


Date: July 18, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Contract Award Recommendation for Approval to Award a Design-Build Contract for the Dadeland South Intermodal Station and Authorizing the Use of People's Transportation Plan Bond Program Funds for Such Purposes

Agenda Item No. 8(N)(3)

Resolution No. R-698-23

Executive Summary

The purpose of this item is to gain approval from the Board of County Commissioners (Board) to award a design-build contract to NV2A Group, LLC for the Dadeland South Intermodal Station project for a maximum amount of \$66,530,555.95 for a term of 741 days, authorizing the use of People's Transportation Plan (PTP) Bond Program funds for such purposes. The awardee shall provide design, permitting and construction services to significantly improve and enhance the infrastructure, operations, and safety at the Dadeland South Station, a core transit hub. The Station is the southern terminus of the existing Metrorail system and is the northern terminal station of the South Dade TransitWay, which was selected to operate as the County's first Bus Rapid Transit (BRT) program by the County's Transportation Planning Organization in 2018. Upon project completion, the Station shall seamlessly integrate the BRT operations with the existing transit services (Metrorail and local bus). The project is continuation of and complementary to the South Corridor of the SMART Program.

The specific scope of work includes the design and construction of: (1) various canopies to provide better weather protection for transit riders on the BRT platform, Metrorail platform and connecting elements between the Metrorail platform and the drop-off/pick-up area; (2) the drop-off/pick-up area north of the Station for easier vehicular and pedestrian access; (3) an at-grade bike path connecting to the County's Underline project and the South Dade Trail; (4) improvements throughout the Station to the existing amenities such as barrier and security systems, bicycle infrastructure, lighting, landscape and hardscape elements, climate control systems, wayfinding signage and vertical circulation; and (5) the Metrorail guideway structural and drainage improvements and site improvements to adjacent roadways, signalized intersections and the surface park-and-ride lot north of the Station area. It is anticipated that the construction work will have a minimal impact on bus and rail service for transit riders; plans include a phased approach to ensure continuity of service throughout the project, with short-term service adjustments as needed (e.g., temporary relocation of bus drop-off/pick-up zones). The project is also aiming to qualify for LEED for Transit Stations Silver-level certification. The cost and scope of proposals received were in line with projections.

Recommendation

It is recommended that the Board approve a competitive award of a contract to NV2A Group, LLC under *Contract No. DB21-DTPW-03, CIP207-DTPW21-DB* for the Transportation and Public Works Department (DTPW) in the combined maximum amount of \$66,530,555.95 plus the allowance of \$297,022 from the Art in Public Places Program, authorizing the use of PTP Bond Program funds for such purposes. The contract term is 685 calendar days to substantial completion plus 56 calendar days to final completion, excluding contingency time of 75 calendars days.

This contract award recommendation may only be considered by the Board if the Citizens' Independent Transportation Trust (CITT) has forwarded a recommendation to the Board prior to the date scheduled for

Board consideration or 45 days have elapsed since the filing with the Clerk of the Board of this item. If CITT has not forwarded a recommendation and 45 days have not elapsed since the filing of this award, a request for withdrawal of this item will be submitted.

Scope

The scope for this project consists of full architectural and engineering services necessary to prepare the architectural program, construction plans and specifications as well as construction and all related services as fully specified in the design-build criteria package. The project includes the design and construction of several canopies to provide better weather protection for individuals on the local (westside) and BRT (eastside) platforms, between the Station's west side entrance and the Datran Center and parking garage, Metrorail platform, and connecting elements between the Metrorail platform and the drop-off/pick-up area; the reconfiguration of the drop-off/pick-up area north of the station for easier vehicular and pedestrian access; the design and construction of an at-grade bike path connection to connect the County's Underline project and the South Dade Trail (adjacent to the TransitWay); improvements throughout the Station to the existing amenities such as facility technologies, barrier and security systems, bicycle amenities, lighting, landscape and hardscape elements, climate control systems, wayfinding signage, and vertical circulation elements; Metrorail guideway structural and drainage improvements; and site improvements to adjacent roadways, signalized intersections and the surface park-and-ride lot north of the station area. The project is targeting LEED for Transit Stations Silver-level certification.

This project is located at 9090 South Dadeland Boulevard, Miami, Florida 33156, in Commission District Seven, which is represented by Commissioner Raquel A. Regalado.

Delegated Authority

The authority of the County Mayor or County Mayor's designee to execute the design-build contract and to exercise the provisions contained therein is consistent with those authorities granted under the Code of Miami-Dade County.

Background

The Dadeland South Intermodal Station Project plans to improve and enhance the infrastructure, operations and safety at the Dadeland South Metrorail Station. The Station is the southernmost end of the existing Metrorail system and is the northern terminal station of the South Dade TransitWay, which was selected to operate as the County's first BRT program by the County's Transportation Planning Organization in 2018. Upon project completion, the Station shall seamlessly integrate the BRT operations with the existing transit services (Metrorail and local bus). In addition, having opened for revenue service in 1984, many Station elements have undergone several years of wear and deterioration, resulting in the need for improvements throughout to maintain the Station in a state of good repair. The last improvement to the Station involved wayfinding signs updates in 2012 and in 2020 lighting at the Station was upgraded to LED.

This design-build procurement followed the standard process, with all firms evaluated in accordance with Section 2-10.4 of the Miami-Dade County Code, Implementing Order No. 3-34 and Administrative Order No. 3-39. The solicitation was advertised on November 5, 2021. In December 2021, four firms submitted proposals. The Competitive Selection Committee was established in April 2022 and completed evaluations in January 2023, ultimately voting to advance NV2A Group, LLC to negotiations. Negotiations with NV2A concluded on April 6, 2023. NV2A, the recommended vendor, has no previous contracting history with the County as reported by the Small Business Development Division of the Internal Services Department.

On May 16, 2023, the Board awarded a companion item – a Professional Services Agreement (PSA) to New Millennium Engineering, Inc. for provision of the construction, engineering and inspection services for this project. The PSA facilitates performance of the required contract administration and oversight services to ensure compliant project delivery.

Fiscal Impact/Funding Source

This contract is valued at \$66,827,578.70 for a term of about two years. That is the combined maximum amount of \$66,530,555.95 plus the allowance from the County for Art in Public Places of \$297,022.00. See table below for a breakdown and further details.

Base Contract Amount	Contingency Amount	Permit Fees Amount	Art in Public Places Amount
\$57,551,924.00	\$5,755,192.40	\$3,223,439.55	\$297,022.75

The project is in the Adopted Budget and Multi-Year Capital Plan. See table below for further details.

Revenue Name	Program No. & Description	Project No.	Fund Code	Funding Amount	Site No.
People's Transportation Plan Bond Program (PTP)	2000001203 DADELAND SOUTH INTERMODAL STATION FY 2022 - 23 Adopted Budget and Multi-Year Capital Plan, Vol 2. Transportation and Public Works	2000001203	ET062	\$66,827,578.70	3002252

See table below for specific funding types, and whether they are applicable to this item.

Funding Type	Applicable (Yes or No)
People's Transportation Plan (PTP)	Yes
General Obligation Bond (GOB)	No
American Recovery and Reinvestment Act (ARRA-Economic Stimulus)	No

Track Record/Monitor

The designated staff contact to track and monitor this contract is DTPW Project Manager, Juan Santandreu, 305-815-9553, juan.santandreu@miamidade.gov.

Vendor Recommended for Award

The table below depicts a summary of the recommended design-builder.

Vendor Name	Principal Address	Local Address	Number of Employee Residents* 1) Miami-Dade County 2) Percentage (%)	Principal
NV2A Group, LLC	9100 S Dadeland Blvd., Suite 600, Miami, FL 33156	9100 S Dadeland Blvd., Suite 600, Miami, FL 33156	50	GILBERTO NEVES
			78.13%	

*Pursuant to R-1011-15, the percentage of employee residents is the percentage of the vendor's employees who reside in Miami-Dade County as compared to the vendor's total workforce.

The sub-consultants/subcontractors for this project are TBD.

Due Diligence

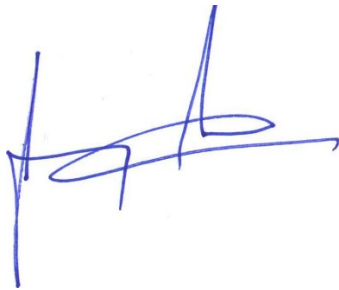
Pursuant to Resolution No. R-187-12, the Strategic Procurement Department (SPD) conducted due diligence in accordance with SPD's Procurement Guidelines to determine vendor responsibility including verifying corporate status and that no performance or compliance issues exist. The lists referenced included: Capital Improvements Information System, Small Business Development Division database, Sunbiz, Tax Collector's Office, convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. Also examined as part of this due diligence: Florida Division of Business and Professional Regulation and the Office of Safety and Health Safety Administration in accordance with Resolution No. R-1181-18. There were no adverse findings relating to vendor responsibility.

Applicable Ordinances and Measures

Table below depicts various legislative policies and whether they are applicable.

Title	Legislation	Applicable (Yes or No)	Notations
In-house Capabilities	Resolution R-1204-05	No	The project carries various engineering disciplines that are not currently available in-house.
Consultants' Competitive Negotiation Act	Florida Statute 287.055	Yes	Project advertised pursuant to Florida Statutes 287.055, Code Sections 2-8.1 and 2-10.4, and A.O. 3-39
Local Preference	Code Section 2-8.5	Yes	The evaluation of the proposals considered the applicability of Local Preference.
Local Certified Veteran Business Enterprise Preference	Code Section 2-8.5.1	Yes	The evaluation of the proposals considered the applicability of Local Certified Veteran Business Enterprise Preference.
Small Business Enterprise - Architecture and Engineering	Code Section 2-10.4.01 and Implementing Order 3-32	Yes	12.59%
Small Business Enterprise - Construction	Code Section 10-33.02 and Implementing Order 3-22	Yes	8.22%
Small Business Enterprise - Services	Code Section 2-8.1.1.1.1 and Implementing Order 3-41	Yes	Goods and Services: 0.25%
Small Business Enterprise - Goods	Code Section 2-8.1.1.1.2 and Implementing Order 3-41	Yes	Goods and Services: 0.25%
Responsible Wages and Benefits	Code Section 2-11.16 and Implementing Order 3-24	Yes	Building.
Living Wage	Code Section 2-8.9 and Administrative Order 3-30	No	Not included per SBD Worksheet.
Sea Level Rise	Ordinance 14-79	Yes	The impact of Sea Level Rise will be considered in the design of the project.
Sustainable Buildings Program	Implementing Order 8-8	Yes	DTPW will pursue Silver or higher-level Leadership in Energy and Environmental Design (LEED) for Transit Stations certification.
Buy American Iron & Steel Procurement Program	Code Section 2-8.2.6.1	Yes	Included.

Title	Legislation	Applicable (Yes or No)	Notations
Community Workforce Program (Clearing House)	Resolution R-1145-99, Code Section 2-1701 and Implementing Order 3-37	No	Project not in a Designated Target Area.
Residents First Training and Employment	Code Section 2-11.17 and Implementing Order 3-61	Yes	Contract valued in excess of \$1,000,000
First Source Hiring Referral Program	Section 2-2113 of the County Code	Yes	Contract valued in excess of \$1,000,000
Employ Miami-Dade Program	Administrative Order 3-63	Yes	Contract valued in excess of \$1,000,000
Art in Public Places	Code Section 2-11.15	Yes	Included.
Office of Inspector General Fee	Code Section 2-1076	Yes	Included.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: July 18, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(N)(3)

Please note any items checked.

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(N)(3)
7-18-23

RESOLUTION NO. R-698-23

RESOLUTION APPROVING AWARD OF A CONTRACT TO NV2A GROUP, LLC FOR \$66,827,578.70 FOR DESIGN-BUILD SERVICES FOR THE PROJECT TITLED DADELAND SOUTH INTERMODAL STATION (PROJECT NO. DB21-DTPW-03; CONTRACT NO. CIP207-DTPW21-DB) FOR A TERM OF 685 CALENDAR DAYS FOR SUBSTANTIAL COMPLETION PLUS 56 CALENDAR DAYS TO FINAL COMPLETION, EXCLUDING CONTINGENCY TIME OF 75 CALENDAR DAYS WHICH EXCLUDES THE WARRANTY ADMINISTRATION PERIOD; AUTHORIZING THE USE OF PEOPLE'S TRANSPORTATION PLAN BOND PROGRAM (PTP) FUNDS FOR SUCH PURPOSES; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE SAME AND TO EXERCISE THE PROVISIONS CONTAINED THEREIN

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

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

Section 1. Approves award of a contract award to NV2A Group, LLC for \$66,827,578.70 for design-build services for the project titled Dadeland South Intermodal Station (Project No. DB21-DTPW-03; Contract No. CIP207-DTPW21-DB) for a term of 685 calendar days for substantial completion plus 56 calendar days to final completion, excluding contingency time of 75 calendar days which excludes the warranty administration period and authorizes the use of People's Transportation Plan Bond Program funds for such purposes.

Section 2. Authorizes the County Mayor or County Mayor's designee to execute the design-build contract in substantially the form attached hereto and made a part hereof and to exercise all provisions contained therein.

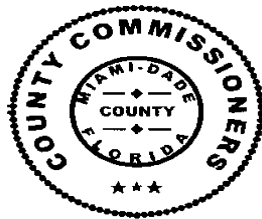
The foregoing resolution was offered by Commissioner **Eileen Higgins** , who moved its adoption. The motion was seconded by Commissioner **Danielle Cohen Higgins** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	nay	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 18th day of July, 2023. 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

JUAN FERNANDEZ-BARQUIN, CLERK



Basia Pruna

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

**DESIGN-BUILD SERVICES AGREEMENT
FOR**

PROJECT NO.: CIP207
CONTRACT NO. CIP207-DTPW21-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", which shall include its officials, successors, legal representatives, and assigns.

And the DESIGN-BUILDER:

Name: NV2A Group LLC
FEIN: 81-2849077
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.

DADELAND SOUTH INTERMODAL STATION

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

DESIGN-BUILD SERVICES AGREEMENT

TABLE OF CONTENTS

<u>ARTICLE NO.</u>	<u>SUBJECT</u>	<u>PAGE NO.</u>
ARTICLE 1	ABBREVIATIONS AND DEFINITIONS	7
1.1	Abbreviations	7
1.2	Definitions	9
ARTICLE 2	INTERPRETATION	20
ARTICLE 3	INTENTION OF THE COUNTY	21
ARTICLE 4	RESPONSIBILITIES OF THE DESIGN-BUILDER	21
ARTICLE 5	THE PROJECT	24
5.1	Location	24
5.2	Term of the Contract	24
5.3	Liquidated Damages	25
5.4	Project Schedule	25
5.5	Adequate Staffing	25
5.6	Publishing of Information	25
5.7	Warranty	25
ARTICLE 6	SUB-CONSULTANTS	26
6.1	General	26
6.2	Services	26
6.3	List of Firms	26
6.4	Replacement of Firms	26
6.5	Contract Measures	26
ARTICLE 7	SUB-CONTRACTORS	27
7.1	General	27
7.2	Services	27
7.3	List of Firms	27
7.4	Replacement of Firms	27
7.5	Contract Measures	27
ARTICLE 8	SUB-CONTRACTS	28
8.1	Design-Builder Participation	28
8.2	Limitations	28
8.3	Sub-contract Documents	28
8.4	Insurance Requirements	28
8.5	Agreement to Schedule	28

ARTICLE 9	THE COUNTY'S RESPONSIBILITIES.....	28
9.1	Information Furnished.....	28
9.2	Project Management.....	29
ARTICLE 10	BASIS OF COMPENSATION.....	29
10.1	Design-Build Services Fee.....	29
10.2	Contingency Allowance Accounts.....	30
10.3	Dedicated Allowance Accounts.....	30
10.4	Adjustment of Prices.....	32
ARTICLE 11	PAYMENTS TO THE DESIGN-BUILDER.....	34
11.1	Payments to the Design-Builder.....	34
11.2	Retainage.....	36
11.3	Payment for Differing Site Conditions.....	36
11.4	Mobilization.....	37
ARTICLE 12	SCOPE OF SERVICES.....	37
12.1	Scope of Services.....	37
ARTICLE 13	GENERAL PROVISIONS.....	37
13.1	Indemnification and Waiver of Liability.....	37
13.2	Errors and Omissions.....	38
13.3	Insurance.....	39
13.4	Performance.....	41
13.5	Project Suspension or Abandonment.....	42
13.6	Termination of Agreement.....	43
13.7	Design-Builder's Accounting Records.....	43
13.8	Ownership and Reuse of the Documents.....	43
13.9	Compliance with Laws.....	44
13.10	Miscellaneous Provisions.....	50
13.11	Sustainable Buildings Program.....	53
13.12	Rights of Decisions and Dispute Resolution.....	54
13.13	Certification.....	55
13.14	Sovereignty.....	56
13.15	Survival.....	57
13.16	Remedies.....	57
13.17	Use and Possession Prior to Completion.....	57
13.18	Independent Contractor.....	58
13.19	Sanctions for Contractual Violation.....	58
13.20	Changes.....	58
13.21	Design-Builder's Office.....	60
13.22	Plant and Facility Inspections.....	61
13.23	Equal Opportunity.....	60
13.24	Public Records and Contracts for Services Performed on Behalf of a Public Agency.....	62
13.25	Assignment/Assignability.....	62

13.26	User Access Program Fee.....	63
13.27	Residents First Training and Employment Program.....	63
13.28	Employ Miami-Dade Program.....	63
13.29	LCP Tracker.....	63
13.30	Community Workforce Program.....	63
13.31	Owner Direct Purchase Procedures.....	63
13.32	Florida Department of Transportation Requirements	64
13.33	Entirety of Agreement.....	67
ARTICLE 14	SIGNATURES.....	67

EXHIBITS

- EXHIBIT "A" Performance and Payment Bonds with Certificates of Insurance
- EXHIBIT "B" Internal Services Department (ISD) Forms
- ISD Form 6 – Price Proposal (inclusive of Attachment C)
 - ISD Form 8DB – Evaluation of Qualifications Form
 - ISD Form 9 - Fair Subcontracting Practices
 - ISD Exhibit "F" – 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 - Collusion Affidavit
 - Affidavit 5 - Public Entity Crimes Sworn Statement
 - Affidavit 6 - Contractor Due Diligence Affidavit
 - Affidavit 7 - Vendor Affirmation Affidavit
 - Affidavit 8 - E-Verify Affidavit
 - Affidavit 9 - Job Clearinghouse Forms and Affidavits
- EXHIBIT "D" Supplemental Requirements
- Miami-Dade County Wages:
 - Building-Highway
- EXHIBIT "E" Small Business Enterprise Requirements
- Certificate of Assurance
 - Responsible Contractor Affidavit (Form RTFE 1)
 - Residents First Training and Employment Program/Community Workforce Program/Employ Miami-Dade Program Construction Workforce Plan Form RFTE2
 - OSHA Safety Training Affidavit - Form RFTE 3
 - Residents First Training and Employment Program/Employ Miami-Dade Program Workforce Performance Report Form RFTE 4
- EXHIBIT "F" Safety Requirements
- Miami-Dade Transit Construction Safety Manual dated May 2012, Revision 6
 - Department of Transportation and Public Works Adjacent Construction Manual dated July 2017
 - Other related safety documents
- EXHIBIT "G" Standard Construction General Contract Conditions

EXHIBIT "H"

General Conditions Attachments (Payments Forms)

- Attachment "A"
 - Certificate of Acceptance for Substantial Completion
 - Certificate of Final Acceptance
- Attachment "B"
 - Contractor Release
 - Agreement on Final Quantities and Amounts
 - Final Affidavit
 - Labor Standards Provisions Final Acceptance
 - Memorandum of Understanding
 - Certificate of Sub-Contractors Status
 - Final Release of Lien
- Attachment "C"
 - Sub-Contractor's/Supplier's Release of Claim
 - Consent of Surety Company to Requisition Payment
- Attachment "D"
 - Contractor Agent to Accept Service
- Attachment "E"
 - Force Account Daily Report: Labor, Material & Equipment
- Attachment "F"
 - Contingency/Dedicated Allowance Expenditure Authorization Forms

- EXHIBIT "I" Request for Design-Build Services and all Addenda

- EXHIBIT "J" Technical Proposal

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
EI	Edison Electric Institute
EPA	United 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 66) 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.

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-Built). 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 AECOM Technical Services, Inc. and its subconsultants Ascendal Group LLC., HR Engineering Services, Inc., Manuel G. Vera & Associates, Inc., T.Y. Lin International, Borges & Associates, P.A. (Borges), and Borges' subconsultants, Brindley Pieters and Associates, Inc., MEP Engineering, Inc., and Laura Llerena & Associates, 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 by either the Contractor or Subcontractors. The first article approval establishes the baseline design and the minimum level of quality. Although the exercise of First Article Approval shall be at MDC's option, the Contractor shall assume that MDC will subject all equipment to first article examination and approval.

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

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, 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 cost of materials and labor, impact cost on unchanged work, inefficiency, decrease 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 of legal and accounting work not associate with claims, loss of Projects not bid upon.

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: Substantial Completion of a Project is the date on which the Owner certifies that the construction is sufficiently completed, in accordance with the Contract Documents as modified by any Change Orders, so that the Owner can occupy the Project for the use for which it was intended. A certificate shall be issued to the Contractor by the Owner upon achievement of Substantial Completion.

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

TECHNICAL 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 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 Documents, or shown on the Contract Documents 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.
- 2.2 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.
- 2.3 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.
- 2.4 References to Articles or Sections include sub-articles or subsections under the Article referenced.
- 2.5 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.
- 2.6 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.
- 2.7 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.
- 2.8 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.

- 2.9 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 Dadeland South Intermodal Station (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, excluding the DESIGN-BUILDER's administrative and incidental cost (such cost to be included elsewhere in the DESIGN-BUILDER's Bid) will be reimbursed to the DESIGN-BUILDER. 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.
- 4.6 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.
- 4.7 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.
- 4.8 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.

- 4.9 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.
- 4.10 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.
- 4.11 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.
- 4.12 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.
- 4.13 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.
- 4.14 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.
- 4.15 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 County Representative before the DESIGN-BUILDER begins any part of the Work.

- 4.16 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 at 9090 South Dixie Highway, Miami, Florida 33156.
- 5.2 TERM OF THE CONTRACT: The Contract Time for which this Agreement shall remain in full force and effect is **Six Hundred and Eighty-Five (685)** calendar days to Substantial Completion plus Fifty-Six (56) calendar days to Final Completion, excluding contingency time of **Seventy-Five (75)** calendar days which excludes the warranty administration period.

5.2.1.1. Project Schedule Contract completion dates.

5.2.1.1.1) The DESIGN-BUILDER shall complete the activities identified in Exhibit G – Standard Construction General Contract Conditions, Article 8.D (1 through 4) by, the Substantial Completion Contract Date specified in the Notice to Proceed, for issuance of Substantial Completion.

5.2.1.1.2) The DESIGN-BUILDER shall complete the activities identified in Exhibit G – 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 which equals **75** calendar days 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 **75** days 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 **Seventy-Five (75)** 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

If the Design-Builder does not achieve Substantial Completion by the official Substantial Completion Contract Date, plus approved time extensions, if any, liquidated damages (LDs) will be assessed and paid to the County by the Design-Builder in the amount of \$15,227.00 per day until such date is achieved. If the Design-Builder does not achieve Final Completion by the official Final Completion Contract Date, liquidated damages (LDs) will be assessed and paid to the County by the Design-Builder in the amount of \$9,816.00 per day until such date is achieved.

5.4 PROJECT SCHEDULE: Refer to Technical Specifications, Division I – General Requirements.

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 G - Standard Construction General Contract Conditions, Article 7.M – Warranty of Work.

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

5.7.2 Disposal of Material Outside the Work Site: Refer to Exhibit G - 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 forty-five (45) 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:

Firm Name(s):

Company Name	FEIN Number

- 6.4 **REPLACEMENT OF FIRMS:** The DESIGN-BUILDER shall not change any sub-consultant without MDC's prior approval, which approval shall not be unreasonably withheld. A written request from the DESIGN-BUILDER must be submitted to MDC, stating the reasons for the proposed change.
- 6.5 **CONTRACT MEASURES:** The DESIGN-BUILDER is required under this Agreement to achieve the following Contract measures applied to this project as shown in the attached Certificate of Assurance as presented in the DESIGN-BUILDER's proposal for the project:

12.59% Small Business Enterprise-Architectural and Engineering Goal
8.22% Small Business Enterprise Construction Goal.
0.25% Small Business Enterprise-Goods and Services Goal

ARTICLE 7 SUB-CONTRACTORS

- 7.1 **GENERAL:** Refer to Exhibit G - 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 contemplated by the Design-Builder or its subcontractor at any tier for any portion of the Project, whichever it deems to be in the COUNTY's best interest. The County shall have forty-five (45) calendar days to accept or reject the 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):

Company Name	FEIN Number
TBD	

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

- 7.5 **CONTRACT MEASURES:** The DESIGN-BUILDER is required under this Agreement to achieve the following Contract measures applied to this project as presented in the DESIGN-BUILDER's proposal for the project:

8.22% Small Business Enterprise-Construction Goal

**ARTICLE 8
SUB-CONTRACTS**

- 8.1 **DESIGN-BUILDER PARTICIPATION:** Refer to Exhibit G - 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 G - 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 G - 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 **\$57,551,924.00**

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 - Schedule of Values.

10.2 CONTINGENCY ALLOWANCE ACCOUNTS.

This Project is a design-build services agreement for the design-build of a facility on public property; therefore, an Allowance Account is permissible, per Ordinance No. 00-65. This Allowance Account, computed as 10% of the design-related and construction-related portions of the compensation, will be used by MDC for unforeseen conditions necessitating additional design and construction, resulting in additions to the design-build services fee.

The sum of the COUNTY Contingency Allowance Accounts is as follows:

Contingency Allowance on Engineering and Design: \$ 369,911.80
(10% of Engineering and Design)

Contingency Allowance on Construction: \$5,385,280.60
(10% of Construction)

TOTAL CONTINGENCY ALLOWANCE: **\$5,755,192.40**

10.3 DEDICATED ALLOWANCE ACCOUNTS (DAA)

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

10.3.1.1 Art in Public Places: \$297,022.75

DEDICATED ALLOWANCE ACCOUNTS FOR ART IN PUBLIC PLACES:

This project is subject to the Miami-Dade County Art in Public Places requirements, pursuant to Section 2-11.15 of the Code of Miami-Dade County, managed by the Miami-Dade County Department of Cultural Affairs as detailed in Procedure 358 in the Miami-Dade County Procedures Manual (see <http://www.miamidadepublicart.org/#tools> or <http://intra.miamidade.gov/managementandbudget/procedures.asp>).

DAAs have been established for the exclusive use of the County as a reserve account for the purpose of funding the cost of the Art in Public Places (AIPP). The DAAs shall be calculated at one-half percent (1.5%) of the new construction cost (to include 10% contingency) as defined in Section 2-11.15 of the Code of the County.

Funds under these DAAs will be drawn using a form approved by the County representative and spent or used in accord with the provisions of Section 2-11.15 of the Code of the County. It is understood that any unspent portion of these DAAs is to remain with the County. The DESIGN-BUILDER shall not be entitled to any portion of the amount of the Dedicated Allowance Account for Art in Public Places and the cost thereof will not be included in the Design-Builder's Purchase Order. The funds from the Dedicated Allowance Account for Art in Public Places will be transmitted by Miami-Dade County to the County's Department of Cultural Affairs.

10.3.1.2 Permit Fees: \$3,223,439.55

DEDICATED ALLOWANCE ACCOUNTS FOR PERMITS:

A DAA have been established for the exclusive use of the Department of Transportation and Public Works (DTPW) as a reserve account for the purpose of funding the cost of all types of permits. The Design-Builder will be reimbursed for the direct (actual) construction permit costs (imposed by the applicable government agency) from these DAAs, upon presentation of paid receipts from the permitting agency, including a copy of the permit. The Design-Builder shall timely inform the COUNTY if additional funds in excess of the DAAs are needed to pay for permits. It is understood that any unspent portion of this allowance account shall remain with the COUNTY.

10.3.1.3 Trackwork Escort Services \$ N/A

DEDICATED ALLOWANCE ACCOUNTS FOR TRACKWORK ESCORT SERVICES:

Not Applicable.

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

- 10.3.3 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 Work Orders or task orders, according to the tasks listed in Section 10.3.1, Subparts 1-8.
- 10.3.4 The sum of the Contingency Accounts and the Dedicated Allowance Accounts excluding art in public places is \$8,978,631.95 for all payments to the DESIGN-BUILDER for any Additional Services authorized by the COUNTY's REPRESENTATIVE on this Project.
- 10.3.5 Therefore, the TOTAL CONTRACT AMOUNT for this Contract shall be limited to \$66,530,555.95, plus the allowance from the County for Art in Public Places of \$297,022.00.

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.

10.4 ADJUSTMENT OF PRICES

- 10.4.1 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, as an increase or decrease for the Variable Materials identified herein. Decreases shall result in a credit to the County. As a result, the County and Contractor agree as follows:
- 10.4.2 This provision shall apply only to those Variable Materials described below.
- 10.4.3 Contractor's Schedule of Values shall identify the quantity of Variable Materials and the Base Unit Price for those materials. The variable items listed below will be subject to a monthly price adjustment, increased or decreased 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.
- 10.4.4 Price adjustments, up or down, will be made commencing no earlier than 180 days after step 2 submittal, 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%. Contractor shall not be

entitled to any other adjustments beyond the adjustments of line items identified below.
The parties agree that the following indexes were in effect when bids were received:

Variable Material from the Schedule of Values	Quantity	Base material price (BMP) index	BMP Source	Base Price
Structure steel and steel sheet piling			Refer to link below*	
Bituminous Material				
Aluminum				
PVC				
Copper				
Steel Guardrails				
Thermoplastic				
Steel sign structures and mast arms				
Other items as requested				

*<https://www.fdot.gov/construction/material-price-adjustment>

- 10.4.5 With each pay application which includes charges for Variable Materials, "Contractor shall provide an Index Report in substantially the form below "Exhibit A.
- 10.4.6 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, $[IMP - (BMP * .95)] / BMP$.
- 10.4.7 The Adjustment Process referenced in this subsection shall commence no earlier than (180) one hundred eighty days after step 2 submittal.
- 10.4.8 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.
- 10.4.9 The price adjustment will be incorporated into the contract pursuant to (Allowance Account).
- 10.4.10 Design Build team shall utilize worksheets provided by FDOT and that can be found on the FDOT link above. Unless otherwise approved by the Department. See sample below.
- 10.4.11 Price adjustments up or down are to be passed to those subcontractors that purchase the materials.

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 G – 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.
 - 4) 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.
 - 5) Basis of Payment:
Payment will be presented as a lump sum under the schedule of values.

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 Project shall include furnishing all labor, equipment, materials, testing, and construction quality control, for final acceptance by DTPW of the Project components. In addition to furnishing and installation, the Design-Build Firm shall be responsible for the design, permitting, integration,

acceptance and testing, providing documentation (manuals) and warranties, commissioning, and training (as required). The Design-Build Firm shall provide all the necessary investigations including site investigations, surveys, geotechnical investigations, and utility locates; be responsible for coordinating with utility agencies/owners (UA/Os) for the required utility adjustments and/or relocations; conducting all contamination remediation and mitigation activities; and conducting all safety and security related activities to obtain Safety Certification for the Project from the DTPW Office of Safety and Security. Refer to Exhibit I for a detailed description of the Scope of Services and special requirements for the Project.

The Project includes the design and construction of several canopies to provide better weather protection for individuals on the BRT platform, between the Station's west side entrance and the Datan Center and parking garage, Metrorail platform and connecting elements between the Metrorail platform and the drop-off/pick-up area; the reconfiguration of the drop-off/pick-up area north of the station for easier vehicular and pedestrian access; the design and construction of an at-grade bike path connection to connect the County's Underline project and the South Dade Trail (adjacent to the Transitway); improvements throughout the Station to the existing amenities such as facility technologies, barrier and security systems, bicycle amenities, lighting, landscape and hardscape elements, climate control systems, wayfinding signage, and vertical circulation elements; Metrorail guideway structural and drainage improvements; and site improvements to adjacent roadways, signalized intersections and the surface park-and-ride lot north of the station area. The Project is targeting LEED for Transit Stations "Silver"-level certification.

Refer to Design Criteria Package of the RDBS for the full Scope of Services, latest version.

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 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 as required in A – C 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 Contractor as required by Florida Statute 440.

- B. Commercial General Liability in an amount not less than \$5,000,000 per occurrence, and \$10,000,000 in the aggregate, not to exclude Explosion Collapse and Underground Hazards and Products and Completed Operations. **Miami-Dade County 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. Completed Value Builders' Risk Insurance on an "all risk" basis in an amount not less than one hundred (100%) percent of the Contract Sum of the building(s) or structure(s). The policy shall be in the name of Miami Dade County and the Contractor.
- E. 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.

***Excess/Umbrella Liability may be used to supplement minimum liability coverage requirements. Follow form basis is required if providing Excess Liability.**

CONTINUITY OF COVERAGE

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

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.

or

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

NOTE: CERTIFICATE HOLDER MUST READ:

**MIAMI-DADE COUNTY
111 NW 1st STREET**

**SUITE 2340
MIAMI, FL 33128**

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

13.4 PERFORMANCE

- 13.4.1 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 Work Orders issued by MDC and complete each Phase within the time stipulated in each 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, 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 G - 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 for the work performed and costs incurred due to the work suspension which shall be included in a Work Order/Change Order in accordance with Article 13.3. 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 Work Order 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 G - 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 G - 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 G – 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 G -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 G - 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 Exhibit "I" of this Agreement,

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 Division of Small Business Development 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 G – Standard Construction General Contract Conditions – Article 12.G.2) -Inspector General.

13.9.6.2 INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL: Refer to Exhibit G – 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 G, 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. 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 an 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 purpose 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:

By entering the Contract, the Awarded Design-Builder becomes obligated to comply with the provisions of Section 448.095, Florida Statute, titled "Verification of Employment Eligibility." This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Awarded Design-Builder effective, January 1, 2021, and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor and Subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Awarded Design-Builder, or if a Subcontractor or Subconsultant knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the

Circuit Court no later than twenty (20) calendar days after the date of termination. If this Contract is terminated for a violation of the statute by the Awarded Design-Builder, the Awarded Design-Builder may not be awarded a public contract for a period of one year after the date of termination, and the Awarded Design-Builder may be liable for any additional costs incurred by the County resulting from the termination of the Contract. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

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 G -Standard Construction General Contract Conditions, Article 8.E – Use and Possession.
- 13.17.2 Notwithstanding the use and possession by the County of any completed portion or partially completed portion of the Work, the applicable time period for the Contractor's guarantee, warranties and Warranty Bond shall not commence until issuance of the Certificate of Acceptance of Final Inspection or said portion of the Work is put into

revenue service or Owner takes possession of the completed portion of the Work in writing as set forth in the Contract Documents.

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 G - 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 USER ACCESS PROGRAM FEE

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County's User Access Program (UAP) in the amount of two percent (2%). This fee applies to all Contract usage whether by County Departments or by any other governmental, quasigovernmental or not-for-profit entity. From every payment made to the Design-Builder under this contract (including the payment of retainage), the County will deduct the two percent (2%) UAP fee provided in the ordinance and the Design-Builder will accept such reduced amount as full compensation for any and all deliverables under the contract. The County shall retain the 2% UAP for use by the County to help defray the cost of its procurement program. Design-Builder participation in this pay request reduction portion of the UAP is mandatory.

13.27 RESIDENTS FIRST TRAINING AND EMPLOYMENT PROGRAM:

In accordance with Section 2-11.17 of the Code of Miami-Dade County and Implementing Order No. 3-61 (copies attached or online at <http://www.miamidade.gov/smallbusiness/businessdevelopment-legislation.asp>), all contractors and subcontractors of any tier on (i) construction contracts valued in excess of \$1,000,000 for the construction, demolition, alteration and/or repair of public buildings or public works, or (ii) contracts or leases valued in excess of \$1,000,000 for privately funded construction, demolition, alteration or repair of buildings or improvements on County-owned land, shall comply with the following:

1. Prior to the issuance of a Notice to Proceed, the Design-Builder must also submit: (i) a Construction Workforce Plan (Form RFTE 2) and supporting documentation; (ii) a list of all subcontractors to be used on the project; (iii) a Responsible Subcontractor Affidavit (Form RFTE 1) for each subcontractor; and (iv) a list of all employees currently employed by the Design-Builder.
2. All certified payrolls submitted to the Contracting Officer shall include an OSHA Safety Training Affidavit (Form RFTE 3).
3. Within thirty (30) business days of completion of a project, the Design-Builder must submit a Workforce Performance Report (Form RFTE 4).
4. Any lessee shall include requirements of Section 2-11.7 of the Code of Miami-Dade County and Implementing Order No. 3-61, including the right of the County to access the Design-Builder's and subcontractors' records to verify compliance, in any contract, subcontract, or sublease. Lessee

shall be responsible to the County for payment of compliance monitoring costs and any penalties found due.

13.28 EMPLOY MIAMI-DADE PROGRAM:

Except where state or federal laws or regulations mandate to the contrary, all contractors and subcontractors of any tier performing on a County Construction Contract shall satisfy the requirements of this Article.

In accordance with Section 5.02 of the Miami-Dade County Home Rule Amendment and Charter, Section 2-8.1 of the Code of Miami-Dade County, and Administrative Order No. 3-63, all contractors and subcontractors of any tier on (i) construction contracts valued in excess of one million dollars (\$1,000,000) for the construction, demolition, alteration and/or repair of public buildings, or public works; or (ii) contracts or leases valued in excess of one million dollars (\$1,000,000) for privately funded construction, demolition, alteration or repair of buildings, or improvements on County-owned land:

A. The awarded Design-Builder is hereby notified that the County will consider whether the Design-Builder made its best reasonable efforts to promote Employ Miami-Dade on this contract, as defined in A.O. 3-63, as part of the County's evaluation and responsibility review of the Design-Builder for new County contract awards.

1. Referral Procedures:

Career Source South Florida shall compile and maintain the Employ Miami-Dade Register. The Contractor will notify Career Source South Florida of the vacancy by completing a Job Opening Form on the Employ Miami-Dade website <https://iapps.careersourcesfl.com/employmd/>. The job order must contain a detailed description of the job responsibilities and qualifications. Career Source South Florida will then provide a list of qualified candidates available to the Contractor with copy to the Compliance Officer.

Contractor will review the resumes and qualifications of the candidates, conduct interviews with those candidates who satisfy the minimum competency requirements, and make a good faith effort to fill at least 20% of the labor workforce required per Contractor's Construction Workforce Plan from the Employ Miami-Dade Register through Career Source South Florida.

Positions filled from the Employ Miami-Dade Register must be full-time, for at least 120 days, in order to be considered towards attainment of the 20% labor workforce threshold herein.

If the 20% labor workforce per Contractor's Construction Workforce Plan from Employ Miami-Dade is not met on the contract, the Contractor must provide the Compliance Officer with a detailed explanation of its efforts.

Career Source South Florida may have funds to pay a portion of the salaries for Employ Miami-Dade participants. It shall be the responsibility of the Contractor to contact Career Source South

Florida directly to determine eligibility for, and make arrangements as applicable with, Career Source South Florida to pay a portion of the salaries for a specified period and/or during on the job training for the Employ Miami-Dade participants employed on the contract.

13.29 LCP TRACKER

To ensure that payroll reporting can be done more securely, quickly and efficiently, and to eliminate paper-based payrolls, the County has adopted LCPtracker, a web-based Certified Payroll Management System. Use of the system is mandatory and at no additional cost to the contractor. LCPtracker can be interfaced with contractor's existing payroll system. For more information on LCPtracker software or training, please contact Small Business Development (SBD) Division at 305.375.3111.

13.30 COMMUNITY WORKFORCE PROGRAM:

A ten percent (10%) Community Workforce Program (CWP) goal has been established for this project. The Design-Builder is required to comply with the requirements of Miami-Dade County (MDC) Code 2-1701 as amended by Ordinance 13-66 (attached), and Implementing Order No. 3-37; COMMUNITY WORKFORCE PROGRAM. Additional information is available at the County's website at <http://www.miamidade.gov/business/contract-requirements.asp#0>.

The Design-Builder must submit a Workforce Plan to the Small Business Development Division within fifteen (15) days of notification of award of the contract. The County will not enter into the contract until it receives the Design-Builder's Workforce Plan and deems the Plan acceptable. The Workforce Plan forms may be obtained on the County's website at <http://www.miamidade.gov/business/contract-requirements.asp#0>.

13.31 OWNER DIRECT PURCHASE PROCEDURES

PART 1 - GENERAL

1.01 REQUIREMENTS INCLUDED

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

PART 2 - PRODUCTS

2.01 GENERAL

A) Any equipment, materials or supplies directly purchased by the Owner that are included in the Contractor's contract shall be referred to as Owner Direct Purchased Materials and the

responsibilities of both Owner and the Design-Builder, as the case may be, relating to such Owner Direct Purchased Materials shall be governed by the terms and conditions of these procedures.

B) Material suppliers shall be selected by the Design-Builder awarded the contract. The Design-Builder has included the price for all construction materials plus applicable taxes in his/her bid.

PART 3 - EXECUTION

3.01 PROCEDURES

A) Design-Builder shall provide Owner's Representative a list of all intended suppliers, vendors, and materialmen for consideration as Owner Direct Purchased materials. This list shall be submitted at the same time as the preliminary Schedule of Values and the Project Schedule. The Design-Builder shall submit a description of the materials to be supplied, estimated quantities and prices.

B) Upon request from Owner, and in a timely manner, Design-Builder shall submit the attached Purchase Order Requisition Form to the Owner's Representative, to specifically identify the materials which Owner has, at its sole option, elected to purchase directly. On the Purchase Order Requisition Form, the Design-Builder will provide the Owner the required quantities of material at the price established in the vendor's quote to the Design-Builder, less any sales tax associated with such price.

C) Such Purchase Order Requisition Forms are to be submitted to Owner's designated representative no less than two (2) weeks prior to the need for ordering such Owner Direct Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that such Directly Purchased Materials may be directly purchased by Owner and delivered to the Project site so as to avoid any delay to the Project.

D) After receipt of the Purchase Order Requisition Form, Owner shall prepare its Purchase Order for equipment, materials or supplies which the Owner chooses to purchase directly. Promptly upon receipt of each Purchase Order, Design-Builder shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. After such verification by the Design-Builder, The Owner shall issue the Purchase Order to the supplier or vendor. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the Owner Direct Purchased Materials on the delivery dated provided by the Design-Builder in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite. The Owner's Purchase Order shall also provide that the supplier shall invoice the Owner directly for the items purchased and not the Design-Builder. Owner shall immediately provide Design-Builder with copies of such invoices it receives. The Owner's Purchase Orders shall contain or be accompanied by the Owner's exemption certificate and must include the Owner's name, address, and exemption number with issue and expiration date shown. The Owner shall issue each supplier or vendor a

Certificate of Entitlement on the Certificate of Entitlement Form attached hereto with each Purchase Order.

E) All shop drawings and submittals shall be made by the Design-Builder in accordance with the Project Specifications.

F) Design-Builder shall be fully responsible for all matters relating to the receipt of materials in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees in favor of and for the benefit of the Owner required by the Contract Documents, inspection and acceptance of the goods at the time of delivery. At the time of, and subsequent to, the delivery of such materials, the Owner shall be liable for all loss or damage to equipment and materials purchased pursuant to the Purchase Order. The Design-Builder shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Design-Builder for the particular materials furnished. The Design-Builder shall provide all services required for the unloading, handling and storage of materials through installation. The Design-Builder agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of Design-Builder. Notwithstanding the foregoing, the Owner shall be responsible for payment off the invoices issued by the supplier or vendor pursuant to the procedures in Paragraph G below.

G) As Owner Direct Purchased Materials are delivered to the jobsite, the Design-Builder and the Owner's Representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice issued to the Owner for material delivered. The Design-Builder shall assure that each delivery of Owner Direct Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier delivered to the Owner (and provided to Design-Builder) conforming to the Purchase Order, together with such additional information as the Owner or Design-Builder may require. The Design-Builder shall verify in writing to the Owner's Representative that the Materials were received in order for the Owner to agree to approve the invoice for payment of the invoice issued. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.

H) The Design-Builder shall ensure that Owner Direct Purchase materials conform to the Specifications, and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Design-Builder discovers defective or nonconformity in the Owner Direct Purchased Material upon such visual inspection, the Design-Builder shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the Vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Design-Builder shall notify the Owner of such occurrence. If the Design-Builder fails to perform such inspection and otherwise incorporates Owner Direct Purchased materials, the condition of which it either knew or should have known by performance of an inspection, Design-Builder shall be

responsible for all damages to Owner resulting from Design-Builder's incorporation of such materials into the Project, including liquidated or delay damages. In the event that materials furnished are found to be defective or nonconforming, the Design-Builder shall promptly take action to remedy the defect or nonconformance so as not to delay the work.

I) The Design-Builder shall be responsible for obtaining and managing all warranties and guarantees in favor of and for the benefit of the Owner for all materials and products as required by the Contract Documents. All repairs, maintenance or damage repair calls shall be forwarded to the Design-Builder for resolution with the appropriate supplier or vendor.

J) The transfer of possession of Owner Direct Purchased Materials from the Owner to the Design-Builder shall constitute a bailment for mutual benefit of the Owner and the Design-Builder. The Owner shall be considered the bailor and the Design-Builder the bailee of the Owner Direct Purchased materials. Owner Direct Purchased Materials shall be considered returned to the Owner for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. Bailee shall have the duty to safeguard, store and protect all Owner Direct Purchased Materials.

The Design-Builder shall maintain insurance in favor of and for the benefit of the Owner pursuant to the requirements set forth in the Owner and Design-Builder Agreement which shall be sufficient to protect against any loss of or damage to Owner Direct Purchased equipment, materials, or supplies. Such insurance shall cover the value of any Owner Direct Purchased Materials not yet incorporated into the Project from the time the Owner first takes title which shall be at the time of delivery and acceptance of the materials by the Design-Builder as provided in Paragraph F above.

K) On a monthly basis, Design-Builder shall be required to review invoices submitted by all suppliers of Owner Direct Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the supplier, based upon Design-Builder's records of materials delivered to the site and any defects in such materials.

L) In order to arrange for the prompt payment to the supplier, the Design-Builder shall provide to the Owner, a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a payment to the supplier based upon the receipt of data provided. This payment will be released, delivered, and remitted directly to the supplier by the Owner. The Design-Builder agrees to assist the Owner to immediately obtain partial or final release of lien waivers as appropriate.

M) Salvage materials shall be the property of the Owner and stored or removed from the site by the Design-Builder at the Owner's discretion.

From the time of delivery and acceptance, the Owner shall have and retain title to any and all Owner Direct Purchased materials.

13.32 FLORIDA DEPARTMENT OF TRANSPORTATION REQUIREMENTS

- 13.32.1 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.
- 13.32.2 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.
- 13.32.3 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.
- 13.32.4 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.

13.33 ENTIRETY OF AGREEMENT

- 13.33.1 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.
- 13.33.2 If any portion of this Agreement is deemed illegal or unenforceable by a court of law, the remainder of the contract remains valid.

- 13.33.3 Since proceeds from the Charter County Transit System Sales Surtax levied pursuant to Section 29.121 of the Code of Miami-Dade County may be used to pay for all or some part of the cost of this Contract, no award of this Contract shall be effective and thereby give rise to a contractual relationship with the County unless and until the following have occurred: the County Commission, after review by the Citizens' Independent Transportation Trust, awards the contract, and such award becomes final (either by expiration of 10 days after such award without veto by the Mayor, or by Commission override of a veto.

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: X

Signature

By:

Agustin Arellano, Jr.



NV2A Group LLC

Signature

Gilberto Neves
President & CEO

Legal Name and Title

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

ATTEST:
Witness:

Signature

Legal Name of Firm

Witness:

Signature

Legal Name of Firm

Date Signed

By:

Signature

WHEN THE DESIGN-BUILDER IS A PARTNERSHIP

ATTEST:

Witness:

Signature

Legal Name of Partnership

Witness:

Signature

Legal Name and Title

Date Signed

By:

Signature

(Seal)

Legal Name and Title

By:

Signature

WHEN THE DESIGN-BUILDER IS AN INDIVIDUAL

Witness:

Signature

Legal Name

Witness:

Signature

Signature

MIAMI-DADE COUNTY, FLORIDA

Approved as to Insurance Requirements:

Approved for Legal Sufficiency:

Risk Management Division

Assistant County Attorney

Date:

Date:

IN WITNESS WHEREOF the said MIAMI-DADE COUNTY, FLORIDA, has caused this Agreement to be executed in its name by the County 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:

FOR:

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

**LUIS G. MONTALDO
Clerk of the Court**

County Mayor

By: Clerk of the Board

By:

Signature

Signature

Date:


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



Memorandum



To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Javier A. Betancourt, Executive Director 

Date: June 30, 2023

Re: **CITT AGENDA ITEM 7B:**
RESOLUTION BY THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST
RECOMMENDING THE BOARD OF COUNTY COMMISSIONERS (BCC) APPROVE
AWARD OF A CONTRACT TO NV2A GROUP, LLC FOR **\$66,827,578.70** FOR DESIGN-
BUILD SERVICES FOR THE PROJECT TITLED DADELAND SOUTH INTERMODAL
STATION (PROJECT NO. DB21-DTPW-03; CONTRACT NO. CIP207-DTPW21-DB)
FOR A TERM OF 685 CALENDAR DAYS FOR SUBSTANTIAL COMPLETION PLUS 56
CALENDAR DAYS TO FINAL COMPLETION, EXCLUDING CONTINGENCY TIME OF
75 CALENDAR DAYS WHICH EXCLUDES THE WARRANTY ADMINISTRATION
PERIOD; AUTHORIZE THE USE OF PEOPLE'S TRANSPORTATION PLAN BOND
PROGRAM (PTP) FUNDS FOR SUCH PURPOSES; AND AUTHORIZE THE COUNTY
MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE SAME AND TO
EXERCISE THE PROVISIONS CONTAINED THEREIN **(DTPW – BCC LEGISLTATIVE
FILE NO. 231156) SURTAX FUNDS ARE REQUESTED**

On June 28, 2023, the CITT voted (7-0) to forward a favorable recommendation to the Board of County Commissioners (BCC) for the approval of the above referenced item, CITT Resolution No. 23-012. The vote was as follows:

Oscar J. Braynon, Chairperson – Aye
Robert Wolfarth, 1st Vice-Chairperson – Aye
Paul J. Schwiep, Esq. – Aye

Hon. Peggy Bell – Aye
Joseph Curbelo – Aye
Qjuezari Harvey – Absent
L. Elijah Stiers, Esq. – Absent

Omar K. Bradford, Esq. – Absent
Meg Daly – Aye
Robert Ruano – Aye
Mary Street, Esq. – Absent

c: Jimmy Morales, Chief Operations Officer
Bruce Libhaber, Assistant County Attorney