

MEMORANDUM

Agenda Item No. 8(N)(5)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 18, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution rejecting all proposals received in response to Project No. DB21-DTPW-01, and waiving competitive bidding procedures pursuant to section 5.03(D) of the Home Rule Charter and section 2-8.1 of the County Code by a two-thirds vote of the Board members present and approving award of the design-build services agreement for Contract No. CIP235-DTPW20-DB, titled "Design-Build Services – The Underline – Phases 3-9", to NV2A Group, LLC and Central Florida Equipment, Inc. d/b/a Central Civil Construction as "NV2A Central Joint Venture" for up to \$87,146,691.50; waiving section 2-10.7 of the Code; and Supplemental Agreement No. 1 for the amount of \$5,828,698.00; for a total contract amount of \$92,975,389.50 for a term of 973 calendar days plus 129 calendar days for contingency time

Resolution No. R-1008-22

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.



Geri Bonzon-Keenan
County Attorney

GBK/ks

Memorandum



Date: October 18, 2022

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Resolution Approving Award of the Design-Build Services Agreement to NV2A Group, LLC and Central Florida Equipment, Inc. d/b/a Central Civil Construction as “NV2A Central Joint Venture” in the Amount of \$87,146,691.50 and Supplemental Agreement No. 1 for the Amount of \$5,828,698 for the Underline Project Phase Three, Segments Three through Nine

Executive Summary

The purpose of this item is to gain approval from the Board of County Commissioners (Board) for a competitive bid waiver to award a Design-Build Services Agreement to NV2A Central Joint Venture for Phase Three (Segments Three through Nine) of the Underline Project for a term of 973 days. The award value is \$87,146,691.50 plus \$5,828,698 in costs explained in Supplemental Agreement No. 1, resulting in a cumulative value of \$92,975,389.50. The project is being supported by the Federal Transit Administration (FTA) via a \$25 million grant award through the Better Utilizing Investments to Leverage Development (BUILD) Transportation Grants Program.

The innovative Underline urban trail (“The Underline”) is included in the County’s Parks, Recreation and Open Spaces Department Master Plan and will serve as the spine of the County’s regional framework for a system of parks, greenways, trails and public spaces. The Underline will be the County’s first true mobility corridor uniting all modes of transportation, enhancing residents’ 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 ten-minute walk of the project, provide access to public transportation to one university, 24 schools, two hospitals, three urgent care facilities, four major malls, and over 10,000 businesses. Upon completion of this contract, The Underline will be a 10-mile linear mobility corridor below the Metrorail and will transform 120 acres of County-owned land below the existing Metrorail from the Miami River (Downtown) to Dadeland South Metrorail Station into a world-class multimodal corridor. The project will provide separated pedestrian and bicycle paths, improvements to over 30 intersections, access to public transportation, public Wi-Fi, enhanced lighting, and wayfinding. This project follows the goals of the Board and the Citizens Independent Transportation Trust (CITT) Advisory Board in the Vision Zero initiative by significantly improving pedestrian and cyclist safety.

The selection process adhered to the contracting requirements within Section 2-8.1 of the County Code as well as provisions in Florida Statutes Section 255.20 pertaining to procurement of contracts for public construction works. The participating firm that submitted the highest-ranked technical proposal and lowest cost proposal, NV2A Central Joint Venture, was selected to initiate negotiations. In an effort to account for inflationary pressures and meet grant agreement performance obligations, a provision to

allow for future unforeseen pricing adjustments on the basis of increases in material costs in accordance to process utilized by FDOT using the USDOL monthly Producer Price Index (PPI) for Variable Materials was incorporated into the contract during the negotiation process. This process is commonly utilized by the Florida Department of Transportation. The provision, although pertaining to limited cost escalation and not anticipated to impact the ranking of participating firms, is considered a material change and necessitates a bid waiver. The recommended award complies with procurement requirements in Florida Statutes Section 255.20(c)7 that provide for an award via bid waiver should the funding source of a project be at risk of being diminished or lost because of the time required to competitively award the project. To perform under the FTA grant agreement, the project must be awarded as soon as possible to facilitate completion prior to the expiration of the grant period.

The scope of work under the design-build services agreement consists of delivery of full architectural and engineering services, construction plans, specifications and construction of approximately 7.36 miles of improvements running within or parallel to the County’s Metrorail right-of-way. Additionally, Supplemental Agreement No. 1 provides environmental progressive enhancements in the form of stormwater retention designed as bioswales in conjunction with more conventional drainage structures as well as enhancements to the paths by providing more robust concrete curbs, reducing the overall maintenance of such feature.

Recommendation

It is recommended that the Board reject all proposals received in response to Project Number DB21-DTPW-01, and waive competitive bidding by a two-thirds vote of the members present pursuant to Section 2-8.1 of the County Code as doing so is in the County’s best interest and approve the award of the Design-Build Services Agreement for Phase Three of the Underline to NV2A Central Joint Venture for \$87,146,691.50, inclusive of a contingency allowance amount of \$7,922,426.50. The duration of the contract is 973 calendar days plus 129 calendar days of contingency time. It is also recommended that the Board approve Supplemental Agreement No. 1 for the amount of \$5,828,698. The cumulative value of both the design-build award and the supplemental agreement is an amount not to exceed \$92,975,389.50. This agreement between the County and NV2A Group, LLC and Central Florida Equipment, Inc. d/b/a Central Civil Construction as “NV2A Central Joint Venture” has been prepared by the Department of Transportation and Public Works (DTPW).

Due to the constrained timeline of the project and the limited resources to manage the procurement of items, DTPW is requesting that Section 2-10.7 of the Code, Sales Tax Exemption Program, be waived for the Project as has typically been done for complex construction projects. This will minimize the potential assertion of claims and damages by the Design-Build firm for delays due to the procurement of materials or equipment by DTPW. Waiving this requirement would expedite the purchase of said materials and would place the responsibility for the procurement, acquisition, and liability of any materials on the Design-Build firm and not the County.

This agenda item is placed for Committee review pursuant to County Code Section 29-124(f). The item 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 County Mayor’s filing of this item with the Clerk of the Board. If the CITT has not forwarded a recommendation and 45 days have not elapsed since the filing of this item, I will request a withdrawal of the item.

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

This project involves the completion of The Underline from SW 19th Avenue to its terminus near the Dadeland South Metrorail Station. The Underline, upon completion of this contract, will be a 10-mile linear mobility corridor below the Metrorail. Design-Build services for the Project are required for approximately 7.36 miles of improvements running within or parallel to Miami-Dade County Metrorail's Right-of-Way (ROW) and sometimes within adjacent municipality ROW that includes separate paved off-street bicycle and pedestrian paths, two pedestrian/bicycle bridges over small waterways/canals, native landscaping, site furniture and equipment, wayfinding signage, pavement markings, intersection improvements, lighting, drainage, environmental remediation, Wi-Fi and security infrastructure, and reconfiguration of parking lots. Services will include, but are not limited to: civil, landscaping, electrical, and drainage design, surveys, geotechnical, permitting, signage, leading public meetings, including their coordination and participation, coordination of all utilities with DTPW, Water and Sewer Department and utility companies, soil remediation, air monitoring plan, air monitoring during construction, reporting, dust control plan, health and safety plan, soils management plan and documents required by the Department of Environmental Resources Management's Pollution Remediation Section, coordination of aspects of the design with the DTPW, Friends of The Underline, City of Miami, City of Coral Gables, City of South Miami and Miami-Dade County, construction and any ancillary tasks necessary to design and build the Project and comply with the commitments submitted to the Federal Transit Administration in the project's National Environmental Policy Act checklist.

Project Location: While the project is located within Districts 5 and 7, represented by Commissioners Eileen Higgins and Raquel A. Regalado, respectively, the impact is Countywide in nature.

- Segment 3: SW 19th Avenue to SW 27th Avenue, Miami, Florida
- Segment 4: SW 27th Avenue to SW 37th Avenue, Miami, Florida
- Segment 5: SW 37th Avenue to SW 42nd Avenue, Miami, Florida
- Segment 6: SW 42nd Avenue to Granada Boulevard, Miami, Florida
- Segment 7: Granada Boulevard to SW 57th Avenue, Miami, Florida
- Segment 8: SW 57th Avenue to SW 65th Avenue, (80th Street)
Miami, Florida
- Segment 9: SW 65th Avenue to Dadeland Boulevard, Miami, Florida

Fiscal Impact/Funding Source

The fiscal impact for the contract is \$92,975,389.50. This amount includes a total base amount of \$79,224,265, plus a contingency allowance amount of \$7,922,426.50 and a Supplemental Agreement No. 1 amount of \$5,828,698. Funding for this project is included in the Capital Budget Program 2000000133 – THE UNDERLINE / Project: 3002666, FY 2021-22 Adopted Budget and Multi-Year Capital Plan, Volume 2 – Transportation and Public Works.

Funding Source

Amount

Road Impact Fees	\$50,549,394.50
USDOT Build Program	\$22,360,552
City of Miami Park Impact Fees	\$7,585,443
City of Coral Gables Park & Mobility Impact Fees	\$7,380,000
FDOT Funds	\$4,500,000
Developer Fees/Donations	\$600,000
Total Funding:	\$92,975,389.50

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

Background

The Underline will transform 120 acres of County-owned land below the existing Metrorail from the Miami River (Downtown) to 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. Phase Three of 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.

The Underline implementation is taking place in three phases. Phase One, The Brickell Backyard, has been completed. Notice to Proceed for Phase Two, The Hammock Trail, was issued on December 3, 2020, with a scheduled completion date of July 21, 2023. This request for Design-Build services will provide DTPW with a qualified design-build team to provide services for Phase Three, the largest of all phases, which will run along the Metrorail ROW from the south ROW line of SW 19th Avenue for approximately 7.36 miles and connect to the Park-and-Ride area at the Dadeland South Metrorail Station.

A Request for Design-Build Services (RDBS), inclusive of the Design Criteria Package was advertised under full and open competition on May 18, 2021. On June 22, 2021, four proposals were received for the Step 1: “Evaluation of Qualifications,” through BidSync. The Competitive Selection Committee (CSC) appointed by the County Mayor reviewed and ranked the proposals at the Step 1 meeting held on September 15, 2021. All four 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 CSC decided to have the following firms advance to Step 2: LEAD Engineering Contractors, LLC (LEAD), Condotte America Inc. (Condotte) and NV2A Central Joint Venture.

On December 22, 2021, technical and price proposals were received from all three advancing firms for Step 2. The Step 2 meeting with oral presentations was held on January 10, 2022. The Step 2 meeting for technical evaluations and bid opening of all three proposals was held on January 18, 2022. The firms were ranked based on their technical evaluation and their proposed total base price. Below are the rankings and price proposals of each of the participating firms:

Firm	Price Proposal	Total Score	Rank
NV2A/Central Joint Venture	\$79,224,265.00	482	1
Lead Ryan JV, LLC	\$99,487,400.00	427	2
Condotte America, LLC	\$90,450,000.00	405	3

1. Scoring was on the basis of 500 total points, with 300 points ascribed to each submitter’s technical proposal and 200 points to price proposal

As a result of this evaluation meeting, NV2A Central Joint Venture was selected to move to negotiations. There were six negotiation meetings, which were resumed on May 24, 2022, in accordance with Section 2-10.4(6) of the Code. The Negotiation Committee accepted the Design-Builder’s lump sum base price of \$79,224,265, without including contingency, to provide design-build services for The Underline Phase 3, Segments Three through Nine. In addition, Supplemental Agreement No. 1 was accepted by the Negotiation Committee. The agreement increases the contract amount by \$5,828,698.

Negotiation meetings resulted in a modification to the agreement to compensate for potential increases in material costs, constituting a bid waiver under Section 2-8.1 of the County Code. The FTA was consulted and does not have objections to the bid waiver and the Federal interest is preserved. The new contract language provides for certain material price adjustments after six months of contract award based on the index as listed by the Florida Department of Transportation of said materials. This adjustment is allowed as a waiver of formal bid procedures with a concurrence by two-thirds vote of the Board members present.

According to the Internal Services Department Division of Small Business Development, there are no violations on record within the last three years for NV2A Central Joint Venture. 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, NV2A Central Joint Venture has not held any contracts with the County.

The Project complies with all applicable federal, state and local regulations including Responsible Wages pursuant to Resolution No. R-54-10 and the Sea Level Rise Ordinance. The Notice to Proceed to NV2A Central Joint Venture is anticipated to be issued within 30 days of Board approval. Included below are the subconsultants that NV2A Central Joint Venture identified for the Project.

Subconsultants

Stantec Consulting Services, Inc.
James Corner Field Operations, LLC
EBS Engineering, Inc.

300 Engineering Group, Inc.
Manuel G. Vera & Associates, Inc.
Nutting Engineers of Florida, Inc.

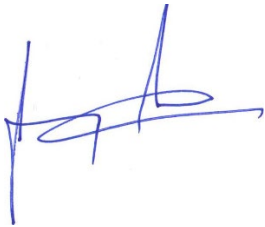
F. R. Aleman & Associates, Inc.

Track Record/Monitor

Cristina Amores of the Internal Services Department (ISD) is the Procurement Contracting Officer and Alfredo E. Munoz of DTPW is the Chief of the Capital Improvements Division. 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 monitoring this Project.

Due Diligence

Pursuant to Resolution No. R-187-12, and in accordance with ISD’s Procurement Guidelines, DTPW staff exercised due diligence to determine Design-Builder’s responsibility for NV2A Group, LLC and Central Florida Equipment, Inc. d/b/a Central Civil Construction. The due diligence was performed on different areas such as: 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 NV2A Group, LLC in the Capital Improvements Information System (CIIS). There are 21 evaluations on record for Central Florida Equipment, Inc. d/b/a Central Civil Construction in CIIS. The average rating of these evaluations is 3.1 out of a possible 4.0 rate. Per Resolution No. R-1181-18, due diligence was also conducted on the recommended awardee’s safety records for the last three years; no major issues were found. Copies of the contractor’s Occupational Safety & Health Form 300 – Log of Work-Related Injuries and Illnesses are on file with DTPW and available upon request.



Jimmy Morales
Chief Operational Officer

SUPPLEMENTAL AGREEMENT NO. 1 TO THE
DESIGN-BUILD SERVICES AGREEMENT
BETWEEN MIAMI-DADE COUNTY, FLORIDA
AND NV2A CENTRAL JOINT VENTURE.

This First Supplemental Agreement is made and entered into as of the ____ day of _____
2022 by and between Miami-Dade County, Florida, a public body, hereinafter referred to as the
“COUNTY”, and NV2A Central Joint Venture, LLC, hereinafter referred to as the “DESIGN-
BUILDER.”

WITNESSETH

WHEREAS, the COUNTY and the DESIGN-BUILDER entered into a Design-Build Services
Agreement to provide Design-Build Services for Phases 3 to 9 – the Underline, Contract Number CIP235-
DTPW20-DB; and

WHEREAS, the parties wish to make certain revisions in the Agreement as provided below as a
result of negotiations to provide Environmental Progressive Enhancements, and Detailing and material
upgrade for concrete curbs for Contract Number CIP235-DTPW20-DB entitled: “Design-Build Services
for Phases 3 to 9 – the Underline.”

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

Phase 1 of the Underline was completed and it is in use for over one year. The design
enhancements included herein result from the observation of patterns of utilization by the users of the
completed areas. Although these enhancements were not included in the original DCP, they are proposed

to be incorporated into Phase 3-9 areas which will provide additional benefits to the County and provide an improved experience for the community. The following items are being added:

ARTICLE 12 SCOPE OF SERVICES:

Under Article 12, Section 12.1, append with the below new section as follows:

12.2. Additional Work:

1. Environmentally progressive enhancements – Stormwater retention ponds

The DCP has located stormwater retention ponds in selected areas that, due to their limited footprint, might not take full advantage of the positive environmental impact that a more expansive approach may accomplish. The following lists the preliminary agreed areas where stormwater retention ponds will be best applied for an engineering enhancement. The stormwater retention ponds will also enhance the aesthetics and user experience of this world-class project. The expanded areas for stormwater retention as agreed herein shall be designed in conjunction with more conventional drainage structures (e.g. drainage wells, exfiltration trenches, etc.) that are contemplated in the original scope of work. This combination of stormwater gardens and drainage structures would work together to achieve the required stormwater management requirements.

- a) Add approximately 30,000 square feet of stormwater retention ponds at Amenity Area No.7, the area between Stanford Drive and Granada Boulevard.
- b) Add approximately 35,000 square feet of stormwater retention ponds with plants and features (raised concrete walkways) at Amenity Area No. 9, the area between Donatello Street and Orduna Drive.
- c) Add approximately 35,000 square feet stormwater retention ponds to area between Granada Boulevard and Sistina Avenue in close relationship with Gables Waterway.
- d) Add approximately 48,000 square feet stormwater retention ponds at area between SW70th Street and SW57th Avenue.

The scope of the added retention areas will include preparation of applicable submittals to DERM and any other AHJs as well as the labor, material and equipment to carry out the work.

2. Detailing and Material Upgrades for Concrete Curbs

Revise the current shoulder detail depicted in the DCP to achieve the same design intent and visual effect, but provide an integral color concrete shoulder with an exposed aggregate/rock salt texture finish in lieu of the Paveway Systems STS topping and reduces long term maintenance costs because of fading and delamination, as follows:

- a) Replace the 6" wide concrete, 18" of base and asphalt shoulder and 2-foot-wide Paveway Systems STS topping, with a 2-foot-wide and 6" thick cast-in-place concrete curb with integral color and exposed aggregate / rock salt finished texture.

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. The

Total Cost \$5,828,698.00

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

Under Article 10, Section 10.4.1, the first paragraph shall be deleted and replaced with the following text:

Therefore, the TOTAL CONTRACT AMOUNT for this Contract shall be limited to Ninety-Two Million, Nine Hundred and Seventy-Five Thousand Three Hundred and Eighty-Nine Dollars and Fifty Cents (\$92,975,389.50).

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 _____ day of _____, 2022.

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:

By: _____



NV2A CENTRAL JOINT VENTURE
(Corporate Seal)

By: _____
Gilberto Neves, President & CEO
NV2A Group LLC

By: _____
Robert Murphy, President
Central Florida Equipment Rentals Inc.
dba Central Civil Construction

CONTRACT NO.: CIP235-DTPW20-DB
ISD PROJECT NO.: DB21-DTPW-01
SUPPLEMENTAL AGREEMENT NO. 1

BHR



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 18, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(N)(5)

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 Danielle Levine Carr Mayor

Veto _____

Override _____

Agenda Item No. 8(N)(5)
10-18-22

RESOLUTION NO. R-1008-22

RESOLUTION REJECTING ALL PROPOSALS RECEIVED IN RESPONSE TO PROJECT NO. DB21-DTPW-01, AND WAIVING COMPETITIVE BIDDING PROCEDURES PURSUANT TO SECTION 5.03(D) OF THE HOME RULE CHARTER AND SECTION 2-8.1 OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT AND APPROVING AWARD OF THE DESIGN-BUILD SERVICES AGREEMENT FOR CONTRACT NO. CIP235-DTPW20-DB, TITLED "DESIGN-BUILD SERVICES – THE UNDERLINE – PHASES 3-9", TO NV2A GROUP, LLC AND CENTRAL FLORIDA EQUIPMENT, INC. D/B/A CENTRAL CIVIL CONSTRUCTION AS "NV2A CENTRAL JOINT VENTURE" FOR UP TO \$87,146,691.50; WAIVING SECTION 2-10.7 OF THE CODE OF MIAMI-DADE COUNTY; AND SUPPLEMENTAL AGREEMENT NO. 1 FOR THE AMOUNT OF \$5,828,698.00; FOR A TOTAL CONTRACT AMOUNT OF \$92,975,389.50 FOR A TERM OF 973 CALENDAR DAYS PLUS 129 CALENDAR DAYS FOR CONTINGENCY TIME

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

WHEREAS, the Board finds it is in the best interest of the County to reject all proposals received in response to Project No. DB21-DTPW-01, and waive competitive bidding requirements of section 2-8.1(b)(1) of the Code of Miami-Dade County, Florida, and section 5.03(D) of the Home Rule Charter by a two-thirds vote of the Board members present,

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

Section 1. Rejects all proposals received in response to Project No. DB21-DTPW-01 and finds it in the best interest of the County to waive competitive bidding requirements of section 2-8.1(b)(1) of the Code of Miami-Dade County, Florida, and section 5.03(D) of the

Home Rule Charter by a two-thirds vote of the Board members present, and approves a design-build services award – Contract No. CIP235-DTPW20-DB – for Phases 3 to 9 of The Underline Project to NV2A Group, LLC and Central Florida Equipment, Inc. d/b/a Central Civil Construction as “NV2A Central Joint Venture” in the amount of \$87,146,691.50.

Section 2. Approves Supplemental Agreement No. 1 in the amount of \$5,828,698.00; for a total contract amount of \$92,975,389.50.

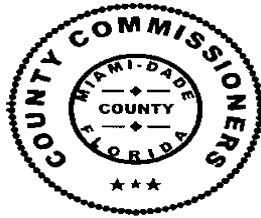
Section 3. Waives section 2-10.7 of the Code of Miami-Dade County. A copy of the contract document is on file with and available upon request from the Chief of the Capital Improvements Division of the Department of Transportation and Public Works.

Section 4. Authorizes the County Mayor or County Mayor’s designee to execute and implement this contract and the Supplemental Agreement No. 1 in accordance with the County Code.

The foregoing resolution was offered by Commissioner **Eileen Higgins** , who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Jose “Pepe” Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	aye		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Kionne L. McGhee	aye
Jean Monestime	aye	Raquel A. Regalado	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	aye

The Chairperson thereupon declared this resolution duly passed and adopted this 18th day of October, 2022. 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: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

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

Bruce Libhaber

DESIGN-BUILD SERVICES AGREEMENT

PROJECT NO.: CIP235
CONTRACT NO. CIP235-DTPW20-DB

DESIGN-BUILD SERVICES AGREEMENT

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

Between the COUNTY: 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" or "Owner", which shall include its officials, successors, legal representatives, and assigns.

And the DESIGN-BUILDER:

Name: NV2A Central Joint Venture
FEIN: 87-1041778
Address: 9100 S Dadeland Blvd Suite 600
Miami FL 33156

Phone Number: 786-233-5060
Fax Number: 786-233-5062
E-mail Address: gneves@nv2agroup.com

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

DESIGN-BUILD SERVICES FOR THE UNDERLINE – PHASES 3 - 9

The COUNTY and the DESIGN-BUILDER agree as set forth herein:

DESIGN-BUILD SERVICES AGREEMENT

TABLE OF CONTENTS

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

ARTICLE 9	THE COUNTY’S RESPONSIBILITIES.....	26
9.1	Information Furnished.....	26
9.2	Project Management.....	26
ARTICLE 10	BASIS OF COMPENSATION	27
10.1	Design-Build Services Fee.....	27
10.2	Contingency Allowance Accounts	27
ARTICLE 11	PAYMENTS TO THE DESIGN-BUILDER.....	30
11.1	Payments to the Design-Builder.....	30
11.2	Retainage.....	30
ARTICLE 12	SCOPE OF SERVICES	32
12.1	Scope of Services	32
ARTICLE 13	GENERAL PROVISIONS	33
13.1	Indemnification and Waiver of Liability.....	33
13.2	Errors and Omissions	34
13.3	Insurance	36
13.4	Performance	37
13.5	Project Suspension or Abandonment	38
13.6	Termination of Agreement.....	38
13.7	Design-Builder’s Accounting Records	39
13.8	Ownership and Reuse of the Documents	39
13.9	Compliance with Laws.....	40
13.10	Miscellaneous Provisions.....	43
13.11	Sustainable Buildings Program	46
13.12	Rights of Decisions and Dispute Resolution.....	47
13.13	Certification	49
13.14	Sovereignty	49
13.15	Survival	50
13.16	Remedies	50
13.17	Use and Possession Prior to Completion.....	51
13.18	Independent Contractor	51
13.19	Sanctions for Contractual Violation.....	51
13.20	Changes	52
13.21	Design-Builder’s Office	54
13.22	Plant and Facility Inspections	54
13.23	Equal Opportunity	54
13.24	Public Records & Contracts for Services Performed on Behalf of Public Agency	55
13.25	Assignment/Assignability.....	56
13.26	Florida Department of Transportation Grant Requirements.....	56
13.27	Entirety of Agreement.....	57
ARTICLE 14	SIGNATURES.....	58

EXHIBITS

EXHIBIT “A”	Performance and Payment Bonds with Certificates of Insurance
EXHIBIT “B”	Internal Services Department (ISD) Forms • ISD Form 6 – Price Proposal • ISD Form 8DB – Evaluation of Qualifications Form • ISD Form 9 - Fair Subcontracting Practices • ISD Exhibit “I” – Acknowledgement of Addenda
EXHIBIT “C”	Affidavits Required at Time of Proposal/ Condition of Award • Affidavit 1 - Design-Builder’s Affidavit • Affidavit 2 - Debarment Disclosure Affidavit • Affidavit 3 - Criminal Record Affidavit • Affidavit 4 - Public Entity Crimes Sworn Statement • Affidavit 5 - Collusion Affidavit • Affidavit 6 - Contractor Due Diligence Affidavit • Affidavit 7 – Fair Wage Affidavit • Affidavit 8 – Exhibit “C” - E-Verify Affidavit • Affidavit 9 - Vendor Affirmation Affidavit
EXHIBIT “D”	Supplemental Requirements • Miami-Dade County Wages: - o Building - o Highway
EXHIBIT “E”	Disadvantaged Business Enterprise and Affirmative Action Requirements • Davis Bacon Minimum Wage Rates: - o Building - o Highway • Forms: - o FDOT 275-030-11 – DBE Bid Package Information Sheet - o FDOT 275-030-11B - DBE Affirmative Action Plan - o FDOT Form 275-021-18 – Commercially Useful Function (CFU) - o FDOT Form 375-30-40 – Certification of Use of all Subs & All Tier Subs - o FDOT Form 375-040-62-psu-dbe-bid-opportunity-form - o FDOT Form 375-030-83– DBE Bid Opportunity Form for Professional Services/Small Business Commitment Form - o DTPW-DBE Prime and Subcontractor’s Form - o DTPW-DBE Schedule For Participation (attached)
EXHIBIT “F”	Standard Construction General Contract Conditions

- EXHIBIT "G" General Conditions Attachments (Payments Forms)
 - Attachment "A"
 - o Certificate of Acceptance for Final Completion
 - o Certificate of Final Acceptance
 - Attachment "B"
 - o Contractor Release
 - o Agreement on Final Quantities and Amounts
 - o Final Affidavit
 - o Labor Standards Provisions Final Acceptance
 - o Memorandum of Understanding
 - o Certificate of Sub-Contractors Status
 - o Final Release of Lien
 - Attachment "C"
 - o Sub-Contractor's/Supplier's Release of Claim
 - o Consent of Surety Company to Requisition Payment
 - Attachment "D"
 - o Contractor Agent to Accept Service
 - Attachment "E"
 - o Force Account Daily Report: Labor, Material & Equipment
 - Attachment "F"
 - o Contingency Allowance Expenditure Authorization Form
- EXHIBIT "H" Request for Design-Build Services inclusive of all Addenda
- EXHIBIT "I" Design-Builder's Technical Proposal
- EXHIBIT "K" Federal Requirements and Provisions
 - o Buy America Certificate
 - o Certification Regarding Debarment, Suspension and Other Responsibility Matters
 - o Lobbying Certification
 - o Statement for Loan Guarantees and Loan Insurance
 - o Disclosure of Lobbying Activities

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
DTPW	Miami-Dade County Department of Transportation and Public Works
EEI	Edison Electric Institute
EPA	Unites States Environmental Protection Agency
FBC	Florida Building Code
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
PROS	Park Recreation and Open Spaces
PCA	Portland Cement Association
PCI	Pre-stressed Concrete Institute
PSC	Public Service Commission
RDBS	Request for Design-Build Services
RER	Miami-Dade County Department of Regulatory and Economic Resources
SBD	Small Business Development
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 binding on both MDC and Contractor

ADDENDA: A modification or clarification of the Contract Documents distributed to prospective Proposers prior to the receipt of Bids.

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: Means this document (pages 1 through 60) inclusive of the Contract Documents,

the Contract Drawings, the Design Criteria Package, 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: Documents signed and sealed by an appropriately licensed professional and submitted by the Contractor during and/or upon completion of the Contract reflecting actual installed/built conditions and all changes made in the Contract Documents during the construction process and showing the exact dimensions, geometry, location, identification and such other information as required by the Contract Documents and/or Architect/Engineer of Record for all elements of the work completed under the contract. (Also referred to as As-Built Drawings or As-Builts). Final payment is conditioned upon the receipt of As-Built Documents.

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.

BID SECURITY or BID GUARANTEE: The cashier's check, certified check or Bid Bond, accompanying the Bid submitted by the prospective Advancing Firm, as a guarantee that the

prospective Advancing Firm 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 him/her.

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, 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 Documents and requesting a price proposal from the Design- Builder, if applicable, within a specified time period.

CHANGE ORDER: A written agreement executed by the Owner, the DESIGN-BUILDER and the DESIGN-BUILDER's Surety, covering modifications to the Contract Documents.

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 MANAGEMENT CONSULTANT/INSPECTION TEAM/CONSTRUCTION, ENGINEERING AND INSPECTION (CEI) TEAM ("DIRECTOR'S DESIGNEE"): Is the team engaged by the COUNTY'S REPRESENTATIVE providing the construction management services, to administer the Design-Build Contract and manage and inspect the Work performed for execution of the Project with the authority granted to it by the COUNTY'S REPRESENTATIVE.

CONSTRUCTION MANAGEMENT SERVICES/CEI SERVICES: The Construction Management Consultant is responsible for: contract administration during the design and construction phases of the Design-Build Contract, performance of duties such as design-build program logistics; planning; schedule reviews and monitoring; monitoring of permits; design support; plans review and resident engineering; office engineering; on-site inspection services; quality control; testing analyses; contract administration; construction safety and security coordination and compliance; construction survey checks and analysis; manage budget for the project; assist with cash flow reports; monitor the Design-Builder's progress; monitor and review construction cost estimates, invoices/requisitions analyses and recommendations; process shop drawings; review, prepare and respond, track and process requests for information and field change requests; analysis, negotiation with recommendations for approval/rejection of supplemental

agreements and change orders; safety certification coordination; and perform contract closeout phases of the Project.

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. 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: See the definition of "Agreement".

CONTRACT COMPLETION DATE: The effective date of Notice-To-Proceed (NTP) plus the Contract Time, as defined in Article 5 "THE PROJECT", as may be amended by change order.

CONTRACT DOCUMENTS: See the definition of "Agreement".

CONTRACT DRAWINGS: The plans, profiles, cross-sections, elevations, schedules, details which show locations, character, dimensions, and details of the Work. Contract Drawings are exempt under the Florida Public Records Act and the Contractor 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.

CONTRACT TIME: The number of days allowed for completion of the Work commencing with the effective date of Notice to Proceed. The Contract Time will be stipulated in the Contract Documents unless extended by a Change Order or by a Work Order.

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

CONTRACTING OFFICER'S REPRESENTATIVE(S): The person or persons designated by the Contracting Officer to act on his/her 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 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 or DESIGN 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, Archeological and Historical Conservancy, Inc., Avino & Associates, Inc., C.M.S.-Construction Management Services, Inc., Horton Lees Brogden Lighting Design Inc., Wingerter Laboratories Inc, and Wood Environment & Infrastructure Solutions, 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.

DIFFERING SITE CONDITIONS: subsurface or concealed conditions or unknown physical conditions at the Project site which differ materially from those shown on the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents. Differing Site Conditions shall not include utilities or the existence of contamination as identified and provided in the Design Criteria Package.

DIRECT COST: Direct Costs recoverable by the Contractor as a result of changes in the Work shall be limited to the actual additional costs of labor and materials installed as part of the Work and for the reasonable additional cost of rental of any Special Equipment or Machinery. Labor shall be limited to site labor costs, including Employer's Payroll Burden. Specifically excluded from labor are the costs of general foremen and site office personnel. Materials are limited to permanent materials required by the Contract Documents and materials approved by the Architect/Engineer of Record as necessary to install the permanent materials in an efficient and workmanlike manner. For special equipment or machinery not listed in said document, the Contractor shall be paid a rental rate corresponding to the average prevailing rental rate for such equipment or machinery in Miami-Dade County, Florida, subject to approval by the Architect/Engineer. No additional payment shall be made to the Contractor for fuel, lubricants, fair wear and tear, transportation, insurance or depreciation. Any equipment or machinery not designated by the Architect/Engineer of Record and/or the Engineer as special equipment and machinery shall be considered Overhead.

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: Work not provided for in the Contract Documents as awarded or as previously modified by Change Order or Work Order but found to be essential to the satisfactory completion of the Contract, within its intended scope.

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 by MDC of the completed work.

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 be 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.

FRAGNET: A fragment or selected portion of the schedule network and/or network of proposed changed work activities.

FURNISHING: Manufacturing, fabricating and delivering to the site of the Work materials, plant, power, tools, patterns, supplies, appliances, vehicles and conveyances necessary or required for the completion of Work.

INDIRECT COSTS: See definition of Overhead.

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: Completely assembling, erecting and connecting material, parts, components, supplies and related equipment specified or required for the completion of the Work including the successful passing of all tests so that they are fully functional.

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 reasonably thorough 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 an 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.

LIMIT OF WORK: Boundary within which the Work is to be performed.

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, including Contract completion dates, as defined in the Agreement and represented in the Project Schedule. Milestone Dates may include interim dates within the duration of the Project or completion dates when Work, or portions of the Work, are required to be finished.

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: Written notice from MDC to the DESIGN-BUILDER specifying the date on which the DESIGN-BUILDER is to proceed with the work and on which the Contract Time commences to run.

NOTICE OF TERMINATION: Written notice from MDC to the DESIGN-BUILDER to permanently stop work under the Contract on the date and to the extent specified in the notice. The Notice of Termination includes Notices of Termination for Convenience, Default and National Emergencies as set forth in the Contract Documents. Upon receipt of such notice, the Contractor shall comply with the termination provisions of this Contract.

OVERHEAD (INDIRECT COSTS): Overhead, also defined as “Indirect Costs”, includes any and all costs other than Direct Costs. The term “Overhead” as indicated in this definition shall apply to both the DESIGN-BUILDER and Subcontractors of any tier. Overhead includes, but is not limited to, all profit and costs associated with: Project bond premiums, Project insurance premiums, costs of general supervision, coordination, superintendents, general foremen, consultants, schedulers, cost controllers, accountants, office administrative personnel, time keepers, clerks, secretaries, watch persons, small tools, equipment or machinery, utilities, rent, telephones, facsimile machines, computers, word processors, printers, plotters, computer software, all expendable items, job site and general office expenses, extended jobsite general conditions, interest on monies retained by the Owner, escalated costs of materials and labor, impact cost on unchanged work, inefficiency, decreased productivity, home office expenses or any cost incurred that may be allocated from the headquarters of the DESIGN-BUILDER or any of its Subcontractors, loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other Project, loss of interest income on funds not paid, costs to prepare a bid, cost to prepare a quote for a Change in the Work, costs to prepare, negotiate or prosecute claims, costs of legal and accounting work, costs spent to achieve compliance with applicable laws and ordinances, loss of Projects not bid upon, loss of productivity or inefficiencies in the Work from any cause.

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 on which the DESIGN-BUILDER provides his/her prices for the

Work in the proposal submitted in response to the RDBS.

PROJECT: See definition for Work.

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

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

PROJECT MANUAL: See the definition for "Agreement".

PROPOSAL DOCUMENTS: Documents applicable to and specific to the Design-Builder's 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.

REQUEST FOR DESIGN-BUILD SERVICES ("RDBS"): The document 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: A term denoting land and property, and interests therein, owned or acquired by MDC.

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: A detailed cost breakdown of each lump sum bid item in the bid form, submitted by the DESIGN-BUILDER at the beginning of the Work and to be used as a basis to

determine monthly progress payments and quantity adjustments within the constraints specified in the Contract Documents.

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 the Project, as described in Article 12 "SCOPE OF SERVICES" of this Agreement.

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: Documents furnished by the DESIGN-BUILDER for approval by the Architect/Engineer of Record to illustrate specific portions of the Work. Shop Drawings include drawings, diagrams, illustrations, calculations, schedules, tables, charts, brochures and other data describing design, fabrication and installation of specific portions of the Work.

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, other than the employees of the DESIGN-BUILDER, 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, other than the employees of the DESIGN-BUILDER, 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, supplying the DESIGN-BUILDER with labor, materials, supplies and/or equipment used directly or indirectly by the DESIGN-BUILDER in the prosecution of the Work.

SUBSTANTIAL COMPLETION: Not used.

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 SPECIFICATIONS: The general term comprising all the written directions, provisions and requirements contained herein, entitled "Technical Specifications," those portions of

standard specifications to which reference is specifically made in the Technical Specifications, and any Addenda, Work Orders and Change Orders that may be issued for the Contract, all describing the work required to be performed, including detailed technical requirements as to labor, materials, supplies and equipment and standards to which such work is to be performed as well as any reports specifically issued with the Bid Documents and specifically identified in the Instructions to Bidders which may include geotechnical or other technical reports.

TEMPORARY CONSTRUCTION EASEMENT LINE: A boundary which describes additional areas which may be made available for construction operations.

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), Dedicated Allowance Account(s), and Work Orders/Change Orders executed by the Parties, which constitutes all sums under the CONTRACT.

USING AGENCY: Department of Transportation and Public Works (DTPW) hereinafter referred to as the "Department". The Department's Contracting Officer or Contracting Officer's Representative 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.

WORK: The design, construction and services required by the Contract Documents, which includes all labor, materials, equipment, and services to be provided by the Contractor to fulfill the Contractor's duties and obligations imposed by the Contract Documents or, if not specifically imposed by the Contract Documents, which can be reasonably assumed as necessary to fulfill the intent of the Contract Documents to provide a complete, fully functional and satisfactory project.

WORK ORDER/TASK ORDER: A written order, authorized by the Architect/Engineer or Owner, directing the Contractor to perform work under a specific Allowance Account or directing the Contractor to perform a change in the Work that does not have a monetary impact, including, but not limited to, extending the Contract Time, if entitlement is established as required by these Contract Documents. No Work Order may increase the Contract Sum.

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 or 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). in accordance with Technical Specifications, Division I – General Requirements – Section 01 26 13, Request for Information (RFI), to issue a written response to the DESIGN-BUILDER.
- 2.2 References to Similar Words - Where "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the Contract Documents unless stated otherwise.
- 2.3 References to Articles or Sections include sub-articles or subsections under the Article referenced.
- 2.4 Referenced Standards: Material and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the date of the Request for Design-Build Services except where otherwise expressly indicated. In case of conflict between the Contract Documents and the referenced standard, the Contract Documents shall govern.
- 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: In the event any article, section, sub-article, paragraph, sentence, clause or phrase contained in the Contract Documents shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other articles, sections, sub-articles, paragraphs, sentences, clauses or phrases of the Contract Documents, which shall remain in full force and effect as if the article, section, sub-article, paragraph, sentence, clause or phrase declared, determined or adjudged invalid, illegal, unconstitutional or otherwise unenforceable was not originally contained in the Contract Documents.
- 2.8 Effect of Headings: The headings and titles to provisions in the Contract Documents are descriptive only and shall be deemed not to modify or affect the rights and duties of parties to this Agreement.

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 This section is not all-inclusive of the responsibilities of the Design-Builder. The Design-Builder is responsible to comply with all sections contained throughout the Agreement that specify its responsibilities of the Design-Builder. 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 The Underline – Phases 3 - 9 (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 cost of all permits, including the DESIGN-BUILDER's administrative and incidental cost shall be included in the DESIGN-BUILDER's bid. 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/her employees, agents or sub-contractors. No time extensions will be allowed for delays in obtaining the 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, of the Florida Statutes.

- 4.4 The DESIGN-BUILDER shall be fully responsible for the actions of all personnel working under his/her 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-BUILDERS shall perform the work utilizing the skill, knowledge and judgment ordinarily possessed and used by a proficient consulting Architect/Engineer 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 13.12 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 months (24) from final acceptance.

- 4.6 The DESIGN-BUILDER agrees to bind specifically every sub-contractor and sub-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, utility relocation/enhancements, environmental remediation, geotechnical and foundation load testing as applicable, 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 that affects the design or final delivery of the Project, 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/her 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 Article 9 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.

ARTICLE 5 – THE PROJECT

- 5.1 LOCATION: The Project is located:

Segment 3: SW 19th Avenue to SW 27th Avenue, Miami, Florida
Segment 4: SW 27th Avenue to SW 37th Avenue, Miami, Florida
Segment 5: SW 37th Avenue to SW 42nd Avenue, Miami, Florida
Segment 6: SW 42nd Avenue to Granada Boulevard, Miami, Florida
Segment 7: Granada Boulevard to SW 57th Avenue, Miami, Florida
Segment 8: SW 57th Avenue to SW 65th Avenue, (80th Street) Miami, Florida
Segment 9: SW 65th Avenue to Dadeland Boulevard, Miami, Florida

- 5.2 TERM OF THE CONTRACT: The Contract Time for which this Agreement shall remain in full force and effect is **Nine Hundred and Seventy-Three 973** calendar days, which excludes the warranty administration period.

- 5.2.1.1. Project Schedule Contract completion dates.

5.2.1.1.1) Not used.

5.2.1.1.2) The DESIGN-BUILDER shall complete the activities identified in Exhibit F – Standard Construction General Contract Conditions, Article 8D (5 through 11) by the Final Completion Contract Date, specified in the Notice to Proceed for Final Completion.

- 5.2.1) COUNTY Contingency Period: This Contract contains a Contingency Allowance for time extension not to exceed ten percent (10%) of the original Contract Time. 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 MDC and its duly authorized representatives, a Work Order 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 Time rounded off to the next whole number.

The COUNTY'S REPRESENTATIVE may authorize a contingency period of not more than **One Hundred and Twenty-Nine (129)** Calendar Days from the NTP to increase in calendar days for the DESIGN-BUILDER to achieve the Project Schedule contract dates when the COUNTY'S REPRESENTATIVE determines that additional days are justified and approves such an increase in accordance with provisions of the Contract:

5.3 LIQUIDATED DAMAGES AND LIQUIDATED INDIRECT COSTS

If the Design-Builder does not achieve Final Completion within 973 calendar days from the NTP date, (plus approved time extensions, if any), LDs will be assessed and paid to the County by the Design-Builder in the amount of **\$6,197.18** per day until such date is achieved. Liquidated Indirect Costs recoverable by the Design-Builder shall be assessed on a daily basis for each Day the Contract Time is delayed due to compensable delay in the amount of \$5,000.00 per day.

5.4 PROJECT SCHEDULE: Refer to Technical Specifications, Division I – General Requirements - Section 01 32 16, Construction Schedule.

5.5 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 terms specified in the Agreement 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. 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.

5.6 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.

5.7 WARRANTY: Refer to Exhibit F - Standard Construction General Contract Conditions, Article 7.M – Warranty of Work.

5.7.1 MATERIAL: Refer to Exhibit F - Standard Construction General Contract Conditions, Article 7.B – Material.

5.7.2 Disposal of Material Outside the Work Site: Refer to Exhibit F - Standard Construction General Contract Conditions, Article 7.B.10.

ARTICLE 6 SUB-CONSULTANTS

6.1 GENERAL: 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 reject in its reasonable discretion, any subcontract at any tier contemplated by the DESIGN- BUILDER or its subconsultants at any tier for any portion of the Project, whichever is deemed to be in the COUNTY's best interest. The County shall have thirty (30) calendar days to accept or reject the subconsultant.

- 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: Additional subconsultants will be identified during the performance of the Contract.

Firm Name(s):

300 Engineering Group, Inc.	Manuel G. Vera & Associates, Inc.
EBS Engineering, Inc.	Nutting Engineers of Florida, Inc.
F. R. Aleman & Associates, Inc.	Stantec Consulting Services Inc.
James Corner Field Operations, LLC	

- 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 presented in the DESIGN-BUILDER's proposal for the project:

10.65% Race-Neutral Aspirational Disadvantaged Business Enterprise Goal

**ARTICLE 7
SUB-CONTRACTORS**

- 7.1 GENERAL: Refer to Exhibit F - 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 subcontractors 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 reject, in its reasonable discretion, any subcontract at any tier contemplated by the DESIGN- BUILDER or its subcontractors at any tier for any portion of the Project, whichever it

deems to be in the COUNTY's best interest. The County shall have thirty (30) calendar days to accept or reject subcontractors.

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): Additional subcontractors will be identified during the performance of the contract.

AUM Construction Inc.	Visualscape Inc.
Jasper Enterprises Inc.	P&J Striping Inc.
Palma Paving & Concrete Inc.	

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.

ARTICLE 8 SUB-CONTRACTS

8.1 DESIGN-BUILDER PARTICIPATION: Refer to Exhibit F - 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 F - 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/her submittal of required

documentation under this Article, and prior to starting work, shall submit written certification that he/she 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 F - 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. Information shown on such plans or data shall be that which has been made available to the COUNTY and shall be provided to the DESIGN- BUILDER without guarantee regarding its reliability and accuracy. The DESIGN- BUILDER shall be responsible for independently verifying such information if it shall be used by the DESIGN-BUILDER to accomplish the work undertaken pursuant to this Contract. The Contracting Officer or Contracting Officer's Representative reserves the right to guarantee the accuracy of information provided by the COUNTY to the DESIGN- BUILDER. When such guarantee is provided in writing, the DESIGN-BUILDER shall not be compensated for independent verification of said information.
- 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 duration of the Work to assess the progress of the DESIGN-BUILDER'S work in accordance with the approved "Project Schedule" to establish and/or review programmatic requirements and scope of the Project. The DESIGN-BUILDER and its Sub-consultants and Sub-contractors should visit the site periodically during the Design and Construction Phases 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. 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.

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". The Design-Builder shall separately invoice, be audited and compensated for services rendered upon presentation of proper invoices and backup documentation in accordance with Article 11 and Article 13, Part 13.9.5 of the Agreement.

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:

DESIGN-BUILD SERVICES

TOTAL BASE CONTRACT AMOUNT	\$79,224,265.00
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The aggregate fixed sum for all payments to the DESIGN-BUILDER for Design-Build Services authorized on this Project shall be in accordance with Technical Specifications, Division I – General Requirements - Section 01 29 73, Schedule of Values.

10.2 CONTINGENCY ALLOWANCE ACCOUNTS.

This Project is a design-build services agreement for the design-build of The Underline – Phases 3 - 9 on public property; therefore, an Allowance Account is permissible, per Ordinance No. 00-65. This Allowance Account, established for the design and construction related portions of the project, will be used by MDC for unforeseen conditions necessitating additional design and construction, resulting in additions to the design-build services fee.

10.2.1 The DESIGN-BUILDER shall obtain prior authorization from MDC for any and all expenses related to services provided under this account. Failure to obtain such prior authorization shall be grounds for non-payment of said expenses.

10.2.2 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 Change Order, Work Orders or task orders.

The sum of the Contingency Allowance Accounts is Seven Million, Nine Hundred Twenty-Two Thousand, Four Hundred and Twenty-Six Dollars and Fifty Cents (\$7,922,426.50).

10.3 DEDICATED ALLOWANCE ACCOUNTS (DAA) – Not Used

10.4 TOTAL CONTRACT AMOUNT

10.4.1 Therefore, the total contract amount for this Contract shall be limited to Eighty-Seven Million, One Hundred Forty-Six Thousand, Six Hundred and Ninety-One Dollars and Fifty Cents (\$87,146,691.50).

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

10.5 The Parties recognize and agree that unforeseen and uncontrollable events have occurred that have caused certain material pricing to be subject to rapid and unpredictable changes (“Variable Materials”), for reasons outside the control of either party, and the Parties agree it is in the best interest of the County to avoid paying estimated and potentially overstated amounts as well as for the County to take advantage of potential price improvements given the high potential for pricing changes. The Parties further agree that such pricing volatility can have a material adverse effect on each party’s rights and obligations under this Contract, and desire to identify and establish a mechanism for payment adjustment for the Variable Materials identified herein. As a result, the County and Contractor agree as follows:

10.5.1 This provision shall apply only to those Variable Materials described below.

10.5.2 Contractor’s Schedule of Values shall identify the quantity of Variable Materials and the Base Unit Price for those materials. Contractor shall be entitled to a monthly price adjustment for Variable Materials using the Base Unit Price, subject to the adjustment process as set forth herein (“Adjustment Process”). Such adjustment shall be based on the process utilized by FDOT using the USDOL monthly Producer Price Index (PPI). Contractor shall not be entitled to payments on Variable Materials that are not incorporated into the Work unless Contractor is otherwise entitled to a change under this Agreement.

10.5.3 Price adjustments will be made commencing no earlier than 180 days after award of this Contract, when the invoice month material price index (“IMP”) set forth below varies by more than 5% from the price index prevailing in the month when the bids were received and then only on the portion that varies by more than 5%. The parties agree that the following indexes were in effect when bids were received:

Variable Material	Quantity	Base material price (BMP) index	BMP Source	Base Price

10.5.4 With each pay application which includes charges for Variable Materials, Contractor shall provide an Index Report in substantially the form attached hereto as Exhibit A.

- 10.5.5 The Index Difference (ID) shall be calculated as follows: For any month where the IMP exceeds the BMP, $[IMP - (BMP * 1.05)] / BMP$. For any month where the IMP is less than the BMP, $[IMP - (BMP * .95)] / BMP$.
- 10.5.6 The Adjustment Process referenced in this subsection shall commence no earlier than (180) one hundred eighty days after award of this contract.
- 10.5.7 The County may audit the Contractor's records related to adjustments made under this provision, and Contractor agrees that the payments contemplated herein are subject to the Audit provisions set forth in the Agreement at 12.G.

[illegible]

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ARTICLE 11 PAYMENTS TO THE DESIGN-BUILDER

11.1 PAYMENTS TO THE DESIGN-BUILDER

- 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.

Payments will be processed pursuant to Administrative Order 3-39 and in accordance with Exhibit F – Standard Construction General Contract Conditions, Article 9 – Progress Payments.

For the purpose of processing progress payment applications, the DESIGN-BUILDER will be assigned a specific pay application period ending date by MDC, 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-consultant and sub-contractor agreements entered into listing award amounts or percentage for this Agreement. Additionally, the Design-Builder shall report all payments made to each sub-consultant and sub-contractor participating on the project and verification of payments received must be confirmed by the sub-consultants and sub-contractors 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.

11.2 RETAINAGE

MDC shall retain a portion of each such invoice equal to five percent (5%) of the amount due for burdened labor and fixed fee only, accrued by the DESIGN-BUILDER during the Construction phases of the Contract. The DESIGN-BUILDER shall provide for a similar retention in all of his/her 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 F – Standard Construction General Contract Conditions, Article 9 – Payments. The County shall not withhold retainage for the Engineering, Design, Permitting, Technical Support, Insurance, Bonds during Construction and other Professional Services as defined in this Agreement.

11.3 PAYMENT FOR DIFFERING SITE CONDITIONS

If Contractor encounters Differing Site Conditions, the following process shall be followed:

- 1) The Design-Builder shall immediately, and before such conditions are disturbed, notify the Engineer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents and as part of the Design-Build firm's due diligence

prior to submittal of a Step 2 Technical and Price Proposal, or of (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

2) The Design-Builder will promptly investigate the conditions, and if such conditions materially differ and cause an increase or decrease in the Design-Builder cost of, or the time required for, performance of any part of the work under the Contract, a Contract change shall be made and the Contract modified in writing in accordance with the Contract Documents.

3) No claim of the Design-Builder under this article will be allowed unless the Design-Builder has given the notice required in the Contract Documents.

4) No claim by the Design-Builder for a Contract change hereunder will be allowed if asserted after final payment under this Contract.

5) If the Engineer is not given written notice prior to the conditions being disturbed, the Design-Builder will be deemed to have waived his right to assert a claim for additional time and compensation arising out of such changed conditions.

11.4 MOBILIZATION

11.4.1 Description

1. Perform preparatory work and operations in mobilizing for beginning work on the Project, including, but not limited to, those operations necessary for the movement of personnel, equipment, supplies, and incidentals to the project site(s) and for the establishment of temporary offices, buildings, safety equipment and first aid supplies, and sanitary and other facilities.

11.4.2 Basis of Payment

1. When No Separate Item for Mobilization is Included in the Contract:
 - a. All work and incidental costs specified as being covered under this Article will be included for payment under the several scheduled items of the overall Contract, and no separate payment will be made therefore.
2. When a Separate Pay Item for Mobilization is Included in the Contract:
 - a. The work and incidental costs specified as being covered under this Article will be paid for at the Contract lump sum price for the Mobilization pay item, after an executed Notice to Proceed for construction has been issued, by partial payments made in accordance with the following:
 - 1) For contracts of 120 contract days duration or less, partial payment will be made at 50% of the Mobilization bid price per month for the first two months. For contracts in excess of 120 contract days duration, partial payment will be made at 25% of the Mobilization line item in the approved Schedule of Values per month for the first four months. In no event shall more than 50% of the Mobilization line item in the approved Schedule of Values be paid prior to commencing construction on the project site.
 - 2) Total partial payments for Mobilization on any project, including when more than one project or job is included in the Contract, will be limited to 10% of the original Contract amount for that project. Any remaining amount will be paid upon completion of all work on the Contract.
 - 3) Retainage, as specified in the Contract Documents, will be applied to all partial payments.
 - 3) Partial payments made on this Subarticle will in no way act to preclude or limit any of the provisions for partial payments otherwise provided for by the Contract.
 - 4) Basis of Payment:
 - Payment will be made under:

Item#	Description	Unit
101-1-A	Mobilization	Lump sum

ARTICLE 12 SCOPE OF SERVICES

12.1 SCOPE OF SERVICES: The scope of services consists of design-build services for the Project, 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.

The Underline Project, once all phases are completed, will be a 10-mile linear mobility corridor

below the Metrorail. Design-Build services are required for approximately 7.36 miles of improvements running within or parallel to Miami -Dade County Metrorail's Right-of-Way and sometimes within adjacent municipality Right-of-Way that includes separate paved off-street bicycle, and pedestrian paths, shared use paths, two pedestrian/bicycle bridges over small waterways/canals, native landscaping, site furniture and equipment, amenities, way finding signage, pavement markings, intersection improvements, lighting, drainage, environmental remediation, WI-FI and security infrastructure, and reconfiguration of parking lots.

Services will include, but are not limited to: civil, landscaping, electrical, and drainage design, surveys, geotechnical, permitting, signage, leading public meetings, including their coordination and participation, coordination of all utilities with DTPW, Water and Sewer Department and utility companies, soil remediation, air monitoring plan, air monitoring during construction, reporting, dust control plan, health and safety plan, soils management plan and documents required by Department of Environmental Resources Management's Pollution Remediation Section, coordination of aspects of the design with the DTPW, Friends of The Underline, City of Miami, City of Coral Gables, City of South Miami and Miami -Dade County, construction; and any ancillary tasks necessary to design and build the Project and comply with the commitments submitted to the Federal Transit Administration in the project's National Environmental Policy Act checklist and, air monitoring during construction.

Refer to Volume II – Design Criteria Package of the RDBS for the full Scope of Services.

ARTICLE 13 GENERAL PROVISIONS

13.1 INDEMNIFICATION AND WAIVER OF LIABILITY

13.1.1 Pursuant to section 725.08 of the Florida Statutes, the DESIGN-BUILDER shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature to the extent arising out of, relating to or resulting from the negligent performance of this Agreement by the DESIGN-BUILDER or its employees, agents, servants, partners principals or subcontractors. 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, employees, agents and instrumentalities as herein provided.

13.1.2 Notwithstanding any provision herein to the contrary, the DESIGN-BUILDER agrees

Page 33 of 170

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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 approval of the Recommendation of Award by the Board of County Commissioners, a Design-Builder's Surety Performance and Payment Bond prepared on the applicable bond form included in the RDBS. The Surety Performance and Payment Bond shall be in the amount of 100% of the contract amount. 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 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 obligee therein specifically mentioned, and all such persons shall be held or deemed to the obligee thereof.

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 13.12 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, unless a longer period is specified within the Contract Documents, 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 months (24) from final acceptance, unless a longer period is specified within the Contract Documents.

13.3 INSURANCE

13.3.1 Within fourteen (14) days after the approval of the Recommendation of Award by the Board of County Commissioners and prior to commencement of Work, the Design-Builder shall obtain all insurance required under this Section with the exception of the Builder's Risk Insurance, which shall be provided upon receipt of the Notice to Occupy Site, and submit same to MDC for approval. All insurance shall be maintained until the Work has been completed and accepted by MDC. The Design-Builder shall furnish to Miami-Dade County:

The Design-Builder shall maintain coverage below throughout the term of this agreement. The Design-Builder shall furnish to insert your Department's name and address, Certificate(s) of Insurance evidencing insurance coverage that meets the requirements outlined below:

- A. Worker's Compensation Insurance for all employees of the Design-Builder as required by Chapter 440.
 - a. If applicable should include coverage required under the U.S. Longshoremen and Harbor Workers' Act (USL&H) and/or Jones Act for any activities on or about navigable water.
- B. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence \$2,000,000 in the aggregate, not to exclude Products and Completed

Operations and Explosion, Collapse and Underground Hazards. **Miami-Dade County and the Florida Department of Transportation must be shown as an additional insured with respects to this coverage.**

- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. Umbrella Liability Insurance in an amount not less than \$5,000,000 per occurrence, and \$5,000,000 in the aggregate.
 - a. If Excess Liability is provided must be follow form for coverage's B and C.
- E. Pollution Liability insurance, in an amount not less than \$1,000,000 covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release or threatened release of Hazardous Materials that result in contamination or degradation of the environment and surrounding ecosystems, and/or cause injury to humans and their economic interest.
- F. Completed Value Builders' Risk Insurance on an "all risk" basis in an amount not less than one hundred (100%) percent of the completed value of the project. Coverage shall remain in place until final completion of construction has been reached as determined by Miami Dade County. The policy shall be in the name of Miami Dade County and the Contractor.
- G. Professional Liability or Errors & Omissions insurance covering architectural and/or engineering project design, construction supervision, administration and any related professional qualifications or functions required by the project for the licensed design professional in an amount not less than \$2,000,000 per claim.
 - a. If any required insurance purchased by the Design-Builder, subcontractor, and Licensed Design Professional has been issued on a 'claims made' basis, the purchaser of such claims made coverage must have and extended reporting or discovery "tail" period of not less than ten years after the project completion date and shall have a retroactive date to the date of first design. The limits of liability and the extensions to be included remain the same.

All insurance policies required above 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.

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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 Performance and Delegation: The performance of this Agreement shall not be delegated or assigned by the DESIGN-BUILDER without the written consent of MDC, and such consent will not be given to any proposed delegation which would relieve the DESIGN-BUILDER or their surety of their responsibilities under this Agreement. The services to be performed hereunder shall be performed by the DESIGN-BUILDER'S own staff and the subcontractors and subconsultants specifically identified in Sections 6.2 and 7.2, unless otherwise approved by MDC. The employment of, contract with, or use of services of any other person or firm by the DESIGN-BUILDER as sub-consultant, sub-contractor or otherwise is subject to approval by MDC.
- 13.4.2 Time for Performance: The DESIGN-BUILDER agrees to start all work hereunder upon receipt of a Notice to Proceed and any subsequent Change Orders or Work Orders issued by MDC and complete each Phase within the time stipulated in each Change Order or Work Order.
- 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.
- 13.4.4 UNFINISHED OR INCOMPLETE WORK

If at any time before Final Completion of the Project the COUNTY'S REPRESENTATIVE finds there is unmanned or unfinished or incomplete Work not in compliance with the Agreement, or Work delay or Work stoppages, it shall notify the DESIGN-BUILDER in writing to finish or complete the Work at DESIGN-BUILDER's expense forthwith using whatever professional services, and construction labor, materials and equipment necessary to perform the Work in accordance with the Contract Documents.

When the activity duration for any items shown on the approved Baseline Project Schedule do not appear sufficient to be completed in the time provided, and the affected activities are likely to delay completion of the Project in the sole opinion of the

COUNTY'S REPRESENTATIVE, or if the COUNTY'S REPRESENTATIVE otherwise determines that the Work is not progressing in a timely manner towards completion in a timely manner, and the DESIGN- BUILDER fails to make good efforts to for completing any of the above Work activities as specified, the COUNTY'S REPRESENTATIVE shall give notice to the DESIGN-BUILDER in writing specifying the conditions pertaining thereto and directing the DESIGN-BUILDER to take the measures necessary to perform the Work. If the DESIGN-BUILDER does not begin to correct such conditions within five (5) days of such notice, or provide a plan satisfactory to the COUNTY'S REPRESENTATIVE to correct such conditions, it shall be sufficient grounds for the COUNTY'S REPRESENTATIVE to reserve the right to place the DESIGN-BUILDER in default and notify its surety of same.

13.5 PROJECT SUSPENSION OR ABANDONMENT

- 13.5.1 Refer to Exhibit F - 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, MDC shall give seven days' notice to the DESIGN-BUILDER of such Project abandonment or suspension. If the Project is to be suspended for less than six (6) months, then the DESIGN-BUILDER shall remain on the Project under this Agreement but will be compensated only for the costs directly associated with the suspension of the Project. MDC will not be liable for stand-by, overhead, or any other costs direct or indirect, that the DESIGN- BUILDER may incur outside of any direct costs assigned to the Project. If the Project is suspended for the convenience of MDC for more than six (6) months, or abandoned in whole or in part for the convenience of MDC during 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 this Agreement which were performed prior to such suspension or abandonment and MDC shall have no further obligation or liability to the DESIGN-BUILDER under this Agreement. If the Project is resumed after having been suspended for more than six (6) months, the DESIGN-BUILDER'S further compensation may be renegotiated, but MDC will have no obligation to complete the Project under this Agreement, and may hire or contract with another DESIGN-BUILDER to complete the project. MDC will have no further obligation or liability to the DESIGN-BUILDER.

13.6 TERMINATION OF AGREEMENT

- 13.6.1 By COUNTY For Convenience: Refer to Exhibit F - 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 F - Standard Construction General Contract

Conditions, Article 11.D.2 – Termination for Default of Contractor and 4) – Implementation of Termination.

- 13.6.3 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 acceptable steps, all to the satisfaction of MDC, to cure the default within that time frame. 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 Refer to Exhibit F – Standard Construction General Contract Conditions – Article 12.G – Audit Rights.
- 13.7.2 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. 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, computer files that have “read” and “write” capability 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. Refer to Exhibit F -Standard Construction General Contract Conditions, Article 12.M – Patent and Copyright.

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 The DESIGN-BUILDER may reuse data where appropriate from other sections of the work included in this contract provided irrelevant material is deleted. The COUNTY shall not be re-invoiced for such reused data. The Contracting Officer or Contracting Officer's Representative shall not accept any reused data containing an excess of irrelevant material, which has no connection with the applicable portion of the work. The COUNTY shall not re-use design documents on other projects not contemplated under this Contract. 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.

13.9 COMPLIANCE WITH LAWS

- 13.9.1 Refer to Exhibit F - 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 The DESIGN-BUILDER shall comply with the financial disclosure requirements of Ordinance No. 77-13 by filing within thirty (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 Dade County Elections Department, P.O. Box 012241, Miami, FL 33101:
- (1) A source of income statement;
 - (2) A current certified financial statement;
 - (3) A copy of the CONSULTANT'S Current Federal Income Tax Return.

The DESIGN-BUILDER further agrees to comply with the requirements of the County, State and Federal Ordinances, Resolutions and/or Regulations.

The DESIGN-BUILDER further agrees to comply with any other Ordinance or Resolution of the County that may become effective before the execution by both parties of this Agreement.

In addition to the above requirements in this article, the DESIGN-BUILDER agrees to abide by and be governed by all Federal, State and County Procedures, Ordinances, Resolutions and Administrative Orders which may have a bearing on the work involved under this Agreement and may be amended from time to time, including but not limited to those listed within the Request for Design-Build Services.

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 DTPW's Office of Civil Rights 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 COR 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

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, 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 Refer to Exhibit F – Standard Construction General Contract Conditions – Article 12.G.2) -Inspector General.

13.9.6.2 INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL: Refer to Exhibit F – Standard Construction General Contract Conditions – Article 12.G.2)c. 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 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 F, 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. Change Orders or Work 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 FORCE MAJEURE shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, hurricane, tropical storm at a strength warranting closure of County facilities by the Mayor and cessation of work, flood or similar occurrence, strike, an act of a public enemy, terrorism, or blockade, insurrection, riot, actions or inactions of government or other authorities, general arrest or restraint of government and people, civil disturbance or similar occurrence which has had or may reasonably be expected to have a material adverse effect on the rights and obligations under this Contract, and which, by the exercise of due diligence, such parties shall not have been able to avoid. Such acts or events DO NOT INCLUDE inclement weather (except as noted above/below) or the acts or omissions of sub- consultants/subcontractors, third-party consultants/contractors, material men, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.

Weather more severe than the norm shall apply only as it affects particular portions of the Work and operations of the Design-Builder, as determined by the Contracting Officer's Representative. The weather more severe than the norm is defined as any situation exceeding the mean data as recorded by The National Climatic Data Center, Asheville, North Carolina and published by the National Oceanic and Atmospheric Administration (This data is taken from the table of normals, means, and extremes in the most recent Local Climatological Data, Annual Summary with Comparative Data, Miami, Florida).

No party hereto shall be liable for its failure to carry out its obligations under the Contract during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligation of the party or parties relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and such cause shall, so far as possible, be remedied with all reasonable dispatch to the extent possible.

It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party or parties, written notice of its assertion that a Force Majeure delay has commenced within ten (10) working days after such commencement, unless there exists good cause for failure to give such notice, in which event, failure to give such notice shall not prejudice any party's right to justify any non-performance as caused by Force Majeure unless the failure to give timely notice causes material prejudice to the other party or parties. Provided timely notice has been given, 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 a non-compensable extension of time to substantially complete its work.

- 13.10.3 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.
- 13.10.4 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.

- 13.10.5 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 property 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.
- 13.10.6 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
- 13.10.7 Energy Efficient Building Tax Credit (if applicable) - Energy Efficient Building Tax Credit (IF APPLICABLE) – The Energy Policy Act (EP Act) of 2005 (Section 1331) as established IRS Section 179D, allows taxpayers to accelerate depreciation on the cost of qualified energy efficient commercial building property placed-in-service after December 31, 2005. This incentive was recently extended by the Emergency Economic Stabilization Act of 2008, to include improvements placed-in-service before January 1, 2014. The returns may be amended going back three tax years, so projects that come online in 2007 or afterwards are eligible.

The Design-Builder is designated as the Designer/Construction Manager (“the Designer”)for the energy efficient improvements incorporated in the Energy

Consumption Reduction Project (“the Project”) for:

1. The purposes of allocating accelerated depreciation benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended (the “Code”).
2. If County and the Internal Revenue Service (IRS) determine that the Design-Builder is eligible and shall receive accelerated depreciation benefits as a “Designer” for the purposes of Section 179D of the Code or that the Design-Builder shall otherwise benefit financially from the monetization of the accelerated depreciation benefit, the Design-Builder hereby agrees to discount its contract price or provide a cash rebate to County (the determination of rebate versus discount to be determined by County in its sole discretion) in an amount equal to the total financial benefit realized by the Design-Builder; at the time the financial benefit to the Design-Builder becomes ascertainable.
3. County reserves the right to retain a third-party consultant (the “Consultant”) –to manage and administer the process of obtaining and monetizing the accelerated depreciation benefit derived from the Project and to designate the “Consultant” as the “Designer” of the energy efficient improvements for the purposes of Section 179D of the Code.
4. The County agrees to cooperate in all reasonable respects with the Design-Builder’s efforts to obtain and monetize any such benefits derived from the Project on behalf of County.

13.10.8 E-VERIFY:

The Design-Builder hereby agrees to utilize the U.S. Department of Homeland Security’s E-Verify system, to verify the employment eligibility of all new employees hired by the Design-Builder during the term of the Agreement; and

Expressly require any subconsultants and subcontractors performing work or providing services pursuant to the Agreement likewise utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subconsultant and subcontractor during the term of the Agreement.

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 RIGHTS OF DECISIONS AND DISPUTE RESOLUTION

13.12.1 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 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 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 criterion 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. If either party wishes to protest the decision of the Department Director or designee, such party may commence an action in a court of competent jurisdiction,

within the periods prescribed by law, it being understood that the review of the court shall be limited to the question of whether or not the Department Director or designee's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

- 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 SOVEREIGNTY

- 13.14.1 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.
- 13.14.2 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 reasonably 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.

13.15 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.

13.16 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.

13.17 USE AND POSSESSION PRIOR TO COMPLETION

- 13.17.1 Refer to Exhibit F -Standard Construction General Contract Conditions, Article 8.E – Use and Possession.
- 13.17.2 Upon the completion of the work for all elements within a segment, Design-Builder will provide the Owner a Notice of Completion for that particular segment. A final punchlist will be generated for that particular segment. All listed punchlist items will be closed at which point the Owner will issue a Certificate of Completion for that particular segment. At that point, the Owner will take Occupancy and Use of that particular segment, assume responsibility for operations and maintenance of that segment and the segment will be available for public use and programming of community activities and events. The Design-Builder Warranty period will begin for that segment on that same date. Each subsequent segment will be completed and turned over in this same manner.
- 13.17.3 Upon the issuance of the Certificate of Completion for the final segment, the work in all seven segments, and therefore the Project, will be deemed to be Complete per Article 5.3. This will begin the 60-day period for the administrative and financial closure of the Contract. Upon the completion of all required documentation for final administrative and financial closure, the Owner will issue a Certificate of Final Completion of the whole Project.

13.18 INDEPENDENT CONTRACTOR

- 13.18.1 The DESIGN-BUILDER 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 DESIGN-BUILDER shall be liable for its own acts and omissions as well as those of its employees, agents, sub- consultants, subcontractors and suppliers. Nothing contained herein shall be construed as creating an employment or agency relationship between the County and the DESIGN-BUILDER.
- 13.18.2 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.

13.19 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.

13.20 CHANGES

13.20.1 Refer to Exhibit F - 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.

13.20.2 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 the denial release the Contractor from its contractual responsibilities under the Contract Documents.

13.20.3 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.

13.20.4 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.

13.20.5 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.

13.20.6 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.

13.20.7 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.

13.20.8 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.

13.20.9 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.

- 13.20.10 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.

13.21 DESIGN-BUILDER'S OFFICE

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

13.22 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 the Project or materials, parts or equipment to be installed into or used for the Project or the Work. Adequate facilities to make the necessary inspection shall be furnished, at no cost, to the County. The responsibility for providing the Project and materials, parts and equipment to install into, or use for the Project 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.

13.23 EQUAL OPPORTUNITY

13.23.1 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 ensure 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.

13.23.2 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.

13.24 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.

13.25 ASSIGNMENT/ASSIGNABILITY:

13.25.1 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.

13.25.2 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.

13.26 FLORIDA DEPARTMENT OF TRANSPORTATION REQUIREMENTS

13.26.1 When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with FDOT as an Additional Insured on the Commercial General Liability policy/ies procured above.

13.26.2 **Records Retention.** The Design-Builder shall maintain and permit access to sufficient project records, including financial statements, demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow FDOT, or its designee, DFS or the Auditor General access to such records upon request.

13.26.3 The employment by any contractor of unauthorized aliens shall be considered a violation of Section 274(e) of the Immigration and Nationality Act. If the Design-Builder knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.

13.26.4 **Deliverable(s):**

- Design-Builder will provide copies of the final design plans and specifications and final bid documents to FDOT's Construction Project Manager prior to commencing construction of the Project. FDOT will specify the number of copies required and the required format.

Plans and Specifications: In the event that this Agreement involves the purchasing of capital equipment or the construction and equipping of

facilities, where plans and specifications have been developed, the DESIGN-BUILDER shall provide an Engineer's Certification of Completion. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

13.27 ENTIRETY OF AGREEMENT

- 13.27.1 This Agreement represents the entire and integrated Agreement between MDC and the DESIGN-BUILDER. This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by the Contracting Officer's Representative or by resolution of the Board of County Commissioners of Miami-Dade County and written agreement by the DESIGN-BUILDER and MDC, as applicable.
- 13.27.2 If any portion of this Agreement is deemed illegal or unenforceable by a court of law, the remainder of the contract remains valid.

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

By: _____
Signature

(Corporate Seal)

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

BHQ

ATTEST:

Witness:

Signature

Signature

June 6, 2022

Date Signed



NV2A Central Joint Venture

Legal Name of Partnership

Gilberto Neves, President & CEO

NV2A Group LLC

Legal Name and Title

By:

Signature

Robert Murphy, President
Central Florida Equipment Rentals Inc.
dba Central Civil Construction

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 Mayor, 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:

HARVEY RUVIN
Clerk of the Court

By: Melisa Adames, Clerk of the Board

Signature

Date:

Distribution:

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

FOR:

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

County Mayor

By:

Signature

EXHIBIT A
PERFORMANCE AND PAYMENT BONDS WITH CERTIFICATES OF INSURANCE

INTERNAL SERVICES DEPARTMENT

PERFORMANCE AND PAYMENT BOND
(Section 255.05, Florida Statutes)

BOND NUMBER _____

CONTRACT NUMBER _____

(Contractor)

(Principal Business Address and Telephone Number)

(Surety)

(Principal Business Address and Telephone Number)

(Owner)

((Principal Business Address and Telephone Number))

By this Bond, We _____ (hereinafter referred to as the
"Principal"), as Contractor under the contract dated _____ 20____, between
Principal and Miami-Dade County for the Construction of
_____ (hereinafter referred to as "Contract") the
terms and conditions of which Contract are incorporated herein by reference and in its entirety
into this Bond and _____ a corporation
(hereinafter referred to as the "Surety"), are bound to Miami-Dade County (hereinafter referred to as
the "County") in the sum of
_____ U.S. dollars (\$ _____) for
payment of which we bind ourselves, our heirs, executors, personal representatives,
administrators, successors and assigns, jointly and severally for the faithful performance of the
Contract.

THE CONDITION OF THIS BOND is that if Principal or successors:

1. Performs all work due and otherwise complies with all terms and conditions of the Contract including but not limited to guarantees, warranties, and the curing of latent defects, said Contract being made a part of this bond by reference; and in the times and in the manner prescribed in the Contract, including any and all damages for delay; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract; and
3. Pays County for all losses, damages, including damages for delay, expenses, costs and attorney's fees, including appellate proceedings, that the County sustains because of a default by Principal under the Contract, including but not limited to a failure to honor all guarantees

Updated April 15, 2016
Approved, ACA H. Gillman

Page 1 of 3

Page 61 of 170

BAC

**INTERNAL SERVICES DEPARTMENT
PERFORMANCE AND PAYMENT BOND (Continued)**

and warranties or to cure latent defects in its work or materials within five (5) years after completion of the Work under the Contract; and

4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, including all warranties and curing all latent defects within five (5) years after completion of the work under the Contract;

Then this bond is void, otherwise it remains in full force.

5. If no specific periods of warranty are stated in the Contract for any particular item or work, material or equipment, the warranty shall be deemed to be a period of one (1) year from the date of final acceptance by the County. This Bond does not limit the County's ability to pursue suits directly with the Principal seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11(3)(c), Florida Statutes.
6. The Surety waives notice of and agrees that any changes in or under the Contract Documents, and compliance or noncompliance with any formalities connected with the Contract or any changes, do not affect the Surety's obligation under this Bond.
7. Principal and Surety expressly acknowledge that any and all provisions relating to consequential, delay, and liquidated damages contained in the Contract are expressly covered by and made a part of this Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.
8. Section 255.05, Florida Statutes, as amended, together with all notice and time provisions contained therein, is incorporated herein, by reference, in its entirety. Any action instituted by a claimant as defined in Section 255.05(1), Florida Statutes, under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.05(2) and 255.05(10), Florida Statutes.
9. This instrument regardless of its form, shall be construed and deemed a statutory bond issued in accordance with Section 255.05, Florida Statutes.

IN WITNESS WHEREOF, the above bounden parties have caused this Bond to be executed by their appropriate officials as of the _____ day of _____, 20____

ATTEST:

CONTRACTOR:

(Secretary)

(Contractor Name)

(Print or type name)

BY: _____
(President) (Managing Partner or Joint Venturer)

(Print or type name)

BAC

**INTERNAL SERVICES DEPARTMENT
PERFORMANCE AND PAYMENT BOND (Continued)**

(Official Title)

(SEAL)

COUNTERSIGNED BY
FLORIDA AGENT OF SURETY:

(CORPORATE SEAL)

(Printed Name of Surety)

(Address of Surety)

(Telephone of Surety)

By: _____
(Signature of Attorney-in Fact)*

By: _____
(Signature of Resident Florida Agent)*

(Printed Name of Attorney-in-Fact)

(Printed Name of Agent)

(Address)

(Address)

(Telephone)

(Telephone)

(Copy of Agent's current
Identification Card as issued by
Commissioner must be attached)

*Power of Attorney must be attached

EXHIBIT B
INTERNAL SERVICES DEPARTMENT (ISD) FORMS

Form 8DB

MIAMI-DADE COUNTY – INTERNAL SERVICES DEPARTMENT (ISD)
STEP 1 - EVALUATION OF QUALIFICATIONS – ISD FORM 8DB
ALL TEAM MEMBERS MUST BE DENOTED ON THIS FORM

Section A – Project Information	
ISD Project No.: DB21-DTPW-01	Project Name: Design-Build Services for the Underline – PHASES 3 - 9
Measures: 10.65%	Goal ☒ DBE – Race Neutral

Firm No.	Section B – Design-Builder's Information Complete this section for the design-builder only; pursuant to Division 1, Section 1.9 of the RDBS "Teaming Restrictions", design-builder may only participate on one (1) team when responding to this solicitation.
1	Design-Builder's Name: _____ FEIN: _____ Business Address: _____ Contact Person's Name & Title: _____ Addenda Received (Indicate number) Telephone Number: () - _____ Fax Number: () - _____ E-mail: _____ General Contractor's / Building Contractor's License No. _____

Firm No.	Section C (1) – Proposed Architecture & Engineering (A &E) Subconsultants (DESIGN TEAM) Complete this section for all proposed A & E subconsultants; pursuant to Division 1, Section 1.9 of the RDBS "Teaming Restrictions".	
	A & E Subconsultant's Name	FEIN:
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

ISD FORM 8DB – Revised 08-10-18

BAC

Section C (2) - A&E Technical Certification Requirements (DESIGN TEAM)

Fill in this section by indicating which firm on the team, using the numbers shown in Sections C(1), will provide services in the technical categories required in the RDBS; you may list more than one firm per category, if applicable.

A&E Technical Category		Lead A & E Consultant	A & E Subconsultant
16.00	General Civil Engineering (LEAD A/E CONSULTANT FOR DESIGN TEAM)		
17.00	Engineering Construction Management (LEAD A/E CONSULTANT FOR DESIGN TEAM)		
3.01	Highway Systems – Site Development and Parking Lot Design		
3.02B	Highway Systems – Minor Highway Design		
3.04	Highway Systems – Traffic Engineering Studies		
3.05	Highway Systems – Traffic Counts		
3.07	Highway Systems – Traffic Signal Timing		
3.09	Highway Systems – Signing, Pavement Marking, and Channelization		
3.10	Highway Systems - Lighting		
9.01	Soils, Foundations and Materials Testing – Drilling, Subsurface Investigations and Seismographic Services		
9.02	Soils, Foundations and Materials Testing – Geotechnical and Materials Engineering Services		
9.03	Soils, Foundations and Materials Testing – Concrete and Asphalt Testing Services		
10.01	Environmental Engineering – Stormwater Drainage Design Engineering Services		
10.05	Environmental Engineering – Contamination Assessment and Monitoring		
10.06	Environmental Engineering – Remedial Action Plan Design		
10.07	Environmental Engineering – Remedial Action Plan Implementation/Operations/Maintenance		
10.09	Environmental Engineering – Wellfield, Groundwater, and Surface Water Protection and Management		
11.00	General Structural Engineering		
13.00	General Electrical Engineering		
15.01	Surveying and Mapping – Land Surveying		
15.03	Surveying and Mapping – Underground Utility Location		
20.00	Landscape Architecture		

Firm No.	Section D – Proposed Non-A & E Subconsultants and/or Subcontractors	
	Complete this section for all proposed non-A & E subconsultants and/or subcontractors who will perform Work with readily identifiable scopes of services and subcontractors as referenced in Section 2.1 – Experience and Qualifications of the RDBS. The following must be provided below: firm name, address, phone number (including area code), contact person, assigned services and FEIN.	
	Non A & E Subconsultant's/Subcontractor's Name	FEIN:
a	Firm Name: Address: Phone Number: () - Contact Person: Assigned Services:	
b	Firm Name: Address: Phone Number: () - Contact Person: Assigned Services:	
c	Firm Name: Address: Phone Number: () - Contact Person: Assigned Services:	
d	Firm Name: Address: Phone Number: () - Contact Person: Assigned Services:	

Section E – Table of Organization

Please attach the following documents:

- 1) Table of Organization
- 2) RESUMES FOR KEY PERSONNEL
- 3) General Contractors or Building Contractors License for Design-Builder

Section F – Experience and Qualification / Preference / Reference Form

This form must be submitted by each team member (Design-Builder, A/E Sub-consultant, Non-A/E Sub-consultant, Sub-contractors) as applicable. Applicable team members must list previous similar type project in which it has performed work. The reference provided below should be for one project and must comply with the requirements listed in Section 2.1 – Experience and Qualifications and Section 2.4, Format and Contents of the RDBS.

Name of Firm (Design-Builder/A/E Sub-consultant/Non-A/E Sub-consultant/Sub-contractor):

Reference Project Name/Address:

Name(s) and role(s) of key personnel working on this reference project:

Reference Project Description:

Scope of Services Provided:

Professional Fees \$ Project Start Date: / / Project Completion Date: / /

Construction Start Date: / / Construction Completion Date: / /

A: Project Construction Cost: \$ B: Professional Fees: \$ Total Project Cost (A+B): \$

Reference Company Name: Reference Name:

Reference Phone Number () - Fax Number () - E-mail:

This project reference complies with the Experience and Qualification(s) and/or Preference(s) required under Section 2.1, Experience and Qualifications

Yes No N/A

Please denote which Experience/Qualification(s) and/or Preference (s) that is met with this project reference:

Design-Builder may use the space below to expand on the scope of services provided for this project:

(Additional sheets of paper may be used to include information)

Section G – Local Certified Veteran Business Enterprise

A Local Certified Veteran Business Enterprise is a firm that is a) a local business pursuant to Section 2-8.5 of the Code of Miami-Dade County and b) Prior to Proposal submittal is certified by the State of Florida Department of Management Services as a service-disabled veteran business enterprise pursuant to Section 295.187 of the Florida Statutes. At the time of proposal submission, the Local Certified Veteran Business Enterprise must affirm in writing its compliance with the certification requirements of Section 295.187 of the Florida Statutes and submit said affirmation and a copy of the actual certification along with the proposal submission.

☐ Place a checkmark here only if affirming Proposer is a certified Local Certified Veteran Business Enterprise. A copy of the required certification must be submitted with the proposal.

Section H - Compliance with Insurance Requirements

The Design Builder acknowledges that if selected, the Design Build firm will comply with the insurance requirements as denoted in Division 1, Section 1.7 of the RDBS - Insurance Requirements.

THE EXECUTION OF ISD FORM 8DB CONSTITUTES THE EXPRESS REPRESENTATION BY THE DESIGN-BUILDER THAT IT HAS THE AUTHORITY AND ABILITY TO PERFORM THE SERVICES REQUESTED UNDER THIS RDBS AND IF AWARDED A CONTRACT, HAS THE AUTHORITY AND ABILITY TO ENTER INTO, AND PERFORM THE CONTRACT ACCORDING TO THE TERMS.

I hereby certify that to the best of my knowledge and belief all the foregoing information is true and correct.

Authorized Design-Builder's Representative _____ Title _____
(Print Name)

Signature of Authorized Representative _____ Date _____



MIAMI-DADE COUNTY – INTERNAL SERVICES DEPARTMENT (ISD)
ISD FORM NO. 9 – Fair Subcontracting Policies
(Section 2-8.8 of the Miami-Dade County Code)

FAIR SUBCONTRACTING PRACTICES

In compliance with Section 2-8.8 of the Miami-Dade County Code, the Proposer submits the following detailed statement of its policies and procedures for awarding subcontracts:

I hereby certify that the foregoing information is true, correct and complete.

Signature of Authorized Representative: _____

Title: _____ Date: _____

Proposer's Name: _____

ISD Form No. 9 – 01-31-12

BHQ

EXHIBIT C
AFFIDAVITS REQUIRED AT TIME OF PROPOSAL/ CONDITION OF AWARD

Affidavit 1

DESIGN-BUILDER'S AFFIDAVIT

Date: _____

Project Name: _____

State of _____

County of _____

Before me, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared _____ who after first being duly sworn, upon oath deposes and says that he/she is an authorized representative of _____
(Legal Name, Corporation, Partnership, Firm)

hereinafter called the bidder or proposer, located at _____ that said proposer visited the site of the work and has carefully examined the documents for said project and checked them in detail before submitting his/her proposal and proposal price; and further, that the proposer or his/her agent, officers, or employees have not either directly or indirectly, made any agreement of participated in any collusion with other bidders, or representatives of Miami-Dade County, or otherwise taken any action in restraint of open competitive bidding in connection with his proposal or proposal price for said project.

Witness: _____
Signature

Legal Name of Proposer

Witness: _____
Signature

Signature

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____.

FOR AN INDIVIDUAL ACTING IN HIS OWN RIGHT:

By: _____

FOR A CORPORATION, PARTNERSHIP OR JOINT VENTURE:

By: _____ having the title of _____

with _____

[] a _____ corporation [] a partnership [] a joint venture, on behalf of the
[] corporation [] partnership [] joint venture.

He/She is [] personally known to me, or
[] has produced _____ as identification

Notary Signature: _____

Type or Print Name: _____

Notary Seal:

BHQ

Affidavit 2

DEBARMENT DISCLOSURE AFFIDAVIT

Date: _____

Project Name: _____

State of _____

County of _____

Before me, the undersigned authority, authorized to administer oaths and take acknowledgements, personally appeared _____ who after first being duly sworn, upon oath deposes and says that he/she is an authorized representative of:

(Legal Name, Corporation, Partnership, Firm, Individual)

hereinafter called the proposer, located at _____

that said proposer, or his agents, officers, principals, stockholders, subcontractors, or their affiliates are not debarred by Miami-Dade County.

Witness: _____
Signature

Witness: _____
Signature

Witness: _____

By: _____
Legal Name & Title

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20 ____.

FOR AN INDIVIDUAL ACTING IN HIS OWN RIGHT:

by _____

FOR A CORPORATION PARTNERSHIP OR JOINT VENTURE:

by _____ having the title of _____

with _____

[] a Florida Corporation [] a partnership [] a joint venture
on behalf of [] corporation [] partnership [] joint venture

He/She is [] personally known to me, or
[] has produced _____ as identification

Notary Signature: _____

Type or Print Name: _____

Notary Seal: _____

BAC

Affidavit 3

CRIMINAL RECORD AFFIDAVIT

Date: _____

Project Name: _____

State of _____

County of _____

Before me, the undersigned authority, authority, authorized to administer oaths and take acknowledgements, personally appeared _____ whom after first being duly sworn, upon oath deposes and says that he/she is an authorized representative of:

(Legal Name, Corporation, Partnership, Firm, Individual)
hereinafter called the bidder or proposer, located at _____ and
that said bidder or proposer, as of the date of this bid or proposal submission:

[] has not been convicted of a felony during the past ten (10) years, nor does it as of the date of bid or proposal submission, have an officer, director or executive who has been convicted of a felony during the past ten (10) years.

[] has been convicted of a felony during the past ten (10) years, or does it as of the date of bid or proposal submission, have an officer, director or executive who has been convicted of a felony during the past ten (10) years.

Witness: _____
Signature

Witness: _____
Signature

Witness: _____
Signature

By: _____
Legal Name & Title

State of _____

County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20 ____.

FOR AN INDIVIDUAL ACTING IN HIS OWN RIGHT:

by _____

FOR A CORPORATION, PARTNERSHIP OR JOINT VENTURE:

by _____ having the title of _____

with _____

[] a Florida Corporation [] a partnership [] a joint venture
on behalf of [] corporation [] partnership [] joint venture

He/She is [] personally known to me, or
[] has produced _____ as identification.

Notary Signature: _____

Type or Print Name: _____

Notary Seal: _____

Affidavit 4

**SWORN STATEMENT UNDER SECTION 287.133(3)(a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal or Contract No. _____ for _____.
2. This sworn statement is submitted by _____ whose
(name of entity submitting sworn statement)
business address is _____
and (if applicable) its Federal Employer Identification Number (FEIN) is _____.
(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____).
3. My name is _____ and my relationship with the entity named
(please print name of individual signing)
above is _____.
4. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), "Florida Statutes" means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes means:
 1. A predecessor or successor of a person convicted of a public entity crime or:
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders,

employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market values under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

7. I understand that a "person" as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, director, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
8. Based on information and belief, the statement which, I have marked below is true in relation to the entity submitting this sworn statement. (Please, indicate which statement applies.)
- ☐ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.
 - ☐ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July, 1989, AND (Please, indicate which additional statement applies.)
 - ☐ There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please, attach a copy of the final order.)
 - ☐ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please, attach a copy of the final order.)
 - ☐ The person or affiliate has not been placed on the convicted vendor list. (Please, describe any action taken by or pending with the Department of General Services.)

(Signature)

Date: _____

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____(Date)

by _____. He/She is personally known to me or has presented
(Affiant)

_____ as identification.
(Type of Identification)

(Signature of Notary)

(Serial Number)

(Print or Stamp Name of Notary)

(Expiration Date)

Notary Public _____
(State)

Notary Seal:

Affidavit 5

COLLUSION AFFIDAVIT

(Code of Miami-Dade County Section 2-8.1.1 and 10-33.1) (Ordinance No. 08-113)

BEFORE ME, A NOTARY PUBLIC, personally appeared _____ who being duly sworn states: (insert name of affiant)

I am over 18 years of age, have personal knowledge of the facts stated in this affidavit and I am an owner, officer, director, principal shareholder and/or I am otherwise authorized to bind the Proposer of this contract.

I state that the Proposer of this contract:

☐ is not related to any of the other parties proposing in the competitive solicitation, and that the Proposer's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the Proposer has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the Proposer has not in any manner sought by collusion to secure to the Proposer an advantage over any other proposer.

OR

☐ is related to the following parties who proposed in the solicitation which are identified and listed below:

Note: Any person or entity that fails to submit this executed affidavit shall be ineligible for contract award. In the event a recommended Proposer identifies related parties in the competitive solicitation its proposal shall be presumed to be collusive and the recommended Proposer shall be ineligible for award unless that presumption is rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such proposals. Related parties shall mean bidders or proposers or the principals, corporate officers, and managers thereof which have a direct or indirect ownership interest in another bidder or proposer for the same agreement or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same agreement. Bids or proposals found to be collusive shall be rejected.

By: _____
Signature of Affiant

_____ 20_____
Date

Printed Name of Affiant and Title

Federal Employer Identification Number

Printed Name of Firm

Address of Firm

SUBSCRIBED AND SWORN TO (or affirmed) before me this _____ day of _____, 20____

He/She is personally known to me or has presented _____ as identification.
(Type of identification)

Signature of Notary

Serial Number

Print or Stamp Name of Notary

Expiration Date

Notary Public – State of _____

Notary Seal

Revised 4/12/99

BAC

Affidavit 6***Miami-Dade County*****Contractor Due Diligence Affidavit**

Per Miami-Dade County Board of County Commissioners (Board) Resolution No. R-63-14, County Vendors and Contractors shall disclose the following as a condition of award for any contract that exceeds one million dollars (\$1,000,000) or that otherwise must be presented to the Board for approval:

- (1) Provide a list of all lawsuits in the five (5) years prior to bid or proposal submittal that have been filed against the firm, its directors, partners, principals and/or board members based on a breach of contract by the firm; include the case name, number and disposition;
- (2) Provide a list of any instances in the five (5) years prior to bid or proposal submittal where the firm has defaulted; include a brief description of the circumstances;
- (3) Provide a list of any instances in the five (5) years prior to bid or proposal submittal where the firm has been debarred or received a formal notice of non-compliance or non-performance, such as a notice to cure or a suspension from participating or bidding for contracts, whether related to Miami-Dade County or not.

All of the above information shall be attached to the executed affidavit and submitted to the Procurement Contracting Officer (PCO)/ AE Selection Coordinator overseeing this solicitation. The Vendor/Contractor attests to providing all of the above information, if applicable, to the PCO.

Contract No. : _____ Federal Employer
Identification Number (FEIN): _____

Contract Title: _____

_____	_____	_____
Printed Name of Affiant	Printed Title of Affiant	Signature of Affiant
_____		_____
Name of Firm		Date
_____	_____	_____
Address of Firm	State	Zip Code

Notary Public Information

Notary Public – State of _____ County of _____

Subscribed and sworn to (or affirmed) before me this _____ day of, _____ 20

by _____ He or she is personally known to me ☐ or has produced identification

Type of identification produced _____

_____	_____
Signature of Notary Public	Serial Number
_____	_____
Print or Stamp of Notary Public	Expiration Date
_____	_____
Notary Public Seal	

2/2014

Affidavit 7



Internal Services Department
Small Business Development
111 NW 1 Street, 19th Floor
Miami, Florida 33128
T 305-375-3111 F 305-375-3160

FAIR WAGE AFFIDAVIT

Before me, the undersigned authority appeared _____ the
(PRINT NAME)

_____ of _____,
(PRINT TITLE) (PRINT NAME OF BIDDER OR PROPOSER)

who attests that _____ shall pay workers on
(PRINT NAME OF BIDDER OR PROPOSER)

the project minimum wage rates in accordance with Responsible Wages and Benefits, Section 2-11.16 of the Code of Miami-Dade County and the Labor Provisions of the contract documents.

State of FLORIDA
County of Miami-Dade

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 201_____.

_____ Personally, known or _____ produced identification.

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Type of identification produced: _____



BAC

Affidavit 8

Miami-Dade County

E-Verify Affidavit

Executive Order 11-02 requires all Florida State agencies under the direction of the Governor to use E-Verify to confirm the employment eligibility of all current and prospective employees (including subcontractors) assigned to perform work pursuant to a state agency contract. Executive Order 11-116 clarifies that the requirement for state contractors to use E-Verify applies to "all contracts for the provision of goods and services to the state in excess of nominal value."

In accordance with the State requirement, Miami-Dade County requires all vendors doing business with the County who are awarded state-funded contracts to verify employee eligibility using the E-verify system. It is the responsibility of the awarded vendor to insure compliance with E-verify requirements at all times.

To enroll in E-Verify, employers should visit the E-Verify website (<http://www.uscis.gov/e-verify>) and follow the instructions. The employer must, as usual, retain the I-9 Forms for inspection.

By affixing your signature below you hereby affirm that you have complied with E-Verify requirements.

Federal Employer Identification Number (FEIN): _____

_____ Printed Name of Affiant	_____ Printed Title of Affiant	_____ Signature of Affiant
_____ Name of Firm		_____ Date
_____ Address of Firm	_____ State	_____ Zip Code

Notary Public Information

Notary Public— State of _____ County of _____

Subscribed and sworn to (or affirmed) before me this _____ day of, _____ 20____

by _____ He or she is personally known to me ☐ or has produced Identification

Type of identification produced _____

_____ Signature of Notary Public	_____ Serial Number
_____ Print or Stamp of Notary Public	_____ Expiration Date
_____ Notary Public Seal	

BAC

EXHIBIT D
SUPPLEMENTAL REQUIREMENTS

EXHIBIT E
DISADVANTAGED BUSINESS ENTERPRISE AND AFFIRMATIVE ACTION REQUIREMENTS

EXHIBIT F
STANDARD CONSTRUCTION GENERAL CONTRACT CONDITIONS

STANDARD CONSTRUCTION
GENERAL CONTRACT CONDITIONS T
ABLE OF CONTENTS

<u>ARTICLE</u>	<u>SUBJECT</u>	<u>PAGE NO.</u>
1.	DEFINITIONS	3
2.	INTERPRETATION	10
3.	ARCHITECT/ENGINEER	13
4.	OWNER	15
5.	CONTRACTOR.....	17
6.	SUBCONTRACTORS.....	19
7.	PROSECUTION OF THE WORK	21
	A. Workmanship and Unauthorized Work	
	B. Material	
	C. Methods of Sampling and Testing	
	D. Meetings	
	E. Permits and Compliance with Laws	
	F. Coordination and Access	
	G. Rights in Land and Improvements	
	H. Interference with Existing Utilities	
	I. Protection of Existing Facilities, Vegetation, Structures, Utilities and Improvements	
	J. Damage to the Work and Responsibility for Materials	
	K. Emergencies	
	L. Accident Prevention	
	M. Warranty of Work	
8.	CONTRACT TIME.....	33
	A. Notice to Proceed	
	B. Schedules	
	C. Extensions of Time and Classification of Types of Delays	
	D. Final Completion and Final Acceptance	
	E. Use and Possession	
	F. Liquidated Damages	
9.	PROGRESS PAYMENTS	42
	A. Payments	
	B. Taxes	
	C. Payments to Subcontractors and Suppliers	
	D. Contract Prices - Bid Form	
	E. Final Payment	

10. CHANGES.....	50
A. Changes	
B. Allowance Accounts	
C. Deletion or Addition of Work	
D. Not Used	
E. Extra Work	
F. Not Used	
G. Force Account	
H. Contractor Proposals - General	
I. Value Engineering Change Proposals	
11. CLAIMS AND DISPUTES.....	59
A. Notice of Claims	
B. Claim Submittals	
C. Disputes	
D. Termination	
12. MISCELLANEOUS PROVISIONS	70
A. No Third Party Beneficiary	
B. Venue	
C. Governing Laws	
D. Successors and Assigns	
E. Written Notice	
F. Indemnification	
G. Audit Rights	
H. Severability	
I. Payment and Performance Bonds	
J. Insurance	
K. Conflict of Interest	
L. Rights in Shop Drawings	
M. Patent and Copyright	
N. Historical, Scientific and Archaeological Discoveries	
O. Use of Owner's Name in Contractor Advertising or Public Relations	
13. ATTACHMENTS	77

1. DEFINITIONS

(June 12, 2012)

Addendum/ Addenda: A modification or clarification of the Contract Documents distributed to prospective Proposers prior to the receipt of Bids.

Advertisement for Bids: The public notice inviting the submission of Bids for the Work.

Agreement: Means the Design- Build Services Agreement (pages 1 through **60**) inclusive of the Contract Documents, the Contract Drawings, the Design Criteria Package, Miami-Dade Transit's Construction Safety Manual, May 2012, Revision No. 6, Department of Transportation and Public Works Adjacent Construction Manual, 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.

Allowance Account (General): Account in which a stated maximum dollar amount is included in the Contract for the purpose of funding, at the sole discretion of the Owner, unforeseen and/ or changed conditions or extra work arising during the prosecution of the Work or any other changes issued by the Owner. The scope and limitations regarding use of the Allowance Account are contained in the Contract Documents. Performance of work, if any, under this Allowance Account shall be authorized by written Work Order issued by the Owner.

Allowance Account(s) (Dedicated): Account(s) in which stated maximum dollar amount(s) are included in the Contract for the purpose of funding specific items of work at the sole discretion of the Owner. The scope and limitations regarding use of the Dedicated Allowance Account(s) are contained in the Contract Documents.

Architect/ Engineer of Record: The architectural and engineering design firm(s) that is responsible for the signing and sealing of the Final design Contract Drawings and Technical Specifications. When these Contract Documents require the action of individual persons, the documents contain specific references to these persons. In particular, the documents shall refer to the BCC when approval of the BCC is specifically required and to the Architect/ Engineer of Record when the Architect/ Engineer of Record's approval is specifically required.

Art in Public Places: Miami- Dade County program established through Ordinance # 94 - 12 and codified in Miami-Dade County Code Section 2-11.15 providing 1.5% of each County project's capital cost to fund a public art component within the Project. Coordination and installation of the Artist's work is included as part of the scope of the Contractor's services to the extent that it is defined in the Bid Documents.

Artist: Person(s) chosen through the Art in Public Places program to design and fabricate or specify an integrated work of art for the Project. The term Artist as may be referred to in the Contract Documents means the Artist and/ or their authorized representative.

As- Built Documents: Documents signed and sealed by an appropriately licensed professional and submitted by the Contractor during and/ or upon completion of the Contract reflecting actual installed/ built conditions and all changes made in the Contract Documents during the construction process and showing the exact dimensions, geometry, location, identification and such other information as required by the Contract Documents and/ or

Architect/ Engineer of Record for all elements of the work completed under the contract (Also referred to as As-Built Drawings or As-Built Documents). Final payment is conditional upon the receipt of As-Built Documents.

BCC: Board of County Commissioners, the governing board of Miami- Dade County.

Beneficial Occupancy: The point at which the Owner or Engineer determines that the Work or any portion thereof can be occupied from a regulatory and work function standpoint. Beneficial Occupancy will not relieve the Contractor of any of its obligations relative to Final Completion or of its responsibility to fully complete the Work in accordance with the Contract Documents.

Bid: The written offer of a Bidder to perform the Work.

Bid Documents: The Advertisement for Bids, Instructions to Bidders, Bid Form, Bid Security, Construction Contract, all contractual forms, General Conditions, Special Provisions, Technical Specifications and Contract Drawings, together with all Addenda and any other applicable standards, regulations, laws and permits as described within these other documents which may be incorporated by reference.

Bid Item: A specific item of work represented by a line item in the Bid Form. Bid Form:

The form on which Bids are submitted.

Bid Security: The cashier's check, certified check or bid bond, accompanying the Bid and submitted by the prospective Advancing Firm, as a guarantee that the prospective Advancing Firm will enter into a contract with the Owner for the performance of the Work and furnish acceptable bonds and insurance if the Contract is awarded to him/ her.

Bidder: An individual, firm, partnership, corporation or combination thereof, submitting a Bid for the Work.

Certificate of Substantial Completion: Not used.

Certificate of Completion: Certificate issued by the local building official providing proof that a structure or system is complete and, for certain types of permits, is released for use and may be connected to a utility system. This certificate does not grant authority to occupy a building, such as a shell building, prior to the issuance of a Certificate of Occupancy by the local building official.

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, release of claims by DESIGN-BUILDER, corrected as-built drawings, record drawings, and all other documents required by this Contract.

Certificate of Occupancy: Certificate issued by the local building official after the building official inspects the building or structure and finds no violations of the provisions of applicable codes or other laws that are enforced by the local building department.

Change Notice: A document issued by the Engineer or Owner to the Contractor specifying a proposed change to the Contract Documents and requesting a price proposal from the Contractor, if applicable, within a specified time period.

Change Order: A written agreement executed by the Owner, the Contractor and the Contractor's Surety, covering modifications to the Contract Documents.

Construction Staging Area: Property which may be available for use by the Contractor 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 Contract: The agreement executed by the Contractor and the Owner covering the performance of the Work including the furnishing of labor, superintendence, materials, tools, and equipment as indicated in the Contract Documents. The term "Contract" shall have the same meaning.

Contract Documents: Same as Agreement.

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

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.

Contract Time: The number of days allowed for completion of the Work commencing with the effective date of Notice to Proceed. The Contract Time will be stipulated in the Contract Documents unless extended by a Change Order or by a Work Order.

County: Miami-Dade County, a political subdivision of the State of Florida. 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.

County Manager: The County Manager of Miami-Dade County, Florida. County Mayor: The Mayor of Miami-Dade County, Florida.

Critical Path: Longest sequence of activities in a project's schedule which defines the project completion date and which must be completed on time in order for the project to be completed on schedule.

Days: Unless otherwise designated, days mean calendar days.

Department Director: The Director of the Miami-Dade County Department implementing the work.

Department Director's Representative: The person or persons designated by the Department Director to act on his/ her behalf in the administration of the contract within the limits of their respective authorization.

Direct Costs: Direct Costs recoverable by the Contractor as a result of changes in the Work shall be limited to the actual additional costs of labor and materials installed as part of the Work and for the reasonable additional cost of rental of any Special Equipment or Machinery. Labor shall be limited to site labor costs, including Employer's Payroll Burden. Specifically excluded from labor are the costs of general foremen and site office personnel. Materials are limited to permanent materials required by the Contract Documents and materials approved by the Architect/ Engineer of Record as necessary to install the permanent materials in an efficient and workmanlike manner. For special equipment or machinery not listed in said document, the Contractor shall be paid a rental rate corresponding to the average prevailing rental rate for such equipment or machinery in Miami-Dade County, Florida, subject to approval by the Engineer. Equipment rental rate shall include fuel, except when equipment is idle. No additional payment shall be made to the Contractor for lubricants, fair wear and tear, transportation, insurance or depreciation. Any equipment or machinery not designated by the Architect/ Engineer of Record and/ or the Engineer as special equipment and machinery shall be considered Overhead.

Engineer: Owner or its authorized representatives identified in the Notice-to-Proceed letter, including, but not limited to the Resident Architect/ Engineer, the Construction Manager, the Contracting Officer's Representatives, and the Owner's representatives. In the event an Engineer is not employed on the project, the term "Owner" may be substituted for Engineer.

Extra Work: Work not provided for in the Contract Documents as awarded or as previously modified by Change Order or Work Order but found to be essential to the satisfactory completion of the Contract within its intended scope.

Field Representative/ Construction Manager: An authorized representative of the Owner that may provide administrative and construction inspection services during the pre- construction, construction, and closeout phases of the Contract and through which the orders of the Owner shall be given. The Field Representative has no authority to modify or waive any provision of the Contract Documents.

Final Acceptance: The formal written acceptance by the Owner of the completed work.

Final Completion: Point in time when the Owner determines that all Work has been completed in accordance with the Contract Documents and all deficiencies listed within the Punch List have been corrected to the satisfaction of the Owner or Engineer including but not limited to all required final inspections, close-

out documents, delivery of all spares and extra materials and activation of warranties as required. A Certificate of Final Acceptance shall be issued to the Contractor by the Owner upon Final Completion.

Force Account: A method of payment measured by actual cost of the labor, materials, and equipment plus a mark-up for Indirect Costs, as distinct from other payment methods such as lump sum or unit price, for Extra Work ordered by Change Order and/ or Work Order.

Fragnet: A fragment or selected portion of the Schedule network and/ or network of proposed changed work activities.

Furnishing: Manufacturing, fabricating, and delivering to the site of the Work materials, plant, power, tools, patterns, supplies, appliances, vehicles, and conveyances necessary or required for the completion of Work.

General Conditions: This section of the Contract Documents which specifies, in general, the contractual conditions.

Green Building Practices: Environmentally- and socially- conscious practices that emphasize processes and methods of design and construction that reduce exposure to noxious materials, conserve non- renewable energy and scarce materials, minimize life- cycle ecological impact of energy and materials, employ renewable energy or materials that are sustainably harvested, protect and restore local air, water, soils, flora and fauna, and support pedestrians, bicycles, mass transit and other alternatives to fossil-fueled vehicles.

Indirect Costs: Overhead.

Installation, Install or Installing: Completely assembling, erecting and connecting material, parts, components, supplies and related equipment specified or required for the completion of the Work including the successful passing of all tests so that they are fully functional.

LEED (Leadership in Energy and Environmental Design): An ecology- oriented building certification program run under the auspices of the U. S. Green Building Council (USGBC) which concentrates its efforts on improving performance across five key areas of environmental and human health: energy efficiency, indoor environmental quality, materials selection, sustainable site development, and water savings.

Limit of Work: Boundary within which the Work is to be performed.

Liquidated Damages: The amount that the Contractor accepts, as stipulated in the Contract.

LIQUIDATED INDIRECT COSTS: The amount stipulated in the Contract Documents, that will be added to the Contract Sum for each Day of delay due to a Compensable Delay. The Contractor accepts this sum as full compensation for the Contractor's and all its Subcontractors' Indirect Costs, for each Day of Compensable Delays. This amount is agreed to include any costs other than Direct Costs incurred by the Contractor and all its Subcontractors of any tier in the performance of this Contract. Documents, that will be deducted from the Contract Sum for each Day of delay due to a Non-excusable Delay.

Lump Sum Bid Item: A bid item in which quantity is not separately measured for payment in units but rather is based on the amount bid by the Contractor as indicated in the Bid Form and made a part of the Contract. Partial payments of Lump Sum Bid Items will be conditionally made, based upon an approved schedule of values, and will be subject to reconciliation in the event that the work of a Lump Sum Bid Item is not fully completed in accordance with the requirements of the Contract Documents.

Miami-Dade County (MDC): A political subdivision of the State of Florida, the Owner.

Milestone: A completion date as defined in the Contract Documents.

Notice to Proceed: Written notice from the Owner to the Contractor specifying the date on which the Contractor is to proceed with the Work and on which the Contract Time commences to run.

Notice of Termination: Written notice from the Engineer or the Owner to the Contractor to permanently stop work under the Contract on the date and to the extent specified in the notice. The Notice of Termination includes Notices of Termination for Convenience, Default and National Emergencies as set forth in the Contract Documents. Upon receipt of such notice, the Contractor shall comply with the termination provisions of this Contract.

Overhead (Indirect Costs): Overhead, also defined as "Indirect Costs", includes any and all costs other than Direct Costs. The term "Overhead" as indicated in this definition shall apply to both Contractors and Subcontractors of any tier. Overhead includes, but is not limited to, all profit and costs associated with: Project bond premiums, Project insurance premiums, costs of supervision, coordination, superintendents, general foremen, consultants, schedulers, cost controllers, accountants, office administrative personnel, time keepers, clerks, secretaries, watch persons, small tools, equipment or machinery, utilities, rent, telephones, facsimile machines, computers, word processors, printers, plotters, computer software, all expendable items, job site and general office expenses, extended jobsite general conditions, interest on monies retained by the Owner, escalated costs of materials and labor, impact cost on unchanged work, inefficiency, decreased productivity, home office expenses or any cost incurred that may be allocated from the headquarters of the Contractor or any of its Subcontractors, loss of any anticipated profits, loss of bonding capacity or capability losses, loss of business opportunities, loss of productivity on this or any other Project, loss of interest income on funds not paid, costs to prepare a bid, cost to prepare a quote for a Change in the Work, costs to prepare, negotiate or prosecute claims, costs of legal and accounting work, costs spent to achieve compliance with applicable laws and ordinances, loss of Projects not bid upon, loss of productivity or inefficiencies in the Work from any cause.

Owner: Miami- Dade County, whose governing body is the BCC acting in its proprietary capacity. Where applicable, the Owner acts through its Engineer or Field Representative. When these Contract Documents require the action of individual persons, the documents contain specific references to these persons. In particular, the documents shall refer to the BCC when approval of the BCC is specifically required and to the Owner or Engineer when the Owner or Engineer's approval is specifically required.

Payment and Performance Bonds: Bonds executed by the Contractor and its Surety assuring that the Contractor will, in good faith, perform and guarantee the work in full conformity with the terms of the

Contract Documents and will promptly pay all persons supplying the Contractor with labor, materials, or supplies, used directly or indirectly by the Contractor in the prosecution of the Work. These bonds shall be two separate bonds, one bonding payment and one bonding performance. Each bond shall be for no less than 100 % of the total maximum contract amount.

Project: See definition for Work.

Punch List: A list issued by the Owner to the Contractor of work elements requiring remedial action or completion by the Contractor before Final Completion is issued to the Contractor.

Right-of-Way: A term denoting land and property, and interests therein, owned or acquired by the Owner.

Schedules: All schedules delivered under the Contract including time schedules and schedule of values.

Schedule of Values: A detailed cost breakdown of each lump sum bid item in the bid form, submitted by the Contractor at the beginning of the Work and to be used as a basis to determine monthly progress payments and quantity adjustments within the constraints specified in the Contract Documents.

Shop Drawings: Documents furnished by the Contractor for approval by the Architect/ Engineer of Record to illustrate specific portions of the Work. Shop Drawings include drawings, diagrams, illustrations, calculations, schedules, tables, charts, brochures and other data describing design, fabrication and installation of specific portions of the Work.

Site, Project Site, Work Site, Construction Site, Job Site: The location(s) at which the work under this Contract is to be accomplished, as shown in the Contract Documents.

Special Provisions: Section of the Contract which includes specific contractual requirements not covered in the General Conditions that are specific to the Project.

Subcontractor: Any person or entity, other than the employees of the Contractor, 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, supplying the Contractor with labor, materials, supplies and/ or equipment used directly or indirectly by the Contractor in the prosecution of the Work.

Substantial Completion: Not used.

Surety: The bonding company or companies furnishing the bonds required of a Bidder and of the Contractor, which is bound by Contract Bond with and for the Contractor who is primarily liable and which surety company or individual is responsible for the Contractor'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 Specifications: The general term comprising all the written directions, provisions and requirements contained herein, entitled " Technical Specifications," those portions of standard specifications to which reference is specifically made in the Technical Specifications, and any Addenda, Work Orders and Change Orders that may be issued for the Contract, all describing the work required to be performed, including detailed technical requirements as to labor, materials, supplies and equipment and standards to which such work is to be performed as well as any reports specifically issued with the Bid Documents and specifically identified in the Instructions to Bidders which may include geotechnical or other technical reports.

Temporary Construction Easement Line: A boundary which describes additional areas which may be made temporarily available for construction operations.

Time Contingency: The maximum time specifically identified in the Contract Documents by which

the Owner may extend the contract time to accomplish the work without a change order. Limitations on the use of the time contingency are set forth in the Contract Documents.

Unit Prices: Unit prices shall include all labor, materials, tools, and equipment; all other direct and indirect costs necessary to complete the item of Work and to coordinate the unit price Work with adjacent work; and shall include all overhead and profit. Contractor shall accept compensation computed in accordance with the unit prices as full compensation for furnishing such Work.

Work: The design, construction and services required by the Contract Documents, which includes all labor, materials, equipment, and services to be provided by the Contractor to fulfill the Contractor's duties and obligations imposed by the Contract Documents or, if not specifically imposed by the Contract Documents, which can be reasonably assumed as necessary to fulfill the intent of the Contract Documents to provide a complete, fully functional and satisfactory project.

Work Order: A written order, authorized by the Engineer or Owner, directing the Contractor to perform work under a specific Allowance Account or directing the Contractor to perform a change in the Work that does not have a monetary impact, including but not limited to, extending the Contract Time if entitlement is established as required by these Contract Documents. No Work Order may increase the Contract Sum.

END OF ARTICLE

2. INTERPRETATION

(June 12, 2012)

- A. The intent of the Contract is to include all necessary items for the proper completion of the Work by the Contractor so the Owner may have a fully functioning facility and fully receive the benefits intended under the Contract. The Contractor shall perform, without additional compensation, such incidental work as necessary to complete the Work and fulfill the design intent, in accordance with the requirements set forth in the Contract Documents, so that it will meet the requirements for which the Project was intended, in a satisfactory and workmanlike manner.
- B. The Contract Documents and all referenced standards cited are essential parts of the Contract requirements. A requirement occurring in one is as binding as though occurring in all. The documents comprising the Contract Documents are complementary and indicate the construction and completion of the Work. Anything mentioned in the Contract Documents and not shown on the Contract Drawings, or shown on the Contract Drawings and not mentioned in the Contract Documents, shall be of like effect as if shown or mentioned in both. The more stringent shall apply in the case of a conflict.
- C. Site Inspections and Verification of Governing Dimensions: In executing the contract, the Contractor represents that he has, prior to bid, visited the site, become familiar with the conditions under which the work is to be performed and correlated his personal observations with the requirements of the Contract Documents or that he has chosen not to do so, in the event that a mandatory site visit is not specified in the Contract Documents. The Contractor accepts the responsibility for all errors in construction which could have been avoided by such examination and the opportunity to seek timely clarifications during the bidding process. The Contractor, 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 conformance with 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 Contractor, and agreed to in writing by the Owner through the Engineer before the Contractor begins any part of the Work. No disclaimer for defective or non-conforming adjoining work that was clearly foreseeable to the Contractor during a site visit (mandatory or non-mandatory) will be considered by the Owner.
- D. Errors, Inconsistencies and Omissions: The Contractor shall carefully study and compare all drawings, Contract Documents and other instructions; shall verify all figures on the Contract Drawings before laying out the Work; shall notify the Owner or Architect/ Engineer of Record of all errors, inconsistencies, or omissions which he may discover; and obtain specific instructions in writing during the bidding process and prior to submitting his Bid. The Contractor shall not take advantage of any apparent error or omission which may be found in the Contract Drawings or Contract Documents, and the Architect/ Engineer of Record shall be entitled to make such corrections therein and interpretations thereof as he may deem necessary for the fulfillment of their intent. The Contractor shall be responsible for all errors in construction which could have been avoided by such examination and notification, and shall correct, at his own expense, all work improperly priced, scheduled, or constructed through failure to notify the Owner or Architect/ Engineer of Record and to request specific instructions.
- E. Where "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the Contract Documents unless stated otherwise.
- F. References to Articles or Sections include sub-articles or subsections under the Article referenced.

- G. Referenced Standards: Material and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the date of the Invitation to Bid except where otherwise expressly indicated. In case of a conflict between the Contract Documents and the referenced standard, the Contract Documents shall govern.
- H. Order of Precedence of Contract Documents: In the event of any conflict, ambiguity or inconsistency among the Contract Documents and unless otherwise provided in the Agreement or required by law, the order of precedence of the Contract Documents shall be as follows:
- a. Change Orders to the Design-Build Services Agreement with the most recent Change Order of highest precedence;
 - b. Notice to Proceed;
 - c. Executed Design-Build Services Agreement (excluding Exhibits listed separately herein);
 - d. Standard Construction General Contract Conditions;
 - e. Addenda to the Request for Design- Build Services;
 - f. Design Criteria Package;
 - g. Design-Build Firm' s Proposal;
 - h. Referenced Codes and Standards;
 - i. Payment and Performance Bond with Certificate(s) of Insurance;
 - j. Request for Design- Build Services (excluding Addenda listed separately herein);
 - k. Other documents not listed above.
- I. In case of differences between small and large scale drawings, the drawings showing greater detail shall govern. Schedules on drawings shall take precedence over conflicting notations on drawings. In the event of discrepancy between any scaled dimensions on drawings and the figures written thereon, the figures shall govern over the scaled dimensions unless otherwise indicated.
- J. Explanations: Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the Owner or Engineer in a timely manner to allow sufficient time for such further written explanations as may be necessary and shall conform to the explanation provided as part of the Contract. Subject to the dispute resolution procedures in the Contract Documents, the Owner or Engineer' s decision shall be final.
- K. Effect of Headings: The headings and titles to provisions in the Contract Documents are descriptive only and shall be deemed not to modify or affect the rights and duties of parties to this Contract.
- L. No acceptance, order, measurement, payment, or certificate of or by the Engineer and/ or the Owner or its employees or agents shall either stop the Owner from asserting any rights or operate as a waiver of any provision hereof or of any power or right herein reserved to the Owner or of any rights to damages herein provided.
- M. Wherever the terms, "as directed", "ordered", " permitted", " designated", "as approved", " approved equal", " or equal", "acceptable" and other words of similar meaning which authorize an exercise of judgment are used in the Contract Documents, such judgment shall be vested

only in the Architect/ Engineer of Record, Engineer and/ or the Owner and subject to the dispute resolution procedures in the Contract Documents.

- N. The Contractor shall make available at the job site one copy of each referenced standard and/ or Contract Documents for the Contractor' s and the Field Representative' s use during the time that work covered by the standards and/ or Contract Documents is underway.
- O. The Contract Documents provide for a complete work and may have been prepared in divisions of various crafts, trades, and other categories of work. The Contractor is responsible for the performance of all work under the Contract regardless of any such divisions and shall ensure that all of the work is performed and completed. The organization of the Contract Documents into divisions, sections and articles and the arrangement of the drawings do not restrict or limit the Contractor into dividing the Work among subcontractors or in establishing the extent of the Work to be performed by any trade.
- P. No deviation from the approved Contract Documents shall be permitted without the prior written approval of the Owner, which approved deviation shall be documented either by Change order or Work Order.
- Q. All Requests for Information by the Contractor per this section shall be in accordance with the Contract Documents.

END OF ARTICLE

3. ARCHITECT/ENGINEER/FIELD REPRESENTATIVE

(June 12, 2012)

- A. The Engineer shall respond to questions which may arise as to the quality and acceptability of materials furnished, work performed, and as to the manner of performance and rate of progress of the work in accordance with the time frames prescribed in the Contract Documents. The Engineer shall decide all questions which may arise as to the interpretation of the Contract Documents relating to the Work, and the fulfillment of the Contract on the part of the Contractor, and those decisions shall be subject to the dispute resolution procedures of the Contract Documents.
- B. The Engineer or Field Representative is not authorized to revoke, alter, or waive any requirement of the Contract.
- C. The Contractor, Engineer, Owner or Field Representative shall have free access to the Work and materials at all times to facilitate the performance of his/ her duties.
- D. Subject to concurrence by the Owner, the Engineer, or the Field Representative shall have the right to observe and reject any material or work performed which does not meet the requirements of the Contract Documents. When the Engineer or the Field Representative discovers any work in progress or completed that does not meet the requirements of the Contract Documents, the Engineer or the Field Representative shall reject that portion of the Work affected and shall confirm such rejection in writing, as soon as practical, detailing the reasons for the rejection. Work rejected by the Engineer or the Field Representative will not be paid for. Any such observation and/ or rejection shall not be construed as undertaking supervisory control of the Work or of means and methods employed by the Contractor or his Subcontractors and shall not relieve the Contractor of any of his responsibilities or obligations under the Contract. The Contractor shall not request or attempt to require the Engineer or the Field Representative to undertake such supervisory control or to administer, supervise, inspect, assist, or act in any manner so as to relieve the Contractor from such responsibilities or obligations.
- E. The fact that the Engineer or the Field Representative has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract Documents, shall not bar the Engineer or the Field Representative from subsequently rejecting said materials or work.
- F. If either the Engineer or the Field Representative requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract Documents. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work. Should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at no additional cost to the Owner.
- G. Any work done or materials used which are not in compliance with the Contract Documents may be ordered removed and replaced at the Contractor's expense.
- H. The Owner and other agencies having jurisdiction over the work hereunder shall be afforded free access to the site to perform such inspections and tests as may be required to determine conformance of the Work with the Contract Documents.
- I. Neither the Engineer nor the Field Representative shall be responsible for any safety

obligations imposed on the Contractor by applicable industry standards, licensing requirements, laws, or regulatory requirements.

END OF ARTICLE

4. OWNER

(June 12, 2012)

- A. Unless otherwise specified or excluded elsewhere in the Contract Documents, the records of borings, test excavations and other subsurface investigations, if any, are offered as information only and solely for the convenience of the Contractor. The Owner does not warrant or guarantee either that said records are complete or that the said records will disclose the actual subsurface conditions. The interpretation of the records and the conclusions drawn therefrom as to the actual existing subsurface conditions are the sole responsibility of the Contractor.
- B. Any estimates of quantities of work or materials, based on said borings, test excavations and other subsurface investigations are not warranted by the Owner to indicate the true quantities or distribution of quantities unless the Contractor is expressly directed to rely on such information to prepare and submit his/ her Bid.
- C. If the Contractor is notified by the Owner to correct defective or nonconforming work, and the Contractor fails to promptly proceed with corrective action in a reasonable time, the Owner may, upon written notice, accomplish the redesign, repair, rework, or replacement of nonconforming work by the most expeditious means available and backcharge the Contractor for the cost incurred. The cost of backcharge work shall include all reasonable costs associated with the corrective action.
- D. The Owner shall separately invoice or deduct from payments, otherwise due to the Contractor, the costs as provided herein. The Owner's right to backcharge is in addition to any or all other rights and remedies provided in this Contract, or by law. The performance of backcharge work, on behalf of the Owner, shall not relieve the Contractor of any of its responsibilities under this Contract including, but not limited to express or implied warranties, specified standards for quality, contractual liabilities and indemnifications, and the Contract Time.
- E. The Field Representative and/ or Engineer will administer the Contract and the orders of the Owner are to be given through the Field Representative and/ or Engineer. The Field Representative and/ or Engineer shall determine the amount and quality of the several kinds of work performed and materials furnished which are to be paid for under the Contract.
- F. The Field Representative will observe the Contractor's work for compliance with the Contract Documents. Such observation shall extend to all, or any part of the work done and to the preparation, fabrication, or manufacture of the material to be used.
- G. Upon discovery, the Field Representative shall call the Contractor's attention to faulty workmanship or defective materials and shall reject work and materials not conforming to the requirements of the Contract Documents.
- H. When any work in progress or completed does not meet the requirements of the Contract Documents, the Field Representative shall have the authority to order the Contractor to shut down that portion of the work affected until the affected work is corrected to the satisfaction of the Field Representative. The Field Representative shall confirm this order in writing as soon as practicable, detailing the reasons for the shutdown. Work performed in violation of the Field Representative's order to shutdown will not be accepted or paid for.
- I. The Field Representative is not authorized to revoke, alter, or waive any requirements of the Contract. The Field Representative will negotiate and act on behalf of the Owner to the authorized limits of his authority as specified in the Contract Documents.

- J. Whenever the Contractor intends to build, assemble or perform any portions of the Work away from the site, the Contractor shall promptly notify the Field Representative of such intentions, including where and when such work is to be performed, before such work starts. The Contractor shall also make arrangements for access thereto by the Field Representative and/or the Engineer so that the aforementioned portions of the Work may be inspected as needed.
- K. The fact that the Field Representative has not made early discovery of materials furnished or work performed which does not meet the requirements of the Contract Documents, shall not bar the Field Representative from subsequently rejecting said materials or work and does not relieve the Contractor of his responsibility to meet the requirements of the Contract Documents.
- L. The Field Representative shall not act as a foreman or perform other duties for the Contractor, nor interfere with the management of the work by the Contractor.
- M. The administration, observation of the work, and actions by the Field Representative, as herein provided, shall not be construed as undertaking supervisory control of the construction work or of means and methods employed by the Contractor or his Subcontractors and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract; the Contractor shall not request or attempt to require the Field Representative to undertake such supervisory control or to administer, to supervise, to inspect, to assist, or to act in any manner so as to relieve the Contractor from such responsibilities or obligations.
- N. Subject to the dispute resolution procedures of the Contract Documents, the Field Representative shall decide all questions relating to the rights of different prime Contractors on the Project or site.
- O. All materials and each part or detail of the work shall be subject to observation by the Field Representative and/or the Engineer. The Engineer and the Field Representative shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required.
- P. Miami-Dade County enters into this Contract solely in its proprietary capacity. Nothing in this Contract is intended to bind or otherwise restrict the discretion of Miami-Dade County acting in its regulatory capacity, including but not limited to the regulatory acts of the Departments of Regulatory and Economic Resources (RER), Transportation and Public Works (DTPW), Fire- Rescue (MDFRD) and Water & Sewer (WASD) or their successors.

END OF ARTICLE

5. CONTRACTOR

(June 12, 2012)

- A. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- B. The Contractor shall hold valid current certificate(s) of competency for the type of work to be performed, in accordance with the qualifications requirements as set forth in Chapter 489 of the Florida Statutes and Chapter 10 of the Code of Miami- Dade County.
- C. The Contractor shall maintain within Miami-Dade County, Florida, a duly authorized agent to accept service of legal process on its behalf, and shall keep the Owner advised of such agent's name and address, during the duration of the Contract, and for three years after final payment or as long as Contractor has warranty obligations under these Contract Documents, whichever period terminates later. The Contractor shall complete the form titled "Contractor Agent to Accept Service" included in the Contract Documents and submit it to the Engineer prior to NTP.
- D. The Contractor shall be responsible for the complete performance for all of the work under the Contract, and for the methods, means, and equipment used in performing the Contract and for all materials, tools, apparatus and property of every description used in connection therewith.
- E. The Contractor will provide in its subcontracts that its Subcontractors agree to work within the timeframes specified in the Contractor's approved schedule.
- F. Contractor's Superintendent: The Contractor shall provide a superintendent at the site at all times who is competent in the type of work being performed to act as the Contractor's agent, and shall give that superintendent the full authority to receive instruction from the Field Representative or Engineer and to execute the order or directions of the Field Representative or Engineer, including the prompt supply of all materials, tools, equipment, labor, and incidentals that may be required. The Contractor shall furnish such superintendence regardless of the amount of work that is subcontracted, and the superintendent shall read, speak, write and understand English. The Contractor shall also maintain at least one other employee on the work site during Project working hours who speaks and understands English. This superintendent shall be responsible for keeping written daily logs of the work on the project.
- G. The competency of the superintendent shall be demonstrated through licensure or certification in contracting, engineering, trade or experience as applicable to the work being performed. Proof of licensure, certification or qualification of the superintendent must be provided to the Owner at the pre-construction conference and is subject to the approval of the Engineer or Field Representative after Contractor receipt of said requirements.
- H. In the event that the Field Representative or Engineer determines, through the course of the actual work progress, that the superintendent lacks the knowledge or expertise necessary to execute the work in an efficient and competent manner, in keeping with all current codes and best practices, the Field Representative or Engineer shall notify the Contractor in writing and the superintendent shall be replaced by the Contractor with a person acceptable to the Field Representative or Engineer within five (5) working days which acceptance shall not be unreasonably withheld.
- I. The Contractor's failure to replace the superintendent in the time allotted shall be cause for the Owner to suspend work with such delays chargeable to the Contractor as Liquidated Damages as specified elsewhere in this contract.

- J. The Contractor shall maintain a daily accounting of his daily manpower, by trade and position, and provide this information to the Field Representative on a weekly basis.

END OF ARTICLE

6. SUBCONTRACTORS

(June 12, 2012)

- A. The Contractor will be permitted to subcontract portions of the Work to competent Subcontractors. Such Subcontractors shall hold valid current certificate(s) of competency for the type of work to be performed, in accordance with the qualifications requirements as set forth in the Florida Statutes and the Code of Miami-Dade County.
- B. Nothing contained herein shall create any contractual relationship between the Owner and any level of Subcontractor, materialman or supplier.
- C. All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor which shall contain provisions that:
 - 1) Preserve and protect the rights of the Owner and any of its authorized representatives under the Contract, including, but not limited to, the Engineer and Field Representative, with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
 - 2) Require that such Work be performed in accordance with the requirements of the Contract Documents including the Contractor's approved schedule;
 - 3) Require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a part, in reasonable time to enable the Contractor to apply for payment in accordance with any and all payment provisions of the Contract Documents;
 - 4) Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor or Supplier where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner;
 - 5) Require specific consent to all relevant provisions of the Contract Documents; and
 - 6) Incorporate all flow-down clauses specifically called for in the Contract, as directed.
- D. Contractor Participation: The Contractor shall perform not less than 25 percent of the Work, not inclusive of materials purchased, with his own organization. If the Contractor is a joint venture, the requirement shall be satisfied by anyone, or a combination of any of the joint venture partners. Where a percentage of a Bid Item is subcontracted, the dollar value of that percentage subcontracted will be based on the estimated cost of such Bid Item, determined from information submitted by the Contractor, subject to approval by the Owner. The materials produced by other than the Contractor's forces shall be considered as being subcontracted. If, during the progress of the Work, the Contractor requests a reduction in such participation percentage, and the Owner determines that, due to the special nature of the conditions of the Work at the time, it would be to the Owner's advantage, the percentage of the Work required to be performed by the Contractor may be reduced, provided written approval of such reduction is obtained by the Contractor from the Owner. The Contractor shall not proceed with any such reductions until his request is approved in writing by the Owner or his authorized designee. Under no circumstances shall less than ten percent (10 %) of the Work be performed with the Contractor's own forces.
- E. Work Performed by Equipment-Rental Agreement:
 - 1) The amount of work performed under equipment rental agreements shall not be considered Subcontractor work. However, for work to be performed by equipment rental agreement, the Contractor shall notify the Engineer in writing of such intention before

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using the rented equipment, and shall indicate whether the equipment is being rented on an operated or non-operated basis. The Contractor's written notice shall contain a listing and description of the equipment and a description of the particular work to be performed with such equipment. As an exception to the above requirements for a written notice to the Engineer, such notice will not be required for equipment to be rented (without operators) from an equipment dealer or from a firm whose principal business is the renting or leasing of equipment.

- 2) The operators of rented equipment, whether rented on an operated or a non-operated basis, will be subject to wage rate requirements applicable to the Project. If equipment is being rented without operators, the Contractor shall be required to carry the operators on his own payroll. When equipment is rented on an operated basis, the Contractor, when required by the Contract or requested by the Engineer, shall submit payrolls from the lessor with the names of the operators shown thereon.

F. No work is to be performed at the Work site until the Contractor is in compliance with the Insurance Specifications, has furnished satisfactory evidence of required insurance to the Owner and obtained all required permits.

G. Approval of Subcontractor:

- 1) Prior to entering into any subcontract for Work to be performed on the Project, the Contractor shall secure the approval of the Owner regarding the prospective subcontractor's qualifications, employment data and compliance with DBE program requirements. The forms used to provide the required information shall be the same as those included in the Forms for Bidding. The Owner will review the submittal from each Subcontractor, and will furnish written notification to the Contractor concerning approval of the award of the subcontract. The County shall have thirty (30) calendar days to accept or reject subcontractors. The Owner may, at its discretion, waive or reduce subcontractor information submittal requirements as it deems appropriate.
- 2) In accordance with Ordinance 97-104, codified in Miami-Dade County Code Sections 2-8.1 and 10-33.01, the Contractor shall not, without written consent of the Owner, either replace any subcontractor or permit any such subcontract to be assigned or transferred or allow that portion of the Work to be performed by anyone other than the approved subcontractor, except he may perform the work himself with qualified personnel upon written notice to the Owner in accordance with applicable law.

END OF ARTICLE

7. PROSECUTION OF THE WORK

(June 12, 2012)

A. Workmanship and Unauthorized Work

- 1) Work under this Contract shall be performed in a skillful and workmanlike manner. Unless otherwise indicated in the Contract Documents, the Contractor shall be solely responsible for means and methods and for the coordination of all trades through completion of the Work and without damage to the existing or newly installed components and surfaces. The Engineer or Field Representative may, in writing, request the Contractor to remove from the work any employee the Engineer or Field Representative determines incompetent, careless, or otherwise objectionable. Such request shall be at no cost to the Owner.
- 2) Unauthorized Work: Work performed beyond the lines and grades shown on the Contract Drawings and approved Shop Drawings or established by the Owner, and Extra Work done without a Work Order or Change Order, will be unauthorized work and the Contractor will receive no compensation therefor. If required by the Owner, unauthorized work shall be remedied, removed, or replaced by the Contractor at the Contractor's expense. Upon failure of the Contractor to remedy, remove or replace unauthorized work, the Owner may at its discretion, remedy, remove or replace the unauthorized work and the Contractor shall bear the responsibility for any and all costs and for delays resulting from such work.
- 3) The entire work and each part thereof, unless otherwise specified in the Contract Documents, shall be placed at the location, elevation, grade and gradient specified, and in proper alignment and adjustment. The Contractor shall provide all frames, forms, falsework, shoring, guides, anchors, and temporary structures required to ensure these results.
- 4) No deviation from the approved Contract Documents shall be permitted without the prior written approval of the Engineer and/ or Owner, by Work Order or Change Order, which approved deviation(s) shall be documented to the extent required by the Contract Documents.
- 5) The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the Contract Documents. All workers shall have sufficient skill and experience to properly perform the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.
- 6) All proposed equipment shall be of sufficient size and in such mechanical condition as to meet requirements of the work, producing a satisfactory quality of work. Equipment used on any portion of the work shall be such that no damage to previously completed work, adjacent property, or existing facilities will result from its use.
- 7) When the Contract Documents specify the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized in writing by the Engineer by Work Order or Change Order. If the Contractor desires to use a method or type of equipment other than specified in the Contract, he may request permission from the Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with Contract requirements. If, after trial use of the substituted methods or equipment,

the Engineer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality or take such other corrective action as the Engineer may direct at no additional cost to the Owner. No change will be made to the Contract Price or the Contract Time as a result of authorizing a change in methods or equipment under this article.

- 8) The Contractor shall give constant attention to the work to facilitate the progress thereof, and he shall cooperate with the Engineer and its Field Representatives and with other Contractors in every way possible.
- 9) The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that the work will be of good quality, free from faults and defects in materials and workmanship for a period of one year from the date of Final Completion of each segment, unless otherwise required under this Contract. Work not conforming to these standards may be considered defective. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

B. Material

- 1) Unless otherwise indicated in the Contract Documents, equipment, material, and products incorporated in the Work covered by this Contract shall be new and of the grade specified for the purpose intended. Unless otherwise specifically indicated, reference to equipment, material, product, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at his option and, subject to the approval of the Engineer, use any equipment, material, article, or process which is equivalent to that named, subject to the requirements of these Contract Documents or propose a substitute equipment, material, article, or process as indicated below. The Contractor shall at all times comply with established Green Building, LEED standards or other third-party standards/ certifications as applicable, and as established in the Contract Documents. Proposed alternative equipment, material, products, or patented processes shall be considered equivalent if the Engineer determines that the proposed alternative is functionally equal to and/ or sufficiently similar to that specified in the Contract Documents.
- 2) The Engineer shall be the sole judge of the quality, suitability and cost of the proposed alternative equipment, material, article or process. A proposed alternative shall be considered equivalent and/ or functionally equal to that specified in the Contract Documents if, in the exercise of reasonable judgment, the Engineer determines that the proposed alternative is at least equal in materials of construction, quality, durability, appearance, strength and design characteristics, will reliably perform at least equally well the function and achieve the results imposed by the design concept and has a proven record of performance and availability.
- 3) If the Engineer determines that a proposed alternative does not qualify as equivalent or functionally equal, the alternative may be proposed for consideration as a substitute subject to the Contractor submitting sufficient information as provided below to allow the Engineer to determine that the proposed alternative is essentially equivalent to or better than the specified item and is an acceptable substitute for that said specified item.
- 4) The burden of proving the quality, suitability and cost of an alternative shall be borne by the Contractor. All information required by the Engineer in judging an alternative

shall be supplied by the Contractor at the Contractor's expense. The Engineer's costs in evaluating a proposed alternative, irrespective of its acceptance, will be reimbursed by the Contractor to the Owner.

- 5) The Contractor certifies that, if approved and incorporated into the Work, there will be no increase in cost to the Owner or in Contract Time and the proposed alternative shall conform substantially to the detailed requirements of the item specified in the Contract Documents.
 - a. Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to affect such redesign or change will be considered in evaluating the suitability of the alternative material. All costs pertaining to redesign and changes in other parts of the Work, including remedial work to completed work, shall be at the Contractor's expense.
 - b. No action relating to the approval of alternative materials will be taken until the request for approval of the alternative materials is made in writing by the Contractor accompanied by complete data as to the quality, suitability and cost of the materials proposed. Such request shall be made at least 60 days before the early start date of the activity. Any delays in receiving approval shall be the responsibility of the Contractor.
 - c. The Architect/ Engineer will examine and review the proposed alternative with the Owner and return it, within twenty- one (21) calendar days unless specified otherwise in the Contract Documents, from the date of its receipt by the Engineer's office, to the Contractor noted with the final decision. If the final decision approves either an equal or a substitution, the approval must also contain the Owner's written approval. When requested by the Engineer, the Contractor shall resubmit such Shop Drawings, descriptive data and samples as may be required.
 - d. Where classification, rating, or other certification by a body such as, but not limited to, Underwriters' Laboratories Inc. (UL), National Electrical Manufacturer's Association (NEMA), or American Railway Engineering Association (AREA) is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed body, or equivalent independent testing laboratory, indicating compliance with Contract Documents requirements. Testing required proving equality of the material proposed shall be at the Contractors expense.
 - e. Approval of an alternative material will be only for the characteristics and use named in such approval, and shall not change or modify any Contract requirement, or establish approval for the material to be used on any other Project for the Owner.
- 6) Source of Supply and Quality of Materials: The Contractor shall furnish all materials and products required to complete the Work except those designated to be furnished by the Owner.
 - a. Notwithstanding prior inspection and approval by the Engineer, only materials conforming to the requirements of the Contract Documents shall be incorporated in the Work.
 - b. The materials shall be manufactured, handled, and incorporated so as to ensure completed work in accordance with the Contract Documents.
- 7) Defective Materials: Contractor-furnished materials not conforming to the

requirements of the Contract Documents will be rejected, whether in place or not. Rejected material shall be removed immediately from the Work site. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work. The Owner may cause the removal and replacement of rejected material and the cost thereof will be deducted from any monies due or to become due to the Contractor.

- 8) Handling of Materials: Materials shall be transported, handled, and stored by the Contractor in a manner which will ensure the preservation of their quality, appearance, and fitness for the Work. Materials shall be stored in a manner to facilitate inspection.
- 9) The Owner will have no responsibility to the Contractor concerning local material sources.
 - a. The Contractor shall make all necessary arrangements with the owners of material sources. The Contractor shall pay all costs in connection with making such arrangements, exploring, developing, and using material sources, whether or not indicated, except such costs as the Owner expressly agrees in writing to assume.
- 10) Disposal of Material Outside the Work Site: Unless otherwise specified in the Contract Documents, the Contractor shall make his own arrangements for properly disposing of waste and excess materials outside the Work Site and he shall pay all costs, therefore. Contractor shall comply with all local, state, and federal requirements when disposing of waste and excess materials.
 - a. Prior to disposing of material outside the Work Site, the Contractor shall obtain written permission from the owner on whose property the disposal is to be made. The Contractor shall file with the Engineer said permit, or a certified copy thereof, together with a written release from the property owner absolving the Owner from any and all responsibility in connection with the disposal of material on said property.
- 11) Property Rights in Materials: The Contractor shall have no property right in materials after they have been attached or affixed to the Work or the soil, or after payment has been made by the Owner to the Contractor for materials delivered to the site of the Work, or stored subject to or under the control of the Owner, as provided in these Contract Documents. However, the Contractor shall be responsible for the security of the material on-site until Final Acceptance by the Owner.

C. Methods of Sampling and Testing

- 1) Sampling and testing of all materials shall be as set forth in the Contract Documents. Except for quality control testing and any other testing that may be the direct responsibility of the Contractor as set forth in the Contract Documents, the testing of samples and materials will be made at the expense of the Owner by the project testing laboratory. The Contractor shall furnish the required samples without charge. Any and all fees for non-conforming materials or work shall be solely borne by the Contractor. The Contractor shall give sufficient notification to the Field Representative of the placing of orders for or receipt of materials to permit testing.
- 2) The Field Representative may inspect, at its source, any specified material or assembly to be used in the Work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the Work and to obtain samples required for its acceptance of the material or assembly.

Should the Field Representative conduct plant inspections, the following shall exist:

- a. The Field Representative shall have the cooperation and assistance of the Contractor and the producer with whom he has contracted for materials.
 - b. The Field Representative shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of materials being furnished.
 - c. If required by the Field Representative, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Office or working space should be conveniently located with respect to the plant.
- 3) It is understood and agreed that the Owner, at its sole cost and at no expense to the Contractor, shall have the right to retest any material which has been tested and approved at the source of supply after it has been delivered to the site. The Field Representative shall have the right to reject only material which, when retested, does not meet the requirements of the Contract Documents. In such an event, the cost of re-testing shall be borne by the Contractor if it results in a rejected material.
 - 4) All inspections and testing of materials, assemblies and equipment will be performed in Miami-Dade County. Subject to Section 7 (C)(3) above, if the Contractor's material or manufacturing sources are such that inspections or tests cannot be made in Miami-Dade County, all traveling and lodging expenses in connections with such inspections and testing shall be borne by the Contractor.

D. Meetings

- 1) A pre- construction conference will be held prior to the issuance of the Notice to Proceed to discuss the work to be performed under this contract. The Contractor and its major Subcontractors shall be required to attend this meeting. The Contractor will be advised of the time, date and location of the meeting.

The Contractor shall attend weekly construction coordination meetings at a time and place to be designated by the Engineer. These meetings are intended to determine job progress, identify job problems, assist in solving and preventing job problems, and promote coordination with all entities involved in the Contract and with other Owner Contractors. The Contractor shall cause Subcontractors and suppliers to attend as he deems advisable, or as requested by the Engineer. Unless otherwise provided for in these Contract Documents, the Contractor shall be responsible for generating and distributing meeting minutes for all such meetings.

E. Permits and Compliance with Laws

- 1) Unless otherwise provided for in these Contract Documents, the Contractor shall be responsible for obtaining 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. (For payment of permits), see the DBSA). No time extensions will be allowed for delays in obtaining the required permits unless revisions directly caused by the Owner or its agents are required to the Contract Drawings due to changes in codes, regulations and applicable contract standards during the contract term or unreasonable delays by the permitting agencies which are not the fault of the Contractor.
- 2) The Owner will not pay or reimburse the Contractor for any penalties relating to his permits or fees as a result of the Contractor's failure to timely obtain all his permits, inspections, and approvals, etc.

- 3) The Contractor shall observe and comply with all applicable Federal, State, County and other laws, codes, ordinances, rules and regulations of the Federal, State and County governments, all authorities having jurisdiction, and any and all programs developed in compliance therewith, in any manner affecting the conduct of the Work.
- 4) Dewatering of excavations shall be performed in accordance with the applicable provisions of the Department of Environmental Resources Management (DERM), Florida Department of Environmental Protection (DEP), U. S. Environmental Protection Agency (USEPA) and the South Florida Water Management District (SFWMD) Dewatering Permits and/ or any and all authorities having jurisdiction and any other requirements specified in the Contract Documents. The means and methods of dewatering shall be determined by the Contractor who shall bear the full cost of same as part of the contract price.
- 5) All construction activities shall be subject to the pollution prevention requirements established under the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act regulating storm water discharge from construction sites.
- 6) Upon completion of all of the work contemplated under the Contract Documents, the Contractor shall obtain and deliver to the Field Representative such Certificate(s) of Occupancy or Certificate(s) of Completion as required by the Florida Building Code and/ or authority having jurisdiction.
- 7) The Contractor shall be subject to and comply with all the provisions of Miami-Dade County Code Section 2 - 8. 4. 1, which provides that, whenever any individual or corporation or other entity attempts to meet is contractual obligations with the County through fraud, misrepresentation or material misstatement, the County shall, whenever practicable, terminate the Contract. The Contractor is further directed to Section 10 - 38 of the Miami-Dade County Code which provides for the debarment of County contractors.

F. Coordination and Access

- 1) Other Contracts: The Owner may undertake or award other contracts for additional work, and the Contractor shall fully cooperate and coordinate with other Contractors and the Owner and carefully fit his own work to such additional work. The Contractor shall not perform any act which will interfere with the performance of work by any other contractor or by the Owner.
Subject to the dispute resolution procedures of the Contract Documents, the Contractor shall be responsible for obtaining all necessary scheduling details from other Contractors and these requests must be provided, in writing, to the Owner. The Engineer shall have the authority to resolve conflicts related to coordination between Contractors.
- 2) In the event of interference between the work of the Contractor and other contractors working concurrently at the Site, the Field Representative will instruct the Contractor as to which work has priority in performance and such instructions shall be subject to the dispute resolution procedures of the Contract Documents and binding upon the Contractor.
- 3) Utility companies, railroads, and municipal agencies having facilities within the limits of the Work shall have access to their facilities at all reasonable times for inspection and repair.

G. Rights in Land and Improvements

The Contractor shall make no arrangements with any person to permit occupancy or use of

any land, structure or building within the Work Site for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the Owner and any property owner, former property owner or tenant of such land, structure or building. The Contractor shall not occupy Owner-owned property outside the Work Site without obtaining prior written approval from the Owner.

H. Interference With Existing Utilities

- 1) Attention of the Contractor is specifically directed to the need for careful control of all aspects of his work to prevent damage to cables, ducts, water mains, sewers, fire mains, telephone cables, fuel lines, radar cables, and any other existing overhead or underground utilities and structures.
- 2) Before commencing work in any given area, the Contractor shall contact utility companies to identify any potential conflicts. Further, the Contractor shall also carefully review the Plans, survey and search the site for utility locations, and determine possible utility conflicts. All known above and underground utilities, including, but not limited to, electrical, telephone, communications, lighting cables, fuel lines, sewer, drainage and water pipes, and other existing structures are shown on the Plans for reference purposes only, but no guarantee is expressed or implied that the information is accurate. It shall be the sole responsibility of the Contractor to ascertain and/ or verify the location of any and all such utilities or structures using magnetic and electronic detectors and by hand excavation or other appropriate measures before performing any work that could result in damage to such existing utilities or structures. The Contractor shall make a thorough search of the particular location for underground utilities or structures whether or not shown on the drawings, before excavation work is commenced in any particular location. To this end the Contractor shall provide and maintain throughout the term of the Contract, electronic and magnetic detecting devices capable of locating underground utilities or structures. The Contractor shall, after locating primary and critical existing utilities, mark their location with indelible material or other means satisfactory to the Field Representative and maintain above ground physical identification during the work.
- 3) In the event of damage to, or accidental disruption of utilities or other facilities as a result of the Contractor's operations, the Contractor shall take immediate steps to repair or replace all damage and to restore all services. Further, the Contractor shall engage any additional outside services which may be necessary to prosecute repairs on a continuous "around the clock" basis until services are restored. The Contractor shall also provide and operate any supplemental temporary services to maintain uninterrupted use of the facilities. All costs involved in making repairs and restoring disrupted service resulting from the Contractor's work shall be borne by the Contractor and the Contractor shall be fully responsible for any and all claims resulting from the damage.

I. Protection of Existing Facilities, Vegetation, Structures, Utilities and Improvements

- 1) The Contractor shall preserve and protect existing vegetation such as trees, shrubs, and grass on or adjacent to the work site which are not indicated to be removed and which do not unreasonably interfere with the construction Work and he shall replace in kind the vegetation, shrubs and grass damaged by him at his own expense.
- 2) The Contractor shall protect from damage all utilities, foundations, walls or other parts of adjacent, abutting or overhead buildings, railroads, bridges, structures, surface and subsurface structures at or near the site of the Work and shall repair or restore any damage to such facilities, resulting from failure to comply with the requirements of this Contract or the failure to exercise reasonable care in the performance of the Work. If,

after receipt of notification from the Engineer, the Contractor fails to or refuses to repair any such damage promptly, the Owner may have the necessary Work performed and charge the cost thereof to the Contractor.

- 3) At points where the Contractor's operations are adjacent to utility facilities, damage to which might result in expense, loss, disruption of service or other undue inconvenience to the public or to the owners, Work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor. The Contractor shall be solely and directly responsible to the owners and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay, caused by the Contractor's operations.
 - a. Where public utilities or their appurtenances interfere with permanent construction, unless otherwise specified, work involved in permanently relocating or otherwise altering such public utilities and their appurtenances are a part of this Contract and at the Contractor's expense. If the Contractor wishes to have utilities temporarily relocated, he shall make necessary arrangements with utility owners and reimburse them at his/ her own expense for cost of the Work. The Contractor shall keep the Engineer advised of temporary relocation arrangements.
 - b. Prior to commencing utility repair work, the Contractor shall immediately contact the utility owner. The Contractor shall obtain the name, address and telephone number of each utility company that the work will affect and the person in such utility company to contact. He shall submit to the Engineer said names, addresses and telephone numbers. The Contractor shall coordinate with such utility owner(s) until the work is complete to the satisfaction of the utility owner(s) and the Engineer, at the Contractor's expense.
- 4) The Contractor shall comply with the latest version of the Florida Building Code or the Code under which the Contract Documents were approved, whichever is applicable at the time the Work is performed.
- 5) In order to safeguard the owners and tenants of abutting property and at the same time prevent unjust or fraudulent claims against the Contractor the Government, State, the Owner and the Engineer in respect thereto, the Contractor shall cause a detailed examination of abutting property to be made before construction is begun. The owner or tenant of each parcel or structure or his or their duly authorized representative will be invited to be present during the examination by a notice in writing delivered by the Contractor to a person in charge of the premises or structure and obtain written acknowledgement of receipt, or by the certified mailing of the notice to the owner at the premises. The Engineer will attend while the Contractor makes the detailed examination. A complete record including photographs of the existing conditions of each parcel or structure shall be made in triplicate, signed by the Contractor, owner and the Engineer and one copy will be delivered to the owner/ person in charge of the premises or structure and obtain written acknowledgement of receipt or by the certified mailing of the completed record, one to the Engineer and one will be retained by the Contractor. At such time as the Engineer may direct, or upon the filing of the verified statement by the owner, tenant, lessee, operator or occupant of the building structure, and in any event, upon the completion of any work that in the opinion on the Engineer might affect the abutting property, the Contractor will make another detailed examination of such abutting property. A complete record of the then existing conditions of said property will be made in triplicate, signed by the Contractor and one copy will be delivered to the owner/ person in charge of the premises or structure and

obtain written acknowledgement of receipt or by the certified mailing of the complete record, one to the Engineer and one will be retained by the Contractor. In any action, which may be brought by any owner, tenant, lessee, operator or occupant of abutting property to recover under the provisions of this article or any paragraph hereof, the record of the existing conditions of each parcel will be prima facie evidence of the conditions thereof at the time of the making of the examination.

- 6) The Contractor shall maintain access to fire hydrants and fire alarm boxes throughout the prosecution of the Work. Hydrants, alarm boxes and standpipe connections shall be kept clear and visible at all times unless approved otherwise. If visibility cannot be maintained, the Contractor shall provide clearly visible signs showing the location of the fire hydrant, fire alarm box or standpipe connection. The Contractor shall promptly notify the authority having jurisdiction of any impairment to any fire systems.

J. Damage to the Work and Responsibility for Materials

- 1) The Contractor shall be responsible for materials delivered and work performed until completion and Final Acceptance of the entire construction thereof, except those materials and work which may have been accepted under the applicable sections of this article and shall take all necessary steps to protect the Work, from all causes, at his expense.
- 2) The Contractor shall bear the risk of injury, loss or damage to any and all parts of the Work caused by the Contractor or parties working under its control, whether arising from the execution or from the non-execution of the Work by the Contractor or parties working under its control, except as provided for in this article. The Contractor shall rebuild, repair or restore work and materials which have been damaged or destroyed by the Contractor or parties working under its control before Completion and Acceptance of the Work and shall bear the expense thereof. The Contractor shall provide security including, but not limited to, security guards, temporary drainage systems and erection of temporary structures and temporary fencing as necessary to reasonably protect the Work and materials from damage.
- 3) The Contractor shall be responsible for materials not delivered to the site for which any progress payment has been made to the same extent as if the materials were so delivered.
- 4) The Contractor's responsibility for material shall be the same for Owner-furnished material, upon receipt of said material from the Owner, under this Contract as for Contractor-furnished material.
- 5) Relief from Maintenance and Responsibility: The Contractor may request, in writing, from the Owner, that the Owner relieve the Contractor of the duty of maintaining and protecting certain portions of the Work, as described in this paragraph, which have been completed in all respects in accordance with the requirements of the Contract. Such action by the Owner will relieve the Contractor of responsibility for injury or damage to said completed portions of the Work resulting from use by the Owner or the public for any cause, but not from injury or damage resulting from the Contractor's own operations or negligence. Portions of the Work for which the Contractor may be relieved of the duty of maintenance and protection, as provided in this paragraph, include the following:
 - a. Early possession by the Owner of any portion of the Work, in accordance with the Contract Documents.
 - b. This Paragraph 5 does not relieve the Contractor of responsibility for repairing or replacing defective work or materials in accordance with the Contract

requirements.

K. Emergencies

- 1) In an emergency affecting the safety of life, the Work, or adjacent property, the Contractor shall notify the Field Representative and the Engineer as early as possible that an emergency exists. In the meantime, without special instruction from the Engineer as to the manner of dealing with the emergency, the Contractor shall act at his own discretion to prevent such threatened loss or injury. As emergency work proceeds, the Field Representative and the Engineer may issue instructions, which the Contractor shall follow. The compensation to which the Contractor is entitled on account of emergency work, if any, shall be limited to emergencies not caused by actions or inactions of the Contractor determined in accordance with the Contract Documents, where applicable.
- 2)) For purposes of this article, an emergency is defined as an act or event that has already occurred, not caused by actions or inactions of the Contractor, which, if no immediate action is taken may affect the safety of life, the work, or adjacent property. This article does not apply to steps taken by the Contractor to protect the Work, adjacent structures, utilities, existing vegetation, etc. under other sections of the Contract Documents. Furthermore, this article does not apply to preparations the Contractor may make prior to storms or hurricanes or other acts of God.

L. Accident Prevention

- 1) Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work to be performed by Contractor. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - a. All persons on the Site or who may be affected by the Work;
 - b. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and other property at the Site or adjacent thereto, including trees, shrubs lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- 2) Contractor shall comply with all applicable laws and regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection.
- 3) Upon notification from the Owner or its representative(s), the Contractor shall promptly correct any deficiencies affecting the safety and wellbeing of the construction workers and the public that have been identified by the notice.
- 4) Should a situation of imminent danger be identified, work in the affected area must be suspended immediately until the condition has been corrected. Imminent danger is defined as the exposure or vulnerability to harm or risk that is impending or about to occur as defined by the Field Representative or the Engineer. The Contractor will not be entitled to future claims alleging impacts caused by the Owner stoppage of the Work due to safety reasons.

M. Warranty of Work

- 1) Except where longer periods of warranty are indicated for certain items, the Contractor warrants the Work under the Contract to be free from faulty materials and workmanship

for a period of not less than one (1) year from the date of Final Completion of each Segment. This one-year period shall be covered by the Surety Performance Bond as specified in this Contract, except that in the case of defects or failure in a part of the work which the Owner takes possession of prior to Final Completion, such a period shall commence on the date the Owner takes possession. Upon receiving notification from the Owner or any public body, to whom the ownership of the Work has been transferred or who has agreed to maintain the Work, the Contractor shall immediately remedy, repair, or replace, without cost to the Owner or other notifying party and to the entire satisfaction of the notifying party, defects, damages, or imperfections due to faulty materials or workmanship appearing in said Work within said period of not less than one year. Remedial work shall carry the same warranty as the original work starting with the date of acceptance of the replacement or repair. Payment to the Contractor will not relieve him of any obligation under the Contract.

- 2) The Contractor, at no additional expense to the Owner, shall also remedy damage to equipment, the site, or the buildings or the contents thereof, which is the result of any failure or defect in the Work, and restore any Work damaged in fulfilling the requirements of the Contract. Should the Contractor fail to remedy any such failure or defect within ten (10) days after receipt of notice thereof, the Owner will have the right to replace, repair, or otherwise remedy such failure or defect and deduct all costs from the Contractor's pay request or Performance Bond if final payment has been made.
- 3) The Contractor will correct all latent defects discovered within ten (10) years after Final Completion of each Segment provided that the Owner shall notify the Contractor of each latent defect within the time specified by law. Nothing contained herein shall be construed to in any way shorten the warranty period or modify the requirements during the warranty period. The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for all damages sustained by the Owner resulting from latent defects, fraud, or such gross mistakes as may amount to fraud, discovered after the stated guarantee and warranty periods have expired. If the Contractor fails to act within ten (10) days, the Owner reserves the right to have the work performed by others at the expense of the Contractor, and the Contractor agrees to pay the Owner the reasonable cost associated with procurement, implementation and management thereof upon demand. The Owner shall also be entitled to reasonable attorney's fees, necessarily incurred upon the Contractor's refusal to pay the above costs.
- 4) Subcontractors', manufacturers' and suppliers' warranties and guaranties, expressed or implied, with respect to any part of the Work and any material used therein shall be deemed obtained and shall be enforced by the Contractor for the benefit of the Owner provided that, if directed by the Owner, the Contractor requires such subcontractors, manufacturers and suppliers to execute such warranties and guaranties, in writing, directly to the Owner.
- 5) The rights and remedies of the Owner provided in this article are in addition to and do not limit any rights and remedies afforded by the Contract or by law.
- 6) Nothing in the above intends or implies that this warranty shall apply to work that has been abused or neglected by the Owner, its agents or other public body, utility or railroad to which ownership has been transferred.

END OF ARTICLE

Page 113 of 170

BAC

8. CONTRACT TIME

(June 12, 2012)

A. Notice to Proceed

- 1) The Contract Time commences on the date shown on the Notice to Proceed.
- 2) Any Work Performed by the Contractor prior to Notice To Proceed shall be at the Contractor's own risk and shall not be considered as the basis for any claim.

B. Schedules

- 1) The Contractor shall provide, maintain, and periodically update schedules in strict accordance with the Contract Documents. The Technical Specifications, Division 1 – General Requirements, Section 01 32 16, Project Schedule shall contain specific requirements for the form, content and date of submission of the baseline schedule and all schedule updates.
- 2) The Contractor shall prosecute the Work in accordance with the approved baseline Schedule or most recently approved revision to the baseline schedule. In the event that progress along the critical path is delayed, the Contractor shall revise his planning to include additional forces, equipment, shifts or hours as necessary to meet the time or times of completion specified in this Contract at no additional cost to the Owner. In addition, the Contractor shall revise his schedule to reflect these recovery actions and submit it to the Owner for review and approval it being understood that such approval will be as to the format and composition of the schedule and not the Contractor's means and methods. Additional costs resulting therefrom will be borne by the Contractor. Delayed progress is defined as:
 - a. A delay in the start or finish of any activity on the critical path (critical path is defined as the path with the least amount of float) of the approved baseline schedule or most recently approved revision to the baseline; or,
 - b. A delay in the start or finish of any non-critical activity which consumes more than the available float shown on the approved baseline schedule or most recently approved revision to the baseline, thereby making the activity critical and late; or,
 - c. A projected completion date shown on a schedule update which is later than the contractual completion date; or,
 - d. Any combination of the above.
- 3) Failure of the Contractor to comply with the requirements under this provision will be grounds for determination that the Contractor is not prosecuting the Work with such diligence as will ensure completion within the Contract Time. Upon such determination, the Owner may terminate the Contractor's right to proceed with the Work, or any separate part thereof, in accordance with the Contract Documents. If in the Contractor's estimation, the cause(s) of delay are beyond the Contractor's control, the Contractor shall adhere to the sections of the Contract Documents related to extensions of time, claims and others as appropriate.
- 4) The Contractor shall be responsible for scheduling and coordinating the work of all crafts and trades, subcontractors and suppliers, required to perform the Work and to complete the Work within the prescribed time. Any inefficiency or loss of productivity in the labor, materials, or special equipment of the Contractor or its subcontractors of any tier shall be the responsibility of the Contractor. No reimbursement of these or any other costs can be requested by or granted to the Contractor or any of its subcontractors of any tier for inefficiency or loss of productivity in labor, materials, or special equipment for delays in the performance and completion of the Work directly caused by the Owner or its authorized representatives. Other than the exception described above, additional costs may only be paid to the Contractor as a result of additional Work added to the Contract scope of work.

C. Extensions of Time and Classification of Types of Delays

- 1) Once a delay has been identified and it has been established through a scheduling analysis that a delay affects the Project's end date or contractually mandated milestone date, the delay must be classified to determine responsibility and to compute damages, if any. Before the Contractor can submit a request for time extension, claim or any request for additional compensation involving or related to time, the Contractor must classify the delay(s) in accordance with the following classifications. These delay classifications shall be used by the Owner and the Contractor in resolving any time-related disputes. Delays fall into three basic categories: non-excusable, excusable, and compensable.
- a. Non-excusable delays are those delays to the critical path which were foreseeable at the time of contract award or delays caused by the Contractor due to the Contractor's fault or negligence or his/ her own inefficiencies or problems, due to his/ her inability to coordinate subcontractors and/ or other flaws in his/ her planning. In these types of delays the Contractor is not entitled to extra time or compensation and the Owner may be allowed to assess Liquidated Damages or actual damages, depending on the contract provisions.
 - b. Excusable delays are those delays to the critical path beyond the Contractor's control and without the active interference of the Owner, such as, without limitation, extreme weather (force majeure), floods, acts or threats of terrorism, explosions, strikes, labor disputes, fire, unusual delay in deliveries, unavoidable casualties, other force majeure events, and delays caused by third parties (i. e. not the Contractor or the Owner). Contractors are granted a time extension but no additional compensation for the extended time of performance for excusable delays.
 - c. Compensable delays are delays to the critical path caused by active interference or participation of the Owner or Owner's agents or consultants. Examples of compensable delays are, without limitation, failure of the Owner to provide right-of-way, introducing late design changes, late review of shop drawings by the Owner or his/ her Engineer to release for construction and failure of the Owner to coordinate the work of various prime Contractors. In the case of a compensable delay, the compensation for the extended period of performance shall cover the direct cost due as a result of the changes as Liquidated Indirect Costs as specified in the Contract Documents.
 - d. Concurrent delays involve two or more delays to the critical path occurring at the same time, either of which, had it occurred alone, would have affected the end date of the Project. In that event, the Contractor's sole remedy is a time extension and relief of Liquidated Damages, if applicable, with no compensation for extended cost for the concurrency delay period.
 - e. The compensability of concurrent delays depends on the types of delays involved. The following shall determine the effects of concurrent delays on time extensions and compensable costs:
 - i. EXCUSABLE DELAY CONCURRENT WITH A NON-EXCUSABLE DELAY. For excusable delays concurrent with non-excusable delays, the Contractor is entitled to a time extension only. For example, without limitation, it rains the day footings are to be excavated (excusable delay) but the excavation equipment was down for repairs (non-excusable delays).
 - ii. NON-EXCUSABLE DELAY CONCURRENT WITH A COMPENSABLE DELAY. For non-excusable delays concurrent with compensable delays, the Contractor is entitled to a time extension only. For example, without limitation, if the Owner introduces a design

change for a beam but the Contractor has failed to submit the shop drawings for said beam in a timely manner. This would be an example of a non-excusable delay (late shop drawings) concurrent with a compensable delay (Owner introducing design change).

- iii. EXCUSABLE DELAY CONCURRENT WITH A COMPENSABLE DELAY. For excusable delays concurrent with compensable delays, the Contractor is entitled to a time extension only. For example, the Owner does not provide the necessary right-of-way to begin construction (compensable delay), but the Contractor's forces are on strike (excusable delay).

- 2) Time Extensions: The Contractor may be granted an extension of time and will not be assessed Liquidated Damages for any portion of the delay in completion of the Work, arising from acts of God, acts of the public enemy, acts or threats of terrorism, explosions, fires, floods, epidemics, quarantine restrictions, freight embargoes, strikes, labor disputes, or weather more severe than the norm, provided that the aforesaid causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes, and has given to the Engineer immediate verbal notification, with written confirmation within 48 hours, of the cause or causes of delay. Within thirty (30) days after the end of the delay, the Contractor shall furnish the Engineer with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract Document references, and the measures taken to prevent or minimize the delay. All requests for extension of time shall be submitted in accordance with the Contract Documents. Failure to submit such information will be sufficient cause for denying the delay claims. The Owner will ascertain the facts and the extent of the delay and its findings thereon will be final and conclusive subject to the dispute provisions in the Contract Documents. The extensions of time granted for these reasons shall be considered excusable and shall not be the basis for any additional compensation.
 - a. Weather more severe than the norm shall apply only as it affects particular portions of the Work and operations of the Contractor, as determined by the Engineer. Weather more severe than the norm is defined as any situation exceeding the mean data as recorded by The National Climatic Data Center, Asheville, North Carolina and published by the National Oceanic and Atmospheric Administration (This data is taken from the table of normals, means, and extremes in the latest version of the "Local Climatological Data, Annual Summary with Comparative Data, Miami, Florida"). For the calculation of delays due to rain, precipitation of 0.01 inches or more a day shall be considered to be a rain day if the rain actually prevented the Contractor from performing work. The effects of weather less severe than the norm may be taken into account in granting time extensions at the Owner's sole discretion.
 - b. An extension of time will not be granted for a delay to the critical path caused by a shortage of materials, except Owner- furnished materials, unless the Contractor furnishes to the Engineer documentary proof that he has diligently made every effort to obtain such materials from every known source within reasonable reach of the Work. The Contractor shall also submit proof, in the form of a CPM network analysis data, that the inability to obtain such materials when originally planned, did in fact cause a delay in final completion of the Work which could not be compensated for by revising the sequence of his operations. Only the physical shortage of material will be considered under these provisions as a cause

for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of the Engineer that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities.

- 3) Delays Caused by the Owner: If the Contractor's performance of the Work along the critical path is delayed by any condition or action directly caused by the Owner, the Owner's agents, and which was not foreseeable by the Contractor at the time the Contract was entered into, the Contractor shall, provide notification in accordance with the Contract Documents, of any such delay and of the anticipated results thereof. The Contractor shall cooperate with the Owner and use its best efforts to minimize the impact on the schedule of any such delay. These delays shall be considered compensable, except for the period in which these delays may be concurrent with Contractor-caused delays. If a delay on the part of the Owner is concurrent, that is, if it occurs at the same time as a Contractor-caused delay, the Owner-caused delay shall be considered an excusable delay for the portion of the Owner-caused delay which is concurrent with the Contractor-caused delay.
- 4) Delays Beyond Contractor's Control Not Caused by the Owner: If Contractor's performance of the Work along the critical path is delayed by any conditions beyond the control and without the fault or negligence of Contractor and not caused by the Owner or its agents, and which was not foreseeable by Contractor at the time this Contract was entered into, Contractor shall, provide immediate verbal notification with written notification in accordance with the Contract Documents, of any such delay and of the anticipated results thereof. Within two (2) calendar days of the termination of any such delay, Contractor shall file a written notice with the Engineer specifying the actual duration of the delay. If the Owner determines that the delay was beyond the control and without the fault or negligence of the Contractor and not foreseeable by the Contractor at the time this Contract was entered into, the Owner will determine the duration of the delay and may extend the time of performance of this Contract provided, however, that Contractor shall cooperate with the Owner and use its best efforts to minimize the impact on the schedule of any such delay. These delays shall be considered excusable and the Contractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of the delays contemplated by this paragraph and extension of time shall constitute Contractor's sole remedy for such delays.
- 5) In addition to the delays in the Work specified in this section, delays in the Work directly caused by an act or omission by an owner of an adjoining property will not be considered an Owner-controlled delay. An owner of an adjoining property is a person, firm, corporation, partnership, or other organization who either owns or occupies, or both, structures or parcels or both, immediately adjacent to the Work Site. Extension of time for those delays will be considered excusable and shall be treated as specified in this article, provided that:
 - a. The Contractor has, in accordance with this article, given to the Engineer immediate verbal justification, with written confirmation within forty-eight (48) hours of the delay; and
 - b. The Contractor establishes, to the satisfaction of the Engineer, that:
 - i. The delay was caused directly by an act or omission by the owner of the adjoining property; and,
 - ii. The Contractor has taken reasonable precautions and has made substantial effort to minimize the delay.

- 6) Change Order will be furnished to the Contractor within a reasonable period of time, after approval by the BCC, of a request for extension of time, specifying the number of days allowed, if any, and the new dates for completion of the Work or specified portions of the Work. All requests for time extension shall be in accordance with the Contract Documents. With the exception of time extensions covered under the time contingency allowance in the contract, only the BCC shall grant final written approval of all Change Orders, including additional money or extensions of time. All change orders shall be in full accord with the Contract Documents.
- 7) For the proper format to be used in submitting requests or claims for time extensions, refer to applicable sections of the Contract Documents.
- 8) Extensions of time shall be in accordance with Section 9-3 of the Code of Miami-Dade County, as applicable.

D. Final Completion and Final Acceptance

- 1) The following items must be satisfied before Final Completion of each segment, as defined in the Contract Documents, will be approved:
 - a. All Work must be completed to the satisfaction of the appropriate permitting agencies having jurisdiction over the Work. The Contractor must furnish the Owner with a "Notice of Completion" for each segment, unless circumstances arise outside the contract scope that prohibits such certificates from being issued (i. e. utility connections).
 - b. All operational systems which may include, but not be limited to: electrical systems, security systems, irrigation systems and fire systems, must be completed in accordance with the Contract Documents, tested and approved.
 - c. All plumbing, heating, ventilation, and air conditioning systems must be completed, tested and approved. Whenever the scope of work includes a facility or building, an HVAC test and balance report must be submitted and approved as a condition precedent to Final Completion.
 - d. The punch list may not be so extensive or of a nature that the Contractor's completion will significantly interfere with the Owner's beneficial use of the facility.
- 2) When the Contractor believes that all the Work or designated portion thereof required by the contract is completed, the Contractor shall submit to the Field Representative and the Engineer a request for Final Completion inspection for that segment. The Contractor, the Field Representative, the Engineer, and the Owner shall meet at the Project site for the purpose of making a combined inspection of the Work. During this inspection, any item of work remaining to be done or Work to be corrected shall be noted on a Punch List. If the Field Representative and/ or the Engineer and the Owner indicate on this inspection report that the Work is complete, a Certificate of Final Completion will be issued to the Contractor for that segment. The Certificate of Final Completion shall establish the date of Final Completion for that segment and shall have attached the Punch List reflecting that all items for that segment are complete
- 3) If any of the conditions listed in this article are not met and the Work has not been completed, or the Contractor determines that the final Punch List is not complete for that segment, a Certificate of Completion for that segment shall not be issued. The Contractor shall continue work, reducing the number of items on the Punch List that were not met. Additional inspections shall be scheduled as necessary until Final Completion of that segment is declared. However, costs incurred by the Owner for any inspections beyond a second inspection will be charged back to the Contractor.
- 4) In the event the Contractor fails to achieve Final Completion within the period specified in the

Contract for completion, the Contractor shall be liable for Liquidated Damages and the Owner has, as its option, the right to, after ten (10) calendar days' notice to the Contractor, have the work performed by others and backcharge the Contractor for all Direct and Indirect Costs related to performing this work. In the event that the Owner chooses to have the work completed by others, there shall not be any further non- excusable delays charged to the Contractor beyond the ten (10) days following notice to the Contractor. However, the Contractor shall not be relieved of any non- excusable delays incurred through the date of termination. The Punch List and the Contract shall remain open until all the Work is complete and accepted. The current retainage will be used to offset any Liquidated Damages and any backcharges, after which, any surplus retainage will be released to the Contractor. If the retainage is insufficient to cover the Liquidated Damages and any backcharge, the Owner will bill the Contractor for the balance and the Contractor shall promptly remit to the Owner an amount equal to the billing. In addition, the County reserves the right, to deduct the sum of liquidated damages from any monies due or that become due to the Design-Builder under the DBSA or under any other contract with the County, or if such monies are insufficient, the Design-Builder or its Surety or Sureties shall pay to the County any deficiencies in such monies within thirty (30) days of written notice by the County. The remedies provided herein are not intended to preclude the County from terminating this DBSA as provided in the termination provisions herein.

- 5) Final Project Completion: When the Owner or Engineer considers all requirements for the financial and administrative closure of the Contract have been provided, the Contractor shall submit written certification that:
 - a. Work has been inspected for the compliance with the Contract Documents.
 - b. Work has been completed in accordance with the Contract Documents, and that deficiencies listed within the Certificate of Final Completion for each segment and its attachments have been corrected.
- 6) Should the Owner and/ or Engineer inspection find that Work is incomplete, he will promptly notify the Contractor in writing listing all observed deficiencies. The Contractor shall be responsible for all Direct and Indirect Costs to the County resulting from the Contractor's failure to complete the Punch List items within the time allowed for completion.
- 7) The Contractor shall remedy deficiencies and send a second certification. Another inspection will be made that shall constitute the final inspection. Provided that work has been satisfactorily completed, the Engineer will notify the Contractor in writing of Final Acceptance as of the date of this final inspection.
- 8) Prior to Final Acceptance, the Contractor shall deliver to the Field Representative complete As-Builts, all approved Shop Drawings, maintenance manuals, pamphlets, charts, parts lists and specified spare parts, operating instructions and other necessary documents required for all installed materials, equipment, or machinery, all applicable warranties, guarantees, trainings, other than those specified in Article 8.D.e.
- 9) Upon notification of Final Acceptance to the Contractor, the Engineer will request and consider closeout submittals from the Contractor including but not limited to the final Contractor's Affidavit and Release of All Claims.
- 10) The Contractor, without prejudice to the terms of the Contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.
- 11) Re-Inspection Fees: Should the status of completion of the Work require re- inspection of the Work by the Owner and the Engineer due to failure of the Work to comply with the Contractor's representations regarding the completion of the Work, the Owner will deduct

from the final payment to the Contractor, fees and costs associated with re-inspection services in addition to scheduled Liquidated Damages.

E. Use and Possession

The Owner shall have the right to beneficially occupy, take possession of or use any completed or partially completed portions of the Work. Such possession or use will not be deemed an acceptance of work not completed in accordance with the Contract. While the Owner is in such possession, the Contractor, notwithstanding the provisions of the Contract Documents, will be relieved of the responsibility for loss or damage to the Work other than that resulting from the Contractor's fault or negligence or breach of warranty. If such prior possession or use by the Owner delays the progress of the Work or causes additional expense to the Contractor, a Contract change in the Contract price or the time of completion will be made and the Contract will be modified in writing accordingly.

F. Liquidated Damages and Liquidated Indirect Costs

- 1) The parties to the Contract agree that time, in the completion of the Work, is of the essence. The Owner and the Contractor recognize and agree that the precise amount of actual damages for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract and that proof of the precise amount will be difficult. Therefore, the Contractor shall be assessed Liquidated Damages on a daily basis for each Day that individual milestones, both interim and cumulative as specified in the Contract Documents, are not timely achieved or that Contract Time is exceeded due to a non-excusable delay. These Liquidated Damages shall be assessed, not as a penalty, but as compensation to the Owner for expenses which are difficult to quantify with any certainty and which were incurred by the Owner due to the delay. The amount of Liquidated Damages assessed shall be an amount, as stipulated in the Contract Documents, per day for each calendar day that individual milestones as specified in the Contract are not timely achieved or that the Project is delayed due to a non-excusable delay.
- 2) In the event the Contractor fails to perform any other covenant or condition (other than time-related) of this Contract relating to the Work, the Contractor shall become liable to the Owner for any actual damages which the Owner may sustain as a result of such failure on the part of the Contractor. The Owner reserves the right to retain these amounts from monies due the Contractor.
- 3) Nothing in this article shall be construed as limiting the right of the Owner to terminate the Contract and/ or to require the Surety to complete said Project and/ or to claim damages for the failure of the Contractor to abide by each and every one of the material terms of this Contract as set forth and provided for in the Contract Documents.

END OF ARTICLE

9. PROGRESS PAYMENTS

(June 12, 2012)

A. Payments

- 1) The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials, for performing all work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof.
- 2) The Owner will make progress payments monthly as the work proceeds. The Contract Documents provide for the payment to be determined by using a cost- loaded CPM. The Contractor shall, within 15 days after Notice-to-Proceed, furnish a Schedule of Values for review and approval by the Owner consisting of a detailed cost breakdown of each lump sum bid item in the bid form in such detail as the Engineer shall request, showing the amount included therein for each principal category of the work, to provide the basis for determining the amount of progress payments. The Schedule of Values shall clearly indicate the amount to be paid by the Contractor to each individual Subcontractor.

A. In the preparation of estimates, the Owner, at its sole discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the Work Site may also be taken into consideration under this article when the Contractor furnishes satisfactory evidence that it will be utilized on the work covered by this Contract.

- 3) In making such progress payments, a maximum of five percent (5 %) of the estimated amount shall be retained from each progress payment made to the Contractor until Fifty-Percent (50 %) Completion of the work has been established. Fifty- Percent (50 %) completion is defined as the point in time when at least 50 % of the Work under contract has been physically and satisfactorily completed in accordance with the intent of the Contract Documents as determined by the Architect/ Engineer. At this point, the retainage amount withheld from each subsequent progress payment shall be reduced by 50 % or not to exceed two and one-half- percent (2.5%) and the accumulated excess amount of retainage will be released to the Contractor, unless such amount is the subject of a good faith dispute, the subject of a claim brought pursuant to Florida Statute 255.05, or otherwise the subject of a claim or demand by the Owner or Contractor. If, at the discretion of the Owner, any time after Fifty- Percent (50 %) Completion of the work has been established, the Owner finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, whenever the Work, or a portion of the Work, is Finally Complete, the Owner, if it considers the amount retained to be in excess of the amount adequate for its protection, may release to the Contractor all or a portion of such excess amount.
- 4) Material and work covered by progress payments shall become the sole property of the Owner. This provision shall not be construed as relieving the Contractor from the sole responsibility for material and work upon which payments have been made, the restoration of damaged work or as waiving the right of the Owner to require the fulfillment of the terms of the Contract.
- 5) Progress payments will be made in accordance with the Miami-Dade County Code, Florida Statute, s.218.70 Florida Prompt Payment Act, and Florida Statute, s.218.735.

A. The Contractor's attention is directed to Florida Statute, s.218.735, revising provisions regarding timely payment, revising deadlines for the payment of

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contractors, subcontractors, sub-subcontractors, materialmen and suppliers. The contractor shall remit payment due to subcontractors within ten (10) days after the contractors' receipt of payment. The subcontractor shall remit payment due to sub-subcontractors and suppliers within seven (7) days after the subcontractors' receipt of payment. Dispute resolution is provided within the Statute.

- 6) No progress payments will knowingly be made for work not in accordance with this Contract.
- 7) Applications for progress payments shall be in the format as prescribed by the Owner. These applications shall be supported by evidence, which is required by this article. Each application for payment shall clearly indicate the amount to be paid to the Contractor as well as the amount to be paid to each of the Contractor's Subcontractors and suppliers. The Contractor shall certify that the work for which payment is requested has been done and that the materials listed are stored where indicated. Those items on the progress payment application that, in accordance with the applicable sections of the Contract Documents, compensate for Force Account Work, for materials not yet incorporated in the work, or for work under change orders negotiated on a cost-reimbursable basis will, under reasonable procedures of the Owner, be subject to the Owner's audit review of the Contractor's records supporting the payment application. Audits will be performed so as not to interfere with timely processing of applications for payment. If audit indicates the Contractor has been overpaid under a previous payment application, that overpayment will be credited against current progress payment applications. For a period of five years from Final Acceptance of the Contract, the Contractor shall maintain and make available for audit inspection and copying by the Owner, State and the Government and their authorized representatives, all records subject to audit review.
- 8) The Owner, at its discretion, may authorize payment for materials not yet incorporated into the Work, whether or not delivered to the Work Site. The value of materials on hand but not incorporated into the Work will be determined by the Field Representative, based on actual invoice costs to the Contractor, and such value will be included in a monthly application for payment only if the materials have been properly stored on the Site, provided that such materials meet the requirements of the Contract Documents, and are delivered to acceptable locations on Site or in bonded warehouses that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next application for payment after the following conditions are met:
 - A. The material has been stored and stockpiled in a manner acceptable to the Field Representative at or on the Work site or in a secure storage facility within Miami-Dade County or other location as approved by the Engineer. If such materials are stored outside Miami-Dade County, the Contractor shall accept responsibility for and pay all personal and property taxes that may be levied against the Owner by any state or subdivision thereof on account of such storage of such material. The Owner will permit the Contractor, at his own expense, to contest the validity of any such tax levied against the Owner and in the event of any judgment or decree of a court against the Owner, the Contractor agrees to pay same.
 - B. The Contractor has furnished the Field Representative with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
 - C. The Contractor has furnished the Field Representative with satisfactory evidence that the materials and transportation costs have been paid including

but not limited to certified bills of sale for such materials and insurance certificates or other instruments, in writing, and in a form as required by the Owner. The Engineer may allow only such portion of the amount represented by these bills as, in his opinion, is consistent with the reasonable cost of such materials.

- D. The Contractor has furnished the Owner legal title (free of debts, claims, liens, mortgages, taxes or encumbrances of any kind) to the material so stored and stockpiled and subject only to the Owner's payment for the materials as reflected in the application for payment. All such materials so accepted shall become the property of the Owner. The Contractor at his own expense shall mark such material as the property of the Owner and shall take such other steps, if any, the Owner may require or regard as necessary to vest title in the Owner to such material.
 - E. The Contractor has furnished the Owner evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work. The cost of the material included in an application for payment which may subsequently become lost, damaged or unsatisfactory shall be deducted from succeeding applications for payment irrespective of the cause and whether or not due to the negligence, carelessness or fault of the Owner.
 - F. It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of its responsibility for furnishing and placing such materials in accordance with the requirements of the Contract Documents and does not waive Owner's right to reject defective material when it is delivered to the Site until such material is delivered to the Site and satisfactorily incorporated into the work.
 - G. In no case will the amount in an application for payment for material on hand exceed the Contract price for such material, the Contract price for the Contract item in which the material is intended to be used or the value for such material established in the approved Schedule of Values. Payment for material furnished and delivered as indicated above will be based on 100 percent of the cost to the Contractor and retention will be withheld as specified in the Contract Documents. In any event, partial payments for materials on hand will not exceed seventy percent (70%) of the item's Bid Price, including taxes and shipping, or the agreed amount within the Schedule of Values.
 - H. No partial payment will be made for stored or stockpiled living or perishable plant materials.
 - I. The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this Article.
 - J. Materials may be subject to being purchased by the Owner directly under the County's "Direct Material Purchase Program" and installed by the Contractor, as applicable, in accordance with the DBSA.
- 9) Payment of the Contract lump sum price for General Requirements, if applicable, will be made in the following manner:
- A. The General Requirements Lump Sum amount, including cost for bonds and

insurance, shall be paid in proportion to the total percent of completion. The Owner will consider requests for payment for bonds and insurance under the General Requirements after receipt of certified invoices from the Contractor showing that the Contractor has paid them.

- B. Subject to the dispute resolution procedures in the Contract Documents, the Owner reserves its right to withhold payment for General Requirements, in whole or in part, at the Owner's sole discretion, in accordance with Paragraph 11 below.
- 10) If any claim is filed against the project for labor, materials, supplies or equipment which the Owner has determined to have been incorporated on the site and the Contractor has not paid for, the Owner will have the right to retain from payments otherwise due the Contractor, in addition to other amounts properly withheld under this article or under other provisions of the Contract, an amount equal to such amounts claimed.
 - 11) In addition to the provisions of this article and the relevant sections of the Contract Documents, payment may also be withheld proportionately for the following reasons:
 - A. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum,
 - B. Reasonable indication that the Work will not be completed within the Contract Time,
 - C. Damage to another Contractor,
 - D. Unsatisfactory prosecution of the Work by the Contractor,
 - E. Failure of the Contractor, or his Subcontractors, to pay wage rates, when applicable as required by the Contract.
 - F. In the event the Surety on the Performance and Payment Bond provided by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in the State of Florida suspended or revoked as provided by law. In this case, payment will continue when the Contractor provides a good and sufficient Bond(s) as required by the Contract Documents, in lieu of the Bond(s) so executed by such Surety.
 - G. If any work or material is discovered which, in the opinion of either the Engineer or the Field Representative, is defective., or should a reasonable doubt arise on the part of either the Engineer or the Field Representative as to the integrity of any part of the work completed previous to the final acceptance and payment. In this case, there will be deducted from the first application for payment subsequent to the discovery of such work, an amount equal in value to the defective or questioned work, and this work will not be included in any subsequent applications for payment until the defects have been remedied or the causes for doubt removed.
 - 12) The Contractor shall submit with each monthly invoice the certified payroll forms for all employees on the job in accordance with the wages required for the Project. Failure to provide this information will cause the Field Representative and/ or Engineer to return the invoice to the Contractor until such time as the Contractor properly submits the information.
 - 13) Failure to comply with the insurance requirements listed in the Contract Documents may result in the Owner's withholding or delaying payment to the Contractor.
 - 14) The Contractor shall submit with each monthly invoice a completed and updated FTA

Standard Cost Categories (SCC) worksheet whereby invoice costs are appropriately mapped to the applicable SCC code. The Contractor may obtain the latest version of the worksheet at [http:// www.transit. dot. gov/ funding/ grant-programs/ capital-investments/small-starts-scc-workbook](http://www.transit.dot.gov/funding/grant-programs/capital-investments/small-starts-scc-workbook).

B. Taxes

- 1) Except as may be otherwise provided for in the Contract Documents, the price or prices bid for the Work shall include full compensation for all federal, state, local and foreign taxes, fees and duties that the Contractor is or may be required to pay and the Contractor shall be responsible for the payment thereof during the prosecution of the work.
- 2) The Contractor's attention is directed to the fact that materials and supplies necessary for the completion of this Contract are subject to the Florida Sales and Use Tax, in accordance with Section 212 .08, Florida Statutes, as amended. The Contractor shall not collect taxes upon making delivery to the Owner.
- 3) The Owner, at its sole discretion, upon request of the Contractor and where appropriate, may furnish to the Contractor appropriate evidence to establish exemption from any taxes, fees or duties which may be applicable to the agreement and from which the Owner is exempt.

C. Payments to Subcontractors and Suppliers

- 1) The Contractor shall pay all Subcontractors for and on account of work performed by such Subcontractors in accordance with the terms of their respective subcontracts and in accordance with Ordinance Nos. 94-40, and 02-29, Miami-Dade County Code Section 10-33.02 and Florida Statute s.218.735.
- 2) Before the Contractor 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 the Architect/ Engineer with duly executed release of claim from all subcontractors and suppliers who have performed any work or supplied any material on the project as of the date, stating that said subcontractors or suppliers have been paid their proportionate share of all previous payments. In the event such affidavits cannot be furnished, the Contractor may, at the Owner's sole discretion after the Contractor demonstrates justifiable reasons, submit an executed Consent of Surety to Requisition using the form provided in the Contract Documents identifying the subcontractors and the amounts for which the Statement of Satisfaction cannot be furnished.
- 3) The Contractor's failure to provide a Consent of Surety to Requisition Payment will result in the amount in dispute being withheld until (1) the Statement of Satisfaction is furnished, or (2) Consent of Surety to Requisition Payment is furnished. The Subcontractor(s) shall submit with each monthly invoice the Certified Payroll forms for all employees on the job in accordance with applicable Provisions. Failure to provide this information will cause the Architect/ Engineer to return the invoice to the Contractor until such time as the Contractor properly submits the information.

D. Contract Prices – Bid Form

- 1) Payment for the various Bid Items listed in the Bid Form shall constitute full compensation for furnishing design, plant, labor, equipment, appliances and materials and for performing operations required to complete the Work in conformity with the Contract Documents. All costs for work shown or indicated by the Contract Documents, although not specifically provided for by a Bid Item in the Bid Form, shall be included in the most appropriate Bid Item price for the items listed. Except for the relief provided by the applicable section of the Contract Documents governing Differing Site

Conditions, the Contractor will not be entitled to additional compensation for providing an activity or material necessary for the completion of the Work in accordance with the Contract even though the activity or material is not included in a specific Bid Item or indicated in the Contract Documents.

E. Final Payment

- 1) After the Work has been accepted by the Owner, subject to the provisions of the Contract Documents, a final payment will be made as follows:
 - A. Prior to Final Acceptance of the Work, the Contractor shall prepare and submit a proposed final application for payment to the Engineer showing the proposed total amount due the Contractor, segregated as to Bid Item quantities, force account work, and other bases for payments; deductions made or to be made for prior payment; amounts to be retained; any claims the Contractor intends to file at that time or a statement that no claims will be filed; and any unsettled claims, stating amounts. Prior applications and payments shall be subject to correction in the proposed final application for payment. Claims filed with the final application for payment must be otherwise timely under these General Conditions.
 - B. The Owner will review the Contractor's proposed final application for payment and necessary changes or corrections will be forwarded to the Contractor. Within 10 days thereafter, the Contractor shall submit a final application for payment incorporating changes or corrections made by the Engineer together with additional claims resulting therefrom. Upon approval by the Owner, the corrected proposed final application for payment will become the approved final application for payment.
 - C. If the Contractor files no claims with the final application for payment and no claims remain unsettled within 30 days after final inspection of the Work by the Engineer and the Owner, and agreements are reached on all questions regarding the final application for payment, the Owner, in exchange for an executed release of all claims and properly executed close-out documents specified in Paragraph 3 below, will pay the entire sum found due on the approved final application for payment.
 - D. Upon final determination of any and all claims, the Owner, in exchange for properly executed close-out documents specified in Paragraph 3 below, will pay the entire sum found due on the approved final application for payment, including the amount, if any, allowed on claims. Contractor may include its "Reservation of Rights" to any outstanding claims which would not delay payment of amounts found due on the approved final application for payment.
 - E. The release from the Contractor will be from any claims arising from the Work under the Contract. If the Contractor's claim to amounts payable under the Contract has been authorized by the Owner for assignment pursuant to the relevant sections of the Contract Documents, a release may be required from the assignee.
 - F. Final payment will be made within 30 days after approval of the final notice and resolution of Contractor's claims, or 30 days after Final Acceptance of the Work by the Owner, whichever is later. If a final application for payment has not been approved within 30 days after final inspection of the Work, the

Owner shall make payment of sums not in dispute without prejudice to the rights of either the Owner or the Contractor in connection with any disputed items.

- G. Prior to payment of a claim settlement, the claim may be audited by the Owner and may be subject to approval by the funding agencies.
 - H. Final payment made in accordance with this article will be conclusive and binding against both parties to the Contract on all questions relating to the amount of work done and the compensation paid therefore.
- 2) With the final application for payment, the Contractor shall return and submit final releases of claim from himself, from each Subcontractor of record and from other Subcontractors or material suppliers who may have notified the Owner that they were furnishing labor or materials for this project. These releases from Subcontractors and suppliers shall be final, originals, notarized and executed on the form provided by the Owner and included in the Contract Documents, all in accordance with all applicable Florida Statutes. In addition, the Contractor shall execute and return to the Owner all the enclosed close-out documents. In the event that all of the above releases cannot be furnished, the Contractor may, at the Owner's sole discretion after the Contractor demonstrates justifiable reasons, submit a Consent of Surety to Final Payment in a form acceptable to the Owner, recognizing lack of such releases of claim. Furthermore, the Contractor and the Surety shall agree in writing, in a form acceptable to the Owner, to indemnify, defend and hold harmless the Owner from any claims of Subcontractors and suppliers who refuse to execute final releases.
- 3) The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:
- A. Faulty or defective Work appearing after Final Completion;
 - B. Failure of the Work to comply with the requirements of the Contract Documents, discovered after Final Completion;
 - C. The performance of audits to seek reimbursement of any overpayments discovered as a result of an audit as provided in the Contract Documents;
 - D. The enforcement of those provisions of the Contract Documents which specifically provide that they survive the completion of the Work;
 - E. The enforcement of the terms of the Payment and Performance Bonds against the Surety;
 - F. Terms of all warranties/ guarantees required by the Contract Documents.
- 4) The acceptance of final payment shall constitute a waiver of all claims by the Contractor.

END OF ARTICLE

10. CHANGES

(June 12, 2012)

A. Changes

- 1) The Owner reserves the right to, at any time, without notice to the sureties and without invalidating the Contract, by written notice or order designated as a Change Notice or Change Order, make any change in the Work within the general scope of the Contract including but not limited to changes:
 - a. In the Contract Documents;
 - b. In the method or manner of performance of the Work;
 - c. In Owner- furnished facilities, equipment, materials, services, or site or;
 - d. Directing acceleration in performance of the Work.
- 2) In the event the Owner exercises its right to change, delete or add work under the Contract, such work will be ordered and paid for as provided for in the Contract Documents.
- 3) Changes in the work may be initiated by the issuance of a Change Notice by the Engineer. The Contractor shall submit a proposal to the Engineer and the Owner for their review, in accordance with the Contract Documents, within a reasonable time after receipt of a Change Notice. The Contractor shall maintain this proposal, for acceptance by the Owner, for a minimum of 90 calendar days after submittal. The cost or credit to the Owner for any change in the work shall be determined in accordance with the provisions of the Contract Documents. The Contractor shall not be compensated for effort expended in preparing and submitting price quotes.
- 4) In the event the Contractor fails to provide the full cost and time estimate for the change work or refuses to execute a full accord Change Order, the Owner will, at its sole discretion, (1) determine the total cost and time impacts of the change and compensate the Contractor and/ or extend the Contract Time, if applicable, through a unilateral Change Order signed only by the Owner; or (2) direct the Contractor to proceed with the Work under the Force Account provisions of this article. Failure of the Contractor to submit his total and final estimated cost and time impact within the time period specified on the Change Notice form shall constitute a waiver by the Contractor to claim additional costs or time beyond that which has been determined by the Owner. Any disputes arising out of an Owner determination shall be resolved in accordance with the disputes provisions in the Contract Documents. Pending the Owner' s final decision, the Contractor shall proceed diligently with the performance of the Work under the Contract.
- 5) Changes in the work covered by Unit Prices, as stated in the Contract Documents shall be all inclusive. These prices will include all Direct and Indirect Costs and means and methods of execution. To be compensable, units must be measured daily by the Contractor and approved in writing by the Owner or his authorized representative.
- 6) The following mark- ups on Extra Work shall apply to all changes in the Work performed under this article:
 - a. For Extra Work performed by the Contractor's own forces, the Contractor agrees that his proposed cost to perform said Extra Work will in no event include a rate for overhead in excess of fifteen percent (15%).
 - b. For Extra Work performed by a Subcontractor's forces, the Contractor agrees that his proposed cost to perform said Extra Work will in no event include Overhead in excess of fifteen percent (15 %). The Contractor may then add

five percent (5%) times the Subcontractor's or sub-tier Subcontractor's actual Direct Cost as direct compensation for the Contractor's Overhead and all other costs associated with the Subcontractors Work at all tiers.

- 7) Increases to the Contract Amount shall be authorized by a Change Order executed by the Contractor, the Contractor's Surety and the Owner and approved by the BCC. Decreases to the Contract amount shall be by Change Order or Work Order as determined by the Owner and shall also be subject to BCC approval when the decrease results from a reduction in the scope of the work.
- 8) A cost of bonds for Change Orders that impact the Contract price shall be established by the Contractor's actual reimbursement costs, as approved by the Owner, based on the original Contract Amount and the original amount reimbursed to the Contractor for bonds at the commencement of the Work. This cost of bonds shall be added to all credit amounts allowed by the Owner. For Change Orders paid under the Allowance Account, no additional bond cost will be allowed unless the Allowance Account is not included in the original Contract Amount. In this case, additional bond costs for these Change Orders will be considered.
- 9) Any claim for payment of Extra Work that is not covered by a Change Order or Work Order will be rejected by the Owner.

B. Allowance Accounts

- 1) Certain portions of work which may be required to be performed by the Contractor under this Contract are either unforeseeable or have not yet been designed, and the value of such work, if any, is included in the Contract as a specific line item(s) entitled "Allowance Account(s)".
 - a. The Allowance Account (General) can be used to reimburse the Contractor for (1) furnishing all labor, materials, equipment and services necessary for modifications or Extra Work required to complete the Project because of unforeseeable conditions and; (2) for performing construction changes required to resolve: oversight in design, Owner oversight, unforeseen conditions, revised regulations, technological and product development, operational changes, schedule requirements, program interface, emergencies and delays.
 - b. Other Allowance Account(s) (Dedicated) may be used as specified in the Contract Documents to fund specific items of work at the sole discretion of the Owner. These dedicated allowance accounts shall be used only for the purposes approved pursuant to a written Work Order issued by the Owner or his authorized representative.
- 2) At such time as work is to be performed under the Allowance Account(s), if any, the work shall be incorporated into the Schedule and the Schedule of Values, and shall in all respects be integrated into the construction as a part of the Contract as awarded.
- 3) The Work Order for the required work will be issued by the Owner or Engineer upon receipt from the Contractor of a satisfactory proposal for performance of the work, and the acceptance thereof by the Engineer and the Owner. If the Contractor and the Owner are unable to agree upon an amount of compensation or; if the nature of the work is such that a Unit Price or Lump Sum price is not economically practical or if the change work is deemed essential to the Project and actual conditions require work to be swiftly conducted to avoid or minimize delays, the Work Order may be issued to perform the work on a Force Account basis. In the event that an equitable adjustment for the said change work cannot be arrived at, either by mutual agreement or under the dispute

provisions of the Contract Documents, the compensation hereunder will be the total compensation for this work.

- 4) No Work Orders shall be issued against an Allowance Account if such Work Orders in the aggregate exceed the authorized amount of that Allowance Account, provided however that such excess may be authorized by appropriate Change Order.
- 5) The unexpended amounts under the allowance accounts shall remain with the Owner and the Contractor shall have no claim to the same.

C. Deletion or Addition of Work

- 1) In the event the Owner exercises its right to delete any portion(s) of the work contemplated herein, such deletion will be ordered and the Contract Total Amount and Time may be adjusted as provided for in these Contract Documents by Change Order or by Work Order, as appropriate. The Contractor shall be reimbursed for any actual reasonable expenses incurred prior to the notice of deletion of work as a result of preparing to perform the work deleted. In the event of a dispute between Owner and Contractor as to the adjustment to the amount of time, the dispute shall be handled in accordance with these General Conditions.
- 2) Deleted Work - Lump Sum Bid Item(s): The Contractor shall credit the Owner for the reasonable value of the deleted work determined from the approved Schedule of Values, subject to approval by the Engineer. If the reasonable value of the deleted work cannot be readily ascertained from the Schedule of Values submitted in accordance with these General Conditions, or if requested by the Engineer, the Contractor shall supply all data required by the Engineer, including the actual agreements executed by the Contractor with the Subcontractors and suppliers affected by the deleted work, to substantiate the amount of the credit to be given the Owner. The Contractor shall also submit for the Owner's approval a revised schedule of values reflecting the work remaining under the Contract following the deletion.
- 3) No payment(s) shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work.
- 4) In the event the Owner exercises its right to add to any portion of the work contemplated herein, such addition will be ordered and the Contract Total Amount and Contract Time will be adjusted as provided for in these Contract Documents, by Change Order or by Work Order as appropriate. In the event of a dispute between Owner and Contractor as to the adjustment to the Amount or the Time, the dispute shall be handled in accordance with the Contract Documents.

D. NOT USED

E. Extra Work

- 1) Except as otherwise expressly provided above, all additional work ordered, work changed or work deleted shall be authorized by Work Order(s) or Change Order(s). All changed or added work so authorized shall be performed by the Contractor at the time and in the manner specified.

The Change Order shall include, as a minimum:

- a. Scope of work to be added, deleted or modified;
- b. Cost of work to be added, deleted or modified;
- c. The Contract time extension or reduction in contract time in the case of deleted work required to perform the work to be added, deleted or modified;

- d. Full release of claims associated with the Contract through the date of the change order, or a reservation of claims identified as to each claim reserved, the scope of the work, the maximum cost of the work, and the maximum number of days of Contract time requested, shall be specified.

The Change Order or Work Order shall include, at a minimum:

- a. Scope of work to be added, deleted or modified;
 - b. Cost of work to be added, deleted or modified;
 - c. The Contract time extension required to perform the work to be added, deleted or modified;
 - d. Full release of claims associated with the change order or work order work, or a reservation of claims identified as to each claim reserved, the scope of the work, the maximum cost of the work, and the maximum number of days of Contract Time requested, shall be specified.
- 2) If Work is ordered, changed, or deleted which is not covered by Unit Prices, then, the Owner and the Contractor shall negotiate an equitable adjustment to the Contract Price for the Direct Costs for the performance of such work in accordance with this article. Indirect Costs for Work ordered, changed or deleted may be reimbursed for Excusable and Compensable Delay as defined in these Contract Documents.
- a. In order to reimburse the Contractor for additional Direct Costs, either by Work Order, Change Order or any other means, the Contractor must have additional work added to the Contract Scope of Work. The additional cost of idle or inefficient labor, from any cause, or the additional cost of labor made idle or inefficient from any cause will not be considered a reimbursable additional Direct Cost. Special equipment or machinery, which is made idle or inefficient by the Work ordered, changed or deleted, may be reimbursable if approved by the Engineer as an unavoidable cost to the Contractor, caused by the Owner.
 - b. Costs of special equipment or machinery, not already mobilized on the site, approved by the Engineer, shall be calculated using the current issue of the Associated Equipment Distributors (AED) Manual plus any required mobilization. The selection of which of the AED rates (daily, weekly, monthly) to be used to calculate these costs shall be as follows:
 - i. Between one (1) day and seven (7) days, use the daily rate.
 - ii. Between seven (7) days and thirty (30) days, use the weekly rate.
 - iii. Greater than thirty (30) days, use the monthly rate.
 - c. For less than one (1) day hourly rates, use the daily rate divided by eight (8).
 - d. For overtime hourly rates use the daily rate divided by eight (8), the weekly rate divided by forty (40), or the monthly rate divided by one hundred and seventy-six (176) as appropriate.
 - e. Costs for Special Equipment and Machinery already mobilized on the site, shall not exceed the monthly rate stated in the AED Manual, divided by one hundred and seventy-six (176), per hour that the Special Equipment and Machinery is in use on the work plus any required re-mobilization.
 - f. The cost calculation shall not combine rates within the range of a time

extension. It shall use decimals of the time extension rate that the extension falls under. For example, the cost calculation for a piece of Special Equipment with an approved delay of forty-five (45) days shall be one and one-half (1.5) months times the monthly rate, not one (1) month at the monthly rate, plus two (2) weeks at the weekly rate, plus one (1) day at the daily rate.

- g. Rental for special equipment and machinery, not already mobilized to the site, shall be an amount equal to the appropriate daily, weekly, or monthly rental rate for such equipment, in accordance with the current issue of Associated Equipment Distributors' (AED) "Compilation of Nationally Averaged Rental Rates and Model Specifications for Construction Equipment" (notwithstanding the caveats contained therein that such rental rates are not for use by government agencies) for each and every rental period (in weeks, days, or months as applicable) that the special equipment or machinery is in use on the work plus any required mobilization. Payment for special equipment and machinery already mobilized to the site shall not exceed the monthly rate stated in the AED standards divided by one hundred and seventy-six (176) to establish a per hour rate that the special equipment and machinery is in use on the Work, plus any required re-mobilization.
- h. For indirect costs, the Contractor shall be allowed a percentage mark-up as set forth in Paragraph G.2 below.

F. NOT USED.

G. Force Account

- 1) If the Owner and the Contractor cannot reach agreement on an equitable adjustment to the Contract Price for any work as prescribed above, then the Extra Work will be performed on a Force Account basis as directed by the Engineer and paid for as specified below.
- 2) The following percentages will be allowed as mark-ups over Direct Costs for all negotiated adjustments to the Contract Amount or for work performed on either a negotiated lump sum basis or a Force Account basis:
 - a. Extra Work Performed directly by Contractor's Own Forces: The Contractor may add up to a maximum fifteen percent (15 %) mark-up on the actual Direct Cost of the Extra Work, subject to review and approval by the Engineer, as direct compensation for Overhead. A 2.5 % mark-up will be added to all negotiated credit amounts for deleted work not performed to cover Overhead.
 - b. Extra Work Performed by a Subcontractor or any Sub-tier Subcontractor: The Subcontractor may add up to a maximum fifteen percent (15 %) mark-up on the actual Direct Cost of the Extra Work as direct compensation for Overhead. The Contractor may add a five percent (5%) mark- up on the Subcontractor's actual Direct Cost as Contractor's Overhead. A 2.5 % additional credit will be added to all Subcontractor negotiated credit amounts for deleted work not performed to cover quality control, supervision, coordination, overhead, small tools and incidentals.
- 3) In the event Extra Work is performed on a Force Account basis, then the Contractor and the Subcontractor(s), as appropriate, shall maintain itemized daily records of costs, quantities, labor and the use of authorized Special Equipment or Machinery. Copies of

such records, maintained as follows, shall be furnished to the Architect/ Engineer daily for approval, subject to audit.

- a. Comparison of Record: The Contractor, including its Subcontractor(s) of any tier performing the work, and the Engineer shall compare records of the cost of force account work at the end of each day. Agreement shall be indicated by signature of the Contractor, the Subcontractor performing the work, and the Engineer or their duly authorized representatives.
- b. Statement: No payment will be made for work performed on a force account basis until the Contractor has furnished the Engineer with duplicate itemized statements of the cost of such force account work detailed as follows:
 - i. Name, classification, date, daily hours, total hours, rate and extension for each laborer, tradesman, and foreman.
 - ii. Designation, dates, daily hours, total hours, rental rate, and extension of each unit of special machinery and equipment.
 - iii. Quantities of materials, prices, and extensions.
 - iv. Transportation of materials.

The statements shall be accompanied and supported by a receipted invoice of all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from its stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

- c. Authorization of Special Equipment and Machinery: No compensation for special equipment or machinery shall be made without written authorization from the Engineer. The Engineer shall review and evaluate any special equipment or machinery proposed by the Contractor for use on a force account basis. As part of its evaluation, the Engineer shall determine whether any of the special equipment or machinery being proposed by the Contractor will be concurrently used on the Project, including approved changes, or on other force account work on the Project. If the Engineer determines that such a concurrent use of special equipment or machinery is being proposed by the Contractor, prior to the authorization of such special equipment or machinery, the Engineer and thereto Contractor shall establish a straight-line prorated billing mechanism based on the actual percentage of time that the equipment or machinery is required to be used on the force account work(s).
- d. Inefficiency in the Prosecution of the Work: If in the Owner's or Architect/ Engineer's opinion, the Contractor or any of its Subcontractors, in performing Force Account Work, is not making efficient use of labor, materials or equipment or is proceeding in a manner which makes Force Account Work unnecessarily more expensive to the Owner, the Owner or Engineer may, in whole or part, direct the Contractor in the deployment of labor, material and equipment. By way of illustration, inefficiency may arise in the following ways, including but not limited to: (1) the timing of the Work, (2) the use of unnecessary labor or equipment, (3) the use of a higher percentage of journeymen than in non-force account Work, (4) the failure to

procure materials at lowest price, or (5) using materials of quality higher than necessary.

H. Contractor Proposals - General

- 1) The Contractor may at any time submit to the Engineer for his review proposed modifications to the Contract Documents, including but not limited to, changes in the Contract Time and/ or Contract Amount, supported by a cost/ price proposal. Upon acceptance of the proposed modifications by the Owner, a Work Order or Change Order will be issued. Denial of a proposed modification will neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities. A Contract change in the form of a Contract price reduction will be made if the change results in a reduction of the cost of performance and the Contractor will not be entitled to share in said savings unless the proposal is made in accordance with Paragraph I of this article. Except as provided in Paragraph I below, the Contractor will not be compensated for any direct, incidental or collateral benefits or savings the Owner receives as a result of the proposal.

I. Value Engineering Change Proposals: The Contractor may submit to the Engineer one or more cost reduction proposals for changing the Contract requirements. The proposals shall be based upon a sound study made by the Contractor indicating that the proposal:

- a. Will result in a net reduction in the total Contract amount;
- b. Will not impair any essential function or characteristic of the Work such as safety, service life, reliability, economy of operation, ease of maintenance and necessary standardized features;
- c. Will not require an unacceptable extension of the Contract completion time; and
- d. Will require a change in the Contract Documents and such change is not already under consideration by the Owner.
 - i. The Owner may accept in whole or in part any proposal submitted pursuant to the previous paragraph on Value Engineering Change Proposals by issuing a Change Order which will identify the proposal on which it is based. The Change Order will provide for a Contract change in the Contract price and will revise any other affected provisions of the Contract Documents. The equitable adjustment in the Contract price will be established by determining the net savings resulting from the accepted change. The net savings resulting from the change will be shared between the Contractor and the Owner on the basis of 50% for the Contractor and 50% for the Owner and will be limited to one Value Engineering Change Proposal per Change Order. Net savings will be determined by deducting from the proposal's estimated gross savings (1) the Contractor's costs of developing and implementing the proposal (including any amount attributable to a subcontractor) and (2) the estimated amount of increased costs to the Owner resulting from the change, such as evaluation, implementation, inspection, related items, and Owner -furnished material. Estimated gross savings will include Contractor's labor, material, equipment, overhead, profit and bond. The Contract price will be reduced by the sum of the Owner's costs and share of the net savings. For the purposes of this article, the applicable provisions of the Contract Documents

shall be used to determine the equitable adjustment to the Contract price.

- ii. The Owner will not be liable for delay in acting upon, or for failure to act upon, any proposal submitted pursuant to of this article. The decision of the Owner as to the acceptance or rejection of any such proposal under the Contract will be final. The submission of a proposal by the Contractor will not in itself affect the rights or obligations of either party under the Contract.
 - iii. The Contractor shall have the right to withdraw part or all of any proposal he may make under Paragraph 2 of this article at any time prior to acceptance by the Owner. Such withdrawal shall be made in writing to the Engineer. Each such proposal shall remain valid for a period of 60 days from the date submitted. If the Contractor wishes to withdraw the proposal prior to the expiration of the 60-day period he will be liable for the cost incurred by the Owner in reviewing the proposal.
 - iv. The Contractor shall specifically identify any proposals under Paragraph 2 of this article with the heading "Value Engineering Change Proposal", or the proposal will be considered as made under Paragraph 1 of this article.
- 2) The Contractor, in connection with each proposal for a Contract Change Notice under this article, shall furnish the following information:
- a. A description of the difference between the existing Contract requirement and the proposed change, and the comparative advantages and disadvantages of each, justification when a function or characteristic of an item is being altered, and the effect of the change on the performance of the end item;
 - b. An analysis and itemization of the requirements of the Contract which must be changed if the Value Engineering Change Proposal is accepted and a recommendation as to how to make each such change (e.g., a suggested specification revision);
 - c. A separate detailed cost estimate for both the existing Contract requirement and the proposed change to provide an estimate of the reduction in costs, if any, that will result from acceptance of the Value Engineering Change Proposal taking into account the costs of development and implementation by the Contractor;
 - d. A prediction of any effects the proposed change would have on collateral costs to the Owner such as government-furnished property costs, costs of related items, and costs of maintenance and operation;
 - e. A statement of the time by which a Contract modification accepting the Value Engineering Change Proposal must be issued so as to obtain the maximum cost reduction, noting any effect on the Contract completion time or delivery schedule; and
 - f. Identification of any previous submission of the Value Engineering Change Proposal to the Owner, including the dates submitted, the numbers of the contracts involved, and the previous actions by the Owner.
- 3) The Contractor waives any and all claims relating to any delay that may arise out of a

Value Engineering Change Proposal.

END OF ARTICLE

11. CLAIMS AND DISPUTES

(June 12, 2012)

A. Notice of Claims

- 1) The Contractor will not be entitled to additional time or compensation otherwise payable for any act or failure to act by the Owner, the happening of any event or occurrence, or any other cause, unless he shall have given the Engineer a written notice of claim therefore as specified in this article.
- 2) The Contractor shall provide immediate verbal notification with written confirmation within forty-eight (48) hours of any potential claims and of the anticipated time and/or cost impacts resulting thereof. The written notice of claim shall set forth the reasons for which the Contractor believes additional compensation and/ or time will or may be due, the nature of the costs involved and the approximate amount of the potential claim.
- 3) It is the intention of this article, that differences between the parties arising under and by virtue of the Contract shall be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken.
- 4) The notice requirements of this article are in addition to those required in other articles of these Contract Documents.
- 5) The Contractor shall segregate all costs associated with each individual claim including but not limited to labor, equipment, material, subcontractor and supplier costs, and all other costs related to the claim. In the event that the Contractor has multiple claims, the Contractor will segregate each claim individually including the respective costs associated with each claim. Failure to segregate claims and their respective costs will be grounds for the Owner's rejection of the claim. No "total cost claims" shall be allowed under this Contract.
- 6) The Contractor must maintain a cost accounting system as a condition for making a claim against the Owner. The cost accounting system must segregate the costs of the work under the Contract (non-claims-related) from claims-related and other Contractor costs through the use of a job cost ledger and be otherwise in compliance with general accounting principles.
- 7) If the Owner decides to pay all or part of a claim for which notice was not timely made, the Owner does not waive the right to enforce the notice requirements in connection with any other claim.
- 8) Inasmuch as the notice of claim requirements of this article are intended to enable the Engineer to investigate while facts are fresh and to take action to minimize or avoid a claim which might be filed thereafter, the Contractor's failure to make the required notice on time is likely to disadvantage the Owner. Therefore, a claim that does not comply with the notice requirements above shall not be considered unless the Contractor submits with his claim proof showing that the Owner has not been prejudiced by the Contractor's failure to so comply and, in the event the Owner has been prejudiced by the Contractor's failure to submit a timely notice of claim, the Owner will reduce any equitable adjustment claimed by the Contractor to reflect the damage.

B. Claim Submittals

- 1) Claims or requests for equitable adjustments filed by the Contractor shall be filed in full accordance with this article no later than 30 calendar days after the act giving rise to the claim and insufficient detail to enable the Owner to ascertain the basis and amount of said claims. In the case of continuing or on-going claim events, the Contractor shall

be allowed to periodically amend his claim to more accurately reflect the impact of said claim, until the end of the claim event. No claims for additional compensation, time extension or for any other relief under the Contract shall be recognized, processed, or treated in any manner unless the same is presented in accordance with this Article. Failure to present and process any claim in accordance with this Article shall be conclusively deemed a waiver, abandonment or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Contract.

- 2) The Owner will review and evaluate the Contractor's claims. It will be the responsibility of the Contractor to furnish, when requested by the Engineer, such further information and details as may be required to determine the facts or contentions involved in his claims. The cost of claims preparation or Change Order negotiations shall not be reimbursable under this Contract.
- 3) Any work performed by the Contractor prior to Notice-to- Proceed (NTP) shall not be the basis for a claim from the Contractor of any kind.
- 4) Each claim must be certified by the Contractor as required by the Miami-Dade Code, False Claims Act (see Code Section 21-255, et seq.), and accompanied by all materials required by Miami-Dade County Code Section 21-257.A "certified claim" shall be made under oath by a person duly authorized by the claimant, and shall contain a statement that:
 - a. The claim is made in good faith;
 - b. The claim's supporting data is accurate and complete to the best of the person's knowledge and belief;
 - c. The amount of the claim accurately reflects the amount that the claimant believes is due from the Owner; and
 - d. The certifying person is duly authorized by the claimant to certify the claim.
- 5) In order to substantiate time-related claims (delays, disruptions, impacts, etc.), the Contractor shall, if applicable and as determined by the Owner, submit, in triplicate, the following information:
 - a. Copy of Contractor's notice of claim in accordance with this article. Failure to submit the notice is sufficient grounds to deny the claim.
 - b. The approved, as-planned Schedule in accordance with the applicable section of the Contract Documents and computer storage media, if applicable.
 - c. The as-built Schedule reflecting changes to the approved schedule up to the time of the impact in question and computer storage media if applicable.
 - d. The basis for the duration of the start and finish dates of each impact activity and the reason for choosing the successor and predecessor events affected in the schedule shall be explained. Also, the basis for the duration of any lead/lags inserted into the schedule and the duration in related activity duration shall be explained.
 - e. A marked-up as-built Schedule indicating the causes responsible for changes between the as-planned and as-built schedule and establishing the required cause and effect relationships.
 - f. After indicating specific time related changes on the as-built schedule, the

documentation must be segregated into separate packages with each package documenting a specific duration change identified previously. This documentation package shall include Change Orders, Change Notices, Work Orders, written directions, meeting minutes, etc., related to the change in duration.

- g. Any loss of efficiency, acceleration, disruption and loss of productivity claims shall be compensated and paid for compensable, excusable delays and mark-up on Direct Cost of changes as allowed by the Contract. Total cost and modified total cost claims will not be accepted and the Contractor agrees to waive the right to seek recovery by these methods. The claimed delay shall not result from a cause specified in the Contract Documents as a non-excusable delay.
- h. The Contractor assumes all risk for the following items, none of which shall be the subject of any claim and none of which shall be compensated: (1) home office expenses or any Direct Costs incurred allocated from the headquarters of the Contractor; (2) loss of anticipated profits on this or any other project, (3) loss of bonding capacity or capability; (4) losses due to other projects not bid upon; (5) loss of business opportunities; (6) loss of productivity on this or any other project; (7) loss of interest income on funds not paid; (8) costs to prepare, negotiate or prosecute claims and (9) except as provided in Section 4.11 of the Agreement, costs spent to achieve compliance with applicable laws and ordinances (excepting only sales taxes paid shall be reimbursable expense subject to the provisions of the Contract Documents).
- i. All non- time-related claim items for additional compensation for Direct Costs shall be properly documented and supported with copies of invoices, time sheets, rental agreements, crew sheets and the like.
- j. Cost information shall be submitted in sufficient detail to allow for review. The basis for the budgeted or actual costs shall include man-hours by trade, labor rates, material and equipment costs etc. These costs shall be broken down by pay item and Construction Specification Institute (CSI) Division.
- k. The documentation for budgeted cost shall, as a minimum, include:
 - i. Copies of all the Contractor's bid documents, bid quotes, faxed quotes, etc.
 - ii. Copies of all executed subcontracts.
 - iii. Other related budget documents as requested by the Engineer.
- l. . The documentation for actual cost shall, as a minimum, include:
 - i. Time Sheets.
 - ii. Materials invoices
 - iii. Equipment invoices
 - iv. Subcontractors' payments
 - v. Other related documents as reasonably required by the

Engineer.

- m. The Contractor shall make all its books, employees, work sites and records available to the Owner or its representatives for inspection and audit.
 - n. No payment shall be made to the Contractor by the Owner for loss of anticipated profit(s) from any deleted work.
- 6) As indicated above, the Engineer and the Field Representative shall be allowed full and complete access to all personnel, documents, work sites or other information reasonably necessary to investigate any claim. Within sixty (60) days after a claim has been received, the claim shall either be rejected with an explanation as to why it was rejected or acknowledged. Once the claim is acknowledged, the parties shall attempt to negotiate a satisfactory settlement of the claim, which settlement shall be included in a subsequent Work Order or Change Order. If the parties fail to reach an agreement on a recognized claim, the Owner shall pay to the Contractor the amount of money it deems reasonable, less any appropriate retention, to compensate the Contractor for the recognized claim.
- 7) Failure of the Contractor to make a specific reservation of rights regarding any such disputed amounts in the body of the Change Order which contains the payment shall be construed as a waiver, abandonment, or relinquishment of all claims for additional monies resulting from the claims embodied in said Change Order. However, once the Contractor has properly reserved rights to any claim, no further reservations of rights shall be required and the Contractor shall not be required to repeat the reservation in any subsequent change order. Prior reservation of rights may however be modified, by express reference, in subsequent change orders. Notwithstanding the aforementioned, at the time of final payment under the Contract, the Contractor shall specify all claims which have been denied and all claims for which rights have been reserved in accordance with this section. Failure to so specify any particular claim shall be constructed as a waiver, abandonment, or relinquishment of such claim.

C. 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 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 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. If either party wishes to protest the decision of the Department Director or designee, such party may commence an action in a court of competent jurisdiction, within the periods prescribed by law, it being understood that the review of the court shall be limited to the question of whether or not the Department Director or designee's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.
- 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.

D. Terminations

1) Termination for Convenience

- a. The Owner may at its option and discretion terminate the Contract, in whole or, from time to time in part, at any time without any default on the part of the Contractor by issuing a written Notice of Termination to the Contractor and its Surety, specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective, at least ten (10) days prior to the effective date of such termination.
- b. In the event of Termination for Convenience, the Owner shall pay the Contractor for all labor performed, all materials and equipment furnished by the Contractor and its Subcontractors, materialmen and suppliers and manufacturers of equipment less all partial payments made on account prior to the date of cancellation as determined by the Field Representative and approved by the Engineer. The Contractor will be paid for:
 - i. The value of all work completed under the Contract, based upon the approved Schedule of Values and/ or Unit Prices,
 - ii. The value of all materials and equipment delivered to but not incorporated into the work and properly stored on the site,
 - iii. The value of all bonafide irrevocable orders for materials and equipment not delivered to the construction site as of the date of cancellation. Such materials and equipment must be delivered to the Owner to a site or location designated by the Department prior to release of payment for such materials and equipment.
 - iv. Costs incurred by the Contractor by reason of such termination such as demobilization costs, early termination of contracts with subcontractors, suppliers, equipment rental agreements, non-refundable deposits, etc.
- c. In the event of termination under this article, the Contractor shall not be entitled to any anticipated profits for any work not performed due to such termination.
- d. In the event of termination under this article, the Owner does not waive or void any credits otherwise due the Owner at the time of termination, including Liquidated Damages, and back charges for defective or deficient work.
- e. Upon termination as indicated above, the Field Representative shall prepare a certificate for Final Payment to the Contractor.

2) Termination for Default of Contractor

- a. The Contract may be terminated in whole or, from time to time in part, by the Owner for failure of the Contractor to comply with any requirements of the Contract Documents including, but not limited to:
 - i. Failure to perform the work or failure to provide sufficient workers, equipment or materials to assure completion of work in accordance

with the terms of the Contract, and the approved Schedule, or

- ii. Failure to provide the Schedule for the Project by the date due, or
 - iii. Failure to provide adequate shop drawings by the dates indicated in the approved Schedule for the Project, or
 - iv. Failure to replace the superintendent in the time allotted, if required, or
 - v. Performing the work unsuitably or neglecting or refusing to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, after written directions from the Field Representative, or
 - vi. Violating the terms of the Contract or performing work in bad faith, or
 - vii. Discontinuing the prosecution of the work, or
 - viii. Failure to resume work which has been discontinued within a reasonable time after notice to do so, or
 - ix. Abandonment of the Contract, or
 - x. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or failure to maintain a qualifier, or
 - xi. Allowing any final judgment to stand against him unsatisfied for a period of 10 days, or
 - xii. Making an assignment for the benefit of creditors, or
 - xiii. For any other cause whatsoever, fails to carry out the work in an acceptable manner or to comply with any other Contract requirement.
- b. Before the Contract is terminated, the Contractor and its Surety will be notified in writing by the Engineer or the Field Representative of the conditions which make termination of the Contract imminent. The Contract will be terminated by the Owner ten (10) days after said notice has been given to the Contractor and its Surety unless a satisfactory effort acceptable to the Owner has been made by the Contractor or its Surety to correct the conditions. If the Contractor fails to satisfactorily correct the conditions giving rise to the termination, the Owner may declare the Contract breached and send a written Notice of Termination to the Contractor and its Surety.
- c. The Owner reserves the right, in lieu of termination as set forth in this article, to withhold any payments of money which may be due or become due to the Contractor until the said default(s) have been remedied. In the event of Termination for Default, the Owner also reserves the right, in cases where the damages calculated by the Owner are expected to exceed the amount the Owner anticipated recovering from the Surety, to withhold amounts for work already performed.
- d. In the event the Owner exercises its right to terminate the Contract for default of the Contractor as set forth herein, the Owner shall have the option of finishing the work, through any means available to the Owner, or having the Surety complete the Contract in accordance with its terms and conditions. In

case that the Owner decides to have the Surety take over the remaining performance of the Work, the time or delay between Notice of Default and start of work by the Surety is a non-excusable delay. If the Surety fails to act promptly, but no longer than thirty (30) calendar days after the Owner notifies the Surety of the Owner's decision to have the Surety complete the work, or after such takeover fails to prosecute the Work in an expeditious manner, the Owner may exercise any of its other options including completing the Work by whatever means and method it deems advisable. No claims for loss of anticipated profits or for any other reason in connection with the termination of the Contract shall be considered.

- e. Payments for the various Bid Items listed in the Bid Form will constitute full compensation for all expenses incurred in consequence of discontinuance of all or any portion of the Work except as provided in this section of the Contract Documents. In no event will compensation be made for anticipatory profits or consequential damages as a result of a discontinuance of all or any portion of the Work.
- f. The Contractor shall immediately upon receipt communicate any Notice of Termination for Default issued by the Owner to the affected Subcontractors and suppliers at any tier.
- g. If, after Notice of Termination of the Contractor's right to proceed under the provisions of this article, it is determined for any reason that the Contractor was not in default under the provisions of this article, or that the Contractor was entitled to an extension of time under the Contract Documents, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the section of this article dealing with Termination for Convenience.

3) Termination for National Emergencies

- a. The Owner shall terminate the Contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction Contract as a direct result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense.
- b. When the Contract, or any portion thereof, is terminated before completion of all items of work in the Contract, payment will be made for the actual number of units or items of work completed at the Contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits or for any other reason in connection with the termination of the Contract shall be considered.

4) Implementation of Termination

- a. If the Owner cancels or terminates the Contract or any portion thereof, the Contractor shall stop all work on the date and to the extent specified in the Notice of Termination and shall:
 - i. Cancel all orders and Subcontracts, to the extent that they relate to the performance of the work terminated and which may be terminated without costs;
 - ii. Cancel and settle other orders and Subcontracts, except as may be

necessary for completion of such portion of the Work not terminated, where the cost of settlement will be less than costs which would be incurred were such orders and subcontracts to be completed, subject to prior approval of the Field Representative;

- iii. Settle outstanding liabilities and claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner, to the extent it may require, which approval or ratification shall be final for the purposes of this Article;
- iv. Transfer title and deliver to the Owner, in the manner, at the time, and to the extent, if any, directed by it, in accordance with directions of the Field Representative, all fabricated or unfabricated parts, all materials, supplies, work in progress, completed work, facilities, equipment, machinery or tools acquired by the Contractor in connection with the performance of the work and for which the Contractor has been or is to be paid;
- v. Assign to the Owner in the manner, at the times and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner will have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- vi. Deliver to the Field Representative As-Built Documents, complete as of the date of cancellation or termination, plans, Shop Drawings, sketches, permits, certificates, warranties, guarantees, specifications, three (3) complete sets of maintenance manuals, pamphlets, charts, parts lists, spare parts (if any), operating instructions required for all installed or finished equipment or machinery, and all other data accumulated by the Contractor for use in the performance of the work.
- vii. Perform all work as may be necessary to preserve the work then in progress and to protect materials, plant and equipment on the site or in transit thereto. The Contractor shall also take such action as may be necessary, or as the Engineer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.
- viii. Complete performance of each part of the work not terminated by the Notice of Termination;
- ix. Use his best efforts to sell, in the manner, at the time, to the extent, and at the price or prices directed or authorized by the Owner, property of the types referred to above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner; provided, further, that the proceeds of any such transfer or disposition will be applied in reduction of any payments to be made

by the Owner to the Contractor under this Contract or will otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Owner may direct;

- x Termination of the Contract or a portion thereof shall neither relieve the Contractor of its responsibilities for the completed work nor shall it relieve its Surety of its obligation for and concerning any just claim arising out of the work performed.
- xi In arriving at the amount due the Contractor under this article, there will be deducted, (1) any claim which the Owner may have against the Contractor in connection with this Contract and (2) the agreed price for, or the proceeds of sale of materials, supplies or other items acquired by the Contractor or sold, pursuant to the provisions of this article, and not otherwise recovered by or credited to the Owner.

5) Suspension of Work

- a. The Owner reserves the right to temporarily suspend execution of the whole or any part of the Work without compensation to the Contractor.
- b. In case the Contractor is actually and necessarily delayed by any act or omission on the part of the Owner, as determined by the Owner in writing, the time for completion of the Work shall be extended by the amount of the time of such delay as determined by the Owner, and an allowance may be made for actual direct costs, if any, which may have been borne by the Contractor. Such requests for additional time and/ or compensation must be made in accordance with the applicable sections of the Contract Documents.
- c. Only the actual delay necessarily resulting from the causes specified in this Article, shall be grounds for extension of time. In case the Contractor is delayed at any time or for any period by two or more of the causes specified in this Article, the Contractor shall not be entitled to a separate extension for each one of the causes but only one period of extension will be granted for the greater delay caused by the two or more causes.
- d. Not used.
- e. Permitting the Contractor to finish the Work or any part thereof after the time fixed for completion or after the date to which the time for completion may have been extended or the making of payments to the Contractor after any such periods shall not operate as a waiver on the part of the Owner of any rights under this contract.
- f. The Contractor shall insert in each subcontract a provision that the Subcontractor shall comply immediately with a written order of the Owner to the Contractor to suspend the Work, and that they shall further insert the same provision in each subcontract of any tier.

END OF ARTICLE

12. MISCELLANEOUS PROVISIONS

(June 12, 2012)

A. Third Party Beneficiary

No contractual relationship will be recognized under the Contract other than the contractual relationship between the Owner and the Contractor. There shall be no third-party beneficiary to this Contract.

B. Venue

Any litigation which may arise out of this Contract 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.

C. Governing Laws

- 1) The Contractor shall, during the term of this Contract and in the prosecution of the work, be governed by the statutes, regulatory orders, ordinances and procedures of the United States of America, the State of Florida and Miami- Dade County including but not limited to the Florida Building Code and the provisions of the Code of Miami-Dade County, as applicable.
- 2) In addition, the Contractor agrees to abide by all applicable federal, state, and County procedures, as may be amended from time to time, regarding how documents to which the Contractor has access are handled, copied, and distributed, particularly documents that contain sensitive security information.

D. Successors and Assigns

The Owner and the Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due the Contractor hereunder, without the previous written notice to the Owner. Consent will not be given to any proposed assignment which would relieve the Contractor or his Surety of their responsibilities under the Contract.

E. Written Notice

- 1) Written notice to the Contractor shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to any officer of the corporation for whom it was intended or if delivered at or sent by registered or certified mail to the last business address known to those who give the notice.
- 2) Written notice to the Owner shall be deemed to have been duly served if delivered in person, delivered at or sent by registered or certified mail to the individual identified in the DBSA.

F. Indemnification

- 1) To the extent provided by law, Contractor shall indemnify, defend and hold harmless the County and the State of Florida, Department of Transportation, including the Department's officers, agents, and employees against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of the Contractor, or any of its officers, agents, or employees, acting within the scope of their

BAC

office or employment, in connection with the rights granted to or exercised by the Contractor hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes.

- 2) The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes 768.28. Nor shall the same be construed to constitute agreement by Contractor to indemnify County for the negligent acts or omissions of County, its officers, agents, or employees, or third parties. Nor shall the same be construed to constitute agreement by the Contractor to indemnify the Department for the negligent acts or omissions of the Department, its officers, agents, or employees, or third parties. This indemnification shall survive the termination of this Agreement.
- 3) This indemnification shall survive the termination of this Agreement, nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the County's sovereign immunity.
- 4) Article 13.3 of the Design-Build Services Agreement describes the insurance requirements.

G. Audit Rights

- 1) Access to Records
 - a. The Contractor shall, during the term of this Contract and for a period of five years thereafter, allow the Owner and its duly authorized representatives to inspect all financial records, including, but not limited to: audited financial statements, balance sheets, and other financial records during the performance of the Contract; payroll records, invoices for materials, books of account, job cost ledgers, Project correspondence and Project-related files and all relevant records pertinent to the Contract.
 - b. The Owner retains the right to audit accounts and access all files, correspondence and documents in reference to all work performed under this Contract. The Owner shall be provided full access upon request to all documents, including those in possession of Subcontractors or suppliers during the work and for a period of five years after the completion of the Work. In case of any litigation regarding this Project, such rights shall extend until final settlement of such litigation. Failure to allow the Owner access shall be deemed a waiver of Contractor's claims.
 - c. The Contractor shall maintain a banking account within Miami-Dade County for all payments to laborers, Subcontractors and vendors furnishing labor and materials under this Contract. All records shall be maintained in Miami-Dade County for the term of this Contract.
- 2)) Inspector General (Inspector General fee not applicable for Federal/ State funded projects)
 - a. According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits, inspections, and reviews of all, on any County/ Trust contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit by the County.
 - b. The Miami-Dade Office of the Inspector General is authorized to investigate County affairs and empowered to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor

existing Projects and programs. Monitoring of an existing Project or program may include a report concerning whether the Project is on time, within budget and in conformance with the Contract Documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to Project design, bid specifications, (bid/ proposal) submittals, activities of the (Contractor/ Vendor), its officers, agents and employees, lobbyists, County and Public Health Trust staff and elected officials to ensure compliance with the Contract Documents and to detect fraud and corruption.

- c. Upon ten (10) days written notice to the Contractor, the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector inspectors general to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to Project design, bid specifications, (bid/ proposal) submittals, activities of the (Contractor/ Vendor), its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with the Contract Documents and to detect fraud and corruption.
- d. The Inspector General shall have the right to inspect and copy all documents and records in the (Contractor/ Vendor's) possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all Project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/ proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- e. The Contractor 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 (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:
 - i. If this contract is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. The Contractor 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.
- f. The provisions in this section shall apply to the (Contractor/ Vendor), its officers, agents, employees, subcontractors and suppliers. The (Contractor/

Vendor) shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the (Contractor/ Vendor) in connection with the performance of this contract.

- g. Nothing in this section shall impair any independent right to the Owner to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the Owner by the (Contractor/ Vendor/) or third parties.

H. Severability

- 1) In the event any article, section, sub- article, paragraph, sentence, clause or phrase contained in the Contract Documents shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other articles, sections, sub-articles, paragraphs, sentences, clauses or phrases of the Contract Documents, which shall remain in full force and effect as if the article, section, sub-article, paragraph, sentence, clause or phrase declared, determined or adjudged invalid, illegal, unconstitutional or otherwise unenforceable was not originally contained in the Contract Documents.

I. Payment and Performance Bonds

- 1) The Contractor shall, as a condition of contract, provide to the County two separate bonds, one bonding payment and one bonding performance. Each bond shall be for no less than 100 % of the total maximum contract amount. The payment bond and performance bond shall be in the forms requested under Sections 713.23 and 255.05, respectively, of the Florida Statutes. These bonds shall be in substantial compliance with the requirements of the forms attached hereto as _____.

- a. The 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:

<u>Bond (Total Contract) Amount</u>	<u>Best's Rating</u>
--------------------------------------	----------------------

\$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
\$5,000,000 to \$10,000,000	A VIII
Over \$10,000,000	A IX

- 2) On Contract amounts of \$ 500,000 or less, the Bond provisions of Section 287.0935, Florida Statutes shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:
 - a. Providing evidence that the surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the Invitation to Bid is issued.
 - b. Certifying that the surety is otherwise in compliance with the Florida Insurance Code, and
 - c. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U. S. C. 9304-9308.

Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published

BAC

annually. The Bond amounts shall not exceed the underwriting limitations as shown in this circular.

- 3) For Contracts in excess of \$500,000 the provisions of the Contract Documents will be adhered to, plus the surety insurer must have been listed on the U.S. Treasury list for at least three consecutive years, or currently hold a valid Certificate of Authority of at least 1.5 million dollars and listed on the Treasury list.
- 4) Payment and Performance Bonds guaranteed through U.S. Government Small Business Administration or Contractors Training and Development Inc. will also be acceptable.
- 5) The attorney-in-fact or other officer who signs Payment and Performance Bonds for a surety company must file with such Bonds a certified copy of his/ her power of attorney authorizing him/ her to do so.
- 6) The cost of the Bonds shall be included in the Bid.
- 7) The required Bonds shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425 of the Florida Statutes.
- 8) The Bonds shall be delivered to the Contracting Officer in accordance with the instructions within the Notice of Award.
- 9) In the event the Surety on the Payment and Performance Bonds given by the Contractor becomes insolvent, or is placed in the hands of a receiver, or has its right to do business in its State of domicile or the State of Florida suspended or revoked as provided by law, the Owner shall withhold all payments under the provisions of these Contract Documents until the Contractor has given good and sufficient Bonds in lieu of Bonds executed by such Surety.
- 10) Cancellation of any Bonds, or non-payment by the Contractor of any premium for any Bonds required by this Contract, shall constitute a breach of this Contract. In addition to any other legal remedies, the Owner at its sole option may terminate this Contract or pay such premiums, and deduct the costs thereof from any amounts that are or may be due to the Contractor.

J. Insurance

The Contractor shall maintain the insurance set forth in the DBSA throughout the performance of this Contract until the Work has been completed by the Contractor and accepted by the Owner.

K. Conflict of Interest

- 1) The Contractor or his employees shall not enter into any Contract involving services or property with a person or business prohibited from transacting such business with Miami-Dade County pursuant to Section 2-11.1 of the Code of Miami-Dade County, Florida, known as the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance.
- 2) In the event the Contractor, or any of its officers, partners, principals or employees are convicted of a crime arising out of, or in connection with, the work to be done or payment to be made under this Contract, this Contract, in whole or any part thereof may, at the discretion of the Owner, be terminated without prejudice to any other rights and remedies of the Owner under the law.
- 3) In accordance with the Code of Miami-Dade County, no officer or employee of Miami-

Dade County during his tenure or for two years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

L. Rights in Shop Drawings

- 1) Shop Drawings submitted to the Engineer by the Contractor, pursuant to the Work, may be duplicated by the Owner and the Owner may use and disclose, in any manner and for any purpose Shop Drawings delivered under this Contract.
- 2) This paragraph shall be included in all subcontracts hereunder at all tiers.

M. Patent and Copyright

- 1) If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Owner, the Field Representative, and the Engineer from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the prosecution or after the completion of the work.
- 2) The Contractor shall warrant that the materials, equipment or devices used on or incorporated in the Work shall be delivered free of any rightful claim of any third party for infringement of any United States patent or copyright. The Contractor shall defend, or may settle, at his expense, any suit or proceeding against the Owner or the Engineer so far as based on a claimed patent or copyright infringement which would result in a breach of this warranty, and the Contractor shall pay all damages and costs awarded therein against the Owner or the Engineer due to such breach. The Contractor shall report to the Engineer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Owner when requested, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Contractor.
- 3) The Contractor shall bear all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the Work. In such case materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor, at his expense shall:
 - a. Secure for the Owner the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license or licenses; or
 - b. Replace such materials, equipment, devices or processes with non- infringing materials, equipment, devices or processes; or
 - c. Modify them so that they become non- infringing or remove the enjoined materials, equipment, devices or processes and refund the sum paid therefore without prejudice to any other rights of the Owner.
- 4) The preceding paragraph shall not apply to any materials, equipment or devices, specified by the Owner or the Engineer or manufactured to the design of the Owner or

the Engineer or in accordance with the details contained in the Contract Documents; and as to any such materials, equipment or devices the Contractor assumes no liability whatsoever for patent or copyright infringement and the Owner will hold the Contractor harmless against any infringement claims arising therefrom.

- 5) Patent rights to patentable invention, item or ideas of every kind or nature arising out of the Work, as well as information, designs, specifications, know-how, data and findings shall be made available to the Government for public use, unless the Owner shall, in specific cases where it is legally permissible, determine that it is in the public interest that it not be so made available.
- 6) The sense of this article shall be included in all subcontracts. The foregoing states the entire liability of the Contractor for patent or copy infringement by use of said materials, equipment or devices.

N. Historical, Scientific and Archaeological Discoveries

All articles of historical, scientific or archaeological interest uncovered by the Contractor during progress of the Work shall be preserved and reported immediately to the Engineer. Further operations of the Contractor with respect to the find, including disposition of the articles, will be decided by the Owner.

O. Use of Owner's Name in Contractor Advertising or Public Relations

The Owner reserves the right to review and approve Owner-related copy prior to publication. The Contractor shall not allow Owner-related copy to be published in Contractor's advertisement or public relations programs until submitting the Owner-related copy and receiving prior approval from the Owner. The Contractor shall agree that published information on the Owner or the Owner's program shall be factual and in no way imply that the Owner endorses the Contractor's firm, service or product. The Contractor shall insert the substance of this provision, including this sentence, in each subcontract and supply Contract or purchase order.

END OF ARTICLE

13. ATTACHMENTS

(June 12, 2012)

END OF ARTICLE

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EXHIBIT G
GENERAL CONDITIONS ATTACHMENTS (PAYMENTS BONDS)

ATTACHMENT A

CERTIFICATE OF ACCEPTANCE FOR FINAL COMPLETION

Contract No.: _____ **Date :** _____
Description : _____
Address : _____ **Contractor :** _____
Consultant : _____ **Surety :** _____

*The work performed under the subject Contract has been reviewed, and subject to the Contract requirements of **Article 8, Final Completion, Final Inspection and Acceptance**, all remaining work has been found to be Completed as of_____.*

*A **Punch List** of items to be completed or corrected, is appended hereto.*

*In the event that the Work, including the Punch List items, is not corrected by the Contract Completion date, the Contract stipulations regarding **Liquidated Damages** will be imposed until such time as the work is certified by the County's Resident Engineer or its Consultant and the Director, DTPW to be complete in all respects and a **Certificate of Final Acceptance** is issued.*

(COMPANY SEAL)

Signed : _____

Contractor

Recommended : _____

Resident Engineer/Project Manager

Recommended : _____

Chief, Construction

Certificate of Final Acceptance

Contract No.:

Description:

Address:

Consultant:

Contractor:

Surety:

The **UNDERSIGNED** hereby certify that, to the best of our knowledge and belief, based on observations of the punch list work required under the terms of the Agreement, we have found that the Work items identified in the **PUNCH LIST**, dated____(**"PUNCH LIST"**) were completed as of____. We therefore recommend that the **FINAL ACCEPTANCE DATE** be established as:_____

Notwithstanding the above, this Certificate shall not be construed as a finding regarding whether work performed on this Contract was done in accordance with all applicable Contract requirements, and the County expressly reserves all of its rights and claims under the Contract, or otherwise, to seek recovery or indemnity for any defects in materials, equipment, or workmanship, or for non-conformance with any Contract requirements.

Recommended : _____
Resident Engineer/Project Manager

Recommended : _____
Chief, Construction

ATTACHMENT B

DEPARTMENT OF TRANSPORTATION
AND
PUBLIC WORKS

CONTRACTOR RELEASE

Contract No.:

KNOW ALL MEN BY THESE PRESENTS : Pursuant to the terms of the Contract and in consideration of the sum of _____ paid by the **Miami-Dade County** under the Contract, the undersigned Contractor does, and by the receipt of said sum shall, for itself, its successors and assigns, remise, release and forever discharge MDC, its officers , agents and employees, of and from all liabilities, obligations, and claims whatsoever, in law and in equity, under or arising out of said Contract.

IN WITNESS WHEREOF, this release has been executed this _____ day of _____, 20____

(COMPANY SEAL)

Contractor

Signature

WITNESS :

Print Name : _____

Print Title : _____

NOTE : In the case of a corporation, witnesses are not required , but the **CERTIFICATE** below must be completed.

CERTIFICATE

I, _____, certify that I am the **Secretary** of the corporation named as Contractor in the foregoing release; that _____ who signed said release on behalf of the Contractor, was then _____ of said Corporation; that said release was duly signed for and on behalf of said corporation under the authority of its governing body, and within the scope of its corporate powers.

(CORPORATE SEAL)

Signature

**DEPARTMENT OF TRANSPORTATION
AND
PUBLIC WORKS**

**AGREEMENT
ON
FINAL QUANTITIES AND AMOUNTS**

Contract No.:

The Contractor and Resident Engineer agree that the **QUANTITIES** as shown on the **FINAL PAY REQUEST No.** are **EQUITABLY** paid for by application of the agreed **LUMP SUM PRICES**.

It is finally agreed that the right in the Contract clause to request negotiation of a different amount is **WAIVED** by the Contractor and the Authorized Representative of the Contracting Officer.

(Company Seal)

Contractor		
Signature	Date	Resident Engineer
Print Name		Print Name
Print Title		

BHQ

**DEPARTMENT OF TRANSPORTATION
AND
PUBLIC WORKS**

FINAL AFFIDAVIT

Contract No.:

The undersigned Contractor, _____, certifies and warrants to **Department of Transportation and Public Works** that _____ has paid in full and completely discharged any and all claims, demands, obligations and liabilities of _____ in connection with or arising out of ***Contract No.*** _____, including without limitation, all claims for labor performed and materials, supplies, equipment and other items furnished or used in connection with performance of said Contract.

(COMPANY SEAL)

Contractor: _____

Signature: _____

Print Name: _____

Print Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION
AND
PUBLIC WORKS

LABOR STANDARDS PROVISIONS
FINAL CERTIFICATE

Contract No.:

The undersigned Contractor, _____, hereby certifies that all laborers, mechanics, apprentices and trainees employed by him or by any Subcontractor performing work under the Contract on the project have been paid **wages at rates no less than those required by the Contract provisions**, and that the work performed by each laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

EXCEPTION (S):

Contractor: _____

(COMPANY SEAL)

Signature: _____

Print Name: _____

Print Title: _____

Date: _____

BHQ

**DEPARTMENT OF TRANSPORTATION
AND
PUBLIC WORKS**

MEMORANDUM OF UNDERSTANDING

Contract No.:

WHEREAS, _____, (hereafter referred to as the " Contractor ") and the ***Department of Transportation and Public Works***, the parties hereto, have mutually agreed to the **total Contract amount** in the sum of _____ for a **COMPLETE CLOSE-OUT** of ***Contract No.***_____

It is understood and expressly agreed that:

- (1) This Memorandum of Understanding is subject to the recommendations of the Assistant Director and the Director of Department of Transportation and Public Works.
- (2) In consideration of the payment by DTPW of a **total Contract amount** of _____, (inclusive of all finalized Change Orders), the Contractor hereby withdraws with prejudice all Claims, Disputes, and Appeals of the Contractor or any of its Subcontractors or Suppliers under the subject Contract. DTPW likewise, withdraws with prejudice, all Claims and/or Backcharges it has against the Contractor.
- (3) The retention withheld in ***Pay Request No.*** is _____ and will be paid in full. Therefore, the Contractor acknowledges the final payment of _____ in ***Pay Request No.*** as the outstanding balance due to date on the Contract.
- (4) DTPW reserves the right to complete an audit upon the request of the Assistant Director, Engineering Services when warranted.
- (5) All terms and conditions of the Contract otherwise remain unchanged including the Contractor's liabilities for warranties, latent defects and the like.
- (6) The execution of this Memorandum and payment in accordance with these terms, and the finalized Contract Change Orders, shall constitute a full accord and satisfaction of all Claims and all rights of the parties against each other, except for claims of the Owner for latent defects discussed after the date of this Memorandum or for warranty items.

**Memorandum of Understanding
Page 2.**

(COMPANY SEAL)

Contractor: _____

Signature: _____

Print Name: _____

Print Title: _____

Date: _____

RECOMMENDED

By: _____
Resident Engineer/Project Manager

By: _____
Chief, Construction Division

BHQ

**DEPARTMENT OF TRANSPORTATION
AND
PUBLIC WORKS**

CERTIFICATE OF SUB-CONTRACTOR STATUS

This is to certify that the following is a complete list of sub-contractors who worked on
Contract No.

Name	Description of work	Original Contract Amount	Paid to date	Amount Owed

(COMPANY SEAL)

Contractor

Signature

Print Name & Title

Date

BHQ

ALL SUBCONTRACTORS WORKING ON THIS PROJECT MUST COMPLETE THIS FORM

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned, for and in consideration of the payment of the sum of _____ and _____/100 dollars (\$_____) paid by the _____ receipt of which is hereby acknowledged, hereby releases and quit claims to the said _____ it successors and assigns, and _____ the owner, all liens, lien rights, claims or demands of any kind whatsoever, which the undersigned now has or might have against the building or premises legally described as

_ on account of labor performed and/or material furnished for the construction of any improvements thereon. That all labor and materials used by the undersigned in the erection of said improvements have been fully paid for.

IN WITNESS THEREOF, I have hereunto set my hand seal this _____ day of _____, 20_____.

WITNESSES:

) ss

(
S
E
A
L
)

B
y

State of _____)

County of _____)

BHQ

The foregoing instrument was acknowledged before me this _____ day of _____, 20 by _____ on behalf of _____ [] who is personally known to me or [] who has produced _____ as identification and who [] did [] did not take an oath.

Notary Signature: _____

Type or Print Name: _____ Notary Seal:
ATTACHMENT C

MIAMI-DADE COUNTY
DEPARTMENT OF TRANSPORTATION
AND
PUBLIC WORKS

SUBCONTRACTOR'S / SUPPLIER'S RELEASE OF CLAIM

NOTE: The General Contractor shall attach this statement, completed by each Subcontractor whose work appears on the prior requisition for payment or has work in place since the last requisition for payment.

Project No.: _____ Date: _____

Project Title: _____

Subcontractor: _____

Requisition No.: _____ From: _____ To: _____

Before me, the undersigned authority, authorized to administer oaths and take acknowledgments appeared: _____ who, after being first duly sworn, upon oath, deposes and says that pursuant to the provisions of his contract for said project, all money due him under prior requisitions for payment have been paid to him by _____, the General Contractor.

(COMPANY SEAL)

Legal Name of Subcontractor
Title

Signature

State of _____)
County of _____) ss

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
_____ by _____ on behalf of _____.

[] who is personally known to me or [] who has produced _____ as identification
and who [] did [] did not take an oath.

Notary Signature: _____

Type or Print Name: _____

BHQ



PROJECT No. _____

CONSENT OF SURETY COMPANY TO REQUISITION PAYMENT

PROJECT TITLE: _____

PROJECT LOCATION: _____

TO: _____ Re: PAY REQUEST No. _____ DATE: _____

IN THE AMOUNT OF: _____

CONTRACTOR: _____ RPQ No. _____

THE UNDERSIGNED SURETY COMPANY _____
(INSERT NAME OF SURETY COMPANY)

_____, ON BOND OF
(ADDRESS)

THE CONTRACTOR LISTED ABOVE, HEREBY APPROVES THIS PAYMENT TO THE CONTRACTOR AND AGREES THAT THE PAYMENT TO THE CONTRACTOR SHALL NOT RELIEVE THE SURETY COMPANY OF ANY OF ITS OBLIGATIONS TO MIAMI-DADE COUNTY, INCLUDING THE SECURITY FROM ANY AND ALL LIENS, CLAIMS OR DEMANDS WHATSOEVER THAT MAY NOW EXIST OR BE MADE IN THE FUTURE BY ANY SUB-CONTRACTOR OR MATERIAL SUPPLIERS AGAINST THIS PROJECT AND CONTRACT.

THIS CONSENT OF SURETY RECOGNIZES THAT CLAIMS HAVE BEEN MADE BY THE FOLLOWING SUB-CONTRACTORS AND MATERIAL SUPPLIERS AGAINST THE CONTRACT IN THE AMOUNTS LISTED BELOW:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

SURETY RECOGNIZES THAT RELEASES OF LIEN OR RELEASES AND ASSIGNMENT OF CLAIM HAVE NOT BEEN REQUESTED OR RECEIVED FROM ALL THE SUB-CONTRACTORS AND MATERIAL SUPPLIERS FOR THIS FACILITY.

IN WITNESS THEREOF,
THE SURETY COMPANY HAS HEREUNTO SET ITS HAND THIS _____ DAY OF _____, 20__.

SURETY COMPANY

ATTEST:
(SEAL)

SIGNATURE OF AUTHORIZED REPRESENTATIVE

TITLE

BHQ

**DEPARTMENT OF TRANSPORTATION
AND
PUBLIC WORKS**

Contract No.: _____	DATE: _____	
CONTRACT TITLE: _____		
CONTRACTOR: _____		
NOTICE TO PROCEED (NTP) DATE: _____		
CONTRACTOR ADDRESS: _____		
CONTRACTOR TELEPHONE No.: _____		
CONTRACTOR E-MAIL ADDRESS: _____		
AGENT'S NAME: _____		
AGENT'S TITLE: _____		
AGENT'S ADDRESS: _____		
AGENT'S TELEPHONE No. _____		
AGENT'S E-MAIL ADDRESS _____		
<i>Contractor Corporate Representative</i>		
Submitted By: _____		
SIGNATURE		
CONTRACTOR		

BHQ

ATTACHMENT E

 FORCE ACCOUNT DAILY REPORT: LABOR, MATERIAL & EQUIPMENT	DATE: _____ CONTRACTOR: _____
CONTRACT No. _____ REPORT No. _____ CONTRACT CHANGE NOTICE / DTPW LETTER: _____ PAGE No. _____ of _____ IMPORTANT-THIS FORM MUST BE SIGNED AND SUBMITTED NOT LATER THAN THE DAY FOLLOWING DATE WORK WAS PERFORMED.	
The following work was performed this date requiring the use of the Labor Force, Materials, Equipment, Special Forces and Services listed hereon: Description of work performed: _____	

LABOR					EQUIPMENT					
NAME	CRAFT	HRRAT	HOURS	TOTALS	MAKE	MODEL	DESCRIPTION	HOURS	RATE	EXT.

CERTIFIED CORRECT BY: _____	DATE _____
MATERIAL INVOICE ON UNIT PRICES TO BE PROVIDED. NO INVOICE OLDER THAN 30 DAYS ACCEPTED.	ALL EQUIPMENT RATES ARE ADJUSTED TO REFLECT CALIFORNIA BLUE BOOK

QUAN.	UNIT	DESCRIPTION	MATERIALS	RECAP
				LABOR
				MATERIALS
				EQUIPMENT

CERTIFIED CORRECT BY: _____ DATE _____	TOTAL THIS SHEET _____
FOR ENGINEER'S USE APPROVED AS TO SUBSTANCE BY: _____ RESIDENT ENGINEER DATE _____	EXTENSION OF LABOR, MATERIAL & EQUIPMENT VERIFIED BY: _____ INSPECTOR _____ DATE _____

BAC

Design-Build Services Agreement
for The Underline – Phases 3 - 9
ISD Project No.: DB21-DTPW-01
DTPW Contract No.: CIP235-DTPW20-DB
ATTACHMENT F

CONTINGENCY EXPENDITURE AUTHORIZATION FORM

BHQ