

FIRST AMENDMENT TO SECOND ADDENDUM TO THE SIGNATORY TERMINAL BUILDING LEASE AGREEMENT BETWEEN BROWARD COUNTY AND DELTA AIR LINES, INC.

This is the First Amendment ("First Amendment") to the Second Addendum to the Signatory Terminal Building Lease Agreement between Broward County, a political subdivision of the State of Florida, hereinafter referred to as "County," and Delta Air Lines, Inc., a Delaware corporation authorized to do business in the State of Florida, hereinafter referred to as "Delta" (the County and Delta may be collectively referred to as the "Parties").

RECITALS

A. The Parties entered a Signatory Terminal Building Lease Agreement, dated September 27, 2011 (as the same has been amended, "Lease Agreement").

B. The Parties entered into an Addendum to Lease Agreement on June 12, 2012 ("Addendum") to allow Delta to manage the design, construction and installation of an In-line Baggage System and enabling projects in Terminal 2 at the Fort Lauderdale – Hollywood International Airport (the "Airport");

C. The Parties amended the Addendum on June 24, 2014 (the "Addendum Modification"), for the design and construction of Lobby Phase concessions and Phase 2 Work involving modification of Delta and Air Canada's Ticket Counters and ATO;

D. The Parties entered into a Second Addendum (the "Second Addendum") to the Lease Agreement effective April 5, 2016, to allow Delta to administer and oversee the Modernization of Terminal Two and make certain other improvements and perform enabling projects thereto at the Airport.

E. The Parties now desire to enter into this First Amendment to (i) add to the scope of the Project certain additional work related to the Terminal Modernization (the "Additional Work"), (ii) increase the Contract Price to provide additional funding for the Project, including the funding for such Additional Work, (iii) extend the Contract Time to provide additional time for completion of the Project, (iv) ratify the Construction Contract and the Program Manager Contract, and (v) modify certain other terms and conditions of the Second Addendum as set forth herein.

Now, therefore, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, County and Delta agree that the Second Addendum is hereby amended as follows:

1. All Recital clauses stated above are true and correct and are incorporated herein by reference.

2. Throughout this First Amendment, stricken-through language indicates deletions, and underlined language (except for the title) indicates additions.

3. Section 4.15 of the Second Addendum is hereby amended as follows:

4.15 Contract Documents shall mean all documents relating to the design, construction, testing, inspection and commissioning of the Project, specifically including, without limitation, this Second Addendum, the Design Contract/Work Authorizations between County and the Design Professional, the Construction Contract, Project specifications, the Program Manager Contract, the Plans, any contracts related to the design and construction of the interim Delta Sky Club, Change Orders, Requests for Proposals, addenda, approved shop drawings, bid sheets and bid submissions for the applicable and engaged Project Contractor, Bonds, Notice(s) of Award, Notice(s) to Proceed, CPEAMs, Field Orders, and any acquisition contracts for equipment acquired, utilized and incorporated into the Project, and such other design or construction contracts entered into by Delta with respect to the Project with the prior written approval of the County.

4. Section 4.16 of the Second Addendum is hereby amended as follows:

4.16 Contract Price shall mean the amount set forth in Section 4 of **Exhibit A** and shall be used to pay the items specifically set forth herein, including the following items: (a) the Final Guaranteed Maximum Price of the Construction Contract; (b) the contract price under the Program Manager Contract; (c) Administrative Costs under this Second Addendum; (d) Owner's Change Order contingency of five (5%) of the FGMP after establishment of the FGMP for changes to the Construction Manager at Risk Work; (e) a Change Order contingency of Two hundred fifty thousand dollars 00/00(\$250,000) for additional Project Manager services; (f) any costs associated with the construction of the Enabling Projects (to the extent that such sums are not included in the FGMP); (g) other Project-related costs funded in contracts entered between Delta and contractors for the Project (with the prior written approval of the County), other than the Construction Contract and the Program Manager Contract; ~~(g)~~(h) an Owner's Allowance Account of ~~\$6,000,000~~\$13,500,000 aggregate to be utilized in accordance with **Exhibit L** hereof, as may be amended by amendment or addendum to this Second Addendum; ~~(h)~~(i) a not to exceed amount of \$750,000 for The Public Art and Design Program ("Public Art Program") established and codified in Section 1-88 of the Broward County Code of Ordinances, as amended, and ~~(g)~~(i) any other items set forth herein and/or approved by the County and/or the Board, as applicable.

5. Section 4.23 of the Second Addendum is hereby amended as follows:

4.23 Design Professional shall mean, individually or collectively, as the context may require, (a) Gresham, Smith and Partners ("GS&P"), the

architectural/engineering firm, retained by County to perform the professional design and engineering services for the Project (other than the Enabling Projects), ~~and~~ (b) the architectural/engineering firm, retained by County to perform the professional design and engineering services for the Enabling Projects, and (c) any other architecture/engineering firm retained by the County to perform professional design and engineering services on the Project.

6. Section 4.24 of the Second Addendum is hereby amended as follows:

4.24 Enabling Projects shall mean those certain enabling projects agreed to in writing by Delta and the County as necessary for the Project, including, without limitation, updating and modifying the building commonly known as Building 850 (or such other location as identified by County to Delta in writing) to be used as new facilities for the Broward Sheriff's Office and moving the Broward Sheriff's Office to such facilities the former Animal Control Facility located at 1870 SW 39th St., Fort Lauderdale, FL 33315.

7. Section 4.29 of the Second Addendum is hereby amended as follows:

4.29 LEED ("Leadership in Energy and Environmental Design") shall mean the rating system for green building practices created by the United States Green Building Council (USGBC). Notwithstanding anything herein to the contrary, neither Delta nor its Project Contractors shall be obligated to achieve LEED certification other than for Terminal 2 (but only as and to the extent under contract and control of such entity(ies)).

8. Section 4.36 of the Second Addendum is hereby amended as follows:

4.36 Project shall mean the modernization of Terminal Two of the Airport, including but not limited to the construction of new ceilings, new terrazzo flooring, the relocation of the passenger security screening checkpoint, demolition of existing concession space, construction of new concession retail shell space, supply of utilities to concession shell space (but excluding distribution of utilities within), relocation of concession support spaces, design and construction of an interim Delta Sky Club at Terminal Two, restroom renovations, expansion of holdrooms, other terminal building improvements, design and construction of the secure connector bridges, and design and construction of related improvements between Terminal 1 and Terminal 2 and Terminal 2 and Terminal 3 (the "Terminal Connectors"), any environmental remediation required due to the Project, the Enabling Projects related thereto, and such other improvements agreed to in writing by the County and Delta, all in accordance with **Exhibit A**, the Contract Documents, and all applicable federal, state, and County laws, rules, regulations, ordinances and requirements; provided, however, that County shall be responsible for the design of the Project unless otherwise agreed by Delta and the County in writing. The Project is more particularly described on the narrative attached

hereto as **Exhibit B-1**, which was prepared by GS&P; provided, however, that (a) if there is a conflict between **Exhibit B-1** and the drawings prepared by GS&P dated September 1, 2015, as the same have been or may be amended, or the drawings, if applicable, provided by any other design professional, such drawings shall control, (b) if **Exhibit B-1** provides for something that is not contained in the aforementioned drawings, such item shall not be constructed unless and until the drawings are revised to reflect it, (c) if **Exhibit B-1** does not provide for something that is in the aforementioned drawings, such item shall be constructed unless and until the drawings are revised to exclude it, and (d) if there is a conflict between **Exhibit B-1** and the other terms this Second Addendum (i.e. other than **Exhibit B-1**), the terms of this Second Addendum (excluding **Exhibit B-1**) shall control.

9. Section 4.38 of the Second Addendum is hereby amended as follows:

4.38 Project Contractors shall mean the Design Professional, Construction Contractor, and Program Manager, and any other contractors or consultants engaged by Delta for the Project; provided, however, that the County and Delta acknowledge and agree that Delta does not have a contract with Design Professional and County is responsible for causing the Design Professional to perform its obligations under the Design Contract.

10. Section 5.1 of the Second Addendum is hereby amended as follows:

5.1 Delta shall administer and oversee the construction and completion of the Project in accordance with the requirements of this Second Addendum. Notwithstanding the foregoing or anything herein to the contrary, (a) Delta shall only be obligated to perform under this Second Addendum if and to the extent that the County performs as contemplated hereunder, and (b) Delta and County acknowledge and agree that the Enabling Projects ~~must~~ may need to be completed prior to commencement of some or all of the Work on the balance of the Project, and Delta shall not be liable for any delays or cost increases in the Project due to the Plans for the Enabling Projects not being complete, permitted or otherwise in a state ready for construction. Notwithstanding the foregoing, if the Enabling Projects and the balance of the Work can be phased such that some or all of the Work can be commenced prior to commencement or completion of the Enabling Projects, Delta and County shall cooperate to cause the commencement and/or completion of any such Work notwithstanding the fact that the Enabling Projects have not yet been completed. In addition, Delta and County agree that, upon approval from Contract Administrator (which may be via email), Delta may release Construction Contractor to perform certain Enabling Projects or other Work that Delta and the County agree in writing should be completed prior to Construction Contractor commencing the balance of the Work.

11. Section 6.1 of the Second Addendum is hereby amended as follows:

6.1 ~~Contract Administrator has notified Delta that it believes the Plans for the Project (other than the Enabling Projects) are one hundred percent (100%) complete.~~ County has provided or will provide within five (5) business days after the date hereof the current draft of the Plans for the Project (other than the Enabling Projects and the Terminal Connectors) to Delta for its use in negotiating with or procuring the Construction Contractor. County shall engage Design Professional, or others, and cause the preparation of Plans for the Enabling Projects, if applicable, as well as engage a Design Professional for the Terminal Connectors.

12. Section 7.2 of the Second Addendum is hereby amended as follows:

7.2 The insurance requirements for the Project are set forth in **Exhibit D.** Prior to commencement of the individual components of the Work, Delta shall provide the County with Project Contractors' evidence of the insurance coverage required for that component of the Work, as set forth in **Exhibit D.** Notwithstanding the foregoing, County reserves the right to determine, in its own discretion, to obtain and maintain the builder's risk insurance with comparable coverages to that which the Construction Contractor or Delta proposes (depending on which entity proposes to obtain such insurance); provided, however, that the terms and conditions of such policy shall be subject to the reasonable approval of Delta, and Delta and its Project Contractors shall be named as an additional insured or named insured on such policy, as applicable. Such Builder's Risk Policy if obtained by the County shall waive subrogation against Delta and its Project Contractors.

13. Section 9.4 of the Second Addendum is hereby amended as follows:

9.4 County's Sales Tax Exemption: To achieve sales tax savings, the parties agree that the County, a tax-exempt entity, and/or, to the extent permitted by applicable law, Delta may purchase Project materials mutually agreed upon by the Contract Administrator and Delta directly from the supplier or a third party agent, to the extent permitted by applicable law. The State of Florida requirements for the County's direct purchase of Project materials mutually agreed upon by the Contract Administrator and Delta shall be adhered to. The cost of these ~~direct~~ purchases shall be credited to the Project through a deductive Change Order to the FGMP (but only to the extent that such amount was included in the FGMP). In addition, County will execute any documents reasonably required to facilitate Delta's or its Contractor's, subcontractors' or other agents' achieving the sales tax savings when purchasing such materials directly from the supplier.

14. Section 10.1 of the Second Addendum is hereby amended as follows:

10.1 Delta shall, subject to Force Majeure, cause its Project Contactors (but not Design Professional, which shall be the responsibility of the County) to secure all permits, licenses, and other governmental approvals required for the Project, and to arrange for all inspections and similar procedural items as required by the governmental authorities having jurisdiction; provided, however, that the cost of such permits, licenses and other governmental approvals, inspections and procedures shall be reimbursed as part of the Project. Within sixty (60) days after Delta has been provided as-built drawings and other materials needed to close permits, Delta shall submit to County evidence showing that all permits have been closed. The County, as the owner of the Airport, shall join in such governmental applications as reasonably necessary to obtain permits, licenses and other governmental approvals necessary for performance of the Services under this Second Addendum.

15. Section 10.1.1 of the Second Addendum is hereby amended as follows:

10.1.1 In the event that the parties are unable to obtain one or more necessary governmental approvals for the Project (including but not limited to any required approvals from the FAA or the United States Environmental Protection Agency ("EPA")) ~~by December 31, 2016~~, despite the diligent efforts of the parties, upon written request by either party, the parties shall meet ~~by January 31, 2017~~, to determine whether to modify the scope of the Project or terminate this Second Addendum. If the parties are unable to reach consensus at the meeting (or at some point thereafter but prior to any termination), then either party may terminate this Second Addendum upon twenty (20) calendar days' written notice to the other, whereupon this Second Addendum shall terminate at the expiration of the twenty (20) calendar days and be of no further force and effect except for the rights and obligations that expressly survive a termination of this Addendum. Notwithstanding the foregoing or anything herein to the contrary, the County shall reimburse Delta for all reimbursable Project costs expended prior to or in connection with any such termination.

16. Section 12.1.1 of the Second Addendum is hereby amended as follows:

12.1.1 The forms attached as **Exhibit E** are the forms Delta will use to submit monthly pay requests for Administrative Costs and Work completed on the Project, unless another format is later required by the Contract Administrator and agreed to by Delta. When requested by the BCAD Project Manager, Delta shall provide detailed backup for past and current pay requests for the Construction Contractor and Program Manager that records actual hours, unit prices, actual salary costs, and direct non-salary expenses on an item basis, and by employee category, so that total hours and costs by item may be verified. Upon request by the BCAD Project Manager, Delta shall also submit certified payroll records from the Project Contractors engaged by Delta for

past and current pay requests for Work performed. For each pay request, Delta shall submit an original pay request and at least two (2) copies (with all back-up) to the BCAD Project Manager. Failure to furnish supporting evidence for amounts invoiced shall result in non-payment of the unsupported invoiced items until such time as supporting evidence has been provided by Delta.

17. Section 12.1.2 of the Second Addendum is hereby amended as follows:

12.1.2 For each Application and Certificate for Payment, County, within ten (10) Business Days after receipt of Delta's proper Application and Certificate for Payment, shall pay Delta one hundred percent (100%) of the construction costs shown to be due on the Application and Certificate for Payment (provided that Delta has withheld the proper amount of retainage as described below, excluding Construction Contractor's direct cost for general conditions, insurances and bonds), and one hundred percent (100%) of applicable soft costs, including: (1) expenses for permitting, inspection, testing, commissioning, and construction administration and management Work performed, including without limitation, Administrative Costs and the costs of Program Manager Services; (2) Delta's costs of external legal counsel, including costs and expenses associated with responses to Public Records requests and Public Records compliance, the negotiation and drafting of this Second Addendum, the Program Manager Contract, and the Construction Contract, and the procuring of the Construction Contract and the Program Manager Contract, under **Exhibit G**, and (3) Delta's external legal counsel costs necessary to litigate disputes directly related to the Project or this Addendum, including procurement protests, (provided that any litigation costs incurred by Delta against the County shall not be reimbursable pursuant to the foregoing phrase). Delta shall notify, and receive input from, the County regarding the status of any litigation by or against Delta in connection with the Project or this Addendum, including submission of an estimated litigation budget and explanation of the legal merits of Delta's position to the Contract Administrator for review, analysis and feedback. Legal counsel costs incurred by Delta in asserting any litigation claim or defense that is adjudged frivolous shall not be reimbursed by the County. Delta shall use such amounts to pay any sums owed for such costs to the parties entitled to such amounts provided that, except as provided otherwise herein, the amounts requested by and provided to Delta for Construction Manager at Risk Work shall reflect the appropriate level of retainage, which shall initially be ten percent (10%) of the amount then due (other than general conditions, insurances and bonds for which no retainage shall be withheld) until fifty percent (50%) completion of the construction Work by the Contractor. Any increase in the maximum not-to-exceed amounts in (2) and (3) of this paragraph must be approved by the Board. Except as set forth herein the total of all payments for construction and soft costs shall not exceed the Contract Price without prior Board approval. In the event that the County disputes any portion of Delta's Application and Certificate for Payment, County shall nonetheless pay Delta,

in accordance with this Section 12.1.2, for all amounts not in dispute. Once any disputed item in an Application and Certificate for Payment is resolved to the County's satisfaction, payment on the balance owed to Delta shall be made as soon as practicable, but not more than ten (10) Business Days from the date the disputed item is resolved.

18. The introduction of Article 14 of the Second Addendum is hereby amended as follows:

The contract forms used by Delta for the Construction Contract shall be substantially similar in substance and form to the construction contract attached as **Exhibit J** and the change order form used for changes to the Construction Contract (other than establishment of the FGMP or the Construction Documents) shall be substantially similar in form to the form set forth on **Exhibit J-1** (the "Construction Change Order Form") with such changes or modifications as may be agreed to by County and Delta or, in either case, such other form as approved by the County and Delta, and, along with any other consultant or professional services engaged directly by Delta (to the extent applicable to such services), shall include the following requirements:

* * *

19. Section 14.2 of the Second Addendum is hereby amended as follows:

14.2 Program Manager Contract Requirements. The Program Manager Contract shall be substantially similar in substance and form to the ~~construction~~ contract attached as **Exhibit J-2** with such changes or modifications as may be agreed to by County and Delta and include the following requirements:

* * *

20. Exhibit A of the Second Addendum is hereby amended in part as follows:

- a. Paragraph 1 of Exhibit A is hereby amended as follows:

1. Generally. The Project is defined in Section 4.36 and further described on **Exhibit B-1**; provided, however, that (a) if there is a conflict between **Exhibit B-1** and the drawings prepared by GS&P dated September 1, 2015, as the same have been or may be amended, or the drawings, if applicable, provided by any other Design Professional, such drawings shall control, (b) if **Exhibit B-1** provides for something that is not contained in the aforementioned drawings, such item shall not be constructed unless and until the drawings are revised to reflect it, (c) if **Exhibit B-1** does not provide for something that is in the aforementioned drawings, such item

shall be constructed unless and until the drawings are revised to exclude it, and (d) if there is a conflict between **Exhibit B-1** and the other terms this Second Addendum (i.e. other than **Exhibit B-1**), the terms of this Second Addendum (excluding **Exhibit B-1**) shall control.

b. Paragraph 2 of Exhibit A is hereby amended as follows:

2. Tenant Relocation. Delta shall be responsible for the phasing and scheduling of all the Work, which shall include the relocation of concession support and the relocation of all other person's spaces of Terminal 2 tenants as required to accommodate the Work as well as moving all tenants that are (a) located on the ramp level, (b) impacted by the Project and (c) required by County to be moved by Delta. For concession space build-out, Delta's responsibility will be limited to the construction of shell space, supply of utilities to concession shell space (but excluding distribution of utilities within) and demolition of existing concession space once concessions have been relocated or as otherwise shown on the ~~GS&P Drawings dated September 15, 2015~~ Plans.

c. Paragraph 3.1 of Exhibit A is hereby amended as follows:

- 3.1 Subject to Force Majeure, Substantial Completion shall occur within ~~One Thousand Two Hundred Seventy-Six (1,276)~~ One Thousand Eight Hundred Twenty-Five (1,825) calendar days from the later of (a) award and execution of the Construction Contract or (b) determination of the FGMP.

d. Paragraph 4 of Exhibit A is hereby amended as follows:

4. Contract Price. The estimated not-to-exceed budget for the Project is ~~One Hundred Ten Million Dollars (\$110,000,000)~~ Two Hundred Twenty Million Dollars (\$220,000,000), subject to adjustment as provided in the Second Addendum, and the Contract Price shall be used to pay components listed herein including those set forth in Section 4.16. The Contract Price does not include any amount that County agrees to pay Delta for the value of the existing Delta Sky Club, which amount shall be determined and paid pursuant to a separate agreement.

e. Paragraph 5.2 of Exhibit A is hereby amended as follows:

* * *

2.	Costs of external legal counsel as described in Section 12.1.2(2)	N/A	N/A	\$75,000 <u>\$100,000</u>
3.	Outside legal counsel services for litigation of Project-related disputes	N/A	N/A	\$250,000 <u>\$600,000</u>

* * *

f. Paragraph 5.3.2 of Exhibit A is hereby amended as follows:

5.3.2 First Notice to Proceed. After selection of the Project Contractors, a first Notice to Proceed shall be issued (a) authorizing Delta to enter into the Construction Contract, the Contractor's establishment of the FGMP and a draft baseline schedule (subject to approval by Delta and the County) and commencement of construction, once the FGMP has been approved by Delta and the County (provided that Delta and County agree in writing that, upon approval from Contract Administrator (which may be via email), Delta may release Construction Contractor to perform certain Enabling Projects or other Work that Delta and the County agree should be completed prior to Construction Contractor commencing the balance of the Work), and (b) authorizing Delta to enter into the Program Management Contract with the Program Manager; provided, however, that if the Program Manager is selected prior to the Contractor, a Notice to Proceed shall be issued that authorizes Delta to enter into the Program Management Contract with the Program Manager and, upon selection of the Contractor, a Notice to Proceed shall be issued that authorizes Delta to enter into the Construction Contract with the Contractor. The executed document between Delta and the Contractor establishing the FGMP shall automatically be incorporated into this Addendum. Upon the later to occur of (a) award and execution of the Construction Contract, and (b) determination of the FGMP, construction work may commence; provided, however, that Delta and County agree that, upon approval from Contract Administrator (which may be via email), Delta may release Construction Contractor to perform certain Enabling Projects or other Work that Delta and the County agree should be completed prior to Construction Contractor commencing the balance of the Work).

g. Paragraph 5.5 of Exhibit A is hereby amended as follows:

5.5 Attic Stock. Delta and the Contract Administrator will work together to determine the appropriate level of attic stock, if any, and to

add such requirement to the Construction Contract (or contract with the entity purchasing such attic stock).

21. The County and Delta ratify and approve the Construction Contract attached hereto as Schedule 1 notwithstanding any changes negotiated from the form attached to the Addendum as **Exhibit J**.
22. The County and Delta ratify and approve the Program Manager Contract attached hereto as Schedule 2 notwithstanding any changes negotiated from the form attached to the Addendum as **Exhibit J-2**.
23. Except as expressly modified herein, all remaining terms and conditions of the Lease Agreement, as modified by the Addendum, the Addendum Modification, and the Second Addendum, shall remain in full force and effect.
24. In the event of any conflict or ambiguity between this First Amendment and the Lease Agreement, Addendum, Addendum Modification, or Second Addendum, the Parties agree that this First Amendment shall prevail.
25. Capitalized terms not otherwise defined herein will have the meanings set forth in the Second Addendum.
26. This First Amendment and the Lease Agreement, Addendum, Addendum Modification, and Second Addendum incorporate and include all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and there are no commitments, agreements, or understandings concerning the subject matter of this document that are not contained in these documents. Accordingly, no deviation from the terms hereof will be predicated upon any prior representations or agreements, whether oral or written.
27. This First Amendment is effective on the date it is fully executed by both Parties.
28. This First Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
29. In the event any provision of this First Amendment is found by a court of competent jurisdiction to be invalid, that provision shall be deemed severed from this First Amendment, and the remaining provisions of this First Amendment shall continue to be in full force and effect.

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FIRST AMENDMENT TO SECOND ADDENDUM TO THE SIGNATORY TERMINAL BUILDING LEASE AGREEMENT BETWEEN BROWARD COUNTY AND DELTA AIR LINES, INC.

IN WITNESS WHEREOF, the parties have made and executed this First Amendment to Second Addendum on the respective dates under each signature: Broward County, Florida through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 2018, and Delta Air Lines, Inc., signing by and through its authorized representative.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

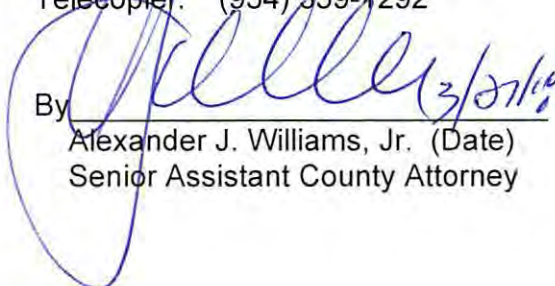
By _____
Mayor or Vice-Mayor

____ day of _____, 2018

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Aviation Office
2200 S.W. 45 Street, Suite 101
Dania Beach, Florida 33312
Telephone: (954) 359-6100
Telecopier: (954) 359-1292

By  _____ 3-27-18
Tracy Meyer, Esq. (Date)
Risk Insurance and Contracts Manager

By  _____ 3/27/18
Alexander J. Williams, Jr. (Date)
Senior Assistant County Attorney

FIRST AMENDMENT TO SECOND ADDENDUM TO THE SIGNATORY TERMINAL BUILDING LEASE AGREEMENT BETWEEN BROWARD COUNTY AND DELTA AIR LINES, INC.


DELTA

DELTA AIR LINES, INC.

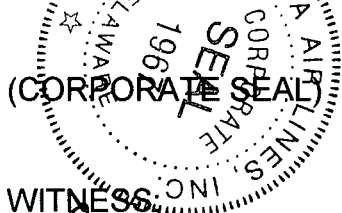
ATTEST:

By: _____



Name: Wayne Aaron
Title: Senior Vice President



Assistant Secretary

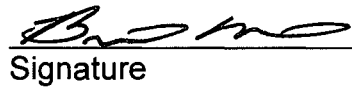


WITNESS:



Signature

SONJA REEVES
Print Name of Witness above



Signature

BRIAN MILLER
Print Name of Witness above

26th day of March, 2018

SCHEDULE 1-CONSTRUCTION CONTRACT

[SEE ATTACHED]

PLEASE REFERENCE THIS PURCHASE ORDER NUMBER ON ALL INVOICES:

WBS Element: P00142.1 GL Account: 6407187 Contract #: CW2319576

*CONSTRUCTION AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER*

where the basis of payment is

**THE COST OF THE WORK PLUS A FEE
WITH FINAL GUARANTEED MAXIMUM PRICE (FGMP) FOR THE PROJECT**

*Owner's General Conditions of the Contract for Construction, as modified for this Project,
contains the General Conditions of this Agreement and is attached hereto as Exhibit A and
incorporated herein by reference.*

THIS AGREEMENT made as of the 7th day of November, 2017.

By and between the Owner:

DELTA AIR LINES, INC.
Corporate Real Estate
Department 877
1030 Delta Boulevard
Atlanta, Georgia 30354-1989
Attention: Vice President - CRE

and the Construction Manager:

TURNER CONSTRUCTION COMPANY
7235 Corporate Center Drive, Suite G
Miami, FL 33126
Attention: David C. Robinson

Attention:

WITNESSETH:

WHEREAS, Owner is the tenant under that certain Signatory Terminal Building Lease Agreement on September 27, 2011 (the "**Original Lease**") with Broward County, a political

subdivision of the State of Florida (the "**County**"), as amended and modified by an Addendum to Signatory Terminal Building Lease Agreement by and between the County and Owner dated as of June 12, 2012 (the "**First Addendum**"), a First Amendment to Signatory Terminal Building Lease Agreement by and between the County and Owner dated as of March 13, 2013 (the "**First Amendment**"), a Second Amendment to Signatory Terminal Building Lease Agreement by and between the County and Owner dated as of March 19, 2013 (the "**Second Amendment**"), a Modification Agreement by and between the County and Owner dated as of June 24, 2014 (the "**First Addendum Modification**"), a Third Amendment to Signatory Terminal Building Lease Agreement by and between the County and Owner (the "**Third Amendment**"), a Second Addendum to Signatory Terminal Building Lease Agreement by and between the County and Owner dated as of April 5, 2016 (as the same has been or may be modified, supplemented, or amended, the "**Second Addendum**"; the Original Agreement as modified and amended by the First Addendum, the First Addendum Modification, the First Amendment, the Second Amendment, the Third Amendment and the Second Addendum and as may be further modified, amended or supplemented, the "**Lease**") concerning the use and lease of certain real property and improvements thereon located at Fort Lauderdale-Hollywood International Airport, located in Fort Lauderdale, Florida (the "**Airport**"); and

WHEREAS, the County desires to modernize Terminal Two of the Airport, and Owner has agreed to manage the modernization; and

WHEREAS, Owner wishes to engage the Construction Manager to provide certain construction management services, construction services and work in connection with the modernization of Terminal Two, as more fully described below, upon the terms, conditions, and covenants hereinafter described; and

WHEREAS, the Construction Manager wishes to perform such services for the Owner upon the terms, conditions, and covenants hereinafter described.

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Owner and Construction Manager agree as set forth below.

ARTICLE 1 **DEFINITIONS**

1.1 The "**Contract Documents**" consist of this Agreement, the General Conditions of the Contract, the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement (including but not limited to Change Orders, Construction Change Directives, and Construction Document Change Orders), the FGMP Change Order, and the Exhibits to this Agreement. The parties hereto understand and acknowledge that Owner and the County have entered into the Second Addendum. The Second Addendum is integral to the development of the Project and is part of the Contract Documents. Construction Manager shall coordinate its efforts with Owner so that Owner can meet all of the requirements imposed on Owner by the Second Addendum. Except as expressly modified herein

or in the documents listed in this Section, Construction Manager shall be bound by and shall comply with the provisions and requirements of the Second Addendum pertaining to Construction Manager's Work on the Project as if Construction Manager had executed the Second Addendum.

1.2 The Contract Documents are meant to be complementary and what is required by one is required by all. Whenever possible, the Contract Documents shall be interpreted as consistent with one another and cumulative. However, if a conflict arises between the Contract Documents, the most stringent requirement shall prevail; provided, however, that the following priorities shall apply to the interpretation of the Drawings and Specifications:

Among and between Drawings, detail Drawings shall govern over general Drawings, and larger scale Drawings shall govern over smaller scale Drawings. Figured dimensions shall govern over scaled dimensions, and work not dimensioned shall be performed as directed by the Architect. In the event of a conflict, inconsistency or discrepancy within or among the Specifications or Drawings as to the quantity or quality of work or materials or quality of construction methods, the higher quality or greater quantity shall be furnished or performed unless otherwise specifically directed in writing by the Architect. Any matters contained in the Specifications which have been omitted from the Drawings or vice versa shall be construed as though contained in both.

1.2.1 For the purpose of this Agreement, the following terms shall have the following meanings:

"Architect," shall mean Gresham, Smith and Partners, and any replacement or additional design professionals retained by Owner or the County in connection with the Project.

"BIM" shall mean the Building Information Modeling requirements for the Project as set forth in the Broward County Aviation Department Building Information Modeling Standard, last updated September 26, 2013, prepared by ACAI

"Confidential Information" shall have the meaning defined in Paragraph 12.10.

"Construction Change Directive" shall have the meaning defined in Paragraph 7.4.1 and Paragraph 7.5.3.

"Construction Documents" shall mean Drawings and Specifications which are issued for construction for all architectural, structural, plumbing, heating, electrical, mechanical, specialty or other work required for the entire Work or any portion thereof.

"Construction Document Change Order" shall mean a Change Order for the final Construction Documents for portions for the Work. The Construction Document Change Order shall be in the form attached hereto as Exhibit G.

"Construction Manager" shall mean the party to this Agreement identified as Construction Manager above.

“Construction Manager’s Fee” shall have the meaning defined in Paragraph 6.2.

“Construction Schedule” shall have the meaning defined in Paragraph 4.4.

“Construction Services” shall mean the Work with the exception of the Preconstruction Services.

“Contingency” shall be established by the Owner with the Construction Manager’s assistance for the Work associated with the Project for the purpose of enabling Construction Manager to be reimbursed, as Cost of the Work, for any unanticipated costs necessarily incurred to perform the Work and not otherwise included within the Cost of Work set forth in the FGMP Change Order, provided such costs are not incurred as a result of (a) the Construction Manager’s, any Subcontractor’s, any Supplier’s (or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable) gross negligence or willful misconduct, or (b) rework: (i) caused by the negligence or willful misconduct of Construction Manager, any Subcontractor, any Supplier (or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable); or (ii) covered by insurance; or (iii) caused by the failure of Construction Manager to fulfill its responsibilities set forth in the Contract Documents. No part of the Contingency may be used by the Construction Manager without first submitting to the Owner a written request for a specific amount and justification for its use, and without receiving the Owner’s written approval. This approval will not be unreasonably withheld. Construction Manager will provide a monthly accounting of all expenses associated with the utilization of the Contingency.

“Contract Documents” shall have the meaning defined in Paragraph 1.1.

“Cost of the Work” shall have the meaning set forth in Article 8.

“County” shall mean Broward County, Florida.

“Drawings” shall mean the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, which are prepared by the Architect and which show the design, location and dimensions of the Work, generally including, but not limited to, plans, elevations, sections, details, schedules, and diagrams.

“FGMP Change Order” shall have the meaning defined in Paragraph 5.5 and shall establish the Final Guaranteed Maximum Price for the entire Work.

“Final Guaranteed Maximum Price” or **“FGMP”** shall mean the Final Guaranteed Maximum Price for the construction of the entire Work (but shall exclude the cost of Preconstruction Services), as determined in accordance with Article 5 of this Agreement.

“Force Majeure” shall mean acts of God, acts of public enemy, acts of governmental authority, any delay caused by tenants of Terminal Two (other than Owner), or any other circumstance beyond the reasonable control of a party that delays or prevents performance under this Agreement by such party.

“General Conditions Costs” shall have the meaning defined in Paragraph 8.1.2.

“Hazardous Materials” shall mean, but not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any asbestos (whether or not friable) and any asbestos-containing materials, lead, paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating waste, explosives, reactive metals, and compounds, pesticides, herbicides, radon gas, urea formaldehyde, foam insulation and chemical, biological and radioactive waste, or any other similar materials which are included under or regulated by any federal, state or local environmental laws.

“Initial Guaranteed Maximum Price (IGMP)” shall mean the maximum construction budget established by the Owner prior to establishment of the FGMP, as specified in Paragraph 5.1.

“Preconstruction Services” shall include all preconstruction services necessary for the Project, including site investigation, measuring, monitoring, estimating, constructability analysis, value engineering (as necessary with the input and participation of County and Owner), logistics, scheduling and other consulting services provided pursuant to this Agreement by the Construction Manager as well as any services necessary to develop and negotiate the FGMP Change Order. Without limiting the foregoing, the Preconstruction Services shall include collaboration with the Architect to document existing conditions on as-built plans. This will require verifying dimensions, structure verification, determination of existing building support systems, hazardous material survey and performing exploratory services to determine “unknown conditions.” The method of compensation for Preconstruction Services differs from the method of compensation for the rest of the Work; otherwise, the Preconstruction Services are considered part of the “Work” wherever referenced.

“Procedures Manual” shall mean a guidance manual for administration of the Project to be developed and revised from time to time by the Program Manager and the Construction Manager and approved by the Owner. For purposes of interpretation, the Procedures Manual will be secondary to this Agreement, and the General Conditions, in the event of a conflict between the Procedures Manual and such documents.

“Program Manager” shall mean the firm(s) employed by the Owner as Owner’s representative for the Project.

“Project” shall mean the modernization of Terminal Two of the Airport, including but not limited to the construction of new ceilings, new terrazzo flooring, the relocation of the passenger security screening checkpoint, demolition of existing concession space (provided that Terminal Two tenants cooperate with such demolition), construction of new concession retail shell space, supply of utilities to concession shell space (but excluding distribution of utilities within), relocation of concession support spaces, design and construction of the interim Delta Sky Club at Terminal Two, restroom renovations, expansion of holdrooms, relocation of Delta Sky Club

and other terminal building improvements, any environmental remediation required due to the Project and certain enabling projects related thereto, as more fully described in Exhibit B.

“Project Element” means the various elements of the Project, which shall be agreed upon by Construction Manager and Owner and approved by County and set forth in the FGMP Change Order.

“Project Safety Manual” shall mean the guidance manual to ensure Project safety to be prepared by Construction Manager as provided in Article 9 of the General Conditions.

“Project Schedule” shall mean the high-level schedule for the Program prepared and maintained by the Program Manager.

“Project Quality Assurance Manual” shall mean the guidance manual to ensure Project quality to be prepared by Construction Manager and approved by Owner.

“Specifications” shall mean that portion of the Contract Documents which consists of the written requirements for the Project or portion thereof, including, but not limited to, the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

“Subcontractor” means any person or entity awarded a contract for construction by the Construction Manager for performance of any part of the Work. Each Subcontractor shall be referred to throughout the Contract Documents as if singular in number and masculine in gender.

“Supplier” shall mean a materialman or supplier of goods or equipment to the Construction Manager for use in connection with the construction of the Work. Each Supplier shall be referred to throughout the Contract Documents as if singular in number and masculine in gender.

“Work” comprises both Preconstruction Services and Construction Services necessary to complete the Project and is further defined and described in Article 2.

In addition to the foregoing specifically defined terms, other capitalized terms used in this Agreement shall have the respective meanings given to them in other articles of this Agreement or elsewhere in the Contract Documents.

1.3 All Drawings, Specifications, Contract Documents and other documents in any format (including but not limited to estimates, schedules, plans, designs, calculations, sketches, reports, computer assisted design documents (“**CADD**”), results of programs, computer disks, diskettes or tapes, charts, photographs and other data compilations from which information can be obtained or translated), and copies thereof, furnished by or on behalf of the Owner, the County or the Architect to the Construction Manager are and shall remain the Owner’s or County’s property, as applicable. All such documents are to be used by the Construction Manager only with respect to this Project and are not to be used on any other project. Submission or distribution of these documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any common law, copyright, or other reserved rights of the Owner.

ARTICLE 2 **THE WORK**

2.1 The Construction Manager shall perform all the Work required by the Contract Documents including the Preconstruction Services and the furnishing, delivery and installation of equipment as reasonably required by or from the Contract Documents as necessary to produce the result contemplated by the Contract Documents in accordance with the final approved Construction Schedule, the FGMP and all applicable standards and requirements of this Agreement. The Work shall include all plant, labor, transportation, equipment, materials, resources, services and appurtenances to be provided by the Construction Manager to fully complete or to be incorporated into the construction and other services required or reasonably inferable from the Contract Documents, all in accordance with the Contract Documents and in compliance with all federal, state and local laws, statutes, orders, rules, regulations, ordinances, and all rules, regulations, policies, practices, and procedures established by the Owner and the County for the Project, including the BIM requirements. The Work includes Preconstruction Services and may incorporate the whole or any part of the Project.

2.1.1 The Construction Manager shall be responsible for means, methods and fully-understanding and implementing the design, as it pertains to the Construction Documents, and the Construction Manager shall be responsible to comply with Paragraph 2.1 as it relates to the implementation of the Work.

2.2 The Construction Manager agrees that the Work shall be performed in a good and workmanlike manner, free from defects not inherent in the kind specified or permitted, and that all materials shall be new and approved by or acceptable to the Owner, except as otherwise expressly provided for in the Contract Documents.

2.3 The Construction Manager shall prepare or cause to be prepared, as part of the Work, all Shop Drawings, Samples, Submittals and Detail Drawings not made a part of the Drawings, Specifications, and Addenda which are required by the Contract Documents or good construction practices in the performance of the Construction Manager's obligations under this Agreement. Although the Architect will review all Shop Drawings, Submittals, Detail Drawings, and Samples, neither the Architect nor the Owner shall be responsible to the Construction Manager for any failure of the Shop Drawings, Submittals, Detail Drawings or Samples to comply with the Contract Documents or any governing codes, laws or ordinances. The Construction Manager is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations, but any non-conformity or violation of such requirements discovered by the Construction Manager shall be promptly reported to the Program Manager and the Architect in writing, and any necessary changes shall be accomplished by appropriate modification. Construction Manager shall use commercially reasonable efforts to ascertain any such non-conformity or violation.

2.3.1 The Construction Manager shall maintain copies of all Shop Drawings, Submittals and Detail Drawings, and maintain all Samples at the Project Site and shall afford the Owner, the



County, the Architect, and Program Manager, access to same at all times during regular working hours.

2.4 The Construction Manager further acknowledges that it is, and will continue to be an integral part of the preconstruction team and that it is assisting, and will assist the Owner in the review of the Contract Documents for their coordination and constructability, consistent with the Owner's scope and intent for the Project. The Construction Manager accepts all costs of work in excess of the Final Guaranteed Maximum Price, as it may be modified in accordance with this Agreement, for all Work which is represented, set forth, or required or reasonably inferable from the Contract Documents.

2.5 The Construction Manager shall confine its operations at the Airport site to those areas permitted by the County and the Owner and by law, ordinances, permits and the Contract Documents.

2.6 During the completion of the Work and the course of the Project, especially during any of the demolition and construction, Construction Manager shall contract for professional pest and rodent prevention and removal services.

ARTICLE 3
THE CONSTRUCTION MANAGER'S DUTIES AND STATUS

3.1 Construction Manager covenants and agrees to perform the Construction Manager's duties under the Contract Documents in accordance with the highest standards of a national contracting firm engaged in the performance of similar projects. The Construction Manager accepts the relationship of trust and confidence toward the Owner and further covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect and the Program Manager in furthering the interests of the Owner. In providing the services required under this Agreement, the Construction Manager shall maintain a working relationship and cooperate with the County, the Program Manager, any other affected third parties (e.g. concessionaire tenants) and the Architect.

3.2 The Construction Manager agrees to establish and maintain for the duration of this Agreement the "Construction Management Team", consisting of the following named individuals:

Name	Title
Michael Kordos	Project Manager
Margaret Simone	Project Executive
To be agreed by Construction Manager, Owner, and County	Project Superintendent

and adequate support personnel, subject to prior written approval of Owner, to provide efficient business administration and superintendence required to assure that an adequate supply of workers and materials are available at all times to perform the Work in the most reasonably expeditious and economical manner in accordance with the Contract Documents and consistent with the interests of the Owner. The Construction Management Team members will not change, except in the following instances: (i) the death or disability of an individual, (ii) the individual leaves the employment of the Construction Manager, (iii) the Construction Manager terminates the employment of the individual, (iv) the individual requests removal for personal or medical reasons, or (v) the Owner requests removal of an individual from the Project and the Construction Manager approves, said approval not to be unreasonably withheld, conditioned or delayed. Upon removal of any Construction Management Team member as permitted in this Paragraph 3.2, the Construction Manager shall promptly notify the Owner of such removal (prior to such removal, if possible), and shall propose a suitable replacement team member within five (5) days after such removal for Owner's approval. Michael Kordos, Project Manager and the Project Superintendent approved by Construction Manager, Owner, and County shall devote all of their time to the Work referred to in this Agreement until Final Completion is achieved in accordance with the requirements of the Contract Documents.

3.3 The Construction Manager agrees to continue its existence until all obligations under this Agreement are fully and finally satisfied.

3.4 The Construction Manager shall maintain one redline set of the Contract Documents in good order and marked currently to record all changes made during construction and the accurate location of all portions of the Work sufficient for the Architect to prepare accurate as-built drawings. The Construction Manager shall submit such documents to the Program Manager and Architect on at least a quarterly basis and upon completion of each Project Element. Within thirty (30) days after Substantial Completion, the Construction Manager shall deliver these redline drawings to the Program Manager for developing as-built documents.

3.5 All equipment data, operation and maintenance manuals, and warranties shall be submitted to the Owner upon Substantial Completion of the Project as provided in the Contract Documents.

3.6 All persons employed by the Construction Manager in and about the performance of the Work shall be agents or employees of the Construction Manager, and neither the Construction Manager nor any of such agents or employees shall be deemed to be employees of the Owner for any purpose whatsoever, the Construction Manager being, and at all times acting as, an independent contractor hereunder and being responsible as an independent contractor to the Owner.

3.7 Any agreements between the Construction Manager and any Subcontractors (and any subsequent modifications to such agreements) shall be in writing and shall incorporate required provisions from this Agreement. The Owner shall reserve the right to review and approve the subcontract agreements for specific Subcontractors and, should Owner elect to approve any such agreement, the Owner shall not unreasonably withhold such approval. The Construction Manager

shall not enter into any contracts with any professional consultant in connection with the Project without obtaining the Owner's prior written approval. Owner does not assume any responsibility or liability for the sufficiency of the agreement or the consultants, Subcontractors or their performance by approving or disapproving any such subcontract agreement or approving any Subcontractor or consultant.

3.8 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors, Suppliers, their agents and employees, and other persons engaged by the Construction Manager or by any Subcontractors or Suppliers of the Construction Manager, or their subcontractors and suppliers of any tier, performing any portion of the Construction Manager's obligations under this Agreement.

3.9 If the Construction Manager believes or is advised by the Program Manager or the Architect that implementation of any instruction received from the Owner would cause a violation of any applicable law, including but not limited to federal, state, or local codes, statutes, regulations, ordinances, or guidance, the Construction Manager shall notify the Owner in writing. Neither the Construction Manager nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

3.10 Nothing contained in this Agreement shall create a contractual relationship between the Owner and any person or entity other than the Construction Manager or between Construction Manager and any person or entity other than the Owner.

ARTICLE 4 **TIME OF COMMENCEMENT AND COMPLETION OF WORK**

4.1 Commencement of Preconstruction Services and Construction Services.

4.1.1 The Construction Manager shall commence the Preconstruction Services upon issuance of a written Notice to Proceed issued by Owner.

4.1.2 The Construction Manager shall commence the Construction Services within the time specified in a written Notice to Proceed issued by the Owner.

4.2 Dates for Substantial Completion and Final Completion. The Contract Time for the entire Work shall be measured from the date of the commencement of the Work pursuant to a Notice to Proceed issued by the Owner.

4.3 Time is of the Essence. TIME IS OF THE ESSENCE of this Agreement and the parties shall fulfill their respective obligations accordingly. If the Construction Manager does not achieve Substantial Completion by the date that is one thousand two hundred seventy-six (1,276) calendar days after the later to occur of (a) the date hereof, and (b) the determination of the FGMP (subject to extension for Force Majeure), Construction Manager shall be assessed liquidated damages in the amount of Five Thousand Two Hundred and 00/100 Dollars (\$5,200.00) per day for each and every day the Work is not substantially complete beyond such

date. If, after Substantial Completion, the Construction Manager fails to achieve Final Completion within ninety (90) days after Substantial Completion (subject to extension for Force Majeure), the Construction Manager shall be assessed daily liquidated damages in the amount of Three Thousand Two Hundred and 00/100 Dollars (\$3,200.00) until Final Completion is achieved. Owner shall deduct such amounts from monies otherwise due the Construction Manager under this Agreement. In the event the amount of damages assessed is greater than the amount due to the Construction Manager as reflected in Construction Manager's Application for Payment to Owner, then Construction Manager shall pay the remaining balance of the assessed damages to Owner within thirty (30) days of Owner's notice to Construction Manager of the assessment of such damages. The deductions set forth in this paragraph are agreed upon liquidated damages and are the sole and only remedy of Owner for the failure of the Construction Manager to timely complete the Work as provided. These amounts are not penalties but are liquidated damages to, and the sole and only remedy of, Owner for its inability to obtain full use of the Project. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by Owner as a consequence of such delay, and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of the Construction Manager to complete the Work on or before the required date.

4.4 Progress and Completion.

4.4.1 All Work shall be fully completed in accordance with the requirements of the Contract Documents by the Substantial Completion Date and Final Completion Dates, as established in the approved Construction Schedule (but no later than the dates set forth in Section 4.3 above), as such times may be extended by approved requests for extension of time, as provided in Paragraph 4.5 below. Within five (5) calendar days of Owner's issuance of the Notice to Proceed for the Preconstruction Services, the Construction Manager shall submit its proposed Construction Schedule to Owner and County indicating applicable milestone dates, start and completion dates and the various stages of the Work, and shall show an activity network for the planning and execution of the Work. The final Construction Schedule (a) shall be developed with input and participation from Owner and the County, (b) shall be the metric against which performance of schedule obligations are measured, and (c) must be prepared in the most current version of Primavera at the time of execution of the Second Addendum, updated at least monthly, and submitted with each application for payment made to Owner by the Construction Manager as required by Exhibit F.

4.4.2 The Construction Manager has represented to the Owner, in order to be awarded this Agreement, and hereby represents that the Construction Manager is experienced in managing construction in accordance with contract requirements and in a timely manner; that the Construction Manager is familiar with County requirements; that the Construction Manager has the requisite personnel and other resources to carefully manage this Project for completion within the stipulated time for Substantial and Final Completion; and that the Construction Manager will provide such management with care and diligence on this Project.

4.4.3 The Construction Manager agrees to maintain the approved Construction Schedule and to meet all commencement, milestone and completion dates shown thereon, including the Substantial Completion Date and Final Completion Date, as same may be adjusted in accordance with the Contract Documents. The Owner shall take such action and make such decisions as are required of it, and shall ask the County to require the Architect to take such action and make such decisions required under the Contract Documents, in a timely manner. Should it appear at any time to the Owner that the Construction Manager is in danger of failing to meet any of the commencement or milestone dates specified in the approved Construction Schedule, or the Substantial Completion Date or Final Completion Date, as same may be adjusted in accordance with the Contract Documents, and should this condition continue for a period of more than ten (10) days, then, upon written notice from the Owner, the Construction Manager shall prepare a recovery plan for approval by the Owner which may require its employees, Subcontractors, Suppliers and all other parties covered by this Agreement to perform and work at hours and on days in addition to the normal working hours and working days, including whatever overtime or shift work is necessary to return to the original Construction Schedule. The Construction Manager shall not be compensated or reimbursed for costs resulting from the implementation of such recovery plan including overtime or shift work, except as specifically permitted by this Agreement. The Construction Manager shall perform no overtime work without the Owner's prior written approval. Subject to the notice and approval provisions of this Paragraph 4.4.3, overtime costs shall only be allowed as a reimbursable Cost of the Work under Article 8 hereof to the extent such overtime work was not made necessary by any delay for which the Construction Manager is responsible.

4.5 Time Extensions.

4.5.1 Subject to other provisions of the Contract Documents and only to the extent permitted by Paragraphs 4.5 and 4.6 hereof, the Construction Manager may be entitled to an extension of the Substantial Completion Date and Final Completion Date only for delays or hindrances which directly impact the critical path of the Construction Schedule, and result from the following unforeseeable causes, if such causes are beyond the reasonable control of the Construction Manager and are not caused by the fault, error, omission, or negligence of the Construction Manager, its employees, agents, Subcontractors, or Suppliers:

(a) Labor strikes (including strikes affecting transportation) that do, in fact, directly and critically affect the progress of the Work. In any event, labor grievances under existing agreements, representative matters, informational picketing and other labor matters shall not constitute a basis for extension of time.

(b) Acts of terrorism, the public enemy, acts of the state, federal or local government in its sovereign capacity, and acts of another contractor or consultant, their subcontractors or subconsultants, in the performance of a contract with the Owner relating to the Project.

(c) Changes ordered in the Work (other than Construction Document Change Orders), provided that Change Orders are properly authorized and approved under the provisions of the Contract Documents.

(d) Any negligence, breach, or omission by the Owner under this Agreement or any act of the Owner specifically authorizing and approving the delay (including the Owner's failure to provide the Construction Manager with access to the site of the Work in accordance with the Owner-approved Construction Schedule, as it may be revised with the Owner's approval during the course of the Work).

(e) Acts of God, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that affect Work to be performed or damage completed Work or stored materials.

(f) The encountering of Hazardous Materials in concentrations or locations that differ from those of which Construction Manager has been notified, that Construction Manager has identified or should have identified during Preconstruction Services, or that were assumed and agreed upon by the Owner and the Construction Manager in reliance upon the information referenced in Paragraph 9.5.1 of the General Conditions.

4.5.2 Notwithstanding anything contained herein to the contrary, the Construction Manager agrees that it shall not be entitled to any extension of time or additional costs due to ordinary inclement weather. The time for performance of this Agreement includes an allowance for days which, according to historical data, may not be suitable for construction work. The Construction Manager shall consider in its planning and scheduling of the Work the range of seasonal weather conditions historically experienced in the Fort Lauderdale area. Delays or temporary inability to perform work as a result of a high or low temperatures and/or precipitation, where such conditions are consistent with the typical range of climatic conditions in the area, will not be considered as a basis for an extension of time. The Construction Manager may be entitled to an extension of time for Work which is actually delayed due to unusually severe inclement weather, as determined by the relevant historical data, but only to the extent permitted by this Paragraph 4.5 and only to the extent such delay directly impacts the critical path of the Construction Schedule.

4.5.3 In the event the Construction Manager requests an extension of time, the Construction Manager shall furnish appropriate justification and supporting evidence necessary for a determination as to whether the Construction Manager is entitled to an extension of time under the provisions of this Agreement. If the Construction Manager is entitled to any extension of time, the total number of days' extension shall be based upon the approved Construction Schedule and on all data relevant to the extension. The Construction Manager acknowledges and agrees that actual delays in activities which, according to the Construction Schedule, do not affect the critical path of the Construction Schedule or the Substantial Completion Date or Final Completion Date will not be the basis for an extension of time. If the Construction Manager is entitled to an extension of time, an appropriate Change Order will be issued in accordance with Article 8 hereof.

4.5.4 For any delay or hindrance for which the Construction Manager intends to seek an extension of time or time-related costs where allowed by Paragraph 4.6 hereof, the Construction Manager shall give initial written notice to the Owner within seven (7) days of the first

occurrence of the delay or hindrance or the Construction Manager's first knowledge of same, whichever is later, otherwise all such claims shall be waived by the Construction Manager. The Construction Manager shall provide a written estimate of the probable effect of such delay or hindrance on both the costs and schedule for the Work, including the specific categories of costs (separated by trade) the Construction Manager anticipates incurring as a result of the delay or hindrance to the Owner within twenty-one (21) days of the first occurrence of delay or hindrance or the Construction Manager's first knowledge of same, whichever is later, otherwise, all such claims shall be waived by the Construction Manager. In making a claim for an extension of time and/or time-related costs as a result of a delay or hindrance, the Construction Manager shall submit its final claim within forty-five (45) days of the cure or termination of the delay or hindrance event, whichever is later, otherwise, the claim shall be waived by the Construction Manager.

4.5.5 To the extent a delay is caused by events for which the Construction Manager and the Owner have joint or concurrent responsibility, the extension of time and/or time-related costs allowed by other provisions of this Agreement shall be limited to that portion of the delay not caused by the default, neglect, or inefficiency of the Construction Manager or any of the Construction Manager's Subcontractors or Suppliers or those for whom they are responsible.

4.5.6 The Construction Manager recognizes that the site of the Work is located at the Airport, which shall remain open for regular business during the performance of the Work. The Construction Manager shall plan and execute the Work in a manner that minimizes to the greatest extent possible disruption, inconvenience, and disturbance to the occupants of facilities at the Airport and to the aforementioned operations, construction projects and traffic at the Airport.

4.6 Damages for Owner-Caused Delay. The extension of time specifically provided for in Paragraph 4.5 of this Agreement shall be the Construction Manager's sole and exclusive remedy for all delays, hindrances, or any other time-related claims, except to the extent specially allowed by this Paragraph 4.6. To the extent the delay is caused solely by fraud, bad faith or active interference, not merely negligence, on the part of the Owner, the County, the Architect, or the Owner's separate contractors, and the such delay is not concurrent with any other delay and Construction Manager provides notice of such delay in accordance with Paragraph 4.5.4 above, the Construction Manager shall be entitled to direct costs actually incurred by the Construction Manager on account of such delay. The Construction Manager shall submit such documents as the Owner or the Program Manager may reasonably require to substantiate the direct costs allowed by this paragraph. The time extension, to the extent permitted under Paragraph 4.5, shall be the Construction Manager's sole remedy for any other delay or hindrance in performance of the Work. The Construction Manager expressly agrees to waive its right to recover any delay or time-related costs except as may be specifically allowed under this Paragraph 4.6. Further, in no instance shall the Owner be liable for the following categories of damages: (1) profit on the additional costs beyond those allowed elsewhere in the Contract Documents, (2) loss of anticipated profit, (3) indirect expenses, (4) home office overhead, (5) consequential damages, including without limitation, loss of bonding capacity, loss of bidding opportunities and

insolvency, or (6) unless specifically authorized by statute, legal fees, claims preparation expenses, or costs of dispute resolution.

ARTICLE 5
INITIAL GUARANTEED MAXIMUM PRICE (IGMP); ESTABLISHMENT OF FINAL
GUARANTEED MAXIMUM PRICE (FGMP)

5.1 In consideration of the full and complete performance of the Construction Services, the Owner agrees to reimburse the Construction Manager for the total Cost of the Work as defined in Article 8, plus the Construction Manager's Fee established in Paragraph 6.2, subject to the limitations stated herein. Construction Manager has established an initial guaranteed maximum price of Ninety-Six Million Nine Hundred Six Thousand Seven Hundred and No/100 Dollars (\$96,906,700.00) (the "**Initial Guaranteed Maximum Price**" or "**IGMP**"). The Construction Manager agrees to work with the Owner, Program Manager, the County and Architect to ensure that the maximum cost to Owner for the Construction Services, including the Cost of the Work and the Construction Manager's Fee, shall not exceed the IGMP.

5.2 The Owner and Construction Manager recognize and agree that all Drawings and Specifications are in a state ready for review by the Construction Manager but may not have been completed as of the date of execution of this Agreement. Accordingly, the FGMP shall be established in accordance with this Article 5 of this Agreement.

5.3 Intentionally deleted.

5.4 The IGMP has been established on the basis of the drawings, designs, specifications and assumptions and clarifications listed on Exhibit P attached hereto and made a part hereof (the "**IGMP Assumptions**").

5.5 Preparation of Construction Documents for the Project

(a) The Owner or County shall cause the Architect to prepare and shall approve the Construction Documents for the Project (working Drawings and Specifications). The Construction Manager shall provide advice to the Program Manager and the Owner during the development of Construction Documents so they are prepared in accordance with the Construction Schedule and reflect items discovered during Preconstruction Services, and shall recommend alternative solutions benefiting the Owner by reducing construction time, saving construction costs, or enhancing the quality of the Project.

(b) Upon its and the County's approval of the Construction Documents as may be revised per Section 5.4.1(a) above for the Project, the Owner, through the Program Manager, shall submit them to the Construction Manager along with a proposed Construction Document Change Order for acceptance first by Construction Manager and then by Owner for the purpose of adding such Construction Documents to this Agreement. The Construction Manager shall promptly accept or reject any such proposed Construction Document Change Order, within five (5) days of its receipt (or such longer period as reasonably required by the Construction Manager

and approved by the Owner to obtain feedback from potential Subcontractors). If the Construction Manager accepts the proposed Construction Document Change Order, then the Owner shall likewise accept same promptly and in any event within three (3) business days of Construction Manager's acceptance.

(c) Prior to its acceptance of any Construction Document Change Order tendered under Paragraph 5.4.6(b), Construction Manager shall promptly review the Construction Documents referenced therein and shall give notice of any material variance between the Construction Documents for the Project and the items discovered during Preconstruction Services.

(d) If the Construction Manager shall determine that the Construction Documents referenced in the proposed Construction Document Change Order are inconsistent with the IGMP Assumptions or the items discovered during Preconstruction Services, and that as a result of such variance the performance of the Work associated with the Project will increase the estimated cost amount of the IGMP, or will require an extension of the time for Substantial Completion of the Project as shown in the Construction Schedule, the Construction Manager shall reject the proposed Change Order and advise the Owner, of its basis for rejection. Following consultations with the Architect, the County (if applicable) and Construction Manager, the Owner shall: (i) ask the County to require the Architect to revise the Construction Documents for the Project so as to make them consistent with the IGMP Assumptions (with said revisions to be completed in a reasonable time) or the items discovered during Preconstruction Services; or (ii) direct Construction Manager to proceed with the bidding of the Work associated with the Project in accordance with the proposed Construction Documents pursuant to a Construction Change Directive or Change Order. In the event the Construction Manager is directed to proceed with the Work associated with the Project in accordance with the proposed Construction Documents, under (ii) above, the Construction Manager shall be paid for the Work associated with the Project as provided under Paragraph 7.6(c) and shall work with the Owner to establish an adjustment to the IGMP or adjustment to the scope included in the IGMP.

5.6 The IGMP shall be subject to additions and deletions by Change Order as follows:

(a) Whenever this Agreement or the General Conditions authorize an increase or decrease in the overall Project cost approved by the Owner and the County (if applicable), the increase or decrease shall operate to increase or decrease the estimated cost component of the IGMP.

(b) If the Project Construction Documents prepared by the Architect are inconsistent with the IGMP Assumptions, and as specified therein, such that the performance of the Work associated with the Project would require the Construction Manager to incur actual costs in excess of the estimate for such Work associated with the Project, then the Construction Manager shall be entitled to a Change Order to increase the IGMP for all costs exceeding the estimated amount for such Project Element and its Fee on such costs due to such variances in the Construction Documents.

5.7 The Date for Substantial Completion for the Project as stated in the construction schedule submitted with the IGMP shall be subject to extension or acceleration as follows:

(a) Whenever this Agreement or the General Conditions authorize or provide for an extension of the Date for Substantial Completion.

(b) If the Construction Documents prepared by the Architect are inconsistent with the IGMP Assumptions, and as specified in the IGMP, and the revised documents are not submitted by the date(s) required by the current approved Construction Schedule, and the performance of Work on the critical path of the then current approved Construction Schedule will be delayed, the Construction Manager shall be entitled to an extension of the Date for Substantial Completion of such Project Element in accordance with the other provisions of the Contract Documents.

5.8 Development of the FGMP Change Order. Within one hundred twenty (120) days (or such longer period as reasonably required by the Construction Manager and approved by the Owner to assemble bid packages and obtain bids from potential Subcontractors) after the Construction Manager's receipt of the Owner's Notice to Proceed with the Preconstruction Services, the Construction Manager shall submit a proposed Change Order to this Agreement (the "**FGMP Change Order**"), in the form attached hereto as Exhibit C, under which the Construction Manager shall propose to perform the Construction Services for a Final Guaranteed Maximum Price (the "**FGMP**"). The FGMP shall be the sum of (a) the Construction Manager's estimated Cost of the Work (organized by Project Element and including all trade categories, allowances, labor costs, management employee costs, including, without limitation, unit rates, material pricing, and any and all other items that comprise the costs of each Project Element), (b) Contingency (as a percentage of the entire Cost of the Work) and (c) the Construction Manager's Fee (organized by Project Element).

5.8.1 Estimated Costs. The proposed FGMP Change Order, as submitted by Construction Manager, shall include separately identified dollar amounts, stated as either fixed sums or as Allowances for each Project Element, for costs as estimated by the Construction Manager for the complete construction of the Project, and Construction Manager shall agree to perform the Construction Services for all of the Project Elements in an amount not to exceed the FGMP.

5.8.2 Fee. The proposed FGMP Change Order shall include as a separately identified item, a Fee for the Construction Manager's performance of the Construction Services, established in accordance with Paragraph 6.2. The Construction Manager's Fee amount shall include all Fees earned for Construction Services 6 performed under this Agreement prior to the tendering of the proposed FGMP Change Order. As used in this Article 5, the term "**Fee**" means the Fee addressed in Paragraph 6.2 hereof.

5.8.3 FGMP Change Order Preparation.

5.8.3.1 The Construction Manager shall, while preparing the FGMP Change Order, provide to Architect, the County (to the extent County requests to participate in such discussions) and Owner and obtain, prior to submission of the proposed FGMP Change Order, approval from the

Owner, the County, the Program Manager and Architect of the items listed below in the order listed below:

(a) A Construction Documents Schedule setting forth the dates assumed by Construction Manager for the Architect's completion of Construction Documents, which shall be consistent with the Owner-approved Construction Schedule.

(b) All Drawings, Specifications and other documents, including all amendments thereto, which were relied upon or used by the Construction Manager in the preparation of same.

Once Owner, Architect, Program Manager, and County have approved items (a) and (b), Construction Manager shall submit item (c) and (d) below for approval:

(c) A listing of the Assumptions and Clarifications made by the Construction Manager in the preparation of the FGMP Change Order.

(d) A listing and back-up documentation evidencing CBE Program (as defined below) compliance as required hereunder.

Once Owner, Architect, Program Manager, and County have approved items (a) – (d), Construction Manager shall submit item (e) and (f) below for approval:

(e) The final Project Schedule, including phasing plans.

(f) A Shop Drawing Approval Schedule setting forth the schedule assumed by Construction Manager for the Architect's approval of Shop Drawings, which shall be consistent with the Owner-approved Construction Schedule.

Once Owner, Architect, Program Manager, and County have approved items (a) – (f), Construction Manager shall submit item (g) and (h) below for approval:

(g) All Allowances, noting whether they cover furnish and delivery, or furnish, delivery and installation and a statement of their basis.

(h) A listing of any trade, work categories or other items which are not included in the Final Guaranteed Maximum Price.

5.8.3.2 Once items (a) – (h) have been agreed upon by Owner, Construction Manager, County, and Program Manager as aforesaid, Construction Manager shall prepare the FGMP Change Order including as part of the FGMP Change Order statements identifying:

(a) All Drawings, Specifications and other documents, including all amendments thereto, which were relied upon or used by the Construction Manager in the preparation of same.

(b) All Allowances, noting whether they cover furnish and delivery, or furnish, delivery and installation and a statement of their basis.

(c) A listing of the Assumptions and Clarifications made by the Construction Manager in the preparation of the FGMP Change Order.

(d) A listing of any trade, work categories or other items which are not included in the Final Guaranteed Maximum Price.

(e) A Construction Documents Schedule setting forth the dates assumed by Construction Manager for the Architect's completion of Construction Documents, which shall be consistent with the Owner-approved Construction Schedule.

(f) The final Project Schedule, including phasing plans.

(g) A Shop Drawing Approval Schedule setting forth the schedule assumed by Construction Manager for the Architect's approval of Shop Drawings, which shall be consistent with the Owner-approved Construction Schedule.

(h) A listing and back-up documentation evidencing CBE Program (as defined below) compliance as required hereunder.

5.8.4 Submittal of the FGMP Change Order. The Construction Manager's proposed FGMP Change Order shall be submitted to the Owner in substantially the form set forth in Exhibit C. Thereafter, the Owner, the County, the Program Manager and the Architect shall meet with the Construction Manager to review the proposed FGMP Change Order and the statement of its basis. The Owner, the Program Manager, the County and/or the Architect shall promptly notify the Construction Manager of any errors or omissions or necessary adjustments or modifications they discover in the presented information during their review of same. The Construction Manager shall make any necessary adjustments to the proposed FGMP Change Order as a result of any such items discovered by the Construction Manager, the Architect, the County, the Program Manager or the Owner prior to its acceptance by the Owner. The Owner shall endeavor to accept or reject the FGMP Change Order within thirty (30) days from the receipt by Owner thereof.

5.8.5 Acceptance or Rejection of FGMP Change Order.

(a) If the Owner accepts the Construction Manager's proposed FGMP Change Order, the Owner shall give written notice of acceptance by returning the proposed FGMP Change Order to the Construction Manager with the Owner's acceptance endorsed thereon and by the issuance to the Construction Manager of a Notice of Acceptance. The FGMP Change Order and the Notice of Acceptance shall constitute amendments to this Agreement.

(b) If the Owner or County rejects the Construction Manager's proposed FGMP Change Order, the Construction Manager may, but shall not be obligated to, revise and resubmit

same. In the event no FGMP Change Order can be agreed upon, the Construction Manager shall continue its performance of any other services then being performed hereunder. If the County or Owner does not approve the FGMP Change Order or it cannot be agreed upon by Owner and Construction Manager, then Owner shall have the right to terminate this Agreement upon seven (7) days' written notice to Construction Manager. If Owner terminates this Agreement in accordance with this Section and Construction Manager is not in default hereunder, Owner shall pay Construction Manager the portion of the Cost of the Work, Fee and/or cost of the Preconstruction Services properly allocable to the portion of the Work completed by Construction Manager, minus the aggregate of previous payments made by Owner to Construction Manager under this Agreement.

(c) Following receipt of the Owner's Notice of Acceptance of the FGMP Change Order, the Construction Manager shall begin any portion of the Work if the Construction Documents for such Work have been prepared by the Architect and approved by the Owner and have or are thereafter added to this Agreement by Construction Document Change Order. Notwithstanding the issuance of a Notice of Acceptance, such performance (by the provision of services or labor or procurement of materials) shall not be initiated for any portion of the Work unless Construction Documents for that specific Work have been approved by the Owner and added to this Agreement by Change Order.

5.8.6 The FGMP shall be subject to additions and deletions by Change Order as follows:

(a) Whenever this Agreement or the General Conditions authorize an increase or decrease in the contract sum or contract price, the increase or decrease shall operate to increase or decrease the estimated cost component of the FGMP Change Order.

(b) If the Construction Documents prepared by the Architect are inconsistent with the Drawings, Specifications and other documents relied upon by Construction Manager in formulating the FGMP Change Order, and as specified therein, such that the performance of the Work would require the Construction Manager to incur actual costs (including delay costs, if available under the provisions of this Agreement) in excess of the estimate for such Work, then Construction Manager shall be entitled to an increase in the FGMP Change Order for all costs exceeding the estimated amount for such Work and its Fee on such costs incurred due to such variances in the Construction Documents.

(c) If the Architect shall fail to prepare Construction Documents in accordance with the Construction Documents Schedule as set forth in the FGMP Change Order, or if the Architect shall fail to approve Shop Drawings in accordance with the Shop Drawing Approval Schedule as set forth in the FGMP Change Order, the Construction Manager shall give notice of same to the Architect and to the Owner, and if within five (5) business days of the issuance of the notice, the subject Construction Documents are not furnished to Construction Manager, then and in that event the FGMP Change Order shall be increased by such additional costs (including delay costs, if available under the provisions of this Agreement) as Construction Manager may reasonably incur as a result of the Architect's failure to perform.

5.8.7 The Date for Substantial Completion of the Project as stated in the FGMP Change Order shall be subject to extension or acceleration whenever this Agreement or the General Conditions authorize or provide for an extension of the Date for Substantial Completion.

5.9 The Owner shall receive as its share of any savings a sum equal to 100% of the amount by which the reimbursable Cost of the Work, plus the Construction Manager's Fee, is less than the Final Guaranteed Maximum Price.

5.10 In the event that Cost of the Work plus the Construction Manager's Fee is greater than the Final Guaranteed Maximum Price (as adjusted as provided for in this Agreement), then the Construction Manager shall pay such excess amount without any claim against the Owner.

ARTICLE 6
CONSTRUCTION MANAGER'S COMPENSATION FOR PRECONSTRUCTION SERVICES; CONSTRUCTION MANAGER'S FEE

6.1 Construction Manager's Compensation for Preconstruction Services. In consideration of the performance of the Preconstruction Services, Owner shall pay the Construction Manager up to the not-to-exceed sum of One Million One Hundred Ninety-Six Thousand One Hundred Three and No/100 Dollars (NTE \$1,196,103.00), for: (a) compensation for Construction Manager's employees performing Preconstruction Services according to the hours worked and the staffing plan, hour rate, and Staff Multiplier (as defined herein) shown on Exhibit I; (b) trade costs actually incurred by Construction Manager in connection with the Preconstruction Services; (c) reimbursable expenses allowed by applicable law and approved by Owner and County; and (d) Construction Manager's fee for Preconstruction Services, which is equal to 3.7% of the sum of (a), (b), and (c). Owner shall pay no other amounts for the Preconstruction Services. Exhibit I-1 is attached hereto and made a part hereof for illustrative purposes to demonstrate how the not-to-exceed sum for Preconstruction Services was calculated, nonetheless costs for Preconstruction Services are limited to those categories and cost codes identified in Exhibit I-1 or such other costs and expenses approved by Owner and County, which approval shall not be unreasonably withheld, conditioned, or delayed so long as they do not exceed the NTE sum set forth above.

6.2 Construction Manager's Fee. In consideration of the performance of the Construction Services, the Owner agrees to pay the Construction Manager, in current funds, the Construction Manager's Fee as follows: Three and 7/10 percent (3.7%) of the Cost of the Work.

6.3 Changes in Work. For Changes (as defined below), Construction Manager's Fee shall be: Three and 7/10 percent (3.7%) of the Cost of the Work.

ARTICLE 7
CHANGES IN THE WORK

7.1 Owner-Directed Changes in the Work. Without invalidating this Agreement or any bond issued hereunder, at any time or from time-to-time during the progress of the Work, and without

notice to the Construction Manager's sureties, the Owner or the County may, by Change Order, or by Construction Change Directive, authorize or order changes in the Work or Project Elements within the general scope of the Agreement or any of the Contract Documents consisting of additions or alternatives to, or deductions or deviations from, or substitutions in the Work (hereinafter referred to as a "Change" or "Changes"). All Changes in the Work shall be authorized only by a Change Order or Construction Change Directive and, when appropriate, the IGMP, the FGMP or the Construction Schedule being adjusted accordingly and pursuant to the requirements of this Article 7. In addition, in the event of any change to any federal, state or local law, statute, order, rule, code, regulation or ordinance not in force at the time of the submission of the IGMP or FGMP hereunder, or later coming into force provided that the Construction Manager did not have reasonable knowledge of such change by publication or otherwise at the time of the submission of any the IGMP or FGMP hereunder, and such change will cause an increase in the time or cost required for the Work, the Construction Manager shall be entitled to an adjustment to the applicable IGMP or FGMP and the Construction Schedule made necessary by such change.

7.2 Limits on Compensation for Changes. The percentages and elements of cost set forth in Paragraph 7.6 of this Agreement shall constitute the maximum amounts to which the Construction Manager shall be entitled for Changes and shall be the sole and only adjustment therefor. No other percentages or elements of cost shall be allowed, and the Construction Manager shall have no right to compensation or damages for loss of profits, overhead, impact damages, consequential damages, or any other loss or cost arising out of Changes, nor any claim or cause of action therefor, except as expressly provided in Paragraphs 7.5 and 7.6 of this Agreement.

7.3 Adjustment of Bond Amounts for Changes. It is the Construction Manager's responsibility to (and to require its Subcontractors to) notify any surety or sureties of any Changes of any applicable portion of any scope of Work or as otherwise required by the terms of any applicable bonds provided pursuant to this Agreement, and to ensure that the amount of the applicable bonds (or insurance) are adjusted accordingly, unless directed otherwise by the Owner in writing. The Construction Manager shall furnish proof of any necessary adjustments to the Owner promptly after receipt of the executed Change Order or Construction Change Directive and the cost of the additional bond premium shall be included as a reimbursable Cost of the Work with the Change Order being submitted.

7.4 Written Authorization Required.

7.4.1 Changes in the Work, the IGMP, the FGMP for the entire Work, or the Construction Schedule shall be made only by Change Order or Construction Change Directive specifying in writing what Changes are to be made. The Construction Manager shall not commence any Change in the Work until an appropriate Change Order has been signed and issued by the Owner (and if necessary, approved by the County) and signed by the Construction Manager, or the Owner has issued a written Construction Change Directive on a form substantially similar to an AIA Document G714 (2001 edition). Any additional work performed or undertaken by the Construction Manager without an appropriate Change Order or Construction Change Directive

will not entitle it to any increase in the IGMP, FGMP, additional compensation, or to any extension of time or the Construction Schedule. Notwithstanding any provisions contained herein to the contrary, the Construction Manager, in the case of an emergency immediately affecting the safety of persons or property, without authorization from the Owner, may act at its discretion to prevent injury or damage, and the Construction Manager shall so act if instructed to do so by the Owner. Any compensation claimed by the Construction Manager for actions necessitated by the emergency shall be determined in the manner provided for herein, except that the failure of the Construction Manager to obtain a written Change Order or Construction Change Directive prior to the performance of such emergency work shall not affect its right, if any, to extra compensation.

7.4.2 Except for written Change Orders or Construction Change Directives, no order, statement or conduct of the Owner shall be treated as a Change or entitle the Construction Manager to any increase in compensation or time. The Construction Manager hereby agrees that it will not make or seek to make any claim for additional compensation against the Owner for any Work performed by the Construction Manager, or its Subcontractors or Suppliers, which was not directed and authorized in advance of commencement of performance of such Work by a formal written Change Order signed by the Owner or by a Construction Change Directive signed by the Owner.

7.5 Proposal Letters.

7.5.1 Prior to the issuance of a Change Order to adjust the IGMP or the approved FGMP, the Construction Manager shall submit a Proposal Letter as required by the Procedures Manual prepared by the Program Manager (and if no such manual has been prepared as of such date, then in form and substance acceptable to Owner) to the Owner and the Program Manager. All Change Order work shall be performed in accordance with this Agreement, and each Change Order shall be in the form prescribed by the Procedures Manual. Each Proposal Letter submitted by the Construction Manager shall include the Construction Manager's proposed Change Order Amount, as specified in Paragraph 7.6 hereof, and the estimate of time to be deleted from or added to the Construction Schedule, if any, and be broken down by Subcontractor or Supplier, or scope of work or detail, and be in such reasonable detail that the Owner, the Program Manager, and the Architect can fully assess the impact of the proposed Change upon the costs and time allocated for the Work. If the Proposal Letter is acceptable to the Owner, it shall direct the Program Manager to prepare and submit for its execution a Change Order for the Work, in compliance with the requirements of Paragraph 7.1.

7.5.2 If the Construction Manager's Proposal Letter pursuant to Paragraph 7.5.1 is not acceptable to the Owner because the Owner determines that the Work referenced by the proposal is not a Change, no Change Order or Construction Change Directive shall be issued or signed, and the Construction Manager shall proceed with the Work and shall reserve its right to make a claim for the alleged additional reimbursable Cost of the Work plus its proportional Fee on same.

7.5.3 If the Construction Manager's Proposal Letter pursuant to Paragraph 7.5.1 is not acceptable to the Owner because the Owner determines that the amount of the proposed

adjustment to the IGMP, or the FGMP, or the time requirements specified by the Construction Schedule, is unacceptable, a Construction Change Directive in a form substantially similar to an AIA Document G714 (2001 edition) or such other form required by Owner shall be issued by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the IGMP, the FGMP, or in the time requirements specified by the Construction Schedule. Upon receipt of a Construction Change Directive, the Construction Manager shall promptly proceed with the Change in the Work involved and advise, in writing, the Owner, the Program Manager, and the Architect, of the Construction Manager's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustments in the IGMP or the FGMP, or in the time periods specified in the Construction Schedule. A Construction Change Directive signed by the Construction Manager shall indicate the Construction Manager's agreement to the terms and adjustments specified in the Construction Change Directive. Such agreement shall be effective immediately and shall be recorded as a Change Order, as specified in this Article 7. If the parties are unable to reach agreement under the procedure set forth above, a Change Order shall be issued and signed by the Owner and signed by the Construction Manager which shall adjust the Agreement as follows:

(i) for Changes resulting in a cost or credit to the Owner, the IGMP and/or the FGMP shall be increased or reduced, as the case may be, as provided for in Paragraph 7.6 hereof; and

(ii) for Changes which affect the time of performance by the Construction Manager of the Work, the time requirements specified in the Construction Schedule shall be increased or reduced, as the case may be, by the additional time or lesser time reasonably required, in accordance with Paragraph 4.5.3.

7.5.4 As set forth in Section 4.6 of this Agreement, and in accordance therewith, any increase in the IGMP or the FGMP whatsoever as a result of actual or alleged delays, hindrances, accelerations or other time-related costs shall be limited to those amounts properly allowed under Paragraph 4.6 hereof and shall be issued only if the terms, provisions, and procedures relating to extensions of time set forth in Article 4 of this Agreement have been satisfied and complied with.

7.6 Change Order Amount. The cost or credit to the Owner resulting from a Change in the Project shall in each instance be determined in one or more of the following ways:

(a) by mutual acceptance of a properly itemized lump sum amount or agreed adjustments to the IGMP, and/or the FGMP;

(b) by unit prices stated in the Contract Documents or subsequently agreed upon (such unit prices shall be complete and shall include all materials, equipment, labor, delivery, installation, overhead, and profit); and/or

(c) by the actual reimbursable costs (as provided in Article 8) incurred by the Construction Manager in the performance of such Work, plus the Construction Manager's Fee. For Change Order Work performed by a Subcontractor pursuant to a Change Order issued under

this clause (c) (a “**Time and Materials**” or “**T&M**” Change Order), each Subcontractor shall be paid based on the mark-ups for Subcontractors preapproved by Owner.

7.6.1 For any Change Order Work performed on a T&M basis as described in Paragraph 7.6(c) above, the following requirements shall apply:

(a) After receipt of Owner’s written direction to proceed on a T&M Change Order basis, Construction Manager shall provide the following information to Owner prior to starting the Change Order work:

1. a comprehensive written scope of work to be completed; and
2. the trade Subcontractors’ schedules and manpower requirements to complete the Change Order work.

(b) During construction, Construction Manager’s supervisor shall review, validate and sign the trade Subcontractors’ tickets on a daily basis. Construction Manager’s supervisor shall meet with Owner’s Program Manager on a daily basis to review the scope performed and hours worked, as documented by the trade Subcontractors. If in agreement, Owner’s Program Manager shall approve and sign the work tickets at such meetings.

(c) After completion of the Change Order work, Construction Manager shall provide a detailed and comprehensive Change Order payment request which shall include, but shall not be limited to, the following supporting documentation:

1. a copy of the Owner’s written direction to proceed with the Change Order work on a T&M basis;
2. a detailed breakdown of the actual scope performed;
3. all back-up documentation supporting the scope performed, including, but not limited to, applicable Requests for Information, drawings and sketches;
4. all trade Subcontractors’ invoices and all other supporting cost documentation, including, but not limited to, the daily T&M tickets signed by both Construction Manager and Owner’s Program Manager; a take-off quantifying the materials used; supplier invoices for all materials used and for which Owner is being billed; certified payroll records covering the period during which the Change Order work was performed; valid labor rates for all trades used to perform the Change Order work; and such other information as may be requested by Owner.

7.7 Owner’s Right To Offset Changes. Whenever it is determined that any Changes will require an increase in the time requirements specified by this Agreement or the Construction Schedule, the Owner may, at its sole discretion and to the extent possible, elect to offset all or any part of such increase with other Changes, as issued pursuant to this Agreement, that will maintain the time requirements specified by the Construction Schedule. Whenever it is determined that any Changes will require an increase in in the IGMP or in the FGMP, the Owner may, at its sole discretion and to the extent possible, elect to offset all or any part of such increase with other Changes that will maintain the IGMP or the FGMP.



7.8 Concealed Conditions. The Construction Manager shall provide notice to Owner and Architect as specified below in the event that the Construction Manager encounters a concealed or unknown subsurface or physical condition in the performance of the Work if such condition (1) is of an unusual nature, differs materially from those conditions ordinarily encountered and generally recognized as inherent to work of the nature provided for in this Agreement and differs materially from those conditions disclosed or indicated in the Contract Documents; or (2) has been expressly addressed in a written assumption or limitation that the parties have agreed in writing applies to the IGMP and/or the FGMP and such condition differs materially from such assumption or limitation. If the Construction Manager makes a proper claim for an adjustment to the IGMP or the FGMP, or to the time requirements specified in the Construction Schedule, regarding an unknown or concealed subsurface or physical condition which meets the requirements listed in clauses (1) or (2) above, the Architect, the Program Manager, and the Owner will promptly investigate such condition. If such condition would cause an increase or decrease in the Construction Manager's costs of performance of any part of the Work or impact the critical path of the Construction Schedule, and the Construction Manager has timely and properly made its claim, the Owner will issue an appropriate Change Order or Constructive Change Directive in accordance with this Agreement. If the Owner determines that the condition does not meet the requirements listed in either clause (1) or (2) above, the Owner will notify the Construction Manager in writing, stating the reasons, and the Construction Manager shall proceed with the Work without any adjustment in the cost or in the Construction Schedule, but the Construction Manager shall reserve the right to make a claim for the alleged additional reimbursable Cost of the Work plus its proportional Fee on same. For any claim for an adjustment to be made properly under this paragraph, such claim must be made by the Construction Manager in writing with specific detail as to the unknown or concealed condition and such notice shall be given to the Owner and the Architect promptly before conditions are disturbed and in no event later than seven (7) days after first observance of any such conditions and if the Construction Manager is entitled to an adjustment in the cost and/or time, the Construction Manager shall make such claim within an additional seven (7) days from the date of its notice to the Owner and the Architect. If such claim is not timely made, it shall be considered waived. Except as provided in this Paragraph 7.8, there shall be no adjustment in cost and/or time for any unknown or concealed condition.

7.9 Field Orders and Minor Changes in the Work. The Program Manager shall have authority, with prior approval from Owner and County, to order minor changes in the Construction Documents for Work not involving an adjustment to the IGMP or the FGMP, nor any extension of the Contract Time. Permissible changes may be effected by Field Order. The Program Manager may also issue written Field Orders which interpret the Contract Documents. Such changes, unless the Construction Manager serves a written objection upon the Owner and the Program Manager within ten (10) days of the Construction Manager's receipt of same, shall be binding on the Construction Manager. If the Construction Manager has properly notified the Owner and the Program Manager of its objection to a Field Order, in accordance with the procedures above, the Construction Manager shall not proceed with the Field Order or minor change until it receives further written instructions from the Owner.

ARTICLE 8

COSTS TO BE REIMBURSED AS COST OF THE WORK

8.1 The term “Cost of the Work” shall mean costs necessarily and actually incurred in the proper performance of the Construction Services under this Agreement by the Construction Manager (and, for the avoidance of doubt, not the Preconstruction Services). Such costs shall be at rates not higher than the standard paid in the locality of the Work except with prior written consent of the Owner, and shall include only the items set forth below in this Article 8:

8.1.1 Wages paid for field labor (including overtime wages as allowed by Paragraph 4.4.3 hereof) in the direct employ of the Construction Manager in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule proposed by the Construction Manager and approved in writing by the Owner, and including such welfare or other benefits, if any, as may be payable with respect thereto. The welfare or other benefits as may be payable with respect to salary or wages as defined above are limited to those required by governmental regulations, by collective bargaining agreements or those specifically proposed by the Construction Manager and approved by the Owner in writing and shall not include bonuses, incentive compensation or paid vacation time unless required by governmental regulations, by applicable collective bargaining agreements, or otherwise approved by Owner.

8.1.2 “Total Compensation” of Construction Manager’s (a) principals and personnel when stationed at the field office, and (b) those personnel located at the Construction Manager’s home or branch office for the portion of their time devoted to the performance of the Work; provided, however, that in either case, such personnel are listed on the Staffing Plan attached hereto as Exhibit J or are otherwise approved by Owner. “Total Compensation” shall mean (a) the Owner-approved salary of an individual, multiplied by (b) a multiplier of 2.12 (the “**Staff Multiplier**”). Principals and personnel engaged at shops or on the road, in necessarily expediting the production or transportation of materials or equipment to be incorporated in the Work, or to be utilized in the direct performance of the Work, shall be considered as stationed at the field office and their salaries paid for the portion of their time spent on the Work. Any change in total compensation of Construction Manager’s personnel, whether due to changes in benefits or salaries during the time this Agreement is in force, must be approved in writing by the Owner prior to Construction Manager’s request for reimbursement, which approval will not be unreasonably withheld, conditioned, or delayed. The “Staff Multiplier” is a fixed percentage applied to salary and shall cover all fringe benefits, overhead, and related staff costs, and no other amounts shall be paid for such items.

8.1.3 Cost of contributions, assessment or taxes incurred during the performance of the Work for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Construction Manager and included in the Cost of the Work under Paragraphs 8.1.1 and 8.1.2. Such costs shall be limited to those required by applicable federal, state or local laws and regulations. The Construction

Manager's payroll documentation shall include a separate breakout of such costs, including the maximum required payment and year-to-date payment with respect to each employee.

8.1.4 The proportion of reasonable transportation and subsistence expenses incurred in discharge of duties directly connected and related to the performance of the Work, including meals and lodging, of the Construction Manager, its officers and employees other than those stationed at the field office, and of those certain Construction Manager personnel, officers or employees stationed at the field office as approved by the Owner in writing; provided, however, that all such costs must be in accordance with the limitations and requirements of Florida Statute §112.061 (as may be amended) and may include billing at per diem rates for meals as permitted thereunder. Or, to the extent agreed and approved by Owner, County, and Construction Manager with respect to certain employee(s) approved in advance by Owner and County, a reasonable relocation cost for such employee(s) who need to relocate or travel to the Ft. Lauderdale, FL metropolitan area for the Project; provided, that no other costs will be allowed for such employee(s) under this Section 8.1.4.

8.1.5 If preapproved by Owner, costs of local parking lot leases for parking for the Construction Manager's employees and those of its Subcontractors and shuttle bus service from local parking lots and local public transportation stations to transport the Construction Manager's employees and those of its Subcontractors to the site of the Work; however, Construction Manager shall use commercially reasonable efforts to minimize such costs.

8.1.6 Cost of materials, supplies and equipment incorporated in the Work, including costs of transportation thereof. Expendable/consumable tools and equipment (blades, bits, fasteners, drop cords, etc.) may be considered to be reimbursable if approved by Owner, subject to a pre-negotiated limit. Notwithstanding the foregoing, the foregoing costs shall only be for Work (including procurement) performed by Construction Manager and not included in costs incurred under Section 8.1.7.

8.1.7 Payments made by the Construction Manager to Subcontractors and consultants for their portion of the Work performed pursuant to subcontracts under this Agreement.

8.1.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used on the site of the Work, whether rented from the Construction Manager or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, at rental charges consistent with those prevailing in the area for the period of time when such machinery and equipment are required and used in the performance of the Work. Notwithstanding the foregoing, the foregoing costs shall only be for Work (including procurement) performed by Construction Manager and not included in costs incurred under Section 8.1.7. The phrase "minor repairs and replacements" above is limited to repairs and parts replacements to maintain the item of machinery or equipment in an operable condition and does not include major repair/overhaul to restore machinery or equipment to a nearly new condition. For each item of machinery or equipment known to have a value in excess of \$100,000, the Construction Manager and Owner shall jointly evaluate the anticipated total rental charge for each such item of machinery and equipment based on an agreed-to appraisal value, and should

the anticipated total rental charge for the duration of the Work equal 75% or more of the purchase value or the appraisal value of the equipment, the Owner reserves the right to approve the purchase of the equipment (or equivalent) for use in the performance of the Work, and at completion of the Work the fair market salvage value or actual sale value will be credited to the Cost of the Work.

8.1.9 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which were purchased for the performance of the Work. Notwithstanding the foregoing, the foregoing costs shall only be for costs actually incurred by Construction Manager and not included in costs incurred under Section 8.1.7.

8.1.10 The proportionate cost attributable to the Work for premiums of all bonds and insurance which the Construction Manager is required by the Contract Documents to purchase and maintain, including but not limited to Performance, Labor/Material Payment and Statutory Lien Bonds.

8.1.11 Sales, use or similar taxes related to the Work and for which the Construction Manager is liable, as imposed by any applicable governmental authority, as allowed by Paragraph 4.6.1 of the General Conditions.

8.1.12 Permit fees and royalties.

8.1.13 (a) Damages for infringement of patents and (b) costs of defending suits therefor (where allowed by Paragraph 4.15.1 of the General Conditions), and (c) deposits lost for causes other than in each case due to the fault or negligence of the Construction Manager, any Subcontractor, any of their suppliers, anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable. However, no such losses, costs and expenses shall be included in the Cost of the Work for the purpose of determining the Construction Manager's Fee or included in the IGMP or FGMP.

8.1.14 Losses and expenses, not compensated by insurance or otherwise, sustained by the Construction Manager in connection with the Work, provided they have resulted from causes other than the fault or neglect of the Construction Manager, any Subcontractor, any of their suppliers, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Claims for such losses must be filed in writing to Owner within twenty-one (21) days of occurrence to be considered. Such losses shall include settlements made with the written consent and approval of the Owner and such approval shall not be unreasonably withheld. No such losses and expenses shall be included in the Cost of the Work for the purpose of determining the Construction Manager's Fee. If, however, such loss requires reconstruction and the Construction Manager is placed in charge thereof, the Construction Manager shall be paid a fee mutually agreeable to the Owner and the Construction Manager.

8.1.15 Minor expenses such as telegrams, long distance telephone calls, Project related telephone services, and postage and delivery services in connection with the Work at the site of the Work.

8.1.16 Subject to the prior approval of Owner and to the extent not included in the Staff Multiplier, field office expenses such as office equipment (copiers/fax/printers); utilities; office supplies; printing, copying, photography and reprographic services; safety clothing required by applicable law such as hard hats, vests, etc.; MIS charges and IT set-up; on-site cell phones, radios and other communications equipment.

8.1.17 Cost of removal of all debris. Notwithstanding the foregoing, the foregoing costs shall only be for costs actually incurred by Construction Manager and not included in costs incurred under Section 8.1.7.

8.1.18 Costs incurred due to an emergency affecting the safety of persons and property.

8.1.19 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

8.1.20 Costs of storage for all materials and equipment necessary for the performance of the Work. Notwithstanding the foregoing, the foregoing costs shall only be for costs actually incurred by Construction Manager and not included in costs incurred under Section 8.1.7.

8.1.21 Costs of temporary provisions and structures necessary for the performance of the Work. Notwithstanding the foregoing, the foregoing costs shall only be for costs actually incurred by Construction Manager and not included in costs incurred under Section 8.1.7.

8.1.22 Costs of background checks, drug testing and other screening for the Construction Manager's employees stationed at the site of the Work as required to comply with Article 16 of the General Conditions and any County requirements.

8.1.23 Document storage and retrieval costs, including those costs incurred by the Construction Manager in complying with its obligations under Article 11 hereof.

8.1.24 Notwithstanding the inclusion of the specific cost items contained in this Article 8, said items shall not be included as a part of the Cost of the Work to the extent that the cost of such items, together with the Construction Manager's Fee, exceed the Final Guaranteed Maximum Price.

ARTICLE 9 **COSTS NOT TO BE REIMBURSED**

9.1 The term Cost of the Work shall not include any of the items set forth below in this Paragraph 9.1:

9.1.1 Except to the extent allowed by Paragraph 8.1.2 hereof, salaries or other compensation of the Construction Manager's principals, officers, and personnel at the Construction Manager's home office, branch offices, and field offices other than the field office for the Work under this Agreement.

9.1.2 Expenses of the Construction Manager's home and branch offices other than the field office for the Work under this Agreement or as permitted as part of the Staff Multiplier.

9.1.3 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work under this Agreement.

9.1.4 Overhead or general expenses of any kind, except as may be expressly included in Article 8, including as part of the Staff Multiplier.

9.1.5 Costs due to the negligent conduct of, or failure to comply with the Contract Documents by, the Construction Manager, any Subcontractor, any Supplier, any of their subcontractors or suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to persons or property.

9.1.6 The cost of any item not specifically and expressly included in the items described in Article 8.

9.1.7 Costs in excess of the IGMP or the Final Guaranteed Maximum Price, as adjusted pursuant to the Contract Documents.

9.1.8 Cost of any entertainment incurred by the Construction Manager.

9.1.9 Costs of replacing lost or stolen hand tools.

9.1.10 Fines or lost discounts to the extent due to the fault or negligent acts or omissions of the Construction Manager, its Subcontractors, or Suppliers.

9.1.11 Secretarial, clerical, or accounting support for personnel not stationed at the Project site or not expressly allowed under Article 8.

9.1.12 Non Project-specific business licenses or similar fees.

9.1.13 To the extent not allowed by Paragraph 8.1.2 hereof, project management labor and all related fees for personnel not stationed at the site of the Work.

9.1.14 Except to the extent allowed by Article 8, including in the Staff Multiplier, all overhead and profit, including home office management and support.



9.1.15 Except to the extent allowed by Paragraph 8.1.4, local travel costs and local relocation expenses.

9.1.16 Cost or expenses associated with the actual performance of corrective or repair work under any warranties or guarantees required by the Contract Documents.

9.1.17 Cost or expenses associated with or incurred in connection with performance of the Preconstruction Services.

Notwithstanding the foregoing, if and to the extent a cost described in Sections 9.1.1, 9.1.2, 9.1.3, 9.1.4, 9.1.5, 9.1.11, 9.1.12, 9.1.13, 9.1.14 is (a) required under governmental regulations or applicable collective bargaining agreements, or (b) included in the Staff Multiplier, such costs shall be allowed as a Cost of the Work.

ARTICLE 10 **PAYMENTS TO THE CONSTRUCTION MANAGER**

10.1 Interim Payments to the Construction Manager.

10.1.1 On or before the twenty-fifth (25th) day of each month, the Construction Manager shall prepare and submit to the Owner and the Program Manager an Application for Payment seeking reimbursement for the reimbursable Cost of the Work or the amounts owed for Preconstruction Services incurred in connection with the Work performed since the preceding pay period. Each Application for Payment shall be on a form or forms approved in advance by the Owner and shall be broken down by Project Elements. The Construction Manager may seek in its Application that portion of its Fee, if any, earned during the pay period, calculated on the Cost of the Work incurred in connection with the Work since the preceding pay period. With the Owner's advance written approval, the Construction Manager may request payment for materials stored off-site if the request is accompanied by a bill of sale transferring title to such materials to the Owner upon receipt of payment for same. The Construction Manager's Applications for Payment shall be accompanied by applications for payment submitted to the Construction Manager by its Subcontractors, by invoices from its Suppliers, and by a detailed invoice from the Construction Manager for all self-performed Work. Each such Application for Payment shall be supported by such documentation and detailed information as may be reasonably required by the Owner to substantiate the validity of the Cost of the Work, amounts owed for Preconstruction Services and Fee amounts requested and must at least include the information required by Exhibit F. The Owner may withhold payment for any item or items contained in any Application for Payment until and unless appropriate documentation and details supporting each item are submitted. Construction Manager shall certify each Application for Payment in accordance with Broward County's False Claims Ordinance (Article XIV, Sections 1-276 through 1-287). Construction Manager shall submit, with each application for payment to Owner, a signed and sworn statement attesting to compliance with the Prevailing Wage Ordinance, Section 26-5 of the Broward County Ordinances, as amended. Owner shall use commercially reasonable efforts to review, and cause its Program Manager and the County to review, and, to the extent Owner deems necessary, provide comments or responses on, all Applications for Payment received within the

time periods set forth in the Invoice Workflow in the Procedures Manual, subject to the County's obligations and rights at applicable law and in the Second Addendum.

10.1.2 Each Application shall also be accompanied by certified payroll records for the compensation paid by the Construction Manager to its own non-salaried labor forces and those of its Subcontractors reimbursable under Article 8, accompanied by a listing of all personnel for which payment is sought, the wages or salary amount owed each individual, the taxes, insurance and worker's compensation payable on account of each individual, and time sheets of each such person working on the Project. A written schedule shall also be submitted setting forth the quantities and costs of all other items for which payment is requested.

10.1.3 The Construction Manager shall also furnish with each Application for Payment affidavits (in the form attached as Exhibit N-1 or Exhibit N-2) and lien waivers (in the form attached as Exhibit O-1) executed by the Construction Manager and by each Subcontractor and Supplier in the forms aforesaid or such other customary forms acceptable to the Owner with respect to the Work covered by the Application for Payment.

10.1.4 Each Application for Payment submitted by the Construction Manager shall contain the percentage of completion of each item included in the Schedule of Values as of the date of the Application.

10.1.5 Applications for Payment by the Construction Manager under this Article 10 shall be on an AIA Document G702 and G703 or such other form required by Owner and shall include all information specified by this Article 10 and on Exhibit F.

10.1.6 Within ten (10) days after the Owner's receipt of funds from the County reimbursing Owner for the costs of a properly completed Application for Payment meeting the requirements of this Agreement, and to the extent the Owner and County have approved the Application, the Owner shall pay to the Construction Manager the reimbursable Cost of the Work properly incurred by the Construction Manager during the period in question, plus the Fee due on same, as herein provided, less retainage as provided in Paragraph 10.2. Owner shall endeavor to make such payments to Contractor in a timely manner. All Applications for Payment shall be subject to adjustment on account of any prior overpayments. The Owner may withhold payment on account of any ground which permits the withholding of payments under Paragraph 10.4 of this Agreement, or as otherwise permitted by law. Notwithstanding anything in the Contract Documents to the contrary, Construction Manager acknowledges and agrees that all interim payments, retainage payments, and the final payment to Construction Manager are contingent upon and subject to Owner's receipt of payment from the County, and Owner's receipt of funds from the County in respect to the Work performed by the Construction Manager is a condition precedent to its obligation to pay Construction Manager.

10.2 Retainage on Interim Payments.

10.2.1 Retainage on Cost of the Work for Work Performed by Subcontractors. Ten percent (10%) of the amounts due to the Construction Manager under approved and verified Applications

for Payment for the Cost of the Work not covered under Paragraph 10.2.2 and payable to the Construction Manager for items other than general conditions and general requirements shall be held by the Owner hereunder as retainage until fifty percent (50%) of the Project has been completed, and fifty percent (50%) completion shall mean the point at which fifty percent (50%) of the total amount of the FGMP has been paid by the County. After fifty percent (50%) completion, five percent (5%) of the amounts due to the Construction Manager under approved and verified Applications for Payment for the Cost of the Work not covered under Paragraph 10.2.2 and payable to the Construction Manager for items other than general conditions and general requirements shall be held by the Owner hereunder as retainage until Final Completion of the Project Element or entire Project. If, prior to Final Completion of the Project, the Owner determines that the manner of completion and progress of the Work associated with a certain Project Element performed by the Construction Manager is reasonably satisfactory and the County approves, it may reduce the amount of retainage being held. The Construction Manager may also request a release of monies held in retainage so that the Construction Manager may make final payment to a Subcontractor where all work to be performed by that Subcontractor is completed and has been accepted by the Owner. Such a request must be accompanied by a final application for payment from the Subcontractor, and all documents required for Final Completion under Paragraph 8.4 of the General Conditions. In any event, the Owner shall be entitled to retain an amount it deems necessary to protect its interests until Final Completion of a Project Element or the entire Project, at which time it may release any excess amount to the Construction Manager.

10.2.2 Retainage on the Construction Manager's Fee. The Construction Manager shall be paid ninety percent (90%) of the proportional amount of its Fee on the reimbursable Cost of the Work, approved in each Application for Payment with each progress payment.

10.2.3 Except for retainage applicable to Subcontracts that have been completed and for which Owner has made final payment, notwithstanding Paragraph 10.2.1, the Owner may reinstate retainage at any time if the Work on the entire Project is unsatisfactory as a whole or as a whole falls behind the time stated for the completion in the Construction Schedule.

10.3 Payment Upon Final Completion. Upon the Architect's issuance of a Certificate of Final Completion for the Work, or designated portion thereof, and the determination by the Owner that the Construction Manager has reached Final Completion, the Owner shall within ten (10) days after the Owner's receipt of funds from the County reimbursing Owner for the costs of a properly completed Application for Payment meeting the requirements of this Agreement (including but not limited to properly executed affidavits (in the form attached as Exhibit N-3 and Exhibit N-4, as applicable, or such other form reasonably required by Owner) and lien waivers (in the form attached as Exhibit O-2 or such other form as reasonably required by Owner) from the Construction Manager and all Subcontractors and Suppliers and the fulfillment of all conditions required by Paragraph 8.4 of the General Conditions) pay to the Construction Manager an amount (including any retained amounts) equal to the sum of (i) the entire unpaid balance due Subcontractors for Work performed by the Subcontractors, (ii) the unpaid balance owed the Construction Manager as reimbursable Costs of the Work, and (iii) the unpaid balance owed the Construction Manager for its Fee on same. Notwithstanding the foregoing, the Owner may withhold any amounts otherwise payable under this Paragraph 10.3 if grounds for such

withholding under any provision of this Agreement then exist. The Construction Manager waives all rights to seek reimbursement for any costs incurred as of the date the request for final payment is submitted if proper documentation of such costs cannot be obtained or does not exist. The Application and Certificate for Final Payment must be submitted to Owner in a timely manner so that Owner can submit such documentation to the County within ninety (90) calendar days after Final Completion.

10.4 No Obligation Under Subcontracts. This Agreement does not create any contractual relationship between the Owner and any Subcontractor or Supplier under contract with the Construction Manager, or any duty by the Owner to any such Subcontractor or Supplier. The Owner shall have no obligation to pay or to see that payment of money owed to Subcontractor or Suppliers is made by the Construction Manager.

10.5 Payments Withheld. In addition to other grounds set forth in this Agreement, the Owner may withhold the whole or a part of any payment due the Construction Manager to such extent necessary to protect the Owner from loss on account of any of the following circumstances (regardless of when discovered):

10.5.1 Defective or inadequate work not remedied.

10.5.2 Claims filed.

10.5.3 Failure of the Construction Manager to make payments when due and owing to Subcontractors or Suppliers.

10.5.4 Substantial evidence that the Work or any Project Element thereof cannot be completed for the balance then unpaid under the IGMP or the FGMP.

10.5.5 Damage caused by the Construction Manager, its Subcontractors, or suppliers to another contractor or to any third party.

10.5.6 Persistent failure to maintain a rate of progress in accordance with the Construction Schedule.

10.5.7 Persistent failure to supply enough skilled workmen or proper materials.

10.5.8 Any material breach of this Agreement.

10.5.9 Any material failure to perform hereunder.

10.5.10 Any material failure to provide information required to be provided by the Construction Manager to the Owner.

10.5.11 Loss due to fraud or reasonable evidence indicated fraud.

When the above grounds are removed, payment shall be made for amounts withheld because of them. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of any breach or acquiescence therein, and the Owner may exercise its option from time to time and as often as may be necessary.

10.6 No Waiver by the Owner. By paying the Construction Manager's Applications for Payment, or by making any other payments to the Construction Manager (including the final payment of retainage), the Owner shall not thereby be deemed to have examined, inspected, or reviewed in any way the quality or quantity of the Work, or to have reviewed the construction means, methods, techniques, sequences or procedures, or to have made any examination to ascertain how or for what purpose the Construction Manager has used the monies previously paid. No payment of any the Construction Manager's Applications (including the final payment of retainage), nor any determination by the Owner of Substantial Completion or Final Completion, nor any partial or entire use or occupancy of the Work by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

10.7 Transfer of Title. The Construction Manager warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner or the County, as applicable, upon the receipt of payment by the Construction Manager for amounts properly due under the Contract Documents, free and clear of all liens, claims, security interests or encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Construction Manager, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager or such other person.

10.8 Overpayments. If the Owner shall determine, by audit or otherwise, that it has made an overpayment to the Construction Manager and thereafter makes written demand for repayment thereof, the Construction Manager shall, within thirty (30) days of receipt of such written demand for repayment, tender the amount of such overpayment to the Owner or otherwise resolve the demand for repayment to the Owner's satisfaction. If the Construction Manager fails to comply with or otherwise resolve to the Owner's satisfaction any demand for repayment made pursuant to this Paragraph 10.8 within forty-five (45) days of receipt thereof, the amount of such overpayment demanded shall thereafter bear interest at the prime rate in effect as of the date the overpayment is demanded, until paid in full.

10.9 No Payments in Advance. Construction Manager may make application for payment to Owner for Work in place and materials and equipment incorporated in the Work, at intervals of not more than once a month. No payment will be made for Work in advance of completion or prior to performance, with the exception of amounts incurred for materials and equipment not incorporated in the Work but delivered and stored at the Airport in compliance with the applicable manufacturer's requirements at the Airport or at an off-Airport bonded warehouse.

ARTICLE 11
ACCOUNTING RECORDS; PUBLIC RECORDS; RETENTION OF RECORDS; LEED
DOCUMENTATION

11.1 Public Records. All books, records and accounts of the Construction Manager and its subconsultants or Subcontractors that are related to the Project and performance of Work under the Construction Contract, including personnel, financial and expense records (collectively, “**Project Records**”), are deemed public records under the Florida Public Records Act (Chapter 119, Florida Statutes). Construction Manager shall comply, and shall require its subconsultants and Subcontractors to comply, with the following public records requirements:

11.1.1 Keep and maintain all Project Records necessary for the performance of the Work;

11.1.2 Provide the County with access to Project Records so that the County can provide the Project Records under the Florida Public Records Act;

11.1.3 Ensure that any Project Records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

11.1.4 Meet all requirements for retaining the Project Records as public records, and transfer to the County, at no cost, all Project Records in their possession upon termination of this Agreement and destroy any duplicate Project Records that are exempt or confidential and exempt. All Project Records stored electronically must be provided to the County by Microsoft Sharepoint, electronic files or hard copy.

11.1.5 Failure to comply with the provisions of Section 11.1 shall constitute a default and breach of this Agreement, and Owner shall enforce the default in accordance with this Agreement.

11.2 Audit and Retention of Project Records. County and Owner shall each have the right, at a reasonable place and time, to audit the Project Records of the Construction Manager and its Subcontractors or subconsultants.

11.2.1 Construction Manager and its Subcontractors or subconsultants shall make same available at no cost to County.

11.2.2 All Project Records shall be kept so that they can be produced to the County in a manner that reflects documentation relating to the Project only.

11.2.3 Incomplete or incorrect entries in Project Records will be grounds for nonpayment to the Construction Manager and recovery of any fees or expenses until appropriate supporting documentation is provided.

11.2.4 Construction Manager shall preserve, and shall require its Subcontractors or subconsultants to preserve, all Project Records for three (3) years after the earlier of any

termination of this Agreement or final payment and the Final Completion of the Project and all Work and Services to be performed pursuant to this Agreement, or if any audit has been initiated and audit findings have not been resolved at the end of the three years, the books, records and accounts shall be retained until resolution of the audit findings.

11.3 Construction Manager shall provide to Owner construction documentation necessary to support a "LEED-certified" rating from the United States Green Building Council for the Project. "LEED-certified" as used herein means achieving 40-49 points as defined by the USGBC. <http://www.usgbc.org/certification#certify>.

ARTICLE 12 **MISCELLANEOUS PROVISIONS**

12.1 Terms used in this Agreement which are defined in other Contract Documents and are not defined in this Agreement shall have the meanings designated in those Contract Documents.

12.2 If for any reason all or part of any provision contained in this Agreement or any other Contract Document is determined judicially to be invalid, void or unenforceable, it shall not affect the validity or enforceability of any other terms and conditions contained herein, and said remaining terms and conditions shall continue in full force and effect to the extent applicable.

12.3 The Construction Manager acknowledges that the Owner desires to obtain the benefit of all cash and trade discounts available in connection with the Work. The Construction Manager shall advise the Owner of the availability of cash discounts on a timely basis and, provided the Owner deposits funds with the Construction Manager on a timely basis with which to make payments to obtain such cash discounts, such cash discounts shall be obtained and shall reduce the Cost of the Work. All trade discounts, rebates, and refunds all returns from sale of surplus materials, tools, and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. Amounts which accrue to the Owner shall be credited to the Owner as a reduction to the Cost of the Work.

12.4 To the extent the Project or any portion of the Work qualifies for tax-exempt status or for tax incentives, and if the Owner furnishes the Construction Manager necessary and appropriate documentation therefor, then the Construction Manager shall take all steps necessary to secure tax savings on all labor and material purchased for the Work. All such savings shall revert solely to the Owner. Notwithstanding the foregoing, to achieve sales tax savings, the parties agree that the County, a tax-exempt entity, may purchase Project materials mutually agreed upon by the County and Owner directly from the supplier. The State of Florida requirements for the County's direct purchase of Project materials mutually agreed upon by the County and Owner shall be adhered to. The cost of these direct purchases shall be credited to the Project through a deductive Change Order to the FGMP (but only to the extent that such amount was included in the FGMP). In addition, County will execute any documents reasonably required to facilitate Owner's, Construction Manager's, Subcontractors' or other agents' achieving the sales tax savings when purchasing such materials directly from the supplier.

12.5 The Construction Manager's communications with the Owner with respect to the Work shall be made through the Program Manager.

12.6 The Construction Manager shall follow the guidelines and requirements established in the Procedures Manual, Delta's Environmental Procedures Manual, the Project Quality Assurance Manual, and the Project Safety Manual, to the extent applicable to the performance of the Work. The Project Quality Assurance Manual and the Project Safety Manual shall be owned by the Owner and shall be relinquished to Owner at termination or completion of this Agreement.

12.7 This Agreement shall be governed by the law of the State of Florida, without giving effect to the conflict of law provisions therein which will lead to the application of the law of another jurisdiction.

12.8 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third-party against either the Owner or the Construction Manager, except as provided herein including in Articles 13 and 14 of this Agreement and Paragraphs 4.16.1 and 6.2.6 of the General Conditions.

12.9 The Owner and the Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement.

12.10 Confidential Information. "Confidential Information" shall mean all information that the Owner discloses to the Construction Manager and identifies in writing to the Construction Manager as confidential, as well as the work product and other information relating to same resulting from the Construction Manager's Work, including without limitation, the Construction Manager's evaluations and reports, the Owner's responses to the Construction Manager's evaluations and reports, cost information, the extent and nature of the Project contemplated by the Owner, and all drafts and associated materials; but not including information that rightly becomes public, or that the Construction Manager otherwise knows or otherwise receives without obligation of confidence. For a period of three (3) years from the date of disclosure, the Construction Manager agrees to hold all Confidential Information in trust and confidence for the Owner and agrees not to disclose Confidential Information, by publication or otherwise, to any person other than to the Construction Manager's Subcontractors, employees, the Owner, the Program Manager, or any authority having jurisdiction over the Project, or to third-parties having a need to know and whom the Owner agrees in writing may receive such information; provided that, prior to such disclosure to third-parties, the Construction Manager shall obtain non-disclosure agreements from such persons and firms. If any medium containing Confidential Information is lost by the Construction Manager, the Construction Manager shall promptly notify the Owner. Upon expiration or early termination of this Agreement, at the written request of the Owner, the Construction Manager shall return to the Owner all written or descriptive matter, in any form, which contains Confidential Information, except that the Construction Manager can retain one (1) copy of such documents or things for its records. The Construction Manager may

produce Confidential Information to the extent required by (i) court order, (ii) order of governmental authority, or (iii) proper written demand in connection with any arbitration or litigation; provided, that in such event, the Construction Manager shall give prompt notice to the Owner so that the Owner can seek a protective order or other protection from disclosure.

12.11 Without the Owner's prior written approval, the Construction Manager shall have no right to use the trademark or tradename of the Owner or any of the Owner's affiliated companies or subsidiaries.

12.12 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any breach of or failure to comply with any of the covenants, conditions, or agreements hereof to be performed by either party shall not be construed to be a waiver of any subsequent breach thereof or failure to comply therewith, or of any breach of, or failure to comply with any other covenant, condition, or agreement contained herein. The Owner's review, approval, acceptance of or payment for services under this Agreement shall not operate as a waiver of any rights under this Agreement, and the Construction Manager shall be and shall remain liable to the Owner for all of its obligations hereunder and for all damages incurred by the Owner as the result of the Construction Manager's failure to perform in conformance with the terms and conditions of this Agreement. The rights and remedies provided for under this Agreement are in addition to any other rights or remedies provided by law. The Owner or the Construction Manager may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of this Agreement.

12.13 Any and all reviews or approvals by the Owner or its Program Manager which are required by or referenced in this Agreement or the Contract Documents or are otherwise undertaken by the Owner or its Program Manager in connection with the Work are for the sole purpose of concept review only. Any such reviews, approvals, or related actions by the Owner or its Program Manager shall not be, or be deemed, an indication or representation of any knowledge or expertise by the Owner or its Program Manager in any area of the services provided by the Construction Manager hereunder and shall not be construed to create any right on behalf of or otherwise affect the obligation of the Construction Manager.

12.14 No member, director, officer, joint venturer, beneficiary, volunteer participant, employee, consultant, agent, or representative of the Owner shall be personally liable to the Construction Manager under any term or provision of this Agreement for the Owner's payment obligations or otherwise, or because of any breach hereof, the Construction Manager agreeing to look solely to the assets of the Owner for the satisfaction of any liability of the Owner hereunder. In no event shall the Owner be liable to the Construction Manager except for payment for services rendered pursuant to and in accordance with this Agreement, nor shall the Owner or County ever be liable to the Construction Manager for indirect, incidental, special, or consequential damages except as expressly provided herein. No director, officer, or employee of the Construction Manager shall be personally liable to the Owner under any term or provision of this Agreement for the

Construction Manager's obligations hereunder or because of any breach hereof. In no event shall Construction Manager be liable to Owner for indirect, incidental, special, or consequential damages in connection with this Agreement in excess of Three Million and No/100 Dollars (\$3,000,000.00); provided however, the foregoing limitation shall not apply in the event such damages are: (a) covered by insurance maintained by or on behalf of Construction Manager or its Subcontractors (or would have been covered had Construction Manager maintained or caused its Subcontractors to maintain the insurance required to be maintained hereunder); (b) caused by the gross negligence or reckless or willful misconduct of Construction Manager, or Construction Manager's employees, agents, subcontractors, or others for whom Construction Manager is responsible; (c) arising out of or related to a violation of confidentiality obligations under this Agreement; (d) arising out of or related to Construction Manager's obligation under this Agreement to indemnify the Indemnified Parties (as defined in the General Conditions attached hereto as Exhibit A) for third party claims; and/or (e) arising out of or related to any infringement claims hereunder. Nothing contained in this Section shall be deemed to preclude liquidated damage payments under Section 4.3, when applicable, in accordance with the terms of this Agreement.

12.15 The Construction Manager at all times shall use all reasonable efforts to mitigate the effect of noise, dust, vibration and construction activities in regards to operation of areas in use by the County, the Owner or other Airport tenants. The Construction Manager shall install all code-required utilities and equipment for safety, ease of entrance and egress for traveling public, pedestrians, and airport and airline personnel as required or reasonably inferable in the Construction Documents. Construction signage, lighting, ventilation, ADA requirements, OSHA regulations and complete compliance with construction-related laws, rules and regulations in areas of Construction Manager's work shall be the Construction Manager's responsibility.

12.16 The following terms and conditions shall survive termination or expiration of this Agreement, in addition to any provisions which by their nature should, or by express terms do, survive or extend beyond termination or expiration of this Agreement: (i) from this Agreement: Sections 12.2, 12.7, 12.9, 12.01, 12.11, 12.12, 12.14, and 12.15 and Articles 13 and the applicable provisions of Article 14; and Exhibits D, H, and K; and (ii) from the General Conditions: Articles 14, 15, and 16; and Sections 1.1, 4.5, 4.16, 9.4, 9.5, and 12.2.

12.17 The following exhibits are attached hereto and incorporated in and made a part of this Agreement by reference:

Exhibit A	General Conditions
Exhibit B	Project Scope
Exhibit C	FGMP Change Order Form
Exhibit D	Sensitive Security Information
Exhibit E	Intentionally Deleted
Exhibit F	Application for Payment Information
Exhibit G	Construction Document Change Order Form

Exhibit H	Nondiscrimination Provisions
Exhibit I	Staffing Plan and Billing Rates for Preconstruction Services
Exhibit J	Construction Manager's Staffing Plan
Exhibit K	Badging Requirements
Exhibit L	Form of Bonds
Exhibit M	Dispute Avoidance Panel
Exhibit N-1	Form of Construction Manager's Interim Affidavit
Exhibit N-2	Form of Subcontractor's Interim Affidavit
Exhibit N-3	Form of Construction Manager's Final Affidavit
Exhibit N-4	Form of Subcontractor's Final Affidavit
Exhibit O-1	Progress Payment Lien Waiver
Exhibit O -2	Final Lien Waiver
Exhibit P	IGMP Assumptions and Clarifications

ARTICLE 13
SUCCESSORS AND ASSIGNS

13.1 It is expressly understood and agreed that this Agreement is personal to the Owner and that the Construction Manager will have no right, power or authority to assign or delegate this Agreement or any portion thereof, either voluntarily or involuntarily, or by operation of law.

13.2 The Construction Manager shall not assign, mortgage, pledge or transfer this Agreement without the prior written consent of the Owner. If the Construction Manager is a partnership or joint venture, a transfer of any interest of a general partner or joint venturer, a withdrawal of any general partner or joint venturer from the partnership or joint venture, or the dissolution of the partnership or joint venture shall be deemed a transfer of this Agreement. If the Construction Manager is a corporation, (i) any merger, consolidation, or other reorganization of the Construction Manager or sale or other transfer of a percentage of capital stock of the Construction Manager which results in a change of controlling persons, or (ii) any dissolution, sale or other transfer of substantially all of the assets of the Construction Manager, shall be deemed a transfer of this Agreement.

ARTICLE 14
SPECIAL PROVISIONS

14.1 Construction Manager shall cooperate with the Program Manager as Owner's representative for the Project.

14.2 Construction Manager's records for the services performed pursuant to this Agreement shall include detail and information sufficient to allocate all amounts invoiced to Owner among the various funding sources for the Project in accordance with procedures established by Owner and the Program Manager. Construction Manager's invoices to Owner shall show such allocations and shall include the level of detail and backup required by Owner and the Program Manager.

14.3 Construction Manager and its personnel shall at all times comply with the Sensitive Security Information Requirements attached hereto as Exhibit D.

14.4 Intentionally Deleted.

14.5 Attornment. Upon any termination of the Lease or the Second Addendum, the County may elect one of the following, and Owner and Construction Manager hereby consent to such election:

14.5.1 Upon written notification by the County to Owner, Owner will cause the assignment of this Agreement to the County, and Construction Manager will accept such assignment and continue to be bound by the terms of this Agreement; or

14.5.2 If the County desires to utilize another entity to complete the Project, then this Agreement shall terminate on such date as is specified in the County's written notice to that effect to Construction Manager and Owner.

14.6 CBE Program. The CBE Program, which is implemented under the Broward County Business Opportunity Act of 2012 (Broward County Ordinance No. 2012-33 as may be amended from time to time), referred to as the "Act," provides for the establishment and implementation of CBE participation goals, initiatives, and other opportunities for County contracts. In performing the Work, Construction Manager agrees to comply with all applicable requirements of the CBE Program in accordance with the requirements of the Second Addendum, which requirements are incorporated into this Agreement by reference. Such provisions, include, without limitation, the following:

14.6.1 The CBE participation goal established by the Broward County Office of Economic and Small Business Development ("OESBD") for the Project is fifteen percent (15%). Construction Manager commits to using good faith efforts to comply with these goal requirements of the County's CBE Program.

14.6.2 Construction Manager acknowledges that subcontract awards to CBE firms are crucial to the achievement of the Project's CBE participation. Construction Manager understands that each CBE firm utilized on the Project to meet the participation goal must be certified by OESBD. In an effort to assist the County in achieving its established goal for the Project, Construction Manager agrees to make good faith efforts to meet the committed CBE participation.

14.6.3 Construction Manager shall provide OESBD executed Letters of Intent to which Construction Manager will be bound for the duration of this Agreement. The Letters of Intent must be submitted and approved by OESBD prior to the issuance of any Notice to Proceed for any Construction Services.

14.6.4 A certified CBE listed as a Subcontractor in the Letters of Intent may not be terminated for convenience without the County's prior written consent, which consent shall not be unreasonably withheld. Construction Manager shall inform Owner promptly when a CBE firm is not able to perform or if Construction Manager believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify that good faith efforts are being made to substitute the CBE firm with another CBE firm. When a certified CBE Subcontractor is terminated for any reason, including for cause, Construction Manager shall, with notice to and concurrence of OESBD, make good faith efforts to substitute another CBE firm in order to meet the level of CBE participation provided herein. Such substitution shall not be required in the event the termination results from County or Owner changing the Scope of Work hereunder and there is no available CBE to perform the new Scope of Work.

14.6.5 Construction Manager shall enter into formal contracts with the CBE firms selected to fulfill the CBE participation goal for this Second Addendum and provide copies of their contracts with such firms to the County and OESBD upon request by Owner.

14.6.6 Construction Manager shall allow County and Owner to engage in on-site reviews to monitor Construction Manager's progress in achieving and maintaining its contractual and CBE Program obligations. Such review and monitoring shall be by OESBD in conjunction with the County. Construction Manager shall allow County to have access, without limitation, to Construction Manager's books and records related to the Project, including payroll records, tax returns and records, and books of account, on five (5) Business Days' notice, to allow County to determine Construction Manager's compliance with its commitment to the CBE participation goal and the status of any CBE firm performing any portion of the Work for the Project.

14.6.7 Construction Manager agrees to furnish monthly reports regarding CBE compliance to the Owner with its pay requests. The submission of the report required by this subsection shall be a condition of payment to Construction Manager. The monthly reports shall be submitted on the form attached to the Second Addendum or such other form required by County or Owner. The first report shall be due at the end of the first month after execution of this Agreement.

14.6.8 Construction Manager agrees that nonpayment of a CBE contractor, Subcontractor or supplier, as required by this Agreement, shall be a material breach of this Agreement and that Owner may, at its option, increase allowable retainage or withhold progress payments unless and until Construction Manager demonstrates timely payments of sums due to such contractor, subconsultant, subcontractors or suppliers. Construction Manager agrees that the presence of a "pay when paid" provision in a contract with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this Section shall not be employed when Construction Manager demonstrates that failure to pay results from a bona fide dispute with the CBE contractor, subconsultant, subcontractor or supplier. If Construction Manager fails to comply with the requirements of this Section or the requirements of the Broward County Business Opportunity Act of 2012, Owner shall have the right to exercise any other right or remedy provided in this Agreement, or under applicable law, rules, or regulations, with all such rights and remedies being cumulative.

14.7 Venue. The venue for a dispute arising under this Agreement shall lie in Broward County, Florida, and Owner and Construction Manager hereby waive any rights they may have to a trial by jury in furtherance of expediting resolution of any such disputes.

14.8 No Verbal Instructions. Construction Manager may not rely upon verbal instructions or suggestions furnished by Owner or its employees, agents, or representatives. Only written modifications to this Agreement will be binding.

14.9 No liens. In addition and not in lieu of any other provisions regarding liens hereunder, no liens shall attach to any property interest held by the County.

14.10 No Unilateral Changes. There shall be no changes to this Agreement provisions, scope of the work, time of performance, or contract sum except by Change Order executed by Owner and Construction Manager and, if required, approved by the County.

14.11 Maintenance of Traffic. Prior to commencement of construction, Construction Manager shall submit to Owner and County for approval a Maintenance of Traffic plan showing traffic flow, signage, and barriers protecting and separating the area(s) around the construction and any phasing of the Maintenance of Traffic plan including a phasing schedule.

14.12 Badging Requirements. Construction Manager and all Subcontractors working on the Project requiring access to the secure areas of the Airport shall satisfy all Security and Badging requirements identified in Exhibit K.

14.13 Surety Bonds. Construction Manager shall provide the performance bond and payment bonds attached as Exhibit L in the names of Owner and County in the full amount of the Contract Sum in accordance with the requirements of Section 255.05, Florida Statutes.

14.14 Public Art. Construction Manager shall cooperate in the incorporation of Public Art into the Project, in accordance with Section 1-88 of the Broward Code of Ordinances, and applicable County Administrative Code provisions.

14.15 Nondiscrimination. Construction Manager shall comply and shall require its Subcontractors to comply with the nondiscrimination provisions of Exhibit H.

14.16 Discriminatory Vendor List; Scrutinized Companies List. By execution of this Agreement, Construction Manager represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes), or the Scrutinized Companies with Activities in Sudan or in the Iran Petroleum Energy Sector Lists (as provided in Section 215.473, Florida Statutes). An untrue representation of the foregoing may result in Owner's termination of this Agreement.

14.17 Dispute Avoidance Panel. The provisions of Article 15 of the Second Addendum are incorporated into this Agreement by reference, and Construction Manager agrees to abide by such provisions, which are set forth on Exhibit M attached hereto and made a part hereof.

14.18 Prevailing Wages. In accordance with Section 26-5 of the Broward County Code of Ordinances, Construction Manager agrees that the rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices employed by the Construction Manager or any subcontractor shall not be less than the prevailing rate of wages and fringe benefit payments for similar skills or classifications of work as determined by the United States Secretary of Labor and as published in the Federal Register at the time the contract is bid. Construction Manager shall post notice of this requirement at the site of the Work in a prominent place where it can be easily seen by the workers.

14.19 Compliance with Laws. Construction Manager shall keep informed of and obey all federal, state, County and local laws, ordinances, codes, rules, and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect the Work to be performed by Construction Manager under this Agreement.

14.20 Drug Free Workplace. Construction Manager certifies that it has established a drug-free workplace in accordance with Chapter 21.31(a) of the Broward County Procurement Code.

14.21 Domestic Partnership. By execution of this Agreement, Construction Manager certifies that it has met the requirements of, or is exempt from, the Broward County Domestic Partnership Act, as codified in Section 16 ½-157 of the Broward County Code of Ordinances.

14.22 Truth-In-Negotiation Certificate. The signature of Construction Manager on this Agreement shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation paid under the Construction Contract are accurate, complete, and current at the time of contracting. The Cost of the Work shall be adjusted to exclude any significant sums by which the County determines the Cost of the Work was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

14.23 No Contingent Fees. Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Construction Manager, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Construction Manager, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, Owner shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract sum, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

14.24 Public Entity Crimes Act. By execution of this Agreement, Construction Manager certifies its compliance with Florida's Public Entity Crimes Act (Section 287.133, Florida Statutes), which provides that a Construction Manager, consultant, or other provider which has been placed on Florida's convicted vendor list following a conviction for a "public entity crime" may not bid or propose on, or contract for, a public works project for thirty-six (36) months from the date of placement on the convicted vendor list. An untrue representation of the foregoing shall result in the termination of this Agreement and recovery of all monies paid to Construction Manager hereunder.

14.25 No Conflicts. Until the Project is complete, the directors and officers of Construction Manager shall not:

14.25.1 Serve as an expert witness in any capacity against the County or Owner in any legal or administrative proceeding in which they are not a party;

14.25.2 Perform consulting or other services that would in any way be in conflict with, or detrimental to, the Project, or for any municipality, developer, tenant or landowner developing or having property within the Airport boundaries, including such additional property that may be acquired to implement Airport development. At least ten (10) calendar days prior to undertaking any services for any of the listed entities, Construction Manager shall provide Contract Administrator with a written description of the contemplated services, and the Contract Administrator shall promptly advise as to whether such services would be detrimental to, or in conflict with, the Project; or

14.25.3 Have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with the loyal and conscientious exercise of judgment and care related to performance of the Work for the Project.

None of the provisions of this Paragraph shall restrict in any way any officers or directors of Construction Manager from acting as required by judicial process or from acting on behalf of Construction Manager in any legal or arbitration proceeding in which Construction Manager is involved pertaining to any agreement between Construction Manager and Owner or County as of the effective date of this Agreement.


14.26 County Delay; County Approval. If and to the extent that payment of any sums hereunder by Owner or any other action of Owner hereunder is delayed due to an action or inaction of the County (e.g. a failure of the County to properly reimburse under the Second Addendum or approve a Change Order or other item over which it has approval rights under the Second Addendum), such delay shall not be considered a default of Owner hereunder so long as it is diligently pursuing a response from the County. Wherever Owner's approval is required hereunder, such event may also require the approval of the County as and to the extent required under the Second Addendum. Construction Manager and Owner acknowledge and agree that certain provisions set forth herein (including without limitation, certain modifications in Articles 8, 9, and 10 hereof) have been revised from the provisions set forth in Exhibit J and elsewhere in the Second Addendum and that Owner and County may elect to enter into an amendment or

modification to the Second Addendum modifying the Second Addendum to conform and/or ratify such revisions. If Owner and/or County believe that an amendment to the Second Addendum is required, Owner shall use commercially reasonable efforts to enter into such an amendment or modification with the County. If Owner and County do not enter into any such amendment or modification that Owner and/or County believes is required on or before the date that Construction Manager, Owner, and County approve the FGMP Change Order, Owner shall be entitled to, in its sole and absolute discretion, at any point thereafter until such time as such amendment or modification is entered (a) terminate this Agreement upon seven (7) days' prior written notice to Construction Manager (provided that Owner shall pay or cause to be paid Construction Manager the portion of the Preconstruction Services, Cost of Work, and Fee properly allocable to the portion of the Work completed by Construction Manager, minus the aggregate of previous payments made by Owner to Construction Manager under this Agreement), or (b) negotiate with Construction Manager to revise this Agreement to conform to the Second Addendum as it is as of the date hereof (provided that if the parties cannot reach an agreement within a reasonable time period as determined by Owner, Owner may terminate this Agreement upon seven (7) days' prior written notice to Construction Manager provided that Owner pays or causes to be paid Construction Manager as set forth in (a) above).

This Agreement entered into as of the day and year first written above.

OWNER: DELTA AIR LINES, INC.

**CONSTRUCTION MANAGER: TURNER
CONSTRUCTION COMPANY**

By: 
Name: Wayne Aaron
Title: Senior Vice President


By: 
Name: David C. Robinson
Title: Vice President & General Manager



Exhibit A
General Conditions



**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
BETWEEN
DELTA AIR LINES, INC. AND TURNER CONSTRUCTION COMPANY**

Delta contract number: CW2315976

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ARTICLE 1 – CONTRACT DOCUMENTS

1.1 DEFINITIONS

- 1.1.1 These General Conditions supplement the Construction Agreement between the Owner and the Construction Manager (“Agreement”). Capitalized terms herein shall have the meaning defined in the Agreement. Other capitalized terms have the meanings ascribed to them herein.

1.2 THE CONTRACT DOCUMENTS

- 1.2.1 The Contract Documents are as enumerated in the Agreement. The Contract Documents may be modified or amended only as provided in the Agreement and herein.

1.3 THE CONTRACT

- 1.3.1 The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral.

1.4 THE WORK

- 1.4.1 The Work comprises the completed construction required by the Contract Documents and includes all labor and services necessary to produce such construction and all materials and equipment incorporated or to be incorporated in such construction.

1.5 EXECUTION, CORRELATION AND INTENT

- 1.5.1 Not less than two (2) sets of the Contract Documents shall be signed by the Owner and Construction Manager as provided in the Agreement.
- 1.5.2 Execution of the Contract by the Construction Manager is a representation that the Construction Manager has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
- 1.5.3 If any errors, inconsistencies, or omissions in Contract Documents are recognized by the Construction Manager, any member of its organization, or any of its Subcontractors, the Construction Manager shall notify the Program Manager and Architect in writing of such error, inconsistency, or omissions. Such notification shall be in the form of a Request for Information (“RFI”) and the Architect shall respond in a prompt manner. Should the Specifications and Drawings fail to particularly describe the product or kind of goods to be used in any place, then it shall be the duty of the Construction Manager to make inquiry of the Architect via an RFI for what is best suited.
- 1.5.4 Where references are made in the Contract Documents to standard specifications, codes and similar documents issued by the United States government, state or local authorities, or professional and industrial societies and associations, the applicable portions thereof shall govern as fully as if they were included in their entirety herein and shall include all revisions as of the date of bid(s) solicited by Construction Manager for portions of the Work, except to the extent that said standards or requirements may be in conflict with applicable laws, ordinances or regulations. Applicable federal and state laws, rules and regulations of all agencies and authorities having jurisdiction over construction of the Work shall apply as if included herein.
- 1.5.5 Words and phrases which have well-known technical or trade meanings are used in the Contract Documents in accordance with such meanings, unless specifically defined in the Contract Documents.
- 1.5.6 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings, shall not control the Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.6 COMMUNICATIONS

- 1.6.1 The Construction Manager shall conduct all communications consistent with a Project Communications Plan established by the Program Manager, as referenced in the Procedures Manual. The Program Manager is responsible for approval of this document and no changes will be made to the approved plan without prior written approval of the Program Manager.

ARTICLE 2 – ARCHITECT AND PROGRAM MANAGER

2.1 ADMINISTRATION OF THE CONTRACT

- 2.1.1 The Program Manager will provide administration of the Contract. Construction Manager acknowledges and agrees that the County has contracted for the Architect's services and the Owner shall not be responsible or liable for any failure of the County to cause the Architect to perform under the agreement between the County and the Architect (except to the extent caused by Owner's negligence or willful misconduct). Owner's responsibility with respect to the Architect shall be to request that the County require the Architect to perform under the agreement between the County and the Architect.
- 2.1.2 The Program Manager will be the Owner's representative during construction until the Owner makes final payment to the Construction Manager. Communications between the Owner and the Construction Manager shall be forwarded through the Program Manager unless otherwise requested by Owner.
- 2.1.3 The Program Manager will visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of these on-site observations, the Program Manager will keep the Owner informed of the progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work of the Construction Manager.
- 2.1.4 Neither the Program Manager nor the Architect will be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Construction Manager's failure to carry out the Work in accordance with the Contract Documents. Neither the Program Manager nor the Architect will be responsible for or have control or charge over the acts or omissions of the Construction Manager, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.
- 2.1.5 The Program Manager and the Architect shall at all times have access to the Work wherever it is in preparation and progress and shall comply with the Project Safety Manual and/or Program, or such other reasonable safety rules or regulations instituted by the Construction Manager, during such visits to the site of the Work. The Construction Manager shall provide facilities as detailed in the Drawings and Specifications for such access so the Program Manager's and the Architect's functions under the Contract Documents may be performed. Any Project Safety Manual or Program shall comply with the Count's safety requirements.
- 2.1.6 Based on the Program Manager's observations and evaluation of the Construction Manager's Applications for Payment, the Program Manager will determine the amounts owing to the Construction Manager and will issue Certificates for Payment in such amounts, as provided in the Agreement. .
- 2.1.7 Owner will request that County ask the Architect to render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limits agreed upon.
- 2.1.8 It is the intent of Owner that all interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.
- 2.1.9 The Architect and Program Manager will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect or Program Manager considers it necessary or advisable for the implementation of the intent of the Contract Documents, such party will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.5.2 whether or not such Work be then fabricated, installed or completed. However, neither the such party's authority to act under this Subparagraph

- 2.1.9, nor any decision made in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of such party to the Construction Manager, Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 2.1.10 The Architect will review and approve or take other appropriate action upon Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay in the progress of the Work. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.1.11 The Program Manager will prepare Change Orders and obtain Owner's, Architect's and BCAD's approval prior to issuing any Change Order.
- 2.1.12 At the written request of the Construction Manager, the Program Manager will conduct inspections to determine the dates of Substantial Completion and Final Completion, which will be subject to confirmation by County, Architect and Owner. Program Manager will receive and forward to the Owner for the Owner's review and approval written warranties and related documents required by the Contract and assembled by the Construction Manager, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 8.4 herein. Such certificates shall be advisory only.
- 2.1.13 The duties, responsibilities and limitations of authority of the Architect and the Program Manager during construction as set forth in the Contract Documents will not be modified or extended without written direction of the Owner and the consent of County, the Architect or the Program Manager, as applicable, in accordance with the Owner's contract agreements with those parties.
- 2.1.14 In case of the termination of the employment of the Architect or the Program Manager, the Owner shall appoint an architect or program manager whose status under the Contract Documents shall be that of the former architect or program manager.

ARTICLE 3 – OWNER

3.1 DEFINITION

- 3.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- 3.2.1 The Owner, through the the Program Manager, shall furnish surveys describing physical characteristics, legal limitations and, if applicable, records of utility locations for the site of the Project.
- 3.2.2 [intentionally deleted]
- 3.2.3 The Owner shall disclose, to the extent known to the Owner and in its possession (or that can be reasonably obtained), results and reports of prior tests, inspections, or investigations conducted by the Owner or at the Owner's direction for the Project involving structural or mechanical systems; chemical, air, and water pollution; or Hazardous Materials or other environmental subsurface conditions.
- 3.2.4 The Construction Manager shall be entitled to reasonably rely, subject to its professional judgment and experience, on the documentation provided by the Owner pursuant to Paragraphs 3.2.1 and 3.2.3 hereof.
- 3.2.5 Unless otherwise provided in the Contract Documents, the Construction Manager will be furnished, free of charge, three (3) sets of Drawings and Specifications, including one (1) reproducible set.
- 3.2.6 The Owner may forward instructions to the Construction Manager through the Program Manager.

3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 8 and 10, respectively.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Construction Manager fails to correct defective Work as required by Paragraph 12.2 or persistently fails to carry out the Work in accordance with the Contract Documents, and fails to initiate correction of such condition within seven (7) days of receipt of written notice from the Owner, the Owner, by a written order signed by the Owner, may order the Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or any other person or entity.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven (7) days following receipt by the Construction Manager of an additional written notice and, without prejudice to any other remedy the Owner may have, make good such deficiencies. In such case, an appropriate Change Order or Construction Change Directive shall be issued deducting from the payments then or thereafter due the Construction Manager the cost of correcting such deficiencies, including compensation for the Architect's and Owner's representatives' additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Owner.

ARTICLE 4 – CONSTRUCTION MANAGER

4.1 DEFINITION

4.1.1 The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term Construction Manager means the Construction Manager and the Construction Manager's authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Construction Manager shall carefully review the Contract Documents and shall at once report to the Program Manager any error, inconsistency or omission discovered for their timely action. The Construction Manager shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention. The Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.3.2 The Construction Manager shall be responsible to the Owner for the acts and omissions of the Construction Manager's employees, Subcontractors, Suppliers, and their agents and employees, and other persons performing any of the Work.

4.3.3 The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Program Manager or Architect, or by inspections, tests or approvals required or performed by persons other than the Construction Manager.

4.4 LABOR AND MATERIALS

- 4.4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.
- 4.4.2 The Construction Manager shall at all times enforce strict discipline and good order among the Construction Manager's employees and those of Subcontractors of all tiers and shall not employ on the Work any unfit person or anyone not skilled in the task assigned.

4.5 WARRANTIES

- 4.5.1 The Construction Manager warrants to the Owner that all materials and equipment furnished under this Contract will be new, unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective or nonconforming. If required by the Program Manager or Architect, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 12.2. The Construction Manager shall develop a schedule of warranties for materials and equipment, and such warranties shall be for a period of not less than two (2) years from the date of beneficial use of a Project Element.
- 4.5.2 In addition to the foregoing stipulations, the Construction Manager shall comply with all other guarantees referred to in any portion of the Contract Documents, the more stringent requirement governing.

4.6 TAXES

- 4.6.1 The Construction Manager shall pay all taxes, consumer, use and other similar taxes for the Work or portions thereof provided by the Construction Manager which are legally enacted at the time bids are received, whether or not yet effective. The Construction Manager warrants that it is fully licensed to perform the Work and to collect for payment, state and local taxes related to the Work.

4.7 PERMITS, FEES AND NOTICES

- 4.7.1 Unless otherwise provided in the Contract Documents or paid for directly by the County, the Construction Manager shall secure and pay for the building permit and for all other construction-related non-discretionary permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received.
- 4.7.2 The Construction Manager shall give all notices and comply with and observe and cause its Subcontractors to comply with and observe all laws, ordinances, codes, rules, regulations, decrees, and lawful orders of any public authority required for the performance of the Work and completion of its duties, responsibilities, and obligations under this Contract.
- 4.7.3 If the Construction Manager observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes and regulations in any respect, the Construction Manager shall promptly notify the Architect and the Program Manager in writing, and any necessary changes shall be accomplished by appropriate modification. Construction Manager shall use commercially reasonable efforts to ascertain any such non-conformity or violation.
- 4.7.4 If the Construction Manager performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, the Construction Manager shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.8 SUPERINTENDENT

4.8.1 The Construction Manager shall employ a competent English-speaking superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work until Final Completion.

4.9 DOCUMENTS AND SAMPLES AT THE SITE

4.9.1 The Construction Manager shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked continuously (but no less often than once per month) to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Owner, Program Manager and Architect and shall be delivered to the Owner upon completion of the Work.

4.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.10.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Construction Manager or any Subcontractor, manufacturer, Supplier or distributor to illustrate some portion of the Work.

4.10.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Construction Manager to illustrate a material, product or system for some portion of the Work.

4.10.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.10.4 The Construction Manager shall review, approve and submit to Program Manager, with reasonable promptness and in such sequence as to cause no delay in the Work, or in the work of the Owner or any separate Contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents. The Owner or any separate Contractor shall review, approve and submit to County, Shop Drawings, Product, Data and Samples required for the performance of the Work with reasonable promptness and in such sequence as not to delay the Work. Architect approved Shop Drawings, Product Data, and Submittals shall be considered Contract Documents.

4.10.5 By approving and submitting Shop Drawings, Product Data and Samples, the Construction Manager represents that the Construction Manager has determined and verified all materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Architect shall not be relieved of responsibility for review, approval, or any deviation from the requirements of the Contract Documents by the Construction Manager's approval of Shop Drawings. Notwithstanding anything to the contrary herein, the Construction Manager shall not be responsible for the errors or omissions of the Architect or its subconsultants as it relates to their review and approval process; provided, however, that the foregoing does not serve to limit any express obligations of Construction Manager hereunder.

4.10.6 The Construction Manager shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or Samples unless the Construction Manager has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Construction Manager shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's approval thereof.

4.10.7 The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.

4.10.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect. All such portions of the Work shall be performed in accordance with approved submittals.

4.11 USE OF SITE

4.11.1 The Construction Manager shall confine operations at the site to areas permitted by the Owner and by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment.

4.12 CUTTING AND PATCHING OF WORK

4.12.1 The Construction Manager shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.12.2 The Construction Manager shall not damage or endanger any portion of the Work or the work of the Owner or any separate Contractor by cutting, patching or otherwise altering any work, or by excavation. The Construction Manager shall not cut or otherwise alter the work of the Owner or any separate Contractor except with the written consent of the party affected. The Owner or any separate Contractor shall not unreasonably withhold from the Construction Manager the Owner's or any separate Contractor's consent to cutting or otherwise altering their work.

4.12.3 The Owner or any separate Contractor shall not damage or endanger any portion of the Work by cutting, patching, or otherwise altering any Work, or by excavation. The Owner or any separate Contractor shall not cut or otherwise alter the Work of the Construction Manager except with the written consent of the Construction Manager. The Construction Manager shall not unreasonably withhold from the Owner or any separate Contractor the Construction Manager's consent to cutting or otherwise altering the Work.

4.13 CLEANING UP

4.13.1 The Construction Manager at all times shall keep the premises free from accumulation of waste materials and rubbish caused by operations under the Contract Documents. At the completion of the Work, the Construction Manager shall remove all waste materials and rubbish from and about the Project as well as all the Construction Manager's tools, construction equipment, machinery and surplus materials.

4.13.2 If the Construction Manager fails to clean up the premises of the Work, and fails to do so within twenty-four (24) hours of receipt of notice from the Owner or the Program Manager, the Owner may do so and the reasonable cost thereof shall be charged to the Construction Manager.

4.14 COMMUNICATIONS

4.14.1 The Construction Manager shall forward all communications to the Owner through the Program Manager.

4.15 ROYALTIES AND PATENTS

4.15.1 The Construction Manager shall include in the FGMP and the IGMP payment for any known royalties and license fees. The Construction Manager shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified in the Contract Documents, but if the Construction Manager has reason to believe that the design, process or product specified is an infringement of a patent, the Construction Manager shall be responsible for such loss unless the Construction Manager promptly gives such notice to the Architect.

4.16 INDEMNIFICATION

4.16.1 To the fullest extent permitted by law (including, without limitation, F.S.A. § 725.06), the Construction Manager shall indemnify, defend and hold harmless the Owner and Owner's officers and employees (each, an "Owner Indemnified Party") from and against any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional misconduct of Construction Manager or any person employed or utilized by Construction Manager in the performance of the Work. The indemnification obligations of this Paragraph shall survive termination or expiration of the Contract.



To the fullest extent permitted by law (including, without limitation, F.S.A. § 725.06), the Construction Manager shall indemnify, defend and hold harmless the County and County's officers and employees (each, a "County Indemnified Party"; together with the Owner Indemnified Parties, the "Indemnified Parties") from and against any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional misconduct of Construction Manager or any person employed or utilized by Construction Manager in the performance of the Work. The indemnification obligations of this Paragraph shall survive termination or expiration of the Contract.

4.17 LABOR

4.17.1 The Construction Manager and Owner agree that they each will employ, directly or indirectly, in connection with the Project only labor which can work in harmony with that being employed by the other party, and other tenants at the Project site. Neither the Construction Manager nor the Owner will employ or permit the use of labor in connection with the Project or otherwise take any action which might result in a labor dispute involving personnel performing work or providing services at the Project site. Further, in the event of any such interference or conflict, the Construction Manager or the Owner, upon written demand of the other, shall cause such contractors, mechanics, or laborers causing such interference or conflict to leave the Project site immediately. In the event that the Owner or the County determines that it is necessary for public safety or the efficient operation of the Airport to post police details or to take such other actions solely as the result of the inability of the Construction Manager's employees, Subcontractors, or other parties performing the Work for or under the Construction Manager to work in harmony with other elements of labor employed at the Project site, the Construction Manager shall reimburse the Owner and/or the County for all reasonable costs incurred in doing so. Notwithstanding anything contained herein to the contrary, Construction Manager recognizes that Owner and its subtenants at the Project Site will continue to operate air transportation businesses and other businesses supporting air transportation at the Project Site during the Project and that neither Owner nor its subtenants shall have any obligation or duty to make changes to the contractors, mechanics or laborers that they employ at the Airport to support the air transportation business conducted at the Airport. It will be the responsibility of the Construction Manager and the Owner to ensure that their respective contractors, mechanics and laborers employed at the Project Site in connection with the Project can work at the Project Site in harmony with the contractors, mechanics and laborers engaged in servicing and supporting air transportation business at the Project Site.

ARTICLE 5 – SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Construction Manager to perform any of the Work. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or a Subcontractor's authorized representative. The term Subcontractor does not include any separate contractor or subcontractor of a separate contractor, unless the context reasonably require otherwise. The selection of Subcontractors and material or equipment Suppliers shall be made as follows:

5.2 SELECTION OF SUBCONTRACTORS

5.2.1 The Construction Manager shall prequalify Subcontractor candidates and competitively bid all subcontract Work in accordance with Paragraph 5.3 hereof unless approved by County and Owner.

5.2.2 The Construction Manager shall award no portion of the Work to any company or firm owned by or related to the Construction Manager without the prior written approval of the Owner. Companies owned or related to the Construction Manager, or any member of the Construction Manager joint venture (affiliates), approved to perform Work by the Owner, are not entitled to include home-office or field-office overhead markup on such Work.

5.3 PREQUALIFICATION AND BIDDING REQUIREMENTS AND PROCEDURES



- 5.3.1 The Construction Manager will issue a Request for Qualifications to at least three (3) firms to submit their qualifications to provide construction services for the Project. Interested firms shall complete the pre-qualification documentation and submit same to the Construction Manager. The Construction Manager shall prepare an evaluation of each response. The Owner and the Construction Manager shall then participate in finalizing the list of pre-qualified firms that will be invited to bid. Pre-qualification, bidding and award of subcontracts shall be in accordance with this Article, the Procedures Manual and any procurement requirements of the County.
- 5.3.2 In the Request for Qualifications, the general scope of Work and the Project duration will be specified. Once a list of pre-qualified firms is determined, then the Construction Manager shall issue invitations to bids to the pre-qualified firms.
- 5.3.3 During the process of determining the list of pre-qualified firms, the references and sureties of interested firms will be contacted, and records of correspondence, phone calls and other communications relative to evaluation will be kept to compile information about the firm's qualifications. All of the foregoing shall be done by the Construction Manager.
- 5.3.4 The Owner, Program Manager, and the Construction Manager will review the documentation submitted. Based on the evaluation, firms meeting qualification criteria will be pre-qualified to bid on portions of the Work as they are released for bid. The Construction Manager shall furnish such firms with the documents needed to bid on the applicable portion(s) of the Work; provided, however, that prior to providing such documentation to such firms, Construction Manager shall provide such documentation to Owner and Program Manager for review in accordance with Section 5.8.3 of the Agreement.
- 5.3.5 Construction Manager shall use commercially reasonable efforts to obtain bids from at least three (3) pre-qualified bidders; provided, however, that the Construction Manager may obtain bids from fewer than three (3) proposers if fewer than three (3) proposers submit proposals, or if fewer than three (3) proposers were deemed qualified by Construction Manager, Owner, and Program Manager. Bids received by the Construction Manager from pre-qualified bidders will be opened and reviewed in a private session which representatives from the Owner and/or the Program Manager and County, if County elects to attend, and the Construction Manager will attend. The Construction Manager shall have the primary responsibility for conducting the session. The Construction Manager shall prepare a bid tabulation. The bid tabulation may be evaluated by some or all of the Owner, the Program Manger, County, and the Architect. In order to reduce Project costs and accurately evaluate bids, the Construction Manager shall have the right to negotiate scope, terms and conditions with the lowest responsive bidders prior to entering into subcontracts for the Work bid. Following negotiations with the recommended bidders, revised bids will be submitted at a set time and available for review by the Program Manager. The Owner shall have the right to review, approve and reject bids. If the recommended bidder is not the lowest responsive bidder, Construction Manager shall provide the Owner with a written explanation of the Construction Manager's recommendation for the Owner's and the County's review and approval.
- 5.3.6 The Construction Manager shall not contract with any such bidder to whom the Owner or the Architect has made reasonable objection. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has a reasonable objection.
- 5.3.7 If the Owner or the Architect has reasonable objection to any bidder, the Construction Manager shall submit a substitute to whom the Owner and the Architect has no reasonable objection, and the Final Guaranteed Maximum Price shall be increased by the reasonable difference in cost, if any, occasioned by such substitution and an appropriate Change Order shall be issued.
- 5.3.8 The Construction Manager shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.
- 5.4 SUBCONTRACTUAL RELATIONS**
- 5.4.1 By an appropriate written agreement, the Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities

which the Construction Manager, by the Contract Documents, assumes toward the Owner, the County, the Program Manager, and the Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. The Construction Manager shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Prior to execution of the Subcontract, Construction Manager shall make available, at its site office or other designated location, copies of the Contract Documents to which the Subcontractor will be bound pursuant to this paragraph 5.4. Each Subcontractor shall similarly make copies of such documents available to Sub-subcontractors.

ARTICLE 6 – WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or substantially similar General Conditions. If the Construction Manager claims that delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 [Intentionally omitted.]

6.1.3 The Owner will provide for the coordination of the work of the Owner's own forces and of each separate Contractor with the Work of the Construction Manager, who shall cooperate therewith as provided in Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITIES

6.2.1 The Owner may enter into one or more contracts with other contractors to perform portions of the Work on the site of the Work. The Project is dependent upon the timely and satisfactory execution of the Work of the Construction Manager and the work of these separate contractors, and will necessarily involve the need for the Construction Manager and these separate contractors to closely coordinate the scheduling and performance of all construction and installation activities with the PM. To this end, the Construction Manager agrees to fully coordinate the Work with the work of each separate Contractor engaged by the Owner. The Construction Manager shall coordinate its schedule and use of the Work site, including any common areas, facilities and access roads, with these separate contractors, and shall conduct and arrange the Work so as not to impede or interfere with the work of such separate contractors. Without limitation, the Construction Manager agrees to coordinate lay down and storage space for use by the Construction Manager and separate contractors, delivery schedules of vendors and suppliers, and adequate security measures for equipment and materials. The Construction Manager agrees to provide these separate contractors, through the PM, with all dependent data and requirements necessary for the satisfactory completion and integration of the work of such separate contractors with the Work, examine the drawings and specifications of the work of such contractors where necessary for the satisfactory completion of the Work. At each location where a portion of the Work to be constructed by the Construction Manager abuts a portion of the Work to be constructed or installed by a separate contractor, the Construction Manager shall take special care to ensure that such construction or installation is coordinated so as to result in a smooth junction between the two portions of the Work, without gaps or mismatches in materials, equipment, utilities, or grade. The Construction Manager shall participate with other contractors and the Owner in reviewing construction and installation schedules when directed to do so.

6.2.2 If any part of the Construction Manager's Work depends on proper execution or results upon the work of the Owner or any separate Contractor, the Construction Manager shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Construction Manager to so report shall constitute an acceptance of the Owner's or such other Contractor's work as fit and proper to receive the Construction Manager's Work, except as to defects which may subsequently become apparent.



- 6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor to the extent allowed by the relevant Contract Documents applicable to the party asserting any such claim.
- 6.2.4 Should the Construction Manager wrongfully cause damage to the work or property of the Owner, or to other work on the site or at the Airport, the Construction Manager shall promptly remedy such damage.
- 6.2.5 Should the Owner or a separate Contractor wrongfully cause damage to the Work or property of the Construction Manager, the Owner or separate Contractor shall promptly remedy such damage.
- 6.2.6 Should the Construction Manager wrongfully cause damage to the work or property of any separate Contractor, or should a separate Contractor of the Owner wrongfully cause damage to the Work or property of the Construction Manager, the Construction Manager, Owner, and the separate Contractor shall, upon due notice, promptly attempt to settle by agreement, or otherwise to resolve the dispute.

6.3 OWNER'S RIGHT TO CLEAN UP

- 6.3.1 If a dispute arises between the Construction Manager and separate contractors as to their responsibility for cleaning up, the Owner may clean up after a period of twenty-four (24) hours notice to the Construction Manager and the contractor(s) and charge the reasonable cost thereof to the party responsible therefor as the Owner shall reasonably determine.

ARTICLE 7 – MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

- 7.1.1 The Contract shall be governed by the laws of the State of Florida, without giving effect to the conflicts of laws provisions therein that would otherwise lead to the application of the law of another jurisdiction.

7.2 WRITTEN NOTICE

- 7.2.1 Any notice, consent, approval, or other communication which is provided for or required by the Contract Documents must be in writing and may be delivered in person to any party or may be sent by facsimile transmission with a copy sent contemporaneously by U.S. Mail; telegraph; reputable overnight courier; or registered or certified U.S. mail with postage pre-paid, return-receipt requested. Any such notice or other written communication shall be deemed received by the party to whom it is sent (i) in the case of personal delivery or courier delivery on the date of delivery to the party to whom such notice is addressed, (ii) in the case of facsimile transmission or telegram, one (1) business day after the date of transmission, and (iii) in the case of registered or certified mail, the earlier of the date receipt is acknowledged on the return-receipt for such notice or three (3) days after the date of posting by the United States Post Office. For purposes of such notices, the addresses of the parties shall be as follows, which addresses may be changed at any time by written notice given in accordance with this provision:

if to Owner:	<u>U. S. Mail Deliveries:</u> Delta Air Lines, Inc. Corporate Real Estate Department 877 P.O. Box 20706 Atlanta, Georgia 30320 Attention: Vice President - CRE Fax Number: (404) 715-2548	<u>Overnight Deliveries:</u> Delta Air Lines, Inc. Corporate Real Estate Department 877 1030 Delta Boulevard Atlanta, Georgia 30354-1989 Attention: Vice President - CRE Fax Number: (404) 715-2548
with a copy to:	Marc Gambrill Director of Capital Improvement and Planning Development, Broward County Aviation Department 2200 SW 45 Street Dania Beach, FL 33312	



Email:mgambrill@broward.org

with a copy to:

Staci Montefusco
Project Manager, Broward County
Aviation Department
2200 SW 45 Street
Dania Beach, FL 33312
Email: smontefusco@broward.org

if to Construction Manager:

Turner Construction Company
7235 Corporate Center Drive, Suite G
Miami, FL 33126
Attention: David C. Robinson

With a copy to:

Facsimile No.: 786.621.9155
Turner Construction Company
7235 Corporate Center Drive, Suite G
Miami, FL 33126
Attention: Jaime Saavedra
Facsimile No.: 786.621.9155

7.3 CLAIMS FOR DAMAGES

- 7.3.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any employees, agents or others for whose acts the other party is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage unless a specific time period for notice is included in the Contract Documents.

7.4 RIGHTS AND REMEDIES

- 7.4.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 7.4.2 No action or failure to act by the Owner or the Construction Manager shall constitute a waiver of any right or duty afforded either of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.5 TESTS

- 7.5.1 If the Contract Documents, construction-related laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over construction-related issues require any portion of the Work to be inspected, tested or approved, the Construction Manager shall give the the Program Manager timely notice of its readiness so they may observe such inspection, testing or approval. The Construction Manager shall bear all costs of such inspections, tests or approvals conducted by public authorities as a result of construction-related laws, ordinances, rules, regulations, codes, or orders of any public authority having jurisdiction over the Work and in effect as of the date of the Agreement or coming into effect after such date but published before such date. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.
- 7.5.2 If the Program Manager determines that any Work requires special inspection, testing, or approval which Subparagraph 7.5.1 does not include, the Program Manager will, upon written authorization from the Owner, instruct the Construction Manager by proper modification to order such special inspection, testing or approval, and the Construction Manager shall give notice as provided in Subparagraph 7.5.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Construction Manager shall bear all costs thereof, including compensation for the Program Manager's



additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.5.3 Required construction-related certificates of inspection, testing or approval shall be secured by the Construction Manager and promptly delivered by the Construction Manager to the Program Manager.

7.5.4 If the Program Manager is to observe the inspections, test or approvals required by the Contract Documents, the Program Manager will do so promptly and, where practicable, at the source of supply.

7.6 HEADINGS

7.6.1 All headings used in this Contract are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of the Contract Documents.

7.7 INTEREST

7.7.1 Payments due and unpaid hereunder within thirty (30) days after their due date shall bear interest at the Prime Rate, as published by the Wall Street Journal.

7.8 DOING BUSINESS WITH OWNER

7.8.1 In performing the Work pursuant to the Contract, Construction Manager shall comply with the principles of business ethics and conduct required of suppliers to Owner as set forth in Owner's Supplier Code of Conduct and Owner's Code of Ethics and Business Conduct, which can each be found on Owner's website, www.delta.com.

ARTICLE 8 – PAYMENTS AND COMPLETION

8.1 CONTRACT SUM

8.1.1 The Contract Price is stated in the Owner-Construction Manager Agreement and, including authorized adjustments thereto, is the maximum amount payable by the Owner to the Construction Manager for the performance of the Work under the Contract Documents. As used herein, except where the context requires otherwise, the terms "Contract Price" and "Contract Sum" shall mean the Initial Guaranteed Maximum Price (IGMP) or Final Guaranteed Maximum Price (FGMP) for the entire Work.

8.2 SCHEDULE OF VALUES

8.2.1 When the Final Guaranteed Maximum Price for the entire Work is added to this Agreement, Construction Manager shall submit a separate schedule of values for same. The schedule of values shall allocate the Final Guaranteed Maximum Price for the Work. The Construction Manager's Fee shall be shown as a single separate item. Each schedule of values shall be subject to the review and approval of the Owner, and the Program Manager and such approval shall not be unreasonably withheld, conditioned, or delayed. If, at any time, the Owner or Program Manager reasonably demonstrates that a schedule of values is unbalanced, the Construction Manager shall revise such schedule of values. Each approved schedule of values shall be used as the basis for each Application for Payment.

8.3 SUBSTANTIAL COMPLETION

8.3.1 The term "Substantial Completion" of the Work or designated portion thereof shall mean that the Architect, the Owner and the County have determined that the Work is at a level of completion in substantial compliance with the Contract Documents and permits, such that the Work has passed inspection, testing and commissioning by all regulatory agencies and the County and/or its tenants can use or operate the Project or portion thereof for its intended purpose. Construction Manager shall cause all equipment and system manuals, maintenance guides and training materials, and all required warranties, be turned over to Owner (or if requested by Owner, County) staff as a precondition of achieving Substantial Completion. Only incidental corrective work under the Punch List Items and cleaning beyond cleaning needed for the Owner's use may remain for final completion. In addition to the foregoing, Substantial Completion will not be determined to have occurred if the Owner is not also in receipt of all items required for Substantial Completion as set forth in the Second Addendum as well as the following:

- (i) any and all Certificate(s) of Occupancy, Partial, Temporary, or otherwise, as required for beneficial occupancy, except where the failure to issue such certificate(s) is due to reasons not the fault of the Construction Manager;
- (ii) a detailed list prepared by the Construction Manager listing all "Punch List Items" to be corrected and listing a time certain for the completion of such correction of each Item (which cannot exceed thirty (30) calendar days except for items that reasonably cannot be completed within such time period);
- (iii) all maintenance and operating manuals, parts lists, guarantees, warranties (including, but not limited to, manufacturer's warranties), copies of service agreements, and all other written material necessary or desirable to operate and maintain the Project, all of which shall be bound in a volume format acceptable to the Owner ;
- (iv) keys; and
- (v) all affidavits, lien waivers, lien releases, bonds, certifications and submissions required by that date by the Contract Documents.

8.3.2 When the Construction Manager considers that the Work, or a designated portion thereof, is Substantially Complete as defined in Paragraph 8.3.1 hereof, the Construction Manager shall notify the Owner and the Program Manager in writing that Construction Manager considers the Work (or designated portion thereof) to be Substantially Complete and shall prepare and submit to the Owner and the Program Manager along with such written notification all of the documents, certificates, lists (including a detailed list of Punch List Items), and other information required for Substantial Completion by Paragraph 8.3.1. Promptly after the issuance of such notice, the Construction Manager, Owner, and Program Manager shall make a joint inspection of the Work and review and supplement the detailed list of Punch List Items. Any failure by the Construction Manager, Owner, and Program Manager to include items on the detailed list of Punch List Items that is required for Substantial Completion by Paragraph 8.3.1 hereof does not alter in any way the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents.

8.3.2.1 Notwithstanding any other provision of this Agreement or the Contract Documents, the Construction Manager agrees that it shall not wait until the entire Work is nearly substantially complete to prepare a list of Punch List Items; instead, it will conduct inspections and begin to prepare such lists on an Individual Project or area-by-area basis as sufficient work is completed on an Individual Project or in an area it proposes is substantially complete to justify an initial preparation of such a list for the Individual Project or area.

8.3.3 Promptly following the Owner's actual receipt from the Construction Manager of the written notification and accompanying documents, certificates, lists, and other information contemplated by Paragraph 8.3.1 hereinabove, the Owner shall notify the Construction Manager that the Owner has determined that Substantial Completion either has, or has not, been achieved.

8.3.4 If, pursuant to Paragraph 8.3.3 hereinabove, the Owner notifies the Construction Manager that the Owner has determined that Substantial Completion has not been achieved, the Owner simultaneously shall provide to the

Construction Manager a detailed list of the reasons and/or items supporting such determination. The Construction Manager shall correct and complete the Work so as to achieve Substantial Completion and shall thereupon again notify the Owner as set forth in Paragraph 8.3.2 hereinabove. Promptly following, but no later than fourteen (14) days of the Owner's receipt of such notice, the Owner shall again make a determination as to whether Substantial Completion has been achieved and shall notify the Construction Manager of the Owner's determination with respect thereto.

8.3.5 When the Owner determines that the Work or designated portion thereof is Substantially Complete, the Owner shall notify the Construction Manager as set forth hereinabove and shall provide to the Construction Manager a list (the "Punch List") of all Punch List Items remaining to be completed or corrected. In preparing the Punch List, Owner and Program Manager may utilize some, all, or none of the list of Punch List Items submitted by the Construction Manager pursuant to Paragraph 8.3.2. hereinabove and may make any modifications and additions thereto which Owner deems necessary. The Punch List Items may be amended by Owner within thirty (30) days following the submission of the Punch List to the Construction Manager.

8.3.6 Upon Owner's notification that Substantial Completion of the Work or designated portion thereof has been achieved (said notification shall not be unreasonably withheld, conditioned, or delayed provided all conditions and requirements are met) and upon submission to Owner of an Application for Payment by the Construction Manager following Owner's notification that Substantial Completion has been achieved, the Owner shall pay Construction Manager within the time period prescribed in the Agreement, the amount of such Application verified and approved by Owner, and the Owner may make payment reflecting an adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents and permitted under the Second Addendum.

8.4 FINAL COMPLETION AND FINAL PAYMENT

8.4.1 "Final Completion" of the Work shall be achieved when: (a) the Owner notifies the Construction Manager in writing that all Punch List Items have been fully completed and corrected to the Owner's and County's satisfaction; (b) the Work, or designated portion thereof, has been fully performed in accordance with the Contract Documents; (c) all other requirements of the Contract Documents have been satisfied; (d) any and all documents required by the Contract Documents have been received by the County and Owner; (e), all required inspection and testing of the Work has been successfully passed; (f) a certificate that, to the best of the Program Manager's and Construction Manager's knowledge, information and belief, all Work required for the Project has been fully completed in all material respects in accordance with the terms and conditions of the Contract Documents and it has passed all inspections, testing and commissioning by regulatory agencies; and (g) all equipment and system manuals and guides, and all required warranties, have been turned over to County staff. However, in the event that Final Completion of one or more Punch List Items cannot reasonably be achieved within the thirty (30) calendar day time period allowed by Paragraph 8.3.1(ii), the Owner and Construction Manager will agree on a reasonable value to be withheld pending the completion of the remaining Punch List Items and the Owner will release the balance of the funds held in retainage pursuant to Paragraph 10.2.2 of the Agreement.

8.4.1.1 When the Construction Manager considers that the Work, or designated portion thereof, achieves Final Completion, it shall notify the Owner and the Program Manager in writing and shall prepare and submit to Owner, the Program Manager and Architect all of the documents, certificates and other information required by Paragraph 8.4.2 hereof.

8.4.2 Neither the final payment nor the remaining retainage shall become due until the Construction Manager submits to the Owner all of the following:

- (a) A final Application for Payment, submitted and substantiated in accordance with the requirements of the Contract Documents;
- (b) Final certificates and all other required approvals from all authorities having jurisdiction, certifying to the proper removal and disposal of all waste materials and substances of the Work in accordance with all applicable laws, statutes, orders, rules, regulations, and ordinances;

- (c) Certificates of Occupancy and any other certificates, permits, or other documents necessary or required for permanent occupancy and full use of the Project;
- (d) Final full unconditional releases of lien and affidavits from all Subcontractors and Suppliers in the forms attached to the Agreement;
- (e) A final affidavit and lien waiver from the Construction Manager in the forms attached to the Agreement;
- (f) Consent of surety company to final payment;
- (g) Intentionally deleted
- (h) A complete listing of all Subcontractors and Suppliers with business address, and items supplied, or Work performed, by such Subcontractors and Suppliers;
- (i) Copies of all test data taken, including a report satisfactory to the Owner that all mechanical systems have been and are properly balanced and a description of corrective actions taken for non-conforming work or items, if any;
- (j) All parts lists and repair source lists;
- (k) All other submissions, certifications, information, materials, or documents required by the Contract Documents; and
- (l) If required by the Owner, other reasonable data establishing payment or satisfaction of all claims or obligations, such as receipts and additional releases, to the extent and in such reasonable form as may be designated by the Owner.

8.4.3 At the completion of the Work, or designated portion thereof, and prior to release of final payment, the Owner shall have the right to review the accounting records of the Construction Manager to insure that accounts payable are current and to confirm that there are no financial liabilities related to the Work except those due in connection with final payment.

8.4.4 Upon receipt of all documents, materials and other data required under Paragraph 8.4.2 hereinabove and upon confirmation of the financial status of the Project as set forth in Paragraph 8.4.3 hereinabove, Owner shall make final payment to Construction Manager within the time period prescribed in the Agreement, provided that the Construction Manager has delivered to the Owner all of the documents, materials, and other data required under Paragraph 8.4.2 hereinabove. In the event that all of the documents, materials, and other data are not submitted by Construction Manager on the same date, said thirty-day period shall not begin to run until the last date that any such documents, materials, or data are received by Owner. The Owner shall promptly notify the Construction Manager of any missing document, material, or data.

8.4.5 The acceptance of final payment shall constitute a waiver of all claims by the Construction Manager except those previously made in writing and identified by the Construction Manager as unsettled at the time of the final Application for Payment.

ARTICLE 9 – PROTECTION OF PERSONS AND PROPERTY

9.1 SAFETY PRECAUTIONS AND PROGRAMS

9.1.1 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

9.1.2 The Construction Manager shall prepare a Project Safety Manual approved by the Owner, and such approval shall not be unreasonably withheld, conditioned, or delayed. The Construction Manager shall make such reasonable revisions to the Project Safety Manual as the Owner may request during the course of the Project. The Construction Manager and the Owner, Program Manager, and Architect to the extent applicable thereto shall, until final completion and acceptance of the Work, comply fully with all facets of the Project Safety Manual. The Construction Manager shall require by appropriate contractual language in each subcontract that each Subcontractor shall comply with same and likewise require its Sub-subcontractors to comply with same; provided, however, that the standards in the Project Safety Manual shall serve as minimum standards and, in the event any Subcontractor or Sub-subcontractor normally follows standards more stringent than those in the Project Safety Manual, they shall be allowed to follow the more stringent standards.

9.2 SAFETY OF PERSONS AND PROPERTY

9.2.1 The Construction Manager shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. all employees on the Work and all other persons who may be affected thereby including, but not limited to, customers and employees of the Owner, and Airport tenants;
2. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Construction Manager, its Subcontractors or their subcontractors of any tier; and
3. the Owner's personal property and the personal property of others, including, but not limited to, computer and communications equipment and aircraft;
4. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated in the Contract Documents for removal, relocation or replacement in the course of construction.

9.2.2 The Construction Manager shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property of their protection from damage, injury or loss.

9.2.3 The Construction Manager shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

9.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Construction Manager shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

9.2.5 The Construction Manager shall promptly remedy all damage or loss to any property caused in whole or in part by the Construction Manager, any Subcontractor, or anyone directly or indirectly employed by any of them.

9.2.6 The Construction Manager shall designate a full-time responsible member of the Construction Manager's organization at the site whose duty shall be prevention of accidents. This person shall be an experienced construction safety professional familiar with OSHA and all other standards and guidelines for worker safety. This person shall have no other collateral duties.

9.2.7 The Construction Manager shall not load or permit any part of the Work to be loaded so as to endanger its safety.

9.3 EMERGENCIES

- 9.3.1 In any emergency affecting the safety of persons or property, the Construction Manager shall act, at the Construction Manager's discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 11 for Changes in the Work.

9.4 HANDLING OR ABATEMENT OF HAZARDOUS MATERIALS

- 9.4.1 Construction Manager represents to Owner that Construction Manager is experienced, or that Construction Manager will subcontract with a Subcontractor who is experienced, in the abatement of Hazardous Materials (as defined below), including asbestos-containing materials ("ACMs"), that Construction Manager or such Subcontractor shall perform the Work in a thorough, efficient, and workmanlike manner, promptly and with due care, and in accordance with that standard of care and skill ordinarily executed by members of the professions doing similar work, that Construction Manager or such Subcontractor is aware of the dangers which Hazardous Materials pose to the environment and to the health of society, and that Construction Manager or such Subcontractor shall have trained all employees and agents as required by any applicable laws as necessary in order to safely conduct the Work before commencing the Work.
- 9.4.2 Construction Manager represents and warrants to Owner that Construction Manager, and any Subcontractor, is in full compliance with all applicable laws. Construction Manager shall perform the Work or shall cause the Work to be performed, and shall erect and maintain or cause to be erected and maintained all reasonable safeguards for safety and protection, pursuant to the Contract Documents, and in accordance with all applicable federal, state and local laws, including, but not limited to, 29 C.F.R. section 1910, 29 C.F.R. section 1926, and 40 C.F.R. section 61 and all reasonable safety and performance guidelines adopted from time to time by the Architect (it being understood that in the context of Work involving Hazardous Materials the term "Architect" shall refer to the design professional selected by Owner to prepare the plans and specifications for such Work, whether such design professional is an architect, an engineer, or other professional).
- 9.4.3 Construction Manager warrants that it will dispose or cause the disposal by its Subcontractor of all of the waste generated by the Work, including without limitation all ACMs or other Hazardous Materials, generated at the Project site as a result of the Work, in accordance with all applicable laws, and the Contract Documents.
- 9.4.4 Construction Manager and its Subcontractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
- 9.4.5 In addition to the requirements set forth in, and unless otherwise provided in, the Contract Documents, the date of final completion of the Work or designated portion thereof shall be no sooner than the date upon which the Architect determines that all of the following have occurred in accordance with the Contract Documents and all applicable laws: (a) if abatement of Hazardous Material is included in the Work, regulatory thresholds for clearance or abatement completion have been achieved, or, if there are no regulatory thresholds, testing confirms there are no adverse exposure conditions related to the Hazardous Material at the Project site after abatement has been completed.; (b) the Project site has been thoroughly cleaned and all waste materials have been removed from the Project site; and (c) clearance air monitoring has been conducted until satisfactory concentrations of airborne asbestos fibers have been reached.

9.5 HAZARDOUS MATERIALS

- 9.5.1 If Construction Manager encounters on the Project site material reasonably believed to be Hazardous Materials that were not anticipated by the Construction Documents, including without limitation ACMs in a location or condition that is not contemplated by the Construction Documents, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Owner in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and the Construction Manager if in fact the material is Hazardous Materials. The Work in the affected area shall be resumed in the absence of Hazardous Materials, or when it has been rendered harmless by written agreement of the Owner and the Construction Manager. Such written agreement may be a Change Order, which adds abatement activities to the scope of Contractor's Work, or an acknowledgement that the Hazardous Materials have been removed or rendered harmless by a third party under separate contract with the Owner.
- 9.5.2 "Hazardous Materials" shall mean, but not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any asbestos (whether or not friable) and any ACMs, lead, paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating waste, explosives, reactive metals, and compounds, pesticides, herbicides, radon gas, urea formaldehyde, foam insulation and chemical, biological and radioactive waste, or any other similar materials which are included under or regulated by any federal, state or local environmental laws.
- 9.5.3 Owner and Construction Manager acknowledge and agree that Section 7.5 of the Second Addendum contains certain obligations and releases of liability from the County to Owner, its Affiliates (as defined therein), and its Project Contractors (as defined therein) related to Hazardous Substances encountered in connection with the Project. To the extent provided in the Second Addendum and subject to the limitations contained therein, Construction Manager and Owner agree that Construction Manager may avail itself of any protection provided to it within Section 7.5 of the Second Addendum, to the extent allowed by applicable law.

ARTICLE 10 – INSURANCE AND BONDS

10.1 CONSTRUCTION MANAGER'S INSURANCE PROVISIONS

- 10.1.1 Construction Manager's Insurance Provisions. During the life of this Contract and for such additional time as may be required hereunder Construction Manager shall maintain the following insurance coverages, with an insurance company or companies satisfactory to Owner and the County for claims which may arise from and during operations under this Contract, whether such operations be by Construction Manager, its Subcontractors or anyone directly or indirectly employed by any of them. Certificates of such insurance shall be filed with Owner prior to commencing the services contemplated by this Contract (and, in the event of a claim or litigation related to the subject of this Contract, Construction Manager will provide Owner a full copy of Construction Manager's Professional Liability policy, including all endorsements), and shall provide coverage in not less than the following amounts:

Commercial General Liability	\$2,000,000 Each Occurrence \$2,000,000 Personal Injury/Advertising Injury \$4,000,000 General Aggregate \$4,000,000 Products/Completed Operations Aggregate, Per Project
Worker's Compensation	Statutory limits
Employer's Liability	\$1,000,000 Each Accident \$1,000,000 Each Employee

	\$1,000,000 Policy Limit
Automobile Liability	\$1,000,000 (or \$5,000,000 if Construction Manager will operate automobiles on the secured area of an airport) Each Accident (including owned, hired and non-owned automobiles)
Professional Liability (Errors & Omissions)	\$10,000,000 Per Claim \$10,000,000 Annual Aggregate
Excess/Umbrella Liability	\$100,000,000 Each Occurrence \$100,000,000 General Aggregate \$100,000,000 Products/Completed Operations Aggregate
Contractor's Pollution Liability	\$15,000,000 Each Occurrence \$15,000,000 General Aggregate

Without limiting the provisions hereof, in the event the Construction Manager maintains the foregoing insurance in limits greater than aforesaid, the Owner, its subsidiaries and affiliates, and the County shall be included therein as additional insured to the full extent of all such insurance in accordance with all the terms and provisions hereof.

10.1.2 The Commercial General Liability, Excess, Contractor's Pollution Liability and Automobile Liability policies shall include contractual liability, shall contain an appropriate Separation of Insureds clause insuring Owner and the County against any loss or damage to Owner or the County or their property, respectively, resulting from any acts or omissions of Construction Manager, its officers, directors, employees, agents or Subcontractors at any tier, and shall name Owner, its subsidiaries and affiliates and the County as additional insureds. The coverage provided to the additional insureds pursuant to this Article shall expressly provide that it is primary to, and non-contributory with, any insurance, whether primary, excess, contingent or on any other basis, maintained by Owner or the County (that is, Construction Manager's insurance shall exhaust vertically, and not share horizontally with any of the insurance carried by Owner or the County notwithstanding any case law to the contrary). In addition, the Commercial General Liability policy shall contain completed operations coverage throughout the greater of any applicable statutes or three years following Substantial Completion. The Commercial General Liability shall include coverage for claims arising from services within the means, methods and techniques of construction. The Workers' Compensation policy shall provide that Construction Manager and its insurers agree to waive all rights of subrogation against Owner and the County. All policies shall remain in full force and effect for at least thirty (30) days after Owner or the County receive written notice of cancellation, termination or material modification. The maximum deductible or self-insured retention for Contractor's Pollution Liability is \$250,000.00. Contractor's Pollution Liability shall include coverage for claims arising out of mold, asbestos or silica that are the result of Construction Manager's, or its Subcontractors', performance or failure to perform services under this Contract.

10.1.3 The Professional Liability policy shall include:

- .1 Any material change in limits, coverages or loss of aggregate limit due to outstanding claims must be reported to Owner within thirty (30) days of any such event.
- .2 Such policy shall be endorsed to provide written notice to Owner of cancellation or non-renewal thirty (30) days prior to the effective date of such policy changes.
- .3 Intentionally deleted.
- .4 The policy shall be effective and maintained through the entirety of the contract, without interruption, and for a minimum period of five (5) years after all services required to be performed under the Contract have been completed.

- .5 Intentionally deleted.
- .6 The policy shall have a retroactive coverage date that precedes the commencement of any services to be performed under this Contract.
- .7 coverage for claims arising from services within the means, methods and techniques of construction deleted.
- .8 The policy shall contain no policy language that would exclude pollution related claims.
- .9 The policy shall have a deductible or self-insured retention of no more than \$100,000.00 unless otherwise approved by Owner or County.

If at any time, any of the insurance policies shall be or become unsatisfactory to Owner or the County as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Owner or the County, the Construction Manager shall promptly obtain a new and satisfactory policy in replacement, Owner and the County agreeing not to act unreasonably hereunder.

The Construction Manager shall be solely responsible for any deductibles, self-insured retentions or claims handling fees arising from any insurance required to be carried by Construction Manager hereunder.

10.2 CONSTRUCTION MANAGER'S BONDS

- 10.2.1 The Construction Manager shall, before beginning the Work, provide a Performance Bond and a Labor and Material Payment Bond, each in an amount equal to the Contract Price (as defined in Paragraph 8.1.1) in the forms attached as Exhibit L to the Agreement. Such bonds shall be issued by a surety company authorized to issue surety bonds in the State of Florida and acceptable to the Owner.

10.3 BUILDER'S RISK INSURANCE

- 10.3.1 To the extent not obtained by Owner or the County, the Construction Manager shall, at its expense, effect and maintain "all risk" Builder's Risk Insurance in an amount sufficient to cover the Work being performed under any phase of the Project on a replacement cost basis, including, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, on-site materials and supplies intended for permanent use in the facilities, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss, said insurance to cover the interests of the parties hereto and to be evidenced by an appropriate Certificate of Insurance, non-cancelable without prior written notice to the Construction Manager and the Owner, a copy of which shall be furnished to the Construction Manager, prior to commencement of construction if the Construction Manager requests. Construction Manager, Subcontractors and sub-Subcontractors shall be added as named insureds. In the event of a loss, all insurance proceeds shall be payable to the Owner and used for repair or rebuilding. Notwithstanding the foregoing, Construction Manager acknowledges and agrees that the County has procured Builder's Risk insurance, and Construction Manager has reviewed and accepted the same regardless of whether it contains the foregoing. Construction Manager and Owner acknowledge and agree that the County's Builder's Risk policy does not include terrorism insurance, and Owner and Construction Manager shall use commercially reasonable efforts to work with the County to determine a mutually acceptable solution on or before the date of the FGMP Change Order.
- 10.3.2 Waivers of Subrogation. The Owner and Construction Manager waive all rights against each other and any of their respective subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 10.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner shall require of its separate contractors

performing work in connection with the Project, and the Construction Manager shall require of its Subcontractors and sub-Subcontractors, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties listed herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Owner and Construction Manager have requested that the County waive all rights of subrogation against the other party, and Owner will request such confirmation from the County in writing.

- 10.3.3 Subject to the terms and conditions of this Section, Owner shall pay the Builder's Risk deductible hereunder. Notwithstanding the foregoing, if the loss under the Builder's Risk insurance occurs and is due to the fault or neglect of Construction Manager, any Subcontractor, any Supplier (or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable), Construction Manager shall be responsible for the entire \$25,000 deductible per occurrence, and it shall not be a Cost of the Work. In addition, Construction Manager shall be responsible for the deductible for non-flood water damage due to the fault or neglect of Construction Manager, any Subcontractor, any Supplier (or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable), which deductible shall not exceed \$100,000, and it shall not be a Cost of the Work. Deductibles for named storms and flood and Builder's Risk deductible other than those set forth above shall be paid by Owner. All other deductibles and/or self-insured retentions associated with the insurance to be provided and maintained by the Construction Manager under this Agreement shall be the responsibility of the Construction Manager and shall not be paid as a Cost of the Work under this Agreement.
- 10.3.4 The Builder's Risk Insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. Notwithstanding the foregoing, Construction Manager acknowledges and agrees that the County has procured Builder's Risk insurance, and Construction Manager has reviewed and accepted the same regardless of whether it contains the foregoing.

ARTICLE 11 – CHANGES IN THE WORK

11.1 CHANGE ORDERS

- 11.1.1 Change Orders shall be issued only as provided in the Contract Documents.

ARTICLE 12 – UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

- 12.1.1 If any portion of the Work should be covered contrary to the request of the County, the Owner or the Program Manager or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner or the Program Manager, be uncovered for the the applicable party's observation and shall be replaced at the Construction Manager's expense.
- 12.1.2 If any other portion of the Work has been covered which the Owner or the Program Manager has not specifically requested to observe prior to being covered, such party may request to see such Work and such Work shall be uncovered by the Construction Manager. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to and paid by the Owner. In addition, an appropriate adjustment may be made to the Construction Schedule. If such Work be found not in accordance with the Contract Documents, the Construction Manager shall pay such costs unless it be found that this condition was caused by the Owner or a separate Contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs and the Construction Schedule may be adjusted accordingly.

12.2 CORRECTION OF WORK

- 12.2.1 The Construction Manager shall promptly correct all Work rejected by the Owner, the Program Manager, or the Architect as defective or as failing to conform to the Contract Documents observed before Final Completion and whether or not fabricated, installed or completed. The Construction Manager shall bear all costs of correcting such rejected Work, including reasonable compensation for the Architect's additional services made necessary thereby.
- 12.2.2 If, within one year after the Date of Substantial Completion of the Work, or designated portion thereof, or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, or within one year of the termination of the Agreement pursuant to Article 13 herein, any of the Work is found to be defective or not in accordance with the Contract Documents, the Construction Manager shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Construction Manager a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
- 12.2.3 The Construction Manager shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.5.1 and 12.2.2, unless removal is waived by the Owner.
- 12.2.4 If the Construction Manager fails to correct defective or nonconforming Work as provided in Subparagraphs 4.5.1 and 12.2.2, the Owner may correct it in accordance with Paragraph 3.4.
- 12.2.5 If the Construction Manager does not proceed with the correction of such defective or nonconforming Work within the time fixed by written notice under the Contract Documents, the Owner may remove it and may store the materials or equipment at the expense of the Construction Manager. If the Construction Manager does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Construction Manager, including compensation for the Architect's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Construction Manager should have borne, the difference shall be charged to the Construction Manager and an appropriate Change Order or Construction Change Directive shall be issued. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Owner.
- 12.2.6 The Construction Manager shall bear the cost of making good all work of the Owner, or separate Contractors destroyed or damaged by such correction or removal.
- 12.2.7 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Construction Manager might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Construction Manager to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to the Construction Manager's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

- 12.3.1 If the Owner prefers to accept defective or non-conforming Work, the Owner may do so instead of requiring its removal and correction, provided that the County has approved such defective or non-conforming Work, in which case a Change Order or Construction Change Directive will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 – SUSPENSION AND TERMINATION OF THE CONTRACT

13.1 [Intentionally omitted.]

13.2 SUSPENSION AND TERMINATION BY THE CONSTRUCTION MANAGER

If the Owner fails to pay the Construction Manager, through no fault of the Construction Manager, within the time payment should have been made as provided in this Agreement, the Construction Manager shall provide written notice to the Owner of such non-payment. The Owner shall have a period of ten (10) days from its receipt of such notice to make payment. If the Owner fails to so act with such ten (10) day period, the Construction Manager may cease work until payment has been received. If such period of suspension of work lasts thirty (30) days without payment from the Owner, the Construction Manager shall provide written notice to the Owner of its intention to terminate this Agreement for non-payment. The Owner shall have a period of ten (10) days from its receipt of such notice to make payment to the Construction Manager. If the Owner makes such payment, the Construction Manager shall resume Work and the Contract Price and Contract Time shall be equitably adjusted to account for the additional costs and time made necessary by reason of the suspension, subject to the limitations of other provisions of the Contract Documents. If the Owner fails to make payment within the ten (10) day period, the Construction Manager may terminate this Agreement for default and recover from the Owner payment for Work executed and for proven loss with respect to labor, materials and equipment, its Fee on same and for profit under this Agreement. It is expressly understood that the above-described time periods and notice requirements are an express condition precedent to the Construction Manager's right to suspend and terminate work under this Agreement.

13.3 TERMINATION BY THE OWNER FOR CONVENIENCE

This Agreement may be terminated by the Owner solely for its convenience upon seven (7) days written notice to the Construction Manager, without regard to cause and without regard to any failure to perform by the Construction Manager. In addition, this Agreement will be terminated immediately upon termination of the Second Addendum for any reason.

13.3.1 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Construction Manager shall:

1. Cease operations as directed by the Owner in the Notice;
2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
3. Terminate all existing Subcontractors and purchase orders and enter into no further subcontract or purchase orders for the Work.

13.3.2 Notwithstanding any other provision in the Contract Documents to the contrary, in case of such termination for the Owner's convenience, the Owner shall pay the Construction Manager for Work actually performed and in place prior to the date of termination in accordance with the most recent approved schedule of values, together with the Construction Manager's Fee on such Work. For purposes of determining Work performed and in place prior to the date of termination, the Construction Manager shall be entitled to payment for demobilization, unused equipment and materials which cannot be returned, restocking fees for equipment and materials returned to a supplier or vendor (provided that the Construction Manager shall credit the Owner for the cost of the equipment and materials so returned), and reasonable costs incurred in the termination of any subcontract or purchase order. The Construction Manager shall use its best efforts to minimize such termination expenses. The Owner shall have no further liability to the Construction Manager, and the Construction Manager shall be entitled to no damages or recovery whatsoever in excess of any compensation earned to the time of notice of termination, nor shall it be entitled to prospective profits on Work not performed or other consequential or incidental damages.

13.4 TERMINATION BY THE OWNER FOR CAUSE

- 13.4.1 If the Construction Manager is adjudged bankrupt, or if the Construction Manager makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Construction Manager refuses or fails to supply enough properly skilled workmen or proper materials, or if the Construction Manager fails to make prompt payment to Subcontractors or Suppliers for materials or labor in relation to a portion of the Work for which payment has been made to the Construction Manager (or for which payment would have been made but for the existence of a condition or conditions allowing the Owner to withhold payment under the Contract Documents), or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise materially violates any provision of the Contract Documents, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and its surety, if any, seven (7) days written notice and opportunity to cure the default or violation, terminate the Contract for cause and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager and may finish the Work by whatever method the Owner may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment from the Owner until the Work is finished.
- 13.4.2 In the event of termination of the Contract by Owner for cause, if the cost of finishing the Work, including compensation for the Architect's, the Program Manager's and the Owner's representatives' additional services made necessary thereby, exceeds the unpaid balance of the Contract Price, the Construction Manager shall pay the difference to the Owner, and this obligation for payment shall survive the termination of the Contract.
- 13.4.3 In the event of termination of the Contract by Owner for cause, if the cost of finishing the Work, including compensation for the Architect's, the Program Manager's and the Owner's representatives' additional services made necessary thereby, is less than the unpaid balance of the Contract Price, the Owner shall pay to the Construction Manager the difference or the amount calculated pursuant to Paragraph 13.4.3.1, whichever is less, and this obligation shall survive the termination of this Agreement.
- 13.4.3.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination; add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination and subtract the aggregate of previous payments made by the Owner.

ARTICLE 14 – NONDISCRIMINATION, AFFIRMATIVE ACTION, NO CONFLICTS

14.1 GENERAL REQUIREMENTS

- 14.1.1 The Construction Manager shall not discriminate by segregation or otherwise against any employee or applicant for employment because of race, color, creed, national origin, sexual orientation, age or sex, and shall undertake affirmative action measures designed to guarantee and effectuate equal employment opportunity for all persons.
- 14.1.2 The Construction Manager shall provide information and reports requested by the Owner or the County pertaining to its obligations under this Paragraph, and will permit access to its facilities and any books, records, accounts or other sources of information which may be determined by the Owner or the County to affect the Construction Manager's obligation herein.
- 14.1.3 The Construction Manager shall comply with all federal and state laws and regulations and all County regulations pertaining to civil rights and equal opportunity, including executive orders and rules and regulations of appropriate federal and state agencies, unless otherwise exempt therein. The Construction Manager is responsible to actively maintain updated County and Owner requirements and to conform to the requirements accordingly.

14.2 CONFLICTS OF INTEREST

- 14.2.1 The Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee or contract employee working solely for the Construction Manager or its consultants or subcontractors, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person,

corporation, individual or firm, other than a bona fide employee or contract employee working for the Construction Manager or its consultants or subcontractors, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability.

- 14.2.2 The Construction Manager and its consultants and subcontractors shall not solicit or accept compensation, work, a promise of future compensation or work, or other consideration in exchange for the Construction Manager's recommendation for the Owner's award of a professional services agreement, a construction contract, equipment or materials contract, or other service contracts for the Project. The Construction Manager's or its consultants or subcontractors' failure to adhere to this requirement may result in termination of this Agreement and prosecution of the failing party under applicable civil and criminal statutes.
- 14.2.3 The Construction Manager shall not hire or employ, on either a full-time or part-time basis during the term of this Agreement, any person so long as such person shall be employed by the Owner or the County. The Construction Manager hereby certifies that this Agreement is made in good faith, without fraud, and without collusion of any kind with any other consultant for the same services, and that the Construction Manager is acting solely on its own behalf without connection with, or obligation to, any undisclosed person or firm and in full compliance with all applicable conflict of interest laws. If any officer, agent or employee of the Owner or the County has a financial interest in the Construction Manager, the Construction Manager hereby agrees that its representatives shall consult with Owner's legal representatives to learn what action shall be taken to comply with the applicable conflict of interest laws.
- 14.2.4 By execution of this Agreement, the Construction Manager hereby certifies and discloses that it and its consultants and subcontractors have no financial or other interest in the execution or outcome of the Project that is the subject of this Agreement, other than as reflected by this Agreement.
- 14.2.5 All conflict of interest matters arising during the term of this Agreement shall be handled in a manner consistent with the requirements of applicable state and federal law and the Construction Manager and its consultants and subcontractors shall conduct themselves at all times in a manner that will avoid any conflict of interest.

14.3 COMPLIANCE WITH ADA AND OTHER DISABILITY ACCESS LAWS

- 14.3.1 The Construction Manager agrees that, in the performance of its work, the Construction Manager shall comply, and shall cause its Subcontractors, agents, employees, to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA") The Construction Manager shall be entitled to rely reasonably upon the Construction Documents as being in compliant with the ADA and other disability laws and shall have no liability to the Owner for the failure of the Construction Documents to comply with such laws.

14.4 NONCOMPLIANCE

- 14.4.1 The Construction Manager's material noncompliance with any of the provisions of this Article 14 shall constitute a material breach of this Agreement.
- 14.4.2 The Construction Manager shall indemnify and hold harmless the Owner from any claims and demands of third persons resulting from the Construction Manager's noncompliance with any of the provisions of this Article 14.

ARTICLE 15 – COMPLIANCE PROGRAM

- 15.0 Construction Manager shall institute and maintain an effective compliance program to ensure that the means and methods employed in the performance of the Work comply with all applicable laws, rules, regulations and procedures. Such program shall, at a minimum, include the following components:
- (a) Instituting standards and procedures that are reasonably capable of reducing the prospect of noncompliance.
 - (b) Assignment of a high-level person or persons to overall responsibility for overseeing compliance with such standards and procedures.

- (c) Exercising due care in making assignments so as to avoid delegating compliance responsibility to individuals whom the organization knows, or should know, have a propensity to engage in illegal activities.
- (d) Communication of compliance standards and procedures by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.
- (e) Establishing monitoring and auditing systems and having in place and publicizing a reporting system whereby employees and other agents can report events of noncompliance without fear of retribution.
- (f) Enforcing standards through appropriate mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect events of noncompliance.
- (g) Taking all reasonable steps to respond appropriately to events of noncompliance and preventing further similar events of noncompliance—including any necessary modification of the compliance program.

Owner may audit and review Construction Manager's compliance program at any time.

ARTICLE 16 – SECURITY

- 16.1 Construction Manager agrees that in the performance of the Work pursuant to this Agreement it is of paramount importance to maintain the security and safety of Owner's customers, County's airport tenants, County's airport customers, County's airport concessionaires, the general public and all personnel employed at the Project Site and to safeguard the security and integrity of all personal, public and Airport property. In this regard, Construction Manager agrees, in accordance with applicable laws, to take those actions necessary to accomplish this purpose, including but not limited to the actions outlined in this Article 16.
- 16.2 Employment and Access Investigations.
- (a) Construction Manager warrants and agrees that it has performed and will continue to perform all employment and access investigations required by and in accordance with federal law and Delta's Aircraft Operator Standard Security Program as approved by the Transportation Security Administration (the "TSA") as in effect from time to time, including, without limitation, the requirements of 49 U.S.C. § 44936 and the TSA's regulations promulgated pursuant thereto at 49 C.F.R. Parts 1542 and 1544, with respect to all persons hired or utilized by Contractor to perform the Work. Such employment and access investigations may include without limitation employment histories and verifications, verifications of identity, and criminal history records checks as and to the extent required by federal law.
 - (b) For all persons Construction Manager has hired or will hire who may operate a motor vehicle on the Airport Operating Area (the "AOA"), Construction Manager will also conduct a five year check of the person's state motor vehicle record and also comply with any requirements of County related to driving on the AOA.
 - (c) Required employment and access investigations shall be completed for all persons prior to Construction Manager allowing such persons "unescorted access authority," "authority to perform screening functions," or "authority to perform checked baggage or cargo functions" (as such terms are defined in 49 C.F.R. Part 1544), prior to Construction Manager allowing such persons to work in the sterile area of the Airport, and otherwise as required by and in accordance with federal law, Delta's Aircraft Operator Standard Security Program and the County's rules and regulations (said authority being referred to herein as "Special Security Authority"). Required motor vehicle record checks shall be completed for all persons prior to Construction Manager allowing such persons to operate motor vehicles on the AOA.
- 16.3 Drug and Alcohol Testing Program. Construction Manager warrants and agrees that, on or before the effective date of this Agreement and to the extent required by applicable laws, regulations and orders, it will establish and thereafter maintain a drug and alcohol testing program for those personnel, if so employed by the Construction Manager, who perform safety-sensitive functions (as defined in 14 C.F.R. Part 121, Appendices I



and J). Construction Manager agrees that such program, including without limitation the timing of placement of Construction Manager's personnel in safety-sensitive functions, will comply with all requirements set forth by the Department of Transportation (the "DOT"), the FAA, and any other federal agency which promulgates applicable rules or regulations concerning such testing, including without limitation DOT's Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 C.F.R. Part 40 ("DOT's Drug and Alcohol Prevention Program"), and FAA's requirements set forth in 14 C.F.R. Part 121, Appendices I and J. To the extent permitted by law, if Construction Manager employs personnel who are not covered by DOT's Drug and Alcohol Prevention Program but who will have Special Security Authority, such personnel shall be subject to pre-employment drug testing by Construction Manager for the same substances and in accordance with the same procedures as required by the DOT's Drug and Alcohol Prevention Program.

- 16.4 **Additional Requirements.** Construction Manager also agrees to undertake whatever other measures are necessary to comply with security, drug and alcohol testing, record-keeping, and other requirements appropriate to the areas to which Construction Manager has access or to the Work that are imposed from time to time by public agencies such as the TSA, DOT, FAA, the United States Postal Service, the United States Customs Service, and the County.
- 16.5 **Audit of Employment Records.** Construction Manager shall keep at the Airport, full and detailed records demonstrating its compliance with this Article 16 as to each employee employed at the Project Site and shall maintain and preserve such records without additional compensation therefor for a period of three (3) years after termination or expiration of this Agreement. Owner shall have the right, but not the duty, to conduct such audits of Construction Manager's employment records as it deems prudent to ensure Construction Manager's compliance with this Article 16.
- 16.6 **Return of Credentials.** Construction Manager acknowledges the importance of maintaining control over all access/identification media and credentials issued to Construction Manager's employees allowing such employees Special Security Authority or other special access authority granted by the County or Delta ("Credentials"). Construction Manager shall maintain by means acceptable to Delta a current listing of all of Construction Manager's employees, all Subcontractor employees and all other individuals employed on the Project Site by or through Construction Manager who require Credentials, and the type of Credentials issued to such individuals. Construction Manager shall, within the time periods prescribed by law and by the issuing authority and by means acceptable to the issuing authority, (i) return to the issuing authority all Credentials issued to such individuals upon termination of employment or disqualification for Credentials of such individuals, and (ii) report to the issuing authority all lost, stolen and unaccounted for Credentials. Construction Manager shall notify Delta's Station Manager/Director at the Airport or his designee in writing (x) of such termination or disqualification of such individuals immediately after such termination or disqualification, (y) of the return of Credentials to the issuing authority simultaneously with such return, and (z) of such lost, stolen and unaccounted for Credentials simultaneously with such report to the issuing authority.

[END OF GENERAL CONDITIONS]

Exhibit B
Project Scope

The modernization of Terminal Two of the Airport as described in the Second Addendum and as further described in the drawings and specifications prepared by Architect and last revised June 30, 2017, as same have been or may be amended, modified or supplemented, provided that conflicts between the two shall be resolved as described in the Second Addendum.



Exhibit C
FGMP CHANGE ORDER FORM
(Article 5)

TO: Delta Air Lines, Inc.
[Program Manager]

Attn: _____

Gentlemen:

In accordance with Article 5 of the Construction Agreement dated _____, 2015, the undersigned shall provide all services, labor and material and to perform in accordance with the Contract Documents the performances of the Construction Services for the entire Project for a total Guaranteed Maximum Price of \$ _____.

The undersigned shall achieve Substantial Completion of the entire Project on or before _____, 20__, (the "Date of Substantial Completion").

The undersigned shall achieve Final Completion of the entire Project on or before _____, 20__, (the "Date of Final Completion").

The Final Guaranteed Maximum Price for the entire Project of \$ _____ is comprised of the following amounts:

- I. Not-to-Exceed Estimated Reimbursable Cost of the Work \$ _____
- II. The Construction Manager's Fee \$ _____

TOTAL (Final Guaranteed Maximum Price) \$ _____

The Dates of Substantial and Final Completion and the Final Guaranteed Maximum Price are subject to adjustment in the manner provided by the Construction Management Agreement.

The terms of the Construction Management Agreement are incorporated herein by reference.

This FGMP Change Order includes the following Appendices pursuant to Paragraph 5.5.3 of the Construction Management Agreement, which Appendices are incorporated herein by reference:

Appendix A All Drawings, Specifications and other documents, including all amendments thereto, which were relied upon or used by the Construction Manager in the preparation of the FGMP Change Order.

Appendix B All Allowances, noting whether they cover furnish and delivery, or furnish, delivery and installation.

Appendix C A listing of the Assumptions and Clarifications made by the Construction Manager in the preparation of the FGMP Change Order.

Appendix D A listing of any trade, work categories or other items which are not included in the Guaranteed Maximum Price.

Appendix E A Construction Documents Schedule setting forth the dates assumed by Construction Manager for the Architect's completion of Construction Documents, which shall be consistent with the Owner-approved Construction Schedule.

Appendix F A Shop Drawing Approval Schedule setting forth the schedule assumed by Construction Manager for the Architect's approval of Shop Drawings, which shall be consistent with the Owner-approved Construction Schedule.

Appendix G A listing and back-up documentation evidencing CBE Program (as defined below) compliance as required hereunder.

Appendix H The final Project schedule, including phasing plans.

The Construction Manager agrees to furnish, within ten (10) calendar days of the date of this FGMP Change Order, a performance bond and a payment bond in accordance with the Contract Documents, with the bonds each to be in an amount equal to one hundred percent (100%) of the FGMP.

DATED: _____, 20__.

DELTA AIR LINES, INC.

BY: _____
TITLE: _____

CONSTRUCTION MANAGER

BY: _____
TITLE: _____

Exhibit D
Sensitive Security Information

(a) All contract documents relative to this Agreement and the Project, including without limitation all plans, specifications, sketches, drawings and other renderings and documents, as well as any documents provided to the Construction Manager or prepared by the Construction Manager may contain Sensitive Security Information, as that term is defined in the Homeland Security Act and all regulations promulgated thereunder, as it relates to the security program, systems, methods, and procedures of FLL. Therefore, the contract documents, and all information contained therein, are privileged and strictly confidential and are subject to the provisions of the Homeland Security Act and 49 C.F.R. F.A.R. Part 1520, et seq.

(b) Except as required for the discharge of its duties under this Agreement or as otherwise required by law, the Construction Manager shall not reproduce, release, or distribute any such document or information in any form to any third party without the prior written permission of Owner. Unauthorized reproduction, release, or distribution may result in civil penalty or other action, as provided for in the Homeland Security Act and regulations promulgated thereunder by Owner, TSA, or others. The Construction Manager shall not use such documents or information other than for the performance of its services under this Agreement.

(c) The Construction Manager hereby agrees to defend, indemnify, and hold harmless Owner, its officers, agents, employees, and indemnitees, from and against, any and all claims, civil penalties, losses, suits, damages, legal and otherwise, arising out of or in any way connected with the Construction Manager's failure to comply with or take any act contrary to any provisions of the Homeland Security Act or any regulations promulgated thereunder.

(d) The Construction Manager shall include the requirements of this Exhibit in every contract or subconsultant agreement so that such provisions will be binding upon each of its subconsultants. Failure to include this provision in every such agreement shall be deemed to be and is a material breach of an essential covenant of this Agreement by the Construction Manager.

Exhibit E
Intentionally Deleted



Exhibit F
Application for Payment Information

1. Such documentation as may be required by Owner and/or County, including, without limitation, detailed backup for past current pay requests that records actual hours, unit prices, actual salary costs, and direct non-salary expenses on an item basis, and by employee category, so that total hours and costs by item may be verified.
2. Upon request by Owner or County, certified payroll records for past and current pay requests for Work performed.
3. Construction Manager shall submit an original pay request and at least two (2) copies (with all back-up) to Owner.

Exhibit G
Construction Document Change Order Form

CONSTRUCTION DOCUMENT CHANGE ORDER No. ___
(Article 5)

TO: Delta Air Lines, Inc.
[Program Manager]

Attn: _____

In accordance with Article 5 of the Construction Agreement (“Agreement”) dated _____, 2012, the following Drawings and Specifications are added as Construction Documents under the Agreement:

The terms of the Agreement are incorporated herein by reference.

DATED: _____, 20_.

DELTA AIR LINES, INC.

BY: _____
TITLE: _____

[Insert Construction Manager’s name]

BY: _____
TITLE: _____



Exhibit H
Nondiscrimination Provisions

1. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. The Construction Manager shall comply with all requirements of the CBE/DBE Program, as applicable, in the award and administration of this Agreement. Failure by the Construction Manager to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit Owner to terminate this Agreement or to exercise any other remedy provided under this Agreement, under the Broward County Code of Ordinances, or Administrative Code, or under applicable law, with all of such remedies being cumulative.
2. The Construction Manager shall include the foregoing or similar language in its contracts with any subcontractors or suppliers, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Owner deems appropriate.
3. The Construction Manager shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. The Construction Manager shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by County or Owner, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, the Construction Manager shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

Exhibit I
Staffing Plan and Billing Rates for Preconstruction Services

See Attached.



**Exhibit I
Staffing Plan and Billing Rates for Preconstruction Services**

Project No.:	T2MP
Project Title:	Fort Lauderdale Terminal Two Modernization Program
Consultant/Subcontractor Name:	Turner Construction Company

Pre-Construction Services:

STAFF	\$	<u>861,258</u>
EXPENSES	\$	<u>281,200</u>
GL INSURANCE 0.96%	\$	<u>10,968</u>
FEE 3.70%	\$	<u>42,677</u>
TOTAL NTE	\$	<u>1,196,103</u>

Salary Costs

Title	Local to Broward County Y/N	Maximum Hourly Rate	X	Multiplier 2.12	=	Maximum Billing Rate	x	Proposed Monthly Hrs 173.33	=	Proposed Monthly Billings	x	Months	=	Total Project Billings
Operations Manager	Y	\$121.59		2.12		\$ 257.76		173.33		\$ 44,678		1.0		\$ 44,678
Preconstruction Manager	Y	\$80.58		2.12		\$ 170.82		173.33		\$ 29,609		1.3		\$ 38,491
Sr. Estimator	Y	\$69.78		2.12		\$ 147.93		173.33		\$ 25,641		3.9		\$ 99,999
Sr. Estimator	N	\$71.54		2.12		\$ 151.66		173.33		\$ 26,288		3.0		\$ 78,863
Sr. Estimator - HVAC, Plbg. & FP	N	\$79.36		2.12		\$ 168.24		173.33		\$ 29,161		1.0		\$ 29,161
Sr. Estimator - Electrical	N	\$81.71		2.12		\$ 173.23		173.33		\$ 30,026		1.0		\$ 30,026
Sr. Estimator	N	\$59.69		2.12		\$ 126.54		173.33		\$ 21,934		1.0		\$ 21,934
Estimator	N	\$47.85		2.12		\$ 101.44		173.33		\$ 17,583		1.0		\$ 17,583
Purchasing Manager	Y	\$86.25		2.12		\$ 182.85		173.33		\$ 31,693		1.0		\$ 31,693
Purchasing Agent	Y	\$57.69		2.12		\$ 122.31		173.33		\$ 21,200		1.0		\$ 21,200
Purchasing Admin Support	Y	\$34.13		2.12		\$ 72.37		173.33		\$ 12,543		0.8		\$ 10,034
Project Executive	Y	\$110.38		2.12		\$ 234.02		173.33		\$ 40,562		1.0		\$ 40,562
Project Manager	Y	\$73.65		2.12		\$ 156.15		173.33		\$ 27,065		5.0		\$ 135,324
Engineering	Y	\$31.25		2.12		\$ 66.25		173.33		\$ 11,483		5.0		\$ 57,416
On-site Admin Support	Y	\$25.96		2.12		\$ 55.04		173.33		\$ 9,540		5.0		\$ 47,699
Accountant	Y	\$43.27		2.12		\$ 91.73		173.33		\$ 15,900		0.5		\$ 7,950
Superintendent	N	\$90.58		2.12		\$ 192.02		173.33		\$ 33,283		4.0		\$ 133,134
Community Affairs	Y	\$44.23		2.12		\$ 93.77		173.33		\$ 16,253		0.5		\$ 8,127
Financial Mgr / Acctg. Mgr	Y	\$80.38		2.12		\$ 170.42		173.33		\$ 29,538		0.3		\$ 7,385
TOTAL NTE Reimbursable Staff														\$ 861,258

TURNER CONSTRUCTION COMPANY

FLL Delta Air Lines Terminal 2

Ft. Lauderdale, Florida

Current Anticipated Project Volume : \$93,000,000

Number of Floors : 3

Type of building : Airport

Made by: MMS

Report Date: 2-Nov-17

#	Cost Code	Description	Quantity	Unit	Unit Cost	Cost
1						
2	80122	JOB OFFICE SETUP				
3		Office - by Owner	-	ea		by Owner
4		SUB TOTAL				0
5						
6	80130	PLANT RENTAL & EQUIPMENT				
7		1 Airside Vehicles	-	mos		w/Construction Phase
8		SUB TOTAL				0
9						
10	80132	VEHICLES/ PARKING				
11		Staff Auto Allowances				with staff rates
12		Parking for Turner staff	4	mos	100.00	400
13		SUB TOTAL				400
14						
15	80500	GENERAL PROTECTION & SAFETY				
16		1 Protection carpenter	4	mos	5,581	22,300
17		0 hrs overtime per week	0	mos	0	0
18		PROTECTION CARPENTER RATE PER HOUR			\$32.22	
19		Protection materials	1	ls	800	800
20		Personnel protective equipment	1	ls	1,000	1,000
21		SUB TOTAL				24,100
22						
23	80600	OFFICE SUPPLIES / EQUIPMENT / COPIER / PRINTER				
24		Office furniture	4	stations	770	3,100
25		Office supplies	1	ls	1,200	1,200
26		Copier Maintenance (copier by Owner)				by Owner
27		Maintenance charge - copier	4	mos	300	1,200
28		Paper for copiers				with office supplies
29		Printers	-	mos		w/Construction Phase
30		Printer supplies and cartridges				with office supplies
31		Miscellaneous general expense	1	ls	1,200	1,200
32		SUB TOTAL				6,700
33						
34	80610	TELEPHONE / FAX / PROJECT COMMUNICATIONS				
35		Cell phone monthly charges	12	sm	75.00	900
36		Ipad monthly data charges	12	sm	40.00	500
37		Global Meet conference call service	-	mos		w/Construction Phase
38		SUB TOTAL				1,400
39						
40	80620	BLUEPRINTS				
41		Blueprints - bid cost	1	ls	2,000	2,000
42		SUB TOTAL				2,000
43						
44	80640	COMPUTER EXPENSES				
45		Laptops - DELL Latitude 6430 bundle + 22" monitor	1	ea	2,120	2,100
46		I pad 64GB, keyboard 2 years service, otter box, cell capability	2	ea	863	1,700
47		Server - DELL Server	-	mos		w/Construction Phase
48		Connectivity - VPN Router, 24 port router, 2 WiFi access points	1	ls	3,000	3,000



TURNER CONSTRUCTION COMPANY

Current Anticipated Project Volume : \$93,000,000

FLL Delta Air Lines Terminal 2

Number of Floors : 3

Ft. Lauderdale, Florida

Type of building : Airport

Made by: MMS

Report Date: 2-Nov-17

#	Cost Code	Description	Quantity	Unit	Unit Cost	Cost
49		E-Plan Table includes flat screen TV and computer	-	mos		w/Construction Phase
50		Sharp 70" monitor	-	mos		w/Construction Phase
51		Software				
52		Plangrid, BlueBeam360 or similar document management tool	1	ls	5,000	5,000
53		P6 Software	4	mos	800	3,200
54		SUB TOTAL				15,000
55						
56	80641	TECHNOLOGY INFRASTRUCTURE				
57		Technology infrastructure per person per month	-	sm	380	w/Construction Phase
58		SUB TOTAL				0
59						
60	80650	LIVING / TRAVEL ALLOWANCE & RELOCATION EXPENSES				
61		Miscellaneous local job travel	4	mos		non-reimbursable
62		Miscellaneous non-local travel	8	ls	3,500	28,000
63		SUB TOTAL				28,000
64						
65	80670	MISCELLANEOUS GENERAL EXPENSE				
66		Scheduling Consultant	1	ls	57,000	57,000
67		Electrical Survey	1	ls	50,000	50,000
68		Mechanical Survey	1	ls	50,000	50,000
69		Environmental Survey	1	ls	25,000	25,000
70		Selective Demolition and Patching with MOTs	1	ls	20,000	20,000
71		Scanning and BIM Modeling	-			by Owner
72		SUB TOTAL				202,000
73						
74	80671	POSTAGE / EXPRESS MAIL / MESSENGER SERVICE				
75		Postage, Courier Service, Overnight Delivery	4	mos	250	1,000
76		SUB TOTAL				1,000
77						
78		TOTAL GENERAL EXPENSE				\$280,600
79						
80		STAFF - See Exhibit I				
81		Management				See Exhibit I
82		Preconstruction				See Exhibit I
83		Project Management				See Exhibit I
84		Construction				See Exhibit I
85		Off-Site Construction Support				See Exhibit I
86		Accounting and Cost				See Exhibit I
87						0
88		SUB TOTAL				0
89						
90		TOTAL STAFF				\$0
91						
92		FRINGES / TAXES / INSURANCE & BONDS				
93	80810	Staff Employee Benefit Expense (EBE)				with multiplier
94	80820	Social Security / Unemployment Insurance / Taxes				with multiplier
95	80830	Workmen's Compensation Insurance				with CCIP
96	80831	General Liability Insurance				See Exhibit I



TURNER CONSTRUCTION COMPANY
FLL Delta Air Lines Terminal 2
Ft. Lauderdale, Florida

Exhibit 2
 Page 107 of 194
Current Anticipated Project Volume : \$93,000,000

Number of Floors : 3
Type of building : Airport
Made by: MMS

Report Date: 2-Nov-17

#	Cost Code	Description	Quantity	Unit	Unit Cost	Cost
97	80832	Owners Protective Insurance				by Owner
98	80840	Builder's Risk & Other Insurance				
99		Plant property and equipment insurance	4	mos	150	600
100		Auto insurance for company vehicles	0	cm	106	0
101		Builders risk insurance				by Owner
102	80860	Bonds				
103		Performance and Payment Bond				with Construction GCs
104		SUB TOTAL				600
105						
106	80895	HOURLY FRINGES & EXPENSES				
107		Hourly payroll charges				with multiplier
108		SUB TOTAL				0
109						
110		TOTAL FRINGES/TAXES/INS. & BONDS				\$600
111						
112		GRAND TOTAL				\$281,200

Exhibit J
Construction Manager's Staffing Plan for Construction Services

See Attached.

**Exhibit J
Staffing Plan and Billing Rates for Preconstruction Services**

Project No.:	T2MP
Project Title:	Fort Lauderdale Terminal Two Modernization Program
Consultant/Subcontractor Name:	Turner Construction Company

Title	Local to Broward County Y/N	Maximum Hourly Rate	X	Multiplier 2.12	=	Maximum Billing Rate
Operations Manager	Y	\$134.39		2.12	\$	284.90
Preconstruction Manager	Y	\$89.00		2.12	\$	188.69
Sr. Estimator	Y	\$77.07		2.12	\$	163.39
Sr. Estimator	N	\$79.03		2.12	\$	167.54
Sr. Estimator - HVAC, Plbg, & FP	N	\$87.71		2.12	\$	185.95
Sr. Estimator - Electrical	N	\$90.39		2.12	\$	191.63
Sr. Estimator	N	\$69.77		2.12	\$	147.92
Estimator	N	\$56.62		2.12	\$	120.03
Purchasing Manager	Y	\$95.37		2.12	\$	202.18
Purchasing Agent	Y	\$64.09		2.12	\$	135.88
Purchasing Admin Support	Y	\$37.92		2.12	\$	80.39
Project Executive	Y	\$122.12		2.12	\$	258.89
Project Manager	Y	\$81.44		2.12	\$	172.65
Engineering	Y	\$66.76		2.12	\$	141.54
BIM/MEP Engineer	Y	\$44.86		2.12	\$	95.11
Engineering	Y	\$34.72		2.12	\$	73.60
On-site Admin Support	Y	\$28.84		2.12	\$	61.14
Accountant	Y	\$48.07		2.12	\$	101.91
General Superintendent	N	\$66.76		2.12	\$	141.54
Superintendent	N	\$99.60		2.12	\$	211.15
Superintendent Structure	Y	\$55.01		2.12	\$	116.63
Superintendent Civil	Y	\$41.66		2.12	\$	88.32
MEP Superintendent	Y	\$48.07		2.12	\$	101.91
Field Engineer	Y	\$32.69		2.12	\$	69.30
Shift Superintendent	Y	\$40.06		2.12	\$	84.92
Shift Superintendent	Y	\$40.06		2.12	\$	84.92
Site Safety Manager	Y	\$32.05		2.12	\$	67.94
Intern / Recruit (Night Safety Mgr)	Y	\$25.64		2.12	\$	54.35
VDC Manager	N	\$41.66		2.12	\$	88.32
Project set-up engineer	Y	\$34.68		2.12	\$	73.52
Administration support	Y	\$28.81		2.12	\$	61.08
Community Affairs	Y	\$49.14		2.12	\$	104.17
Safety Director	Y	\$79.39		2.12	\$	168.31
IT support	Y	\$61.96		2.12	\$	131.35
Punchlist/Post Construction Warranty	Y	\$48.02		2.12	\$	101.79
Financial Mgr / Acctg. Mgr	Y	\$88.92		2.12	\$	188.51
Accountant	Y	\$48.07		2.12	\$	101.91
CCIP Coordinator	N	\$41.66		2.12	\$	88.32
Senior Cost Engineer	Y	\$56.08		2.12	\$	118.89
Cost	Y	\$37.39		2.12	\$	79.26

Exhibit K
Badging Requirements

1. **SECURITY**

Airport Security Program and Aviation Regulations.

Construction Manager ("Consultant/contractor" for purposes of this Agreement) agrees to observe all security requirements and other requirements of the Federal Aviation Regulations applicable to Consultant/contractor, including without limitation, all regulations of the United States Department of Transportation, the Federal Aviation Administration and the Transportation Security Administration. Consultant/contractor also agrees to comply with the County's Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and any amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by the County, and to take such steps as may be necessary or directed by the County to insure that subconsultants/subcontractors, employees, invitees and guests of Consultant/contractor observe these requirements. If required by the Aviation Department, Consultant/contractor shall conduct background checks of its employees in accordance with applicable Federal Regulations. If as a result of the acts or omissions of Consultant/contractor, its subconsultants/subcontractors, employees, invitees or guests, the County incurs any fines and/or penalties imposed by any governmental agency, including without limitation, the United States Department of Transportation, the Federal Aviation Administration or the Transportation Security Administration, or any expense in enforcing any Federal regulations, including without limitation, airport security regulations, or the rules or regulations of the County, and/or any expense in enforcing the County's Airport Security Program, then Consultant/contractor agrees to pay and/or reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorney's fees and all costs incurred by County in enforcing this provision. Consultant/contractor further agrees to rectify any security deficiency or other deficiency as may be determined as such by the County or the United States Department of Transportation, Federal Aviation Administration, the Transportation Security Administration, or any other Federal agency with jurisdiction. In the event Consultant/contractor fails to remedy any such deficiency, the County may do so at the sole cost and expense of Consultant/contractor. The County reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency.

- (a) Access to Security Identification Display Areas and Identification Media. The consultant/contractor shall be responsible for requesting the Aviation Department to issue Airport Issued Identification Media to all employees who are authorized access to Security Identification Display Areas ("SIDA") on the Airport, as designated in the Airport Security Program. The office of Delta located at the Airport will sponsor the issuance of Airport Issued Identification Media; provided, however, that if the number of badges required becomes overly burdensome on Delta, Delta may designate Program Manager to sponsor the badges. In addition, consultant/contractor shall be responsible for the immediate reporting of all lost or stolen Airport Issued Identification Media and the immediate return of the media

of consultant/contractor's personnel transferred from the Airport, or terminated from the employ of the consultant/contractor, or upon termination of this Second Addendum. Before an Airport Issued Identification Media is issued to an employee, consultant/contractor shall comply with the requirements of applicable Federal regulations with regard to fingerprinting for criminal history record checks and security threat assessments, and shall require that each employee complete security training programs conducted by the Aviation Department. The consultant/contractor shall pay or cause to be paid to the Aviation Department such charges as may be established from time to time for lost or stolen Airport Issued Identification Media and those not returned to the Aviation Department in accordance with these provisions. The Aviation Department shall have the right to require the consultant/contractor to conduct background investigations and to furnish certain data on such employees before the issuance of Airport Issued Identification Media, which data may include the fingerprinting of employee applicants for such media.

- (b) Operation of Vehicles on the AOA: Before the consultant/contractor shall permit any employee of consultant/contractor or of any subconsultant/subcontractor to operate a motor vehicle of any kind or type on the AOA (and unless escorted by an Aviation Department approved escort), the consultant/contractor shall ensure that all such vehicle operators possess current, valid, and appropriate driver's licenses. In addition, any motor vehicles and equipment of consultant/contractor or of any subconsultant/subcontractor operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department, which identification must be displayed as required by the Aviation Department.
- (c) Consent to Search/Inspection: The consultant/contractor agrees that its vehicles, cargo, goods and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. The consultant/contractor further agrees on behalf of itself and its subconsultant/subcontractors, that it shall not authorize any employee or other person to enter the AOA unless and until such employee or other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. Consultant/contractor acknowledges and understands that the foregoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts and other unlawful activities at the Airport. For this reason, consultant/contractor agrees that persons not executing such consent-to-search/inspection form shall not be employed by the consultant/contractor or by any subconsultant/subcontractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by the consultant/contractor or by any subconsultant/subcontractor.
- (d) Consultant/contractor understands and agrees that if any of its employees, or the employees of any of its subconsultants/subcontractors, are required in the course of the work to be performed under this Second Addendum to access or otherwise be in contact with Sensitive Security Information ("SSI") as defined and construed

under Federal law, that individual will be required to execute a Sensitive Security Information Non-Disclosure Agreement promulgated by the Aviation Department.

- (e) The provisions hereof shall survive the expiration or any other termination of this Second Addendum.



Exhibit L
Form of Bonds

PERFORMANCE BOND

BY THIS BOND, We _____, as Principal, hereinafter called CONTRACTOR, and _____, as Surety, under the assigned Bond Number _____, are bound to DELTA AIR LINES, INC., as Obligee, hereinafter called DELTA, in the amount of _____ Dollars (\$_____) for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, CONTRACTOR has by written agreement dated the _____ day of _____, 20____, entered into a Contract, Bid/Contract No.: _____, with DELTA, which Contract Documents are by reference incorporated herein and made a part hereof, and specifically include provision for Liquidated Damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "CONTRACT";

THE CONDITION OF THIS BOND is that if CONTRACTOR:

- 1) Performs the CONTRACT between CONTRACTOR and DELTA for construction of _____, in the time and manner prescribed in the CONTRACT; and
- 2) Pays DELTA all losses, Liquidated Damages, expenses, costs and attorney's fees including appellate proceedings, that DELTA sustains as a result of default by CONTRACTOR under the CONTRACT; and
- 3) Performs the guaranties of all work and materials furnished under the CONTRACT for the time specified in the CONTRACT; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever CONTRACTOR shall be, and declared by DELTA to be, in default under the CONTRACT, DELTA having performed DELTA obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- a) Complete the Project in accordance with the terms and conditions of the Contract Documents; or
- b) Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Bidder, or, if DELTA elects, upon determination by DELTA and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and DELTA, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total

amount payable by DELTA to CONTRACTOR under the CONTRACT and any amendments thereto, less the amount properly paid by DELTA to CONTRACTOR.

No right of action shall accrue on this bond to or for the use of any person or corporation other than DELTA named herein.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the CONTRACT or the changes does not affect Surety's obligation under this Bond.

Signed and sealed this _____ day of _____, 20____.

ATTEST:

Secretary

(Print/Type Name)

(Corporate Seal)

(Name of Corporation)

By _____
(Signature and Title)

(Type Name and Title Signed Above)

IN THE PRESENCE OF:

Signature

(Print Name)

Signature

(Print Name)

SURETY:

By _____
Agent and Attorney-in-Fact

(Print/Type Name)

Address: _____
(Street)

(City/State/Zip Code)

Telephone No.: _____

PAYMENT BOND

BY THIS BOND, We _____, as Principal, hereinafter called

CONTRACTOR, located at:

Business Address: _____

Phone: _____

And _____, as Surety, located at:

Business Address: _____

Phone: _____

under the assigned Bond Number _____, and pursuant to Section 255.05, Florida Statutes, are bound to DELTA AIR LINES, INC., as Obligee, hereinafter called DELTA, in the amount of _____ Dollars (\$ _____) for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, CONTRACTOR has by written agreement dated the _____ day of _____, 20____, entered into a Contract, Bid/Contract No.: _____, with DELTA, for construction of _____, located at _____, which Contract Documents are by reference incorporated herein, and for the purposes of this Bond are hereafter referred to as the "CONTRACT";

THE CONDITION OF THIS BOND is that if CONTRACTOR:

- 1) Performs the CONTRACT between CONTRACTOR and DELTA, in the time and manner prescribed in the CONTRACT; and
- 2) Promptly makes payments to all claimants as defined by Section 255.05(1), Florida Statutes, for all labor, materials, and supplies used directly or indirectly by CONTRACTOR in the performance of the CONTRACT;

THEN CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

- a) Any notices provided under this Bond must be in accordance with the notice provisions prescribed in Section 255.05(2), Florida Statutes.
- b) A claimant, except a laborer, who is not in privity with CONTRACTOR shall, before commencing or not later than forty-five (45) days after commencing to furnish labor,

materials, or supplies for the prosecution of the work, furnish the CONTRACTOR with a written notice that he or she intends to look to the bond for protection.

- c) A claimant, who is not in privity with CONTRACTOR, and who has not received payment for its labor, materials, or supplies, shall no earlier than 45 days, or no later than ninety (90) days, after final furnishing of the labor or after complete delivery of the materials or supplies, serve notice to CONTRACTOR and to the Surety, of the performance of the labor or delivery of the materials or supplies and of the nonpayment.
- d) No action for the labor, materials, or supplies may be instituted against CONTRACTOR or the Surety unless the notices stated under the preceding conditions have been given.
- e) Any action under this Bond must be instituted in accordance with the time limitations prescribed in Section 255.05(10), Florida Statutes.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the CONTRACT or changes does not affect the Surety's obligation under this Bond.

Signed and sealed this _____ day of _____, 20__.

ATTEST:

Secretary

(Print/Type Name)

(Corporate Seal)

(Name of Corporation)

By _____
(Signature and Title)

(Type Name and Title Signed Above)

IN THE PRESENCE OF:

Signature

(Print Name)

Signature

(Print Name)

SURETY:

By _____
Agent and Attorney-in-Fact

(Print/Type Name)

Address: _____
(Street)

(City/State/Zip Code)

Telephone No.: _____



DUAL/ADDITIONAL OBLIGEE RIDER

THIS RIDER, executed simultaneously with and being part of that certain PERFORMANCE BOND and PAYMENT BOND (Bond No. _____) executed on the _____ day of _____ 20____, between _____, (Contractor), and _____, Surety, in favor of Delta Air Lines Inc., (Obligee) :

THAT THE AFORESAID BOND SHALL BE AND IT IS AMENDED AS FOLLOWS:

1. The name of the BROWARD COUNTY, FLORIDA, shall be and is hereby added to the bond as a named Obligee.
2. The rights of BROWARD COUNTY, FLORIDA, as a named Obligee, shall be subject to DELTA, or COUNTY, performing Delta's obligations under the Contract; provided, however, that the aggregate liability of the Surety under said bond, to Delta and COUNTY, as their interests may appear, is limited to the penal sum of said bond.
3. Except as herein modified, the aforementioned bond shall be and remain in full force and effect.

SIGNED, SEALED AND DATED THIS _____ DAY OF _____, 2000.

SURETY

CONTRACTOR

By _____
Attorney-in-Fact

By _____
Title: _____

(Accompany this Rider with Attorney-in-Fact's authority from the Surety to execute Rider, certified to include the day of the Rider.)

Exhibit M

Dispute Avoidance Panel

Owner and Construction Manager agree to the following dispute avoidance requirements:

- 1.1 Purpose. The purpose of the dispute avoidance process set forth herein is to mitigate impacts to the Project and assist in the prevention and resolution of disputes between Owner and the Construction Manager arising out of the Project. The intent of the establishment of the DISPUTE AVOIDANCE PANEL ("PANEL") is to facilitate contemporaneous agreement as to the resolution of events occurring during the progress of the Work, and if agreement cannot be quickly reached, then to fairly and impartially consider disputes placed before it and to provide written recommendations for resolution of such disputes. All decisions of the PANEL are non-binding on the parties. Submission of a disputed matter to the PANEL for its written recommendation is an absolute condition precedent to filing any claim, suit, or demand for arbitration with regard to the matter.
- 1.2 Panel Scope.
 - 1.2.1 Operations: Owner and the County will collaborate on informal rules of operation for the PANEL. Owner and the Construction Manager will keep the PANEL informed of construction activity and progress of the Work by submitting to the PANEL quarterly written progress reports and other relevant data. The PANEL will visit the Project and conduct a field inspection of the Work as necessary (with such necessity determined by Owner in consultation with the County and Construction Manager). The PANEL will further meet with the representatives of Owner and the Construction Manager as necessary (using the same necessity standard outlined in the previous sentence).
 - 1.2.2 Membership/Neutrality of the PANEL: The PANEL shall consist of three (3) neutral members. PANEL members shall disclose all prior employment with, and engagements as a consultant to, Owner, the Construction Manager, and the County. Owner, in consultation with the County, shall nominate one (1) PANEL member, and one (1) PANEL member shall be nominated by the Construction Manager. Unless reasonably objected to by the other party within ten (10) calendar days, the nominees shall be appointed to the PANEL. The third member of the PANEL shall be the chair and shall be selected by the two (2) party-appointed members. Each appointed member shall have significant construction experience and be a non-lawyer. The chair of the PANEL shall have significant experience with public building construction and be a lawyer. All PANEL members shall be trained and experienced in (i) mediation and arbitration and (ii) the effective operations of Dispute Resolution Boards.
 - 1.2.3 Meetings; Confidentiality: The first meeting of the PANEL shall occur within 30 calendar days after determination of the FGMP. Subsequent meetings will be

held onsite as set forth in Section 15.2.4, below. Statements made in meetings of the PANEL will be confidential and inadmissible to the same degree as proceedings in a mediation under Florida law. Each meeting will consist of an informal round table discussion and, if necessary, as determined in Section 15.2.1, a field inspection of the Work. The round table discussion shall be attended by Owner and the Construction Manager, and representatives from the County, the Design Professional, and the Program Manager may also attend. The round table discussions may include presentations from Owner and the Construction Manager to the PANEL that address the following items: construction Work accomplished since the last meeting, current status of the Work, the current and future Project schedule, payment status of the Work, potential future problems that may come before the PANEL, proposed solutions to those problems, and an update regarding previously handled or ongoing problems. It is contemplated that other Project participants will be invited to attend PANEL meetings, including major subcontractors and subconsultants of the Construction Manager. In addition to round table discussions, agendas for meetings of the PANEL may include the following:

- 1.2.3.1 Presentations by representatives of the parties with respect to any substantive/major issues (i.e., issues ripe for resolution involving dollar values of Fifty Thousand Dollars (\$50,000.00) or more) that have arisen or have been properly presented to the PANEL through the below-stated Request for Hearing process. Issues that were not submitted to the PANEL pursuant to the procedures delineated herein shall not be presented to the PANEL for consideration without the agreement of both parties.
- 1.2.3.2 Responses, if requested, by representatives of the parties with respect to presentations made by the representatives of the other party.
- 1.2.3.3 A tentative date for the next meeting.
- 1.2.4 Frequency of Meetings: The PANEL will meet at least once per quarter. If conditions warrant, the PANEL may recommend to Owner and the County that the frequency of meetings be increased to more than quarterly. Upon mutual agreement of Owner and the County, such recommendation may be accepted. Factors to be considered by the PANEL when making such recommendation to Owner and the County include Work progress, occurrence of unusual events, and the number and complexity of ongoing or potential disputes.
- 1.2.5 Procedure for Scheduling Disputed Matters to be Heard by the PANEL: The parties should attempt to resolve potential disputes without resorting to use of the PANEL. However, in the event that a resolution is unlikely, the following procedures must be followed:

- 1.2.5.1 As a condition precedent to a party's referral of a matter to the PANEL for a hearing ("Hearing"), the representative of the party requesting the Hearing must first submit a letter titled Notice of Disagreement to his/her counterpart from the other party describing the issue that has arisen. The party receiving the notice shall have seven (7) calendar days from receipt of the letter to submit a response. If, after fourteen (14) calendar days from the initial receipt of the Notice of Disagreement, the issue has not been resolved, the party which sent the original Notice may file a written request for a Hearing ("Request") to the PANEL, and the matter will be scheduled before the PANEL. The written Request shall contain a copy of the initial Notice of Disagreement and the response to this Notice, if any, by the other party. No Request may be filed with the PANEL without first having complied with the Notice of Disagreement requirements of this subsection.
- 1.2.5.2 Upon receipt of a Request, the Chair will schedule the matter for Hearing, which shall occur as a part of the next quarterly meeting of the PANEL (unless the parties agree to permit the PANEL to convene for a Hearing sooner). The parties may request that the matter be deferred to the next quarterly meeting of the PANEL in the event that additional preparation is necessary.
- 1.2.5.3 The parties shall provide to the PANEL position papers with appropriate supporting documentation no later than fourteen (14) calendar days before the commencement of the Hearing. The parties shall provide response papers, if any, no later than five (5) calendar days before the Hearing.
- 1.2.5.4 The party submitting the Request shall be responsible to provide the PANEL with three (3) copies of each document submitted with the Request, one for each PANEL member. The party furnishing any written documentation to the PANEL shall also furnish copies of such information to the other party concurrently when furnishing the documents to the PANEL. The PANEL may request that additional written documentation and explanations from both parties be sent to each member and to the other party for study before the Hearing begins.
- 1.2.5.5 The parties will be afforded an opportunity to be heard by the PANEL and to offer support for their respective positions. The PANEL members may ask questions, request clarification, or ask for additional data. In large or complex disputes, an additional day for the Hearing, in addition to the standing quarterly meeting, may be

necessary in order to consider and fully understand all the information presented by both parties.

- 1.2.5.6 All of the PANEL's written recommendations for resolution of disputes will be given to the parties within ten (10) calendar days of completion of the Hearing(s).
- 1.2.5.7 No provisions associated with the PANEL shall in any way abrogate Owner's or the Construction Manager's responsibility for preserving a claim filed in accordance with the requirements set forth in the Construction Contract.
- 1.2.5.8 In the event that Owner or the County is not in agreement with a decision or recommendation of the PANEL, Owner or the County may elect to issue a work order or Change Order, with appropriate reservations of rights.
- 1.2.5.9 By agreement of Owner, the County, and the Construction Manager, the steps listed under this Section may be modified, and the time periods may be shortened in order to hasten resolution.
- 1.2.6 Neutrality of PANEL Members: All PANEL members shall act impartially and independently, and abstain from conflicts of interest, when performing their functions as PANEL members including in the consideration of any Construction Contract provisions and the facts and conditions surrounding any written Request to the PANEL by Owner or the Construction Manager. Ex parte communications between a PANEL member and any party are strictly prohibited. PANEL members shall not discuss or communicate with any party without the other party being present. Seeking any PANEL member's advice or consultation is expressly prohibited, unless it is done in the open at a PANEL meeting and in the presence of the other party.
- 1.2.7 Records of Meetings: While the PANEL may take notes or keep other records during the consideration of a Notice of Disagreement, it is not necessary for the PANEL to keep a formal record. Hearings shall be informal to the greatest extent possible.
- 1.2.8 Recommendations of the PANEL: All written recommendations of the PANEL shall be executed by all PANEL members and supported by at least two (2) members. Recommendations will be based on the pertinent Construction Contract provisions and the facts and circumstances involved in the dispute.
- 1.3 Coordination and Logistics: Owner will coordinate the operations and meetings of the PANEL. Owner need not take minutes of PANEL meetings. Each PANEL member shall execute a three (3)-party agreement with Owner and the Construction Manager setting

forth the terms and conditions of the PANEL members' service, which shall be consistent with this Second Addendum.

- 1.4 Time for Beginning and Completion: Unless otherwise disbanded as set forth in Section 15.7, below, the PANEL shall be in operation until Final Completion or until all Requests for Hearing submitted prior to Final Completion are heard or withdrawn, whichever is later.
- 1.5 Payment: The maximum not-to-exceed daily fee to be paid to each PANEL member shall be One Thousand Five Hundred Dollars (\$1,500.00) and travel costs in accordance with the requirements of County procedures and Chapter 112, Florida Statutes.
 - 1.5.1 Payment - Regular meetings: Owner shall pay the PANEL members for their services, including travel costs, and shall submit a request to the County for payment of all expenses incurred, without markup or bond. County shall process and pay Owner for PANEL expenses as part of Owner's periodic pay requests under Article 12 of this Second Addendum.
 - 1.5.2 Payment - Hearings on Disputed Matters: In the event a party files a Request for a Hearing, all fees and costs incurred by the PANEL members in connection with the Hearing shall be paid by the party requesting the Hearing. The County will pay Owner for such fees and costs as part of Owner's periodic pay requests under Article 12 of this Second Addendum.
- 1.6 Costs and Accounting Records. The PANEL members shall keep available the cost records and accounts pertaining to all of the work by the PANEL for inspection by representatives of the County, Owner or the Construction Manager for a period of three (3) years after final payment. If any litigation, claim, or audit arising out of, in connection with, or related to the Construction Contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.
- 1.7 Conversion or Termination of Dispute Avoidance Panel.
 - 1.7.1 No earlier than twelve (12) months after establishment of the FGMP, the parties may mutually agree to dispense with the periodic regular meetings of the PANEL, and convert the PANEL to a pure dispute resolution panel or may terminate the Panel in its entirety. In such event, all requirements set forth in this Article 15 shall expire and have no further effect.
- 1.8 Termination of Panel Membership. PANEL members may withdraw from the PANEL by providing four (4) weeks written notice to all other parties. Should the need arise to appoint a replacement PANEL member, the replacement PANEL member shall be selected as was the departing PANEL member. The selection of a replacement PANEL member shall begin promptly upon notification of the necessity for a replacement. The

chair of the PANEL may be terminated without cause by agreement of Owner and the Construction Manager. Each party may change its appointed PANEL member once for convenience.

- 1.8.1 PANEL members may be terminated for cause by any of the parties. The party desiring to terminate a PANEL member for cause will notify the other party and the other PANEL members and shall provide an explanation for the requested termination. If the other party does not agree that cause exists, the remaining PANEL members shall convene and decide whether cause exists and such decision shall be effectuated.
- 1.9 Independent Construction Manager. Each PANEL member, in the performance of his or her duties on the PANEL, shall act in the capacity of an independent agent and not as an employee or consultant of the County, Owner, or the Construction Manager. Each PANEL member shall have the same immunity as does a mediator appointed by Court order, as provided by Florida law.
- 1.10 Public Records. Each PANEL member, Owner and the Construction Manager shall permit public access to all documents, papers, letters, and other materials made or received by the parties that are related to this PANEL and the activities of this PANEL, subject to the provisions of Chapter 119, Florida Statutes. However, upon receipt of any such public records request, the parties hereto shall promptly notify the County and obtain prior written consent from the County before releasing such records. Plans, schematics, security plans and other Project elements may not be released unless the recipient executes an appropriate confidentiality agreement required by applicable law.
- 1.11 Statute of Limitations. No part of this Article or any of the procedures delineated herein shall in any way toll any statutes of limitations for Owner or the Construction Manager.
- 1.12 No Bonus. PANEL members shall not be paid nor will they receive or accept any commission, percentage, bonus, or consideration of any nature, other than the payment provided for in this Article, for their performance and services.
- 1.13 Interpretation. This Article shall in no way limit the rights of the County or Owner to issue Change Orders, any other type of order or instruction, or take any other type of action that is permitted by this Second Addendum or the Construction Contract. This Article shall also in no way limit the remedies or obligations of the Construction Manager pursuant to the Construction Contract, except that submission of a disputed matter to the PANEL for a written recommended resolution shall be a condition precedent to pursuit of any claim in arbitration or litigation in any forum.
- 1.14 Subsequent Proceedings. In the event that Owner, Construction Manager or County files suit or initiates arbitration in connection with this Project, no member of the PANEL shall be called to testify in such proceedings, and the personal notes of PANEL members shall not be admissible. Any claims by or against the PANEL members arising out of the work

of the PANEL are waived, and such waiver shall be included in the three (3)-party agreements.



Exhibit N-1

FORM OF CONSTRUCTION MANAGER'S INTERIM AFFIDAVIT

STATE OF _____

COUNTY OF _____

The undersigned, _____ [insert company name] ("Construction Manager"), has been employed by _____ ("Owner") to furnish materials, labor, equipment and/or services for the construction of improvements known as _____ [insert project name] ("Project") located at the Ft. Lauderdale-Hollywood International Airport, in Ft. Lauderdale, FL (the "Property"), and which is owned by the Broward County (the Landlord") and leased by Owner.

Construction Manager states that, not including the payment referenced in its lien waiver (signed contemporaneously herewith), it thus far has been paid \$ _____ in the aggregate for its work and improvements to the Property, and hereby acknowledges receipt of such payments for such work, and, pursuant to its agreement for work at the Property, states that it is entitled to payment of \$ _____ (the amount referenced in its lien waiver signed contemporaneously herewith), plus the approximate amount of \$ _____ for work still to be performed at the Property, including \$ _____ being held in retainage.

Construction Manager affirms, warrants and represents that the list attached hereto as Attachment "1" and made a part hereof contains the names of all of the subcontractors, manufacturers, suppliers, and other parties who have furnished services, labor, fixtures or materials, or any one of these items, by virtue of a direct contract or agreement with Construction Manager, and further affirms, warrants and represents (a) that all persons or entities listed on Attachment "1" have been paid in full for all work performed and all materials, fixtures or services supplied to the undersigned for use at the Property through and including the date hereof, and (b) that Construction Manager is not indebted to any person or entity for labor or materials used in connection with or as a part of the Project in any amount whatsoever (excluding

retainage) through and including the date hereof, except as noted on Attachment "2" attached hereto and made a part hereof.

Construction Manager recognizes and acknowledges that the Landlord, Owner, security deed holders, subsequent transferees of and holders of title to the Property, title insurance companies and agents of title insurance companies shall be entitled to rely on this instrument and the assertions, statements and averments made herein, including with regard to the making of loans, the repayment of which are or may be secured in part or in full by the Property or in issuing title insurance policies covering the subject of which is said Property.

This ___ day of _____, 20__.

[Insert Company Name]

By: _____
Title: _____

Before me, the undersigned officer authorized to administer oaths, personally appeared _____, who being duly sworn, deposes and states as indicated above.

Sworn to and subscribed
before me this ___ day
of _____, 20__.

Notary Public

My Commission Expires: _____



Exhibit N-1 - Attachment "1"

List of All Subcontractors, Suppliers, Materialmen,
Manufacturers And Others Providing Goods Or
Services To Contractor For The Project

[Insert Company Name]

By: _____
Title: _____



Exhibit N-1 - Attachment "2"

List of Persons or Entities Identified
on Attachment "1" to Whom Contractor Owes Money

Party

Amount

[Insert Company Name]

By: _____
Title: _____



Exhibit N-2

FORM OF SUBCONTRACTOR'S INTERIM AFFIDAVIT

STATE OF _____

COUNTY OF _____

The undersigned has been employed by _____
("Contractor") to furnish materials, labor, equipment and/or services for the construction of
improvements known as [insert project name] ("Project") located at the Ft. Lauderdale-
Hollywood International Airport, in Ft, Lauderdale, FL (the "Property"), and which is owned by
the Broward County (the Landlord") and leased by Delta Air Lines, Inc. ("Owner").

The undersigned states that, not including the payment referenced in its lien waiver (signed
contemporaneously herewith), it thus far has been paid \$ _____ in the aggregate for
its work and improvements to the Property, and the undersigned hereby acknowledges receipt of
such payments for such work, and, pursuant to its agreement for work at the Property, the
undersigned states that it is entitled to payment of \$ _____ (the amount referenced
in its lien waiver signed contemporaneously herewith), plus the approximate amount of
\$ _____ for work still to be performed at the Property, including \$ _____
being held in retainage.

The undersigned affirms, warrants and represents that the list attached hereto as Attachment
"1" and made a part hereof contains the names of all of the subcontractors, manufacturers,
suppliers, and other parties who have furnished services, labor, fixtures or materials, or any one
of these items, by virtue of a direct contract or agreement with the undersigned, and the
undersigned further affirms, warrants and represents (a) that all persons or entities listed on
Attachment "1" have been paid in full for all work performed and all materials, fixtures or
services supplied to the undersigned for use at the Property through and including the date
hereof, and (b) that the undersigned is not indebted to any person or entity for labor or materials
used in connection with or as a part of such Project in any amount whatsoever (excluding
retainage) through and including the date hereof, except as noted on Attachment "2" attached
hereto and made a part hereof.

The undersigned recognizes and acknowledges that the Landlord, Owner, Contractor, security deed holders, subsequent transferees of and holders of title to the Property, title insurance companies and agents of title insurance companies shall be entitled to rely on this instrument and the assertions, statements and averments made herein, including with regard to the making of loans, the repayment of which are or may be secured in part or in full by the Property or in issuing title insurance policies covering the subject of which is said Property.

This ___ day of _____, 20__.

[Insert Company Name]

By: _____
Title: _____

Before me, the undersigned officer authorized to administer oaths, personally appeared _____, who being duly sworn, deposes and states as indicated above.

Sworn to and subscribed
before me this ___ day
of _____, 20__.

Notary Public

My Commission Expires: _____



Exhibit N-2 - Attachment "1"

List of All Subcontractors, Suppliers, Materialmen,
Manufacturers, And Others Providing Goods Or
Services To The Undersigned For The Project

[Insert Company Name]

By: _____
Title: _____



Exhibit N-2 - Attachment "2"

List of Persons or Entities Identified
on Attachment "1" to Whom the Undersigned Owes Money

Party

Amount

[Insert Company Name]

By: _____
Title: _____



Exhibit N-3
FORM OF CONSTRUCTION MANAGER'S FINAL AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF _____

The undersigned _____ [insert company name] (“Construction Manager”) has been employed by _____ (“Owner”) to furnish materials, labor, equipment and services for the design and/or construction of improvements known as _____ [insert project title or description] (“Project”), located at the Ft. Lauderdale-Hollywood International Airport, in Ft. Lauderdale, FL (the “Property”), and which is owned by the Broward County (the Landlord”) and leased by Owner.

Construction Manager acknowledges and agrees that it has received the final payment due to Construction Manager for all work performed by the undersigned at the Property and hereby affirms, warrants and states under oath:

1. That all laborers, materialmen, mechanics, manufacturers, suppliers, subcontractors, and consultants who have furnished services, labor, fixtures or materials, by virtue of a direct contract or agreement with Construction Manager, have been paid in full for all work performed and all materials, fixtures or services supplied to the Property; and Construction Manager is not indebted to any person or entity for labor, materials, or services used in connection with or as a part of the Project in any amount whatsoever.

2. That there are no outstanding claims of any nature, contractual or otherwise, or for any personal injury, death or property damage, arising from or associated with Construction Manager's performance of work at the Property which might be the basis of any claim, suit, lien, or demand that could be asserted against the Landlord, Owner, Construction Manager, or the Property.

3. In consideration of final payment for the Project, Construction Manager does hereby release and discharge the Landlord, Owner, and the officers, directors, agents, employees, representatives, affiliates, successors and assigns of same, from any and all claims and causes of

action which Construction Manager has or may have against same relating in any manner to the Property or Construction Manager's work at the Property.

4. Construction Manager recognizes and agrees that the Landlord, Owner, security deed holders, subsequent transferees of and holders of title to the Property, title insurance companies and agents of title insurance companies shall be entitled to rely on this instrument and the assertions, statements and averments made herein, including with regard to the making of loans, the repayment of which are or may be secured in part or in full by the Property, or in issuing title insurance policies covering or the subject of which is said Property.

This ___ day of _____, ____.

Construction Manager:

[Insert Company Name]

By: _____

Title: _____

Before me, the undersigned officer personally appeared _____, who being duly sworn, deposes and states as indicated above.

Sworn to and subscribed
before me this ___ day
of _____, ____.

Notary Public

My Commission Expires: _____



Exhibit N-4
FORM OF SUBCONTRACTOR'S FINAL AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF _____

The undersigned, _____ **[insert company name]**, has been employed by _____ (“Contractor”) to furnish materials, labor, equipment and/or services for the construction of improvements known as _____ **[insert project title or description]**, located at the Ft. Lauderdale-Hollywood International Airport, in Ft. Lauderdale, FL (the “Property”), and which is owned by the Broward County (the Landlord”) and leased by Delta Air Lines, Inc. (“Owner”).

The undersigned acknowledges and agrees that it has received the final payment due to the undersigned for all work performed by the undersigned at the Property and hereby affirms, warrants and states under oath:

1. That all laborers, materialmen, mechanics, manufacturers, suppliers, and subcontractors who have furnished services, labor, fixtures or materials, by virtue of a direct contract or agreement with the undersigned, have been paid in full for all work performed and all materials, fixtures or services supplied to the Property; and the undersigned is not indebted to any person or entity for labor or materials used in connection with or as a part of the Project in any amount whatsoever.
2. That there are no outstanding claims of any nature, contractual or otherwise, or for any personal injury, death or property damage, arising from or associated with the undersigned’s performance of work at the Property which might be the basis of any claim, suit, lien, or demand that could be asserted against the Landlord, Owner, Contractor, the undersigned or the Property.
3. In consideration of final payment, the undersigned does hereby release and discharge the Landlord, Owner, Contractor, and the officers, directors, agents, employees, representatives, affiliates, successors and assigns of same, from any and all claims and causes of action which the undersigned has or may have against same relating in any manner to the Property or the undersigned’s work at the Property.

4. The undersigned recognizes and acknowledges that the Landlord, Owner, Contractor, security deed holders, subsequent transferees of and holders of title to the Property, title insurance companies and agents of title insurance companies shall be entitled to rely on this instrument and the assertions, statements and averments made herein, including with regard to the making of loans, the repayment of which are or may be secured in part or in full by the Property, or in issuing title insurance policies covering or the subject of which is said Property.

This ____ day of _____, ____.

[Insert Company Name]

By: _____
Title: _____

Before me, the undersigned officer personally appeared _____, who being duly sworn, deposes and states as indicated above.

Sworn to and subscribed
before me this ____ day
of _____, ____.

Notary Public

My Commission Expires: _____



Exhibit O-1
FORM OF INTERIM LIEN WAIVER

WAIVER AND RELEASE OF LIEN
UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of \$ _____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(description of property)

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on _____, (year).

(Lienor)

By: _____



Exhibit O-2
FORM OF FINAL LIEN WAIVER

**WAIVER AND RELEASE OF LIEN
UPON FINAL PAYMENT
(Fla. Stat. Ch. 713.20(5))**

The undersigned lienor, in consideration of the final payment in the amount of \$ _____, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of lienor's customer—meaning the party with whom the lienor contracted) on the job of (insert the name of the owner) to the following described property:

(description of property)

DATED on _____, _____.

... (Lienor) ...

By: _____

Exhibit P
IGMP ASSUMPTIONS AND CLARIFICATIONS

SEE ATTACHED.





9/2/2016

Terminal 2 Modernization Project
IGMP Proposal
Assumptions and Clarifications

Trade Items

Demolition (CBE Mentor Opportunity)

23. The Proposal assumes the demolition work can be performed based on our phasing plans as submitted in our RFP response of 8/23/16. We anticipate the work will be performed during working hours from 7:00 am to 4:00 pm. Debris removal is anticipated to be accomplished using trash chutes and trash slides from the 2nd and 3rd levels extending to grade.
24. The Proposal assumes all salvage value will be realized by the demolition subcontractor with the only exception being the escalator demolition. We have assumed BCAD will identify any spare parts salvage prior to the start of demolition. Parts removal will be performed and then all remaining escalator demolition debris will be salvaged by the demolition subcontractor.

CIP Concrete

25. We have assumed the ramp level foundation work will be performed during working hours from 7:00 am to 4:00 pm. Vertical concrete elements and elevated slab work is assumed to be performed from 7:00 am to 4:00 pm whenever possible.
26. We have included structural elements at the sizes and shapes indicated on the Contract Documents. Based on questions and answers pertaining to structural element sizes issued by Bid Addendum we anticipate the sizes and shapes of the concrete structural elements will be reviewed and confirmed with the Design Professionals during the preconstruction period. We have not included additional costs for any size changes which may occur during the preconstruction review period.

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9/2/2016

Terminal 2 Modernization Project
IGMP Proposal
Assumptions and Clarifications

Masonry (Prime CBE Opportunity)

- 27. We have included normal weight and strength CMU with a standard texture finish.
- 28. We have not included dry block as none are available in this region.

Structural Steel and Miscellaneous Metals (CBE Mentor Opportunity)

- 29. The Proposal assumes the steel connections will be AISC standard connections wherever possible and delegated engineer calculations and design for the connection will not be required.
- 30. We have assumed prime painting of steel to be fireproofed is not required. Steel will be cleaned of oils, grease and mill scale prior to delivery to site.
- 31. We have included joists as indicated on the drawings. Supplemental bracing and reinforcing of the joists is not included as no concentrated loads were indicated on the Contract Documents.
- 32. We have assumed the metal deck and supporting structure as designed will bear the load of the concrete pours without shoring or bracing.
- 33. Erection of the structural roof elements is assumed to occur overnight as there are critical safety and logistics considerations associated with this work. The Proposal assumes the schedule, phasing and logistics described in our RFP submission of 8/23/16 are acceptable.

Millwork (Prime CBE Opportunity)

- 34. Appliances shown in the breakrooms are assumed to be by the Owner.

Waterproofing (Prime CBE Opportunity)

Roofing

- 35. We have assumed the roofing work will be performed during working hours from 7:00 am to 4:00 pm.

Fireproofing and Firesafing (Prime CBE Opportunity)

- 36. The Proposal assumes the Contract Documents are coordinated for fire ratings and life safety requirements. We anticipate confirmation of the coordination will occur during the constructability review.
- 37. It is assumed that all existing fire proofing and fire stopping meets the current code requirements and modifying, patching, and/or replacing or upgrading of existing rated assemblies is not included unless specifically shown on the drawings.



9/2/2016

Terminal 2 Modernization Project
IGMP Proposal
Assumptions and Clarifications

Expansion Control

38. The Proposal assumes the Contract Documents are coordinated for expansion requirements. We anticipate confirmation of the coordination will occur during the constructability review.

Spray Foam Insulation

39. The Proposal includes 5" of K-13 spray foam for an R19 in lieu of R20 as the maximum allowed thickness for K-13 is 5" and it is R3.8 per inch.

Expansion Joints

40. Removal, replacing, or fixing of existing expansion joints is not included.

Caulking and Waterproofing

41. Removal, replacing, or fixing of existing caulking and waterproofing is not included.

Doors Frames and Hardware

42. The Proposal assumes the preconstruction period will include a detailed review of doors, frames, hardware, security, CCTV and other systems to confirm design and operations requirements are addressed. We anticipate the Owners Allowances include the costs and requirements for participation by the Owner's proprietary vendors and subcontractors.

Curtainwall (Prime CBE Opportunity)

The items below are based the subcontractor included in our Proposal and represent our expectation of the type of Final GMP items to be clarified when a successful bidder has been identified.

43. The Proposal includes Kawneer 1630-SS-IR Wet and Dry Glazed Curtain wall system, the large missile is a wet glazed system and the small missile is a dry glazed system.
44. Glass will be 15/16" Insulated Laminate as per spec section 08 8000 glass types GT-1, GT-2, GT-3, GT-4 and GT-6.
45. Glass Type makeups are as follows:
- GT-1 and GT-4 will be 1 5/16 Insulated laminate (1/4 Evergreen with Viracon VNE-63 Low E #2 H.S. - 1/2 airspace - 1/4 Clear H.S. - .090 SGP at large missile or .060 pvb at small missile - 1/4 Clear H.S.)
 - GT-2 will be 1 5/16 Insulated laminate (1/4 Evergreen with Viracon VNE-63 Low E #2 and Standard 50% line pattern White Ceramic Frit on #2 H.S. - 1/2" airspace - 1/4 Clear H.S. - .090 pvb at large missile or .060 pvb at small missile - 1/4 clear H.S.)

9/2/2016

Terminal 2 Modernization Project
IGMP Proposal
Assumptions and Clarifications

- c. GT-3 will be 1 5/16 Insulated laminate (1/4 Evergreen with Viracon VNE-63 Low E #2 H.S. – ½" airspace – ¼ Clear H.S. - .090 pvb at large missile or .060 pvb at small missile – ¼ clear H.S. with Ceramic frit #6 surface)
 - d. GT-6 will be 1 5/16 Insulate Laminate (1/4 tint to match existing with Low E #3 H.S. – ½ airspace – ¼ clear H.S. - .090 pvb – ¼ Clear H.S.
 - e. GT-7 will be Vivid Glass 9/16" Laminate Vivigraphix Vapor.
 - f. GT-8 will be 9/16 Clear Laminate Tempered
 - g. GT-9 will be ¼ Clear Tempered
46. The Warranty period on glass does not include labor to remove and replace glass.
47. Viracon makes every effort to provide glass from a consistent supplier for each project however reserves the right to utilize multiple suppliers to ensure delivery commitments are met.

Metal Panels

48. The metal panel manufacturer limits length of smooth finish panels to 16'-0" in length.
49. Sheathing at headers and sills not receiving metal panels is assumed to be exterior gypsum type and not plywood.

Gypsum Walls and Ceilings (CBE Mentor Opportunity)

Acoustic Ceilings (CBE Mentor Opportunity)

Tile (CBE Prime Opportunity)

Carpet

50. We have included Option C carpet by Mohawk.
51. The Proposal includes a two (2) year warranty, for all carpet options. The extended warranties were not provided to the bidders by the manufacturers.

Terrazzo

52. The Proposal assumes that specification section 09 6623, 3.1.D is covered by Allowance item #19 for floor leveling.
53. At locations where new terrazzo abuts existing terrazzo variations in color, finish and pattern may be evident. We have not included costs to attempt to match or blend the new and old terrazzo.





9/2/2016

Terminal 2 Modernization Project
IGMP Proposal
Assumptions and Clarifications

54. The Proposal assumes the constructability review will address the use and extent of vapor barriers, crack membranes and other products of this type and nature prior to issuing the Terrazzo package for bid.

Signage

55. We have included signage based on the Contract Documents, we anticipate the signage systems will be reviewed for locations, lines of sight, messaging, systems and power connections during the constructability review.

Exit Lane Breach Control

56. The Proposal includes a turnkey Breach Control system furnished and installed by Kaba.

Elevators and Escalators

57. The Proposal includes elevator and escalator equipment by Schindler. The Proposal assumes the Owner will assist Turner in addressing pricing, service and maintenance with Schindler as the market feedback indicates the airport is perceived as a proprietary elevator and escalator system by Schindler.

Fire Protection

58. We have not included upgrades, replacements or corrections of the existing fire protection system to meet current codes unless the work is specifically indicated on the Contract Documents.
59. The Proposal includes standard and extended coverage sprinklers shall be installed as the design and calculations allow per code.

HVAC

60. We have not included maintenance platforms for HVAC equipment as none are indicated on the Contract Documents.
61. The Proposal assumes that existing systems and capacities are adequate to serve new and replacement equipment.
62. The Proposal includes new ductwork as indicated on the contract documents. New ductwork will be fabricated and installed cleaned and capped until put into service. Duct cleaning of new and existing systems is not included.
63. The Proposal does not include cleaning and flushing of existing systems.
64. The Proposal does not include indoor air quality control building flush-out.

A handwritten signature in blue ink, located in the bottom right corner of the page.



9/2/2016

Terminal 2 Modernization Project
IGMP Proposal
Assumptions and Clarifications

Sitework and Paving

65. We have not included lighting on the apron for hauling excavated materials.

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SCHEDULE 2-PROGRAM MANAGER CONTRACT

[SEE ATTACHED]

PO #: 9100060202
Contract Number: CW2287796

PROGRAM MANAGEMENT SERVICES AGREEMENT

Terminal 2 Modernization Fort Lauderdale – Hollywood International Airport (FLL) Fort Lauderdale, Florida

THIS AGREEMENT is made this 25th day of August, 2016 (the “**Effective Date**”)

BETWEEN the “**Owner**”:
DELTA AIR LINES, INC.
1030 Delta Blvd.
Department 877
Atlanta, Georgia 30354

And the “**Program Manager**”:
PM TECHNOLOGIES, INC.
5775 Glenridge Drive
Suite 500, Building B
Atlanta, GA 30328

For services in connection with the “**Project**” known as:

Terminal 2 Modernization
Fort Lauderdale – Hollywood International Airport (FLL)
Ft. Lauderdale, FL

W I T N E S S E T H

WHEREAS, Owner is the tenant under that certain Signatory Terminal Building Lease Agreement on September 27, 2011 (the “**Original Lease**”) with Broward County, a political subdivision of the State of Florida (the “**County**”), as amended and modified by an Addendum to Signatory Terminal Building Lease Agreement by and between the County and Owner dated as of June 12, 2012 (the “**First Addendum**”), a First Amendment to Signatory Terminal Building Lease Agreement by and between the County and Owner dated as of March 13, 2013 (the “**First Amendment**”), a Second Amendment to Signatory Terminal Building Lease Agreement by and between the County and Owner dated as of March 19, 2013 (the “**Second Amendment**”), a Modification Agreement by and between the County and Owner dated as of June 24, 2014 (the “**First Addendum Modification**”), a Third Amendment to Signatory Terminal Building Lease Agreement by and between the County and Owner (the “**Third Amendment**”), a Second Addendum to Signatory Terminal Building Lease Agreement by and between the County and Owner dated as of April 5, 2016 (the “**Second Addendum**”; the Original Agreement as modified and amended by the First Addendum, the First Addendum Modification, the First Amendment, the Second Amendment, the Third Amendment and the Second Addendum and as may be further modified, amended or supplemented, the “**Lease**”) concerning the use and lease of certain real

PO #: 9100060202
Contract Number: CW2287796

property and improvements thereon located at Fort Lauderdale-Hollywood International Airport, located in Fort Lauderdale, Florida (the “**Airport**”); and

WHEREAS, the County desires to modernize Terminal Two of the Airport, and Owner has agreed to manage the modernization; and

WHEREAS, the Owner wishes to engage the Program Manager to provide certain program management services for the Project, as more fully described below, upon the terms, conditions, and covenants hereinafter described; and

WHEREAS, the Program Manager wishes to perform such services for the Owner upon the terms, conditions, and covenants hereinafter described.

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Owner and the Program Manager agree as set forth below.

ARTICLE 1 **DEFINITIONS**

1.1 For purposes of this Agreement, the following words shall have the following meanings:

“**Architect**” shall mean Gresham, Smith and Partners, and any replacement or additional design professionals retained by Owner or the County in connection with the Project.

“**Architect Agreement**” shall mean the agreement(s) for the Project entered into between the County and the Architect, as said agreement may be modified or replaced from time to time.

“**Confidential Information**” shall have the meaning defined in Paragraph 11.7.

“**Construction Documents**” shall mean Drawings and Specifications which are issued for construction for all architectural, structural, plumbing, heating, electrical, mechanical, specialty or other work required for the entire Work or any Project Element thereof.

“**Construction Agreement**” shall mean the construction contract (whether one or more) for the Project or any portion thereof entered into by and between the Owner and the Contractor pursuant to the process described in Paragraph 3.1.2 of this Agreement.

“**Consultant**” shall mean any and all firms or individuals, other than the Architect, with whom the Owner enters into a contract for the provision of design, engineering or other professional services for the Project.

“**Contract Documents**” shall mean the Construction Agreements and all documents incorporated therein or attached thereto as exhibits (including but not limited to the General Conditions of the Contract, the Special Provisions, the General Requirements, the Drawings, the Specifications, Notice to Proceed(s), all Addenda issued prior to and all Modifications issued after execution of this Agreement, including but not limited to Change Orders, Construction

PO #: 9100060202
Contract Number: CW2287796

Change Directives, Work Authorizations and Construction Document Change Orders). The parties hereto understand and acknowledge that Owner and the County have entered into the Second Addendum. The Second Addendum is integral to the development of the Project and is part of the Contract Documents. The Program Manager shall coordinate its efforts with Owner so that Owner can meet all of the requirements imposed on Owner by the Second Addendum. Except as expressly modified herein or in the documents listed in this Section, the Program Manager shall be bound by and shall comply with the provisions and requirements of the Second Addendum pertaining to the Program Manager's work and services on the Project as if the Program Manager had executed the Second Addendum.

“Contractor” shall mean the general contractor or construction manager (whether one or more) for the Project or any portion or Project Element thereof employed by the Owner pursuant to the process described in Paragraph 3.1.2 of this Agreement.

“Drawings” shall mean the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, which are prepared by the Architect or a Consultant and which show the design, location and dimensions of the Work, generally including, but not limited to, plans, elevations, sections, details, schedules, and diagrams.

“Procedures Manual” shall mean a guidance manual for administration of the Project to be prepared by Program Manager in accordance with the provisions of Paragraph 3.1.3 of this Agreement, and as it may be revised from time-to-time by mutual agreement of the Owner, the Program Manager and the Contractor.

“Project” shall mean the modernization of Terminal 2 of the Airport, as more particularly described on Addendum B attached hereto and made a part hereof.

“Project Element” shall mean a designated portion or part of the Project, including the Project Elements described on Addendum B attached hereto, if any.

“Reimbursable Expenses” shall have the meaning set forth in Paragraph 6.2 hereof.

“Specifications” shall mean that portion of the Contract Documents which consists of the written requirements for the Project or any Project Element or portion thereof, including, but not limited to, the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

“Work” shall mean all plant, labor, transportation, equipment, materials, resources, services and appurtenances for the Project to be provided by the Contractor all in accordance with the Contract Documents in compliance with all federal, state and local laws, statutes, orders, rules, regulations, ordinances, and all rules, regulations, policies, practices and procedures, established by the Owner and the County for the Project. The Work may incorporate the whole or any part of the Project.

In addition to the foregoing specifically defined terms, other capitalized terms used in this Agreement shall have the respective meanings given to them in other articles of this Agreement

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or elsewhere in the Contract Documents or if not defined shall have the meaning commonly applied to such terms.

ARTICLE 2 **RELATIONSHIP OF THE PARTIES**

2.1 Owner and Program Manager

With the respect to the Owner, the Program Manager shall at all times be an independent contractor. No provision hereof shall be construed to constitute the Program Manager or any of its officers or employees as an employee or employees of the Owner nor shall any provision of this Agreement be construed as creating a partnership or joint venture between the Program Manager and the Owner. Neither the Owner nor the Program Manager shall have the power to bind the other party except pursuant to the terms of this Agreement.

2.2 Term of Agreement

The engagement of the Program Manager hereunder shall be deemed to commence on August 25, 2016, and shall end on December 31, 2020; provided, however, if any remedial work to be performed by the Contractor or any other Contractor following the completion of the Project has not been completed, the term of this Agreement shall be extended until the date on which any remedial work required to be performed shall be so performed and accepted by the Owner.

2.3 Standard of Care

This Agreement establishes a relationship of trust and confidence between the Program Manager and the Owner. The Program Manager covenants with the Owner to exercise that degree of skill, competence, quality and professional care rendered by the leading and most reputable companies performing the same or similar type services in the United States; to cooperate with the County, the Architect, the Contractor and other parties in furthering the interests of the Owner; to perform the Program Manager's services and make sure that the Project is planned, designed and constructed in the most expeditious and economical manner consistent with the interests of the Owner and that all work on the Project shall be in accordance with applicable federal, state and local laws and regulations and the County requirements. The Program Manager will not subcontract any of its services to any other entity or person without first obtaining the Owner's prior written consent.

2.4 Relationship of Program Manager to Other Project Participants

In providing the services required under this Agreement, the Program Manager shall maintain a working relationship with the County, the Contractor, Consultants, and the Architect on behalf of the Owner. The Contractor shall be responsible for construction means, methods, sequence or procedures used in the construction, and the complete safety program for the work for which such Contractor is responsible, including but not

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limited to the safety of its personnel and its operations. The Architect shall be solely responsible for the Project design.

ARTICLE 3
PROGRAM MANAGER'S BASIC SERVICES

The tasks listed in this Article describe the general range of services to be provided by the Program Manager hereunder. In addition, the Program Manager shall also perform all services and functions identified for the Program Manager in the Construction Agreement (and all Contract Documents related thereto), the Architect Agreement, any agreements between the Owner or the County and any Consultants for the Project, the Procedures Manual and any additional Services set forth on Addendum B. All services to be provided under this Article and elsewhere in this Agreement shall be defined as the Program Manager's "**Basic Services**".

3.1 Pre-Construction and Design Phase Services

3.1.1 Consultant Team Selection

The Program Manager shall assist the Owner in defining the scope for Consultant services, if any, required for the Project. Subject to the Owner's review and approval, the Program Manager shall manage all aspects of the selection process for Consultants in accordance with the Second Addendum and the County's procurement procedures, including without limitation the preparation of requests for proposals, reviewing proposals, making recommendations to Owner, and negotiating and preparing the Owner/Consultant agreements.

3.1.2 Contractor Selection

The Program Manager shall assist the Owner in preparing the scope of work for the Contractors and in defining other Contractor services required for the Project. Subject to the Owner's and the County's review and approval, to the extent that the Program Manager is selected prior to selection of the Contractor, the Program Manager shall manage all aspects of the selection process for the Contractors in accordance with the Second Addendum and the County's procurement procedures, including without limitation the preparation of requests for proposals, reviewing proposals, making recommendations to Owner, and negotiating and preparing the Construction Agreements using forms specified by Owner and in coordination with Owner's legal and risk management advisors.

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3.1.3 Project Management Plan and Procedures Manual

The Program Manager shall prepare a preliminary Project Management Manual for the Project which shall establish the basis for the management of the Project. In preparing the Project Management Manual, the Program Manager shall consider the Owner's and the County's schedule, cost and design requirements for the Project. Management tools shall include Primavera for schedule control and ProLog for document process control. Upon approval by Owner of the preliminary Project Management Manual, Program Manager shall prepare the Project Management Manual in final form which shall include a narrative description of the manual and a description of the various major Project Elements of the Program. The Program Manager shall further prepare the comprehensive Procedures Manual for the Project and shall revise same during the entire course of the Project as agreed by the Owner, the Program Manager, and one or more of the Contractors.

3.1.4 Master Summary Schedule

In accordance with the Project Management Manual, the Program Manager shall prepare a Master Summary Schedule (the "**Master Schedule**") for each Project Element of the Project and the Project as a whole. The Master Schedule shall specify the milestones, activities, and dates that will be used to plan and monitor overall performance on the Project. The Program Manager shall work cooperatively with the Contractors, the Architect, and the County to develop various alternative approaches for the phasing and logistics of the construction and shall make appropriate recommendations to Owner. The Master Schedule shall be prepared in the most current version of Primavera at the time of execution of the Second Addendum.

3.1.5 Updates to Master Schedule

Throughout the Project, the Program Manager will monitor and provide required updates to the Master Schedule on a monthly basis. The Program Manager shall coordinate changes in the schedule with the County, the Architect, and the Contractors. Such monthly Master Schedule updates will incorporate, in appropriate summary form, data submitted by the County, Owner, the Architect, and the Contractors.

3.1.6 Management of Design Services and Review of Design Documents

The Program Manager shall conduct regularly-scheduled design coordination meetings and shall attend design, update or other meetings at the request of the County or the Owner. The Program Manager shall coordinate the review of design documents for clarity, consistency, constructability, and adaptability to the Owner's program. The results of the review coordination shall be provided to the Owner and County in writing. The performance of such coordination review by

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the Program Manager shall not make the Program Manager liable for the design obligations or performance, or both, of the Architect.

3.1.7 Cost Estimate

The Program Manager shall evaluate project cost estimates for the various phases of Project. The Program Manager shall work cooperatively with the Architect and the Contractors to reconcile the independent cost estimates of the Architect and the Contractors at the completion of the various phases of the Project.

3.1.8 Construction Recommendations

The Program Manager shall provide written recommendations and input to Owner, County and the Architect with respect to Contractor's comments on constructability, construction cost, sequencing construction, possible means and methods of construction, expected construction durations of various building methods and separation of the Project into contracts for various categories of the Work.

3.1.9 Value Engineering

The Program Manager shall conduct, in cooperation with the Owner and the Architect, a formal value engineering study if so directed by the Owner. The results of this study shall be in report form and shall be distributed to the Owner, County and the Architect. If additional value engineering studies are required or requested, they will be performed as Additional Services under Article 4 of this Agreement.

3.1.10 Design Review Meetings

The Program Manager shall coordinate and prepare minutes of periodic Design Review meetings during all phases of design of the Project. The Program Manager shall coordinate with the County on design submittals and obtaining the County and other governmental approvals provided that the County shall be responsible for design submittals and actually obtaining the County and other governmental approvals.

3.2 Bidding Services.

3.2.1 Contract Documents

The Program Manager shall assist the Owner, the County and the Architect in preparation of the scope and schedule for the contract bidding documents. In addition, the Program Manager shall provide input as appropriate for the instructions to bidders. As part of this task, the Program Manager will focus on documents dealing with project controls including but not necessarily limited to project scheduling, monthly progress reporting, and progress payment requirements. In addition, the Program Manager shall ensure that all bidding

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complies with the Second Addendum, the County procurement procedures and all applicable CBE requirements.

3.2.2 Addenda

The Program Manager shall assist the Owner, County and the Architect in developing and coordinating addenda procedures to provide answers to bidders' questions.

3.2.3 Assembly and Delivery of Bid Documents and Addenda

The Program Manager shall monitor the delivery of all bid documents and addenda to the bidders. This task shall be performed in conjunction with the Architect who will assemble, bind, and transmit the bid documents and any addenda to the Program Manager for distribution to bidders. The Program Manager shall notify, forward documents, and schedule meetings as necessary to facilitate obtaining the Owner's input in the sourcing/approval of subconsultants and subcontractors to the Program Manager and the Contractor as outlined under Paragraph 5.10 of this Agreement.

3.2.4 Pre-Bid Conference

In conjunction with the Owner and the Architect, the Program Manager shall attend the pre-bid conference(s) for all portions of the Project. In addition, the Program Manager shall ensure that all pre-bid conferences comply with the Second Addendum and the County procurement procedures.

3.2.5 Bid Opening and Recommendations

The Program Manager shall participate in the bid opening(s) as provided in the Contract Documents, and shall assist the Owner and the Architect in evaluating bidder qualifications and the bids for completeness, responsibility, responsiveness and price. Further, Program Manager shall ensure the bid process is conducted in a manner consistent with Owner's high ethical standards that is fair and competitive as well as in accordance with the Second Addendum and the County procurement procedures. The process as further defined in the Procedures Manual shall ensure confidentiality, timely distribution of beneficial information to all bidders and that best and final bids are received at the same date and time. Program Manager shall present formal recommendations to Owner.

3.2.6 Construction Contracts

The Program Manager shall assist the Owner with the review of contract documents developed by the Contractor.

3.2.7 Contract Administration

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In accordance with the Owner's policies and practices, the Program Manager shall ensure that all Project-related contracts with Owner are properly signed and returned and entered into the Owner's contract management system and that all required evidence of insurance and bonds are obtained and properly handled.

3.3 Financial Controls; Public Records

3.3.1 General

The Program Manager shall perform cost control, contract compliance, and management services in connection with the Project, including without limitation establishing and enforcing proper audit and controls measures to ensure compliance by Owner and other members of the project team with Owner Internal Audit standards and procedures and all contractual and legal requirements of a financial nature, monitoring of Project budgets and Project schedules, oversight of disbursement requisitions, and compliance with sources and uses of funds requirements. The Program Manager shall ensure that all Project professionals' record-keeping procedures and application for payment processes comply with the County's allocation and other requirements to allow County reimbursement to Owner in accordance with the schedule agreed between the County and Owner.

3.3.2 Incorporation into Project Transaction Documents

The Program Manager will become intimately familiar with the recordkeeping, reporting, document retention, accounting and other financial and compliance-related terms and conditions set forth in all Project agreements, including Owner's lease agreement(s) and reimbursement agreement(s) with the County, and the Second Addendum (as each of the same have been, and may hereinafter from time to time, be amended, modified or supplemented, collectively, the "**Project Transaction Documents**"). All of these requirements must then be appropriately incorporated into contracts and Project procedure manuals to ensure compliance.

3.3.3 Financial Reporting and Analysis

The Program Manager shall prepare various reports and analyses to support the decision-making process throughout the Project. Program Manager shall perform the Basic Services so as to provide Owner with the information necessary to facilitate important business and financial decisions and to closely monitor the Project and ensure that the Project is progressing in accordance with the financial metrics established at the outset of the Project.

3.3.4 Public Records

The Program Manager shall assist Owner with Owner's compliance with any public records requirements, including, without limitation, responding to any public records requests.

3.4 Construction Services

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3.4.1 Pre-Construction Conference

In conjunction with the Owner, Architect, and Contractor, the Program Manager shall attend and prepare minutes for all pre-construction Conferences.

3.4.2 Permits, Insurance and Labor Affidavits

The Program Manager shall manage and work with the Architect and Contractor in the permitting process as necessary for timely permitting, including managing the expediting process. The Program Manager shall maintain duplicate copies of all permits, insurance certificates, bonds, labor affidavits, and other government agency documents as appropriate. The Program Manager must be familiar with all applicable federal, state, local and County laws, rules and regulations, including without limitation permitting, wage, and labor requirements and oversee compliance with such compliance by all Contractors and Consultants working on the Project. The Program Manager shall communicate to the Owner any required third party inspections required by such laws, rules and regulations and coordinate the scheduling of such inspections.

3.4.3 Contractor Construction Schedules

Upon the transmission of the notice(s) to proceed to a successful bidder, the Program Manager shall advise the Contractor of the specific details for developing a detailed construction schedule within the framework of the Program Manager's Master Schedule requirements set forth in the Contract Documents.

3.4.4 Contract Administration and Construction Phase Procedures

The Program Manager shall provide contract administration and shall, in accordance with Owner's policies, establish and implement administrative coordination and communication procedures among the Program Manager, the Owner, the Architect, the County, Contractors, Consultants, and other appropriate parties. The Program Manager, using County's ProLog system, shall establish and implement procedures for submittal, material samples, change orders, payment requests and other procedures and maintain daily job reports, logs, files, and other necessary documentation. As the Owner's representative at the construction site, Program Manager shall be the party through which change orders, payment requests, requests for information submittal and information shall be processed and communicated from the Contractor to either the Owner, the Architect, the County or all three, and from either the Owner, the Architect, the County or all three to the Contractor. The Owner may elect to have requests for information, shop drawings, and material samples submitted directly to the County (or the Architect, if possible), with a copy to the Owner, County (if applicable), and the Program Manager.

3.4.5 Owner's Representative

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The Program Manager shall provide necessary staffing as required to support the project to observe the progress and quality of the Work and to determine in general that it is proceeding in accordance with the Contract Documents. The Program Manager will provide on-site phasing and logistics coordination with Owner to facilitate its on-going terminal and flight operations. The Program Manager shall assist with site access for other Project team members, inspectors and others who require access to the Project site, and shall coordinate security clearances and badging for all Project personnel and adherence to applicable security procedures.

3.4.6 Construction Site Meetings

As reasonably required by the Owner, the Program Manager shall attend construction site meetings with the Contractors and/or the County, and attend overall coordination meetings with the Contractors, and, as appropriate, the Owner, the County and the Architect, and shall record, transcribe and distribute minutes to all attendees and all other appropriate parties.

3.4.7 Coordination of Other Independent Consultants

Technical inspection and testing provided by the Owner, the Architect, the Consultants, or any other third party shall be coordinated by the Program Manager. All technical inspection reports shall be in a format approved by the Program Manager and shall be received by the Program Manager as expeditiously as possible.

3.4.8 Progress Payments

In consultation with the Architect (if required), based upon observations at the site and upon applications for payment by the Contractor, which may include certified payrolls, the Program Manager shall review the payment requests for accuracy and determine whether the amount requested reflects the progress of the Contractor's work and complies with the requirements of the Second Addendum. The Program Manager shall recommend appropriate adjustments to each payment application and shall review and forward to Owner the Certificate for Payment prepared by the Contractor and approved and certified by the Program Manager.

3.4.9 Weekly Job Progress Report

The Program Manager shall report to the Owner in writing, on a weekly basis, a status of jobsite progress. The report shall include the Program Manager's review of the Architect's and the Contractors' progress payment requests, a status report on all open Change Orders, and an evaluation of the Project Master Schedule. Such evaluation will include a revised copy of the Summary Master Schedule reflecting the current progress, and progress photos obtained from the Contractor.

3.4.10 Nonconforming Work

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The Program Manager shall, in conjunction with the Architect and/or County, if applicable, make recommendations for corrective action on nonconforming Work. The Program Manager shall make recommendations to the Owner, the County and the Architect in instances where Program Manager observes Work that, in the Program Manager's opinion, should be rejected.

3.4.11 Punch Lists

In conjunction with the Architect (if the Architect is providing such services), the Program Manager shall coordinate the preparation of lists of incomplete or defective work ("Punch Lists") by the Contractors prior to Substantial Completion. When incomplete work or defective work has been remedied, the Program Manager shall advise the Owner of Project completeness, and assist the Architect in issuing, upon the County's and Owner's concurrence, a Certificate of Substantial Completion. There may be separate Certificates of Substantial Completion for each Project Element of the Project.

3.4.12 Change Order Control/Audits

The Program Manager shall establish and implement a Change Order control system as further defined in the Procedures Manual. The Program Manager shall make recommendations to the Owner concerning time extensions and shall verify that work and time adjustments, if any, required by approved change orders, have been incorporated into the Contractor's Construction Schedule. The Program Manager shall assist Owner as required in project/program financial or programmatic audits.

3.4.13 Submittals

The Program Manager shall team with the Contractor and/or the Architect, to provide, establish and implement a control system using County's ProLog system for the review and approval of all submittals. "Submittals" shall include vendor's drawings, catalog cuts, manufacturer's literature, samples, mock-ups and other materials submitted as required by the various contracts.

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3.4.14 Claims

The Program Manager shall review the contents of any claim submitted by any Contractor or the Architect, assemble information concerning the claim, review the impact of the alleged cause, and make recommendations to the Owner with respect to the claim in a timely manner. When requested by the Owner, the Program Manager shall further negotiate the claim on behalf of Owner pursuant to the Owner's instructions. The Program Manager shall make a final recommendation to the Owner concerning settlement or other appropriate action. Detailed claims analysis, including detailed time impact analyses, trial assistance or depositions/testimony will be provided as an Additional Service. However, the Program Manager's role with respect to claims is advisory only, and the Owner shall be responsible for decisions affecting claims and the final outcome of any negotiations, legal proceedings, or any other manner of claim resolution.

3.4.15 Record Documents

The Program Manager shall coordinate and expedite submittal of information by the Contractor for record documents preparation and shall coordinate and expedite the transmittal of record documents to the Owner. The Program Manager shall at all time keep full record copies of completed and ongoing Project Elements of the Project in a safe and secure location.

3.4.16 Occupancy Permits

The Program Manager shall participate in activities conducted by the Contractors and the Owner in obtaining the Occupancy Permits, including accompanying governmental officials during inspections of the Project, verifying that proper documentation is submitted to the appropriate approving agencies, and verifying that final testing and other activities are conducted.

3.4.17 Administration of Testing and Start-up

The Program Manager shall participate in the activities conducted by the Contractors and the Owner in administrating and coordinating all related equipment testing and shall coordinate the Owner's start-up operations.

3.4.18 Badging

At Owner's request, the Program Manager shall administer the badging procedures on Addendum G.

3.4.19 Final Payment

The Program Manager shall, at the conclusion of corrective action of all Punch List items, make a final inspection of the facilities in conjunction with the Architect, prepare a report of the final inspection for the Owner and shall make

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recommendations to the Owner as to final payment to the Contractor with respect to each Project Element of the Project.

3.4.20 Post-Construction

The Program Manager shall coordinate the establishment of maintenance programs for the completed Project, the compilation of operation and maintenance manuals and coordinate training of BCAD maintenance staff. All warranties, drawings, contracts, and other materials that need to be retained by the Owner in connection with the Project shall be compiled and transferred to the Owner in a condition to be incorporated into the Owner's document maintenance programs.

- 3.5 The Program Manager shall be responsible to the Owner for the acts and omissions of the Program Manager's employees, subcontractors, suppliers, their agents and employees and other persons engaged by the Program Manager to perform any portion of the Program Manager's obligations under this Agreement.
- 3.6 Nothing contained in this Agreement shall create a contractual relationship between the Owner and any person or entity other than the Program Manager or between Program Manager and any other person or entity other than the Owner.
- 3.7 The services performed by the Program Manager, its employees and consultants, shall be as specified in this Agreement and as necessary to meet the Owner's program requirements and the specific requirements of the Project. Time is of the essence in the performance of the Program Manager's services hereunder. The Program Manager's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project.

ARTICLE 4 **ADDITIONAL SERVICES**

4.1 Additional Services

Owner, without invalidating this Agreement, may make changes in the Program Manager's Basic Services specified in Article 3 of this Agreement. The Program Manager shall notify the Owner in writing within 10 business days of changes that increase or decrease the Program Manager's compensation or the duration of Program Manager's services or both. No Additional Services shall be performed without prior written approval of the Owner.

4.2 Additional Compensation

Should the Project duration be extended beyond the estimated Project duration indicated in Paragraph 2.2 for reasons beyond the exclusive control of the Program Manager, or should the Owner require Additional Services pursuant to this Article, Program Manager shall give prompt written notice of a request for Additional Services and, if authorized in

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writing by Owner, shall be entitled to receive additional compensation. Such compensation shall be determined as provided in Paragraph 6.6.

4.3 Payment for Additional Services

The Program Manager shall submit invoices for Additional Services with its invoice for Basic Services, and payment shall be made pursuant to the provisions of Article 6 of this Agreement.

ARTICLE 5 **OWNER'S RESPONSIBILITIES**

- 5.1 The Owner will provide to the Program Manager necessary information regarding the Owner's requirements or other Project-related data in Owner's possession applicable to the Program Manager's services for the Project as reasonably requested by the Program Manager.
- 5.2 The Owner will examine information submitted by the Program Manager and shall render decisions pertaining thereto promptly.
- 5.3 The Owner will furnish its own legal, accounting and insurance counseling services as the Owner may deem appropriate for its own interests.
- 5.4 If at any time during the Project, the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, prompt notice thereof shall be given to the Program Manager. The Owner, however, shall have no obligation to observe the Project to determine any fault or defects, but such shall be the responsibility of the Program Manager and the Architect as their contracts may require.
- 5.5 The Owner will furnish required information and approvals in a timely manner to facilitate orderly progress of the Work in cooperation with the Program Manager consistent with this Agreement and in accordance with the planning and scheduling requirements of the Project as determined by the Program Manager, and approved by the Owner.
- 5.6 Intentionally deleted.
- 5.7 The Owner will verify the Project budget and will approve any subsequent revisions for the Project based on consultation with the Program Manager.
- 5.8 Copies of Contract Documents will be furnished by the Owner to Program Manager at no cost to the Program Manager.
- 5.9 In order to eliminate confusing and conflicting instructions to the Contractor to the extent possible, all communications between the Owner and the Contractor shall be copied to the Program Manager.

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5.10 To facilitate cost effectiveness, the Owner shall:

- .a Have full and free access to the sourcing process for subcontractors to the Contractor and subconsultants to the Program Manager, and shall have the right, but not the obligation, to approve all bidding documents and the bidding process for such contracts; and
- .b The Owner shall have the right to recommend selection of subconsultants to the Program Manager and subcontractors to the Contractor other than the low qualified bidder, but with a change order to the Not-to-Exceed Amount for this Agreement, or to the guaranteed maximum price or the stipulated sum, as appropriate, for the applicable Construction Agreement, for the difference between the low bid amount and the price of the subconsultant/subcontractor approved by the Owner.

5.11 The Owner will designate, in writing, one or more officers or employees to represent the Owner with respect to the Project. Any such designation may be supplemented and replacements may be provided for by written notice thereof by Owner at any time.

ARTICLE 6 **PROGRAM MANAGER'S COMPENSATION**

6.1 Compensation for Basic Services

The Owner shall pay the Program Manager for the Basic Services to be performed hereunder an amount equal to Program Manager's Labor Costs, subconsultant and consulting support costs (to the extent approved by Owner), and Reimbursable Expenses (as defined below) and based upon the Program Manager's Rate Schedule attached hereto as Addendum A and Staffing Plan ("**Staffing Plan**") attached hereto as Addendum C; provided, however, that the combined cost of such Labor Costs, subconsultant and consulting support costs, and Reimbursable Expenses shall not exceed the amount of \$7,030,390.32 (the "**Not-to-Exceed Amount**"), which shall cover all the Program Manager's Labor Costs, subconsultant and consulting support costs (not to exceed \$6,482,568.57,) and Reimbursable Expenses (not to exceed \$547,921.75) for the Basic Services. The Owner shall review the Staffing Plan for staff assignment and man-hours on an annual basis and subsequently release the budget for the following year with hourly rates to remain unchanged from the Rate Schedule, and the Staffing Plan. The Not-to-Exceed Amount shall be broken down into the following not-to-exceed amounts for the various phases and/or Project Elements:

6.1.1 Labor Costs. For all employees working on the Project, the Program Manager shall invoice the Owner on a monthly basis according to the following:

- A. Invoicing will be based on the hourly billing rates reflected in the approved Rate Schedule attached hereto as Addendum A and will be based on the multiplier reflected in the Addendum A. Such rates will

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include fringe benefits, including, but not limited to: sick leave, vacation, holiday, unemployment, excise and payroll taxes, contributions for social security, unemployment compensation insurance, retirement benefits, and medical and insurance benefits. In no event will the base salary rate or billing rate be higher than the maximum base salary rate and maximum billing rate shown on Addendum A. Further, the base salary rate and billing rate for each year of the Project shall be as shown on the Resource Planning worksheet included in Addendum A. As used in the foregoing sentence, “year” shall mean each year of the Project, which shall commence on August 25 each calendar year and terminate on August 24 of the subsequent calendar year.

- B. Said Salary or Labor Costs are to be used only for time directly attributable to the Project or services, and the services described in this Agreement. Total costs comprising the overhead and fringe benefit factors shall be consistent with the Federal Acquisition Regulation (FAR) Guidelines for Cost & Pricing Data. The term Salary or Labor Costs as used herein shall mean the hourly rate actually paid to all personnel engaged directly on the Project, as adjusted by an overall multiplier.
- C. Program Management Staff invoicing will be limited to a maximum of eight (8) hours per day. Absent prior express authorization, Staff shall not exceed 40 hours per week.
- D. Base rate salary increases will be in accordance to the Staffing Plan, (Addendum C.)
- E. Holiday time, vacation time and sick time will not be included in invoiced hours.
- F. Provision of any and all other items required for the Program Manager’s invoices as set forth on Addendum F, as may be unilaterally amended by Owner.

6.1.2 Subcontractor/consultant costs. For all subcontract and consulting support retained by the Program Manager and approved in writing by the Owner in advance, and performing services related to the Project, the reasonable direct personnel expenses, administrative cost and profit shall be determined in a manner approved by the Owner in advance.

6.2 Reimbursable Expenses

The Program Manager shall be compensated for Reimbursable Expenses, limited to the categories below that are reasonably necessary for the performance of Program Manager’s services hereunder. These expenses will be invoiced at cost, and without any mark-up, shall comply with the applicable invoicing requirements on Addendum F, as

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may be unilaterally amended by Owner, and shall be limited to the following and subject to the limitations of Section 112.061, Florida Statutes:

- 6.2.1 Project office expense, including: rent; utilities; telephone; furniture; equipment; and supplies where applicable, but only to the extent such items are not provided by Owner. All equipment and furniture purchased for this Project will be the property of the Owner at the termination of the Program Manager's services to be provided under this Agreement, or, if the Owner so directs, shall be retained or sold by the Program Manager, with the salvage value or sale price, as the case maybe, credited against the Owner's payments or obligations hereunder.
- 6.2.2 Travel and subsistence costs for the Program Manager employees incurred for the Project, subject to the limitations and requirements of applicable Florida law, including, without limitation, Florida Statute §112.061.
- 6.2.3 Expenses for Project vehicles, approved by the Owner in writing in advance.
- 6.2.4 Project related telephone calls, telegrams, and high speed internet connection.
- 6.2.5 Handling, shipping, mailing and reproduction of Project-related materials.
- 6.2.6 Local area transportation expenses when traveling in connection with the Project, subject to the limitations and requirements of applicable Florida law, including, without limitation, Florida Statute §112.061.
- 6.2.7 Computer equipment and supplies.
- 6.2.8 Progress photographs.

6.3 Program Manager's Accounting Records

Records of the Program Manager's payroll, consultant and Reimbursable Expenses pertaining to the Project shall be kept on the basis of generally accepted accounting practices and in accordance with County requirements including without limitation allocation requirements to permit County reimbursement and any Public Records requirements, and shall be available to the County, Owner and/or their respective representatives at mutually convenient times for a period of three (3) years after issuance of the Certificate of Final Completion for the last-completed portion or Project Element of the Project or such other period required by the County.

6.4 Payments

The Program Manager shall invoice the Owner, in accordance with the requirements of Addendum F, as may be unilaterally amended by Owner, on a monthly basis for the services performed during the previous month and for Reimbursable Expenses incurred

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in the previous month. Payments of undisputed amounts will be made monthly not later than ten (10) business days after Owner is reimbursed for such amount by the County.

6.5 No Payments in Advance

The Program Manager may make application for payment to Owner only for completed Work, at intervals of not more than once a month. No payment will be made for Program Manager's services in advance of completion or prior to performance.

6.6 Payments Withheld

In addition to other grounds set forth in this Agreement, the Owner may withhold the whole or a part of any payment due the Program Manager to such extent necessary to protect the Owner from loss on account of any of the following circumstances, regardless of when such may be discovered:

6.6.1 Defective services not remedied;

6.6.2 Claims filed;

6.6.3 Failure of the Program Manager to make payments properly due and owing to its subcontractors or consultants;

6.6.4 Any material failure to perform under this Agreement;

6.6.5 Any material breach of this Agreement; and

6.6.6 Any failure to comply with the invoicing requirements of Addendum F or the County or Owner.

When the above grounds are removed, payment shall be made, for amounts withheld because of them. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of any breach or acquiescence therein. The Owner may exercise its option from time to time and as often as may be necessary.

If the Owner shall determine, by audit or otherwise, that it has made an overpayment to the Program Manager and thereafter makes written demand for repayment thereof, the Program Manager shall, within thirty (30) days of receipt of such written demand for repayment tender the amount of such overpayment to the Owner or otherwise resolve the demand for repayment to the Owner's satisfaction. If the Program Manager fails to comply with or otherwise resolve to the Owner's satisfaction any demand for repayment made pursuant to this paragraph, the amount of such overpayment demanded shall thereafter bear interest at the prime rate in effect as of the date the overpayment is demanded, until paid in full.

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6.7 Payment for Additional Services

Payment for Additional Services shall be on the same basis and manner as provided for Basic Services once the Owner and the Program Manager reach agreement on a scope of work and staff requirements for the Additional Services.

ARTICLE 7
INSURANCE AND INDEMNITY

7.1 Insurance

7.1.1 Program Manager shall maintain the following insurance coverages, with an insurance company or companies satisfactory to Owner for claims which may arise from and during operations under this Agreement, whether such operations be by Program Manager, its subconsultants or anyone directly or indirectly employed by any of them. Certificates of such insurance shall be filed with Owner prior to commencing the services contemplated by this Agreement and shall provide coverage in not less than the following amounts:

Commercial General Liability	\$2,000,000 Each Occurrence \$2,000,000 Personal Injury/Advertising Injury \$3,000,000 General Aggregate \$2,000,000 Products/Completed Operations Aggregate
Worker's Compensation	Statutory limits
Employer's Liability	\$1,000,000 Each Accident \$1,000,000 Each Employee \$1,000,000 Policy Limit
Automobile Liability	\$1,000,000 (or \$5,000,000 if Program Manager will operate automobiles on the secured area of an airport) Each Accident (including owned, hired and non-owned automobiles).
Excess/Umbrella Liability	\$3,000,000 Each Occurrence \$3,000,000 General Aggregate \$3,000,000 Products/Completed Operations Aggregate

7.1.2 The Commercial General Liability, Automobile Liability, and Excess/Umbrella Liability policies shall include contractual liability, shall contain an appropriate cross-liability clause insuring Owner, and the County against any loss or damage to Owner or the County or their property, respectively, resulting from any acts or omissions of Program Manager, its officers, directors, employees, agents or contractors, and shall name Owner and the County as additional insureds. The coverage provided to the additional insureds pursuant

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to this Article shall expressly provide that it is primary to, and non-contributory with, any insurance, whether primary, excess, contingent or on any other basis, maintained by Owner and the County (that is, Program Manager's insurance shall exhaust vertically, and not share horizontally with any of the insurance carried by Owner or the County notwithstanding any case law to the contrary). The Workers' Compensation policy shall provide that Program Manager or its insurers agree to waive all rights of subrogation against Owner and the County. All policies shall remain in full force and effect for at least thirty (30) days after Owner and the County receive written notice of cancellation, termination or material modification.

- 7.2 Indemnification. Except as provided below in clauses (1) and (2) of this Paragraph 7.2, to the fullest extent permitted by law, the Program Manager shall release, indemnify, defend and hold harmless Owner and the County and their respective directors, officers, members, employees, successors and assigns (collectively, the "**Indemnified Parties**" and individually, an "**Indemnified Party**") from and against any and all claims, damages, losses, fines, civil penalties, liabilities, judgments, costs and expenses of any kind or nature whatsoever (including but not limited to interest, court costs and attorney's and expert's fees, including those incurred by the Owner in seeking the enforcement of the Program Manager's obligations hereunder) ("**Claims**"), which in any way arise out of or result from any act(s) or omission(s) by the Program Manager or its consultants or subcontractors (or anyone directly or indirectly employed by them for whose acts they may be liable) in the performance or nonperformance of the services under this Agreement, including but not limited to injury to or death of any person, damage to or destruction of any property, real or personal (including but not limited to property owned, leased or under the control of Owner), and any loss of use of such property or revenues therefrom, and liability or obligations under or with respect to any violation of federal, state and local laws, regulations, rules, codes and ordinances (including but not limited to those concerning environmental protection); all claims for services, labor performed, materials furnished, liens, or garnishments; and infringement or any violation of any patent, copyright or other such protection or right of intellectual property. This Paragraph shall apply regardless of whether or not the damage, loss or injury complained of, was caused in part by the negligence (whether active or passive) of an Indemnified Party. However, (1) nothing contained in this Paragraph shall be construed as a release or indemnity by Program Manager of an Indemnified Party from or against any loss, liability or claim arising solely from the negligence or willful misconduct of that Indemnified Party, and (2) with respect to Claims insured only under the Errors and Omissions/Professional Liability policy described in Paragraph 7.1, this indemnity shall apply to the extent such Claims arise out of or result from the negligent acts, errors, omissions or willful misconduct of the Program Manager, or anyone directly or indirectly employed by the Program Manager or anyone for whose acts the Program Manager may be liable. This Paragraph shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which would otherwise exist in favor of any Indemnified Party, or any other obligation of the Program Manager, its officers, directors, employees, agents or subconsultants to indemnify an Indemnified Party. The Program Manager's obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits paid or payable by the Program Manager under Workers' Compensation Acts, disability benefits acts or other employee

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benefit laws or regulations. The Program Manager shall incorporate this indemnity provision into all contracts/subcontracts it executes for the performance of any Services under the Agreement. The foregoing indemnity obligation shall not be waived or reduced because Owner or the County approved, required modification of, or did not require modification of any aspect of the Work, including without limitation any plan, calculation or specification submitted by or on behalf of Owner or the County concerning or relating to the Work. The indemnification obligations of this Paragraph shall survive termination or expiration of this Agreement.

ARTICLE 8 **TERMINATION**

- 8.1 This Agreement may be terminated by the Owner if the Program Manager fails substantially to perform in accordance with any of its obligations, duties, or responsibilities under this Agreement. The Owner shall give the Program Manager written notice of such default under this Agreement. The Program Manager shall have a period of fourteen (14) calendar days from the date of such notice to cure the default. In the event the Program Manager does not cure the default to Owner's satisfaction during such period, the Owner shall provide a second written notice to the Program Manager indicating that the Agreement is terminated. The Owner's right of termination set forth herein shall be in addition to, and not in limitation of, any and all other remedies available to the Owner by law, in equity, or under the terms and provisions of this Agreement.
- 8.2 This Agreement may be terminated by the Owner on not less than fourteen (14) days' written notice to the Program Manager for the Owner's convenience without cause. This Agreement may be terminated immediately upon termination of the Second Addendum.
- 8.3 In the event of termination pursuant to Paragraph 8.2, and as complete and final compensation to the Program Manager in such event, the Program Manager shall be compensated for all services performed to the termination date, together with Reimbursable Expenses then due in compliance with this Agreement. The Program Manager shall not be entitled to recover prospective profits on work unperformed or other consequential or incidental damages. All agreements between the Program Manager and its consultants and subcontractors shall provide that all such agreements may be terminated upon a termination by the Owner of this Agreement and, in such event, such parties shall be entitled only to compensation for services performed to the date of termination, including Reimbursable Expenses then due, and shall not be entitled to lost profits or other consequential or incidental damages.
- 8.4 The Program Manager agrees that it can be adequately compensated by money damages for any breach of this Agreement which may be committed by the Owner, and hereby agrees that no default, act, or omission of the Owner shall entitle the Program Manager to cancel or rescind the provisions of this Agreement or, except as provided below in this paragraph, to suspend or abandon performance of all or any part of the services required by this Agreement. If the Owner fails to make payment properly due to the Program Manager for services and expenses under this Agreement, the Program Manager may,

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upon thirty (30) days' written notice to the Owner, suspend performance of the services under this Agreement. Unless payment in full is received within thirty (30) days of the date of the notice, the suspension shall take effect without further notice. Before resuming services, the Program Manager shall be paid all sums properly due prior to suspension and the time schedules for completion of the Program Manager's services and the Program Manager's compensation shall be equitably adjusted.

- 8.5 It is understood and acknowledged that the Owner may suspend performance of the services under this Agreement upon fourteen (14) days' written notice. If the Project is suspended, the Program Manager shall be compensated for all services properly performed prior to receipt of written notice from the Owner of such suspension, together with the Reimbursable Expenses then due; provided, however, that the Program Manager shall not be entitled to any compensation or expenses under this Agreement upon suspension of the Project if such compensation, expenses, or suspension was caused by an error or omission of the Program Manager (whether negligent, intentional, or otherwise). If the Project is resumed after being suspended for more than ninety (90) consecutive calendar days, and such prior suspension was not caused by any error or omission of the Program Manager, then the Program Manager's compensation shall be equitably adjusted, if necessary, only to account for any changes in the scope of the Program Manager's services occasioned by the suspension.

ARTICLE 9

NONDISCRIMINATION, AFFIRMATIVE ACTION, NO CONFLICTS

9.1 Owner Requirements

In accordance with policies adopted by Owner, Program Manager agrees:

- 9.1.1 The Program Manager shall not discriminate by segregation or otherwise against any employee or applicant for employment because of race, color, creed, national origin, sexual orientation, age or sex, and shall undertake affirmative action measures designed to guarantee and effectuate equal employment opportunity for all persons.
- 9.1.2 The Program Manager shall provide information and reports requested by the Owner pertaining to its obligations under this Article 9, and will permit access to its facilities and any books, records, accounts or other sources of information which may be determined by the Owner or the County to affect the Program Manager's obligation herein.
- 9.1.3 The Program Manager shall comply with all federal and state laws and regulations and all County regulations pertaining to civil rights and equal opportunity, including executive orders and rules and regulations of appropriate federal and state agencies, unless otherwise exempt therein. The Program Manager is responsible to actively maintain updated County and Owner requirements and to conform to the requirements accordingly.

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9.2 Small and Disadvantaged Business Concerns

Program Manager acknowledges that (i) Owner is committed to enhancing business opportunities for small business, veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business enterprises (collectively, “**Small Business**”) as first and second tier suppliers to Owner, and (ii) Owner believes that every reasonable attempt should be made to include and utilize Small Business supplier firms as suppliers to Owner, as long as they are competitive on price, quality and service, and provide the best overall value for Owner. Program Manager agrees to cooperate with Owner to achieve the general objective of including Small Business supplier firms as suppliers to Owner, in accordance with the guidelines described in clause (ii) above, and to use all commercially reasonable efforts to include Small Business supplier firms in its procurement process. Upon request, Program Manager shall complete and submit to Owner a Supplier Diversity Quarterly Utilization Report, in such format as Owner may reasonably specify.

9.3 No Conflicts Of Interest

9.3.1 The Program Manager warrants that it has not employed or retained any company or person, other than a bona fide employee or contract employee working solely for the Program Manager or its consultants or subcontractors, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, corporation, individual or firm, other than a bona fide employee or contract employee working for the Program Manager or its consultants or subcontractors, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability.

9.3.2 The Program Manager and its consultants and subcontractors shall not solicit or accept compensation, work, a promise of future compensation or work, or other consideration in exchange for the Program Manager's recommendation for the Owner's award of a professional services agreement, a construction contract, equipment or materials contract, or other service contracts for the Project. The Program Manager's or its consultants or subcontractors' failure to adhere to this requirement may result in termination of this Agreement and prosecution of the failing party under applicable civil and criminal statutes.

9.3.3 The Program Manager shall not hire or employ, on either a full-time or part-time basis during the term of this Agreement, any person so long as such person shall be employed by the Owner or the County. The Program Manager hereby certifies that this Agreement is made in good faith, without fraud, and without collusion of any kind with any other consultant for the same services, and that the Program Manager is acting solely on its own behalf without connection with, or obligation to, any undisclosed person or firm and in full compliance with all applicable conflict of interest laws. If any officer, agent or employee of the Owner or the County has a financial interest in the Program Manager, the Program Manager

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hereby agrees that its representatives shall consult with Owner's legal representatives to learn what action shall be taken to comply with the applicable conflict of interest laws.

9.3.4 By execution of this Agreement, the Program Manager hereby certifies and discloses that it and its consultants and subcontractors have no financial or other interest in the execution or outcome of the Project that is the subject of this Agreement, other than as reflected by this Agreement.

9.3.5 All conflict of interest matters arising during the term of this Agreement shall be handled in a manner consistent with the requirements of applicable state and federal law and the Program Manager and its consultants and subcontractors shall conduct themselves at all times in a manner that will avoid any conflict of interest.

9.3.6 In performing the services pursuant to this Agreement, the Program Manager shall comply with the principles of business ethics and conduct required of suppliers to the Owner as set forth in the Owner's booklet entitled "Doing Business with Delta," available on-line at <https://content1.delta.com/delta/pdfs/doingbiz.pdf>.

9.4 General Provisions

9.4.1 The Program Manager's noncompliance with any of the provisions of this Article 9 shall constitute a material breach of this Agreement.

9.4.2 The Program Manager shall indemnify and hold harmless Owner from any claims and demands of third persons resulting from the Program Manager's noncompliance with any of the provisions of this Article.

ARTICLE 10 **DISPUTE RESOLUTION**

10.1 The parties agree that they will attempt in good faith to resolve promptly any controversy or claim arising out of, or relating to, the Agreement by "step negotiations" between decision makers authorized by the Program Manager and the Owner to settle the controversy. "Step negotiations" means initial efforts for dispute resolution shall be at the Project level. If this level of efforts proves unsuccessful, then dispute resolution will be addressed between the Program Manager's principal executive and an executive of the Owner authorized to settle the dispute. If such efforts are unsuccessful, then either party may pursue any remedy available at law or in equity. Any such action shall be before a court of competent jurisdiction in the State of Florida; provided, however, that the Program Manager consents to be joined in any action arising from the Project and involving the Owner and the County, the Architect, the Contractor, or any combination of the foregoing, in any state or federal court sitting in the State of Florida.

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ARTICLE 11
ADDITIONAL PROVISIONS; REQUIREMENTS OF SECOND ADDENDUM

11.1 Assignment of Interest

The Program Manager shall not assign, mortgage, pledge or transfer this Agreement without the prior written consent of Owner. If Program Manager is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership shall be deemed a transfer of this Agreement. If Program Manager is a corporation, (i) any merger, consolidation, or other reorganization of the Program Manager or sale or other transfer of a percentage of capital stock of the Program Manager which results in a change of controlling persons, or (ii) any dissolution, sale or other transfer of substantially all of the assets of the Program Manager, shall be deemed a transfer of this Agreement. The Program Manager acknowledges that Owner may assign this Agreement freely and agrees to execute whatever documents the Owner may reasonably require to effect such assignment.

11.2 Governing Law; Venue; Waiver of Jury Trial

This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Florida. The venue for any disputes arising under this Agreement shall lie in Broward County, Florida, and Delta and Program Manager waive any rights they may have to a trial by jury in furtherance of expediting resolution of any such disputes.

11.3 Extent of Agreement

This Agreement represents the entire and integrated agreement between the Owner and the Program Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or supplemented only by written instrument signed by both the Owner and the Program Manager.

11.4 Severability

If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11.5 Project Personnel

The Program Manager agrees to establish and maintain for the duration of this Agreement, the following team of individuals: David Barron, Christopher Davis, Carmen Ellis, Susan Joyce, Paul Ridge, Shawn Masur, Craig Gordan, Kimberley Hochoy, Robert Cedeno, and adequate support personnel to provide efficient business administration and to assure that the Program Manager services are performed in the most reasonably expeditious and economical manner in accordance with the terms of this Agreement and

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consistent with the interests of the Owner. The Program Manager shall not change the above named individuals except in the following instances:

- (i) the death or disability of an individual,
- (ii) the individual leaves the employment of the Program Manager;
- (iii) the Program Manager terminates the employment of the individual;
- (iv) the individual requests removal for personal or medical reasons; or
- (v) the Program Manager requests removal and the Owner approves.

Notwithstanding the foregoing, Owner shall be entitled to review and approve Program Manager's employees and consultants assigned to work on the Project, and Owner may at any time request removal of any such individuals from the Project.

In addition, if Owner determines, in its sole and absolute discretion, that Program Manager's personnel is not adequately supporting the Project, in addition to any other rights and remedies of Owner hereunder or at law or in equity, Owner shall have the right to provide Program Manager notice of such deficiency and fifteen (15) days to cure the same (provided that if such deficiency cannot be cured in fifteen (15) days, but Program Manager commences a cure and diligently pursues the same, such period shall be extended for a reasonable amount of time necessary to complete such cure but no more than forty (40) days). If such deficiency has not been corrected to Owner's reasonable satisfaction on or before the end of such period, at Owner's election and Program Manager's sole cost and expense, (a) the Program Manager's project executive (who upon execution of this Agreement is David Barron), shall immediately take control of the Services without billing any additional time to Owner until such time as Owner has determined in its reasonable discretion that the Project is adequately supported, (b) Program Manager shall remove existing personnel identified by Owner as failing to complete his or her duties and provide new personnel approved by Owner (provided that Owner shall not pay for any "ramp up time" or time when two Program Manager personnel are performing the same function), and/or (c) Program Manager shall provide such supplementary personnel, at no cost to Owner, until such time as Owner determines the Project is adequately supported.

11.6 Time of Essence

Time is of the essence in regard to Program Manager's performance of its obligations under this Agreement. The Program Manager shall perform all of its obligations in a professional and timely manner so as not to delay or otherwise adversely affect the rights and performance by the Contractor, the Architect or anyone else working on the Project.

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11.7 Confidential Information

“Confidential Information” shall mean all information that the Owner or any affiliate of the Owner discloses to the Program Manager, as well as information disclosed to the Program Manager by third parties in connection with the Project, and the work product and other information resulting from the Program Manager’s services hereunder, including without limitation the Program Manager’s evaluations and reports, the Owner’s responses to the Program Manager’s evaluations and reports, cost information, the extent and nature of the Project contemplated by the Owner, and all drafts and associated materials; provided that Confidential Information does not include information that the Owner identifies in writing as not confidential, that rightly becomes public (after it becomes public), or that the Program Manager otherwise knows or receives without obligation of confidence. For a period of five (5) years from the date of disclosure, the Program Manager agrees to hold all Confidential Information in trust and confidence for the Owner and agrees not to disclose Confidential Information, by publication or otherwise, to any person other than to the Program Manager’s consultants or subcontractors, employees, the Owner, the County, or any authority having jurisdiction over the Project, or to third parties having a need to know and whom the Owner agrees in writing may receive such information; provided that, prior to such disclosure to third parties, the Program Manager shall obtain appropriate non-disclosure agreements from such persons and firms. If any medium containing Confidential Information is lost, the Program Manager shall promptly notify the Owner. The Program Manager shall not copy Confidential Information unless approved in writing by the Owner. Upon expiration or early termination of this Agreement, the Program Manager shall return to the Owner all written or descriptive matter, in any form, which contains any Confidential Information, except that the Program Manager may retain one copy of such documents or things for its records.

11.8 Ownership of Documents

All Drawings, Specifications, Contract Documents and other documents in any format (including but not limited to estimates, schedules, plans, designs, calculations, sketches, reports, computer assisted design documents (“**CADD**”), results of programs, computer disks, diskettes or tapes, charts, photographs and other data compilations from which information can be obtained or translated), and copies thereof, furnished by or on behalf of the Owner or the Architect are and shall remain the Owner’s property, subject to the County’s rights thereto. All such documents are to be used by the Program Manager only with respect to this Project and are not to be used on any other project. Submission or distribution of these documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any common law, copyright, or other reserved rights of the Owner.

11.9 SSI Requirements

Program Manager and its personnel shall at all times comply with Sensitive Security Information Requirements attached hereto as Addendum E.

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11.10 No liens

No liens shall attach to any property interest held by the County.

11.11 No Unilateral Changes.

There shall be no changes to provisions, scope of the Program Manager's Services, time of performance, or contract sum of this Agreement without the written consent of Owner, the Program Manager and the County.

11.12 Badging Requirements

The Program Manager and its subconsultants working on the Project requiring access to the secure areas of the Airport shall satisfy all Security and Badging requirements identified in Addendum G.

11.13 False Claims

The Program Manager shall certify each application for payment in accordance with the County's False Claims Ordinance (Article XIV, Sections 1-276 through 1-287).

11.14 Nondiscrimination

The Program Manager shall comply, and shall require its subconsultants to comply, with the nondiscrimination provisions of Addendum H.

11.15 Discriminatory Vendor List; Scrutinized Companies List

By execution of this Agreement, the Program Manager represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes), or the Scrutinized Companies with Activities in Sudan or in the Iran Petroleum Energy Sector Lists (as provided in Section 215.473, Florida Statutes). An untrue representation of the foregoing may result in Owner's termination of this Agreement.

11.16 Domestic Partnership

The Program Manager must certify that it has met the requirements of, or is exempt from, the Broward County Domestic Partnership Act, as codified in Section 16 ½-157 of the Broward County Code of Ordinances.

11.17 Drug-Free Workplace

The Program Manager must certify that it operates a drug-free workplace in accordance with Section 21.31(a) of the Broward County Procurement Code.

11.18 Assignment or Termination

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Upon County's written instructions after any termination of the Second Addendum, (1) Owner shall assign this Agreement to the County, and the Program Manager shall accept such assignment and continue to be bound by the terms and conditions of this Agreement; or (2) this Agreement shall terminate on the date specified in the County's written instructions.

11.19 Public Records; Audit and Retention of Records

11.19.1 Public Records. All books, records and accounts of the Program Manager and its subconsultants or subcontractors that are related to the Project and performance of Work under the this Agreement, including personnel, financial and expense records (collectively, "**Project Records**"), shall be deemed public records under the Florida Public Records Act (Chapter 119, Florida Statutes). Program Manager shall comply, and shall require its subconsultants or subcontractors to comply, with the following public records requirements:

11.19.1.1 Keep and maintain all Project Records necessary for the performance of the Services;

11.19.1.2 Provide the public with access to Project Records on the same terms and conditions as the County would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

11.19.1.3 Ensure that any Project Records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

11.19.1.4 Meet all requirements for retaining the Project Records as public records, and transfer to the County, at no cost, all Project Records in their possession upon termination of this Agreement and destroy any duplicate Project Records that are exempt or confidential and exempt. All Project Records stored electronically must be provided to the County by Microsoft Sharepoint or hard copy.

11.19.2 Failure to comply with the provisions of Section 11.19.1, above, shall constitute a default and breach of this Agreement, and Delta shall enforce the default in accordance with this Agreement.

11.19.3 Audit and Retention of Project Records

The County shall have the right, at a reasonable place and time, to audit the Project Records of the Program Manager and its subcontractors or subconsultants.

11.19.3.1 All Project Records shall be kept in a form capable of conversion to Microsoft Sharepoint. Program Manager and its subcontractors or subconsultants shall make same available at no cost to County.

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11.19.3.2 All Project Records shall be kept so that they can be produced to the County in a manner that reflects documentation relating to the Project only.

11.19.3.3 Incomplete or incorrect entries in Project Records will be grounds for nonpayment to the Project Manager and recovery of any fees or expenses until appropriate supporting documentation is provided.

11.19.3.4 Program Manager shall preserve, and shall require its subcontractors or subconsultants to preserve, all Project Records for three (3) years after the earlier of any termination of this Agreement or final payment and the completion of the Project and all Services to be performed pursuant to this Agreement, or if any audit has been initiated and audit findings have not been resolved at the end of the three years, the books, records and accounts shall be retained until resolution of the audit findings.

11.20 No Verbal Instructions

The Program Manager may not rely upon verbal instructions or suggestions furnished by Owner employees, agents, or representatives. Only written instructions to the Program Manager from Delta shall be binding.

11.21 Compliance with Laws

The Program Manager shall keep informed of and obey all federal, state, County and local laws, ordinances, codes, rules, and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect the Services to be performed under this Agreement.

11.22 No Conflicts

Until the Project is complete, the directors and officers of the Program Manager shall not:

11.22.1 Serve as an expert witness in any capacity against the County or Owner in any legal or administrative proceeding in which they are not a party;

11.22.2 Perform consulting or other services that would in any way be in conflict with, or detrimental to, the Project, or for any municipality, developer, tenant or landowner developing or having property within the Airport boundaries, including such additional property that may be acquired to implement Airport development. At least ten (10) calendar days prior to undertaking any services for any of the listed entities, Program Manager shall provide Owner and the County with a written description of the contemplated services, and the County shall promptly advise Owner as to whether such services would be detrimental to the Project or in conflict therewith; or

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- 11.22.3 Have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with the loyal and conscientious exercise of judgment and care related to performance of the Services for the Project.

None of the provisions of this Section shall restrict in any way any officers or directors of Program Manager from acting as required by judicial process or from acting on behalf of Program Manager in any legal or arbitration proceeding in which Program Manager is involved pertaining to any agreement between the Program Manager and Owner or County as of the effective date of this Agreement.

11.23 Truth-In-Negotiation Certificate

The signature of the Program Manager on this Agreement shall act as the execution of a truth-in-negotiation certificate stating that the wage rates, representations and other factual costs supporting the compensation paid under this Agreement are accurate, complete, and current at the time of contracting. The original contract sum and any additions thereto shall be adjusted to exclude any significant sums by which the County auditor reasonably determines the contract sum was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

11.24 No Contingent Fees

The Program Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Program Manager, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Program Manager, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, Owner shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract sum, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

11.25 Public Entity Crimes Act

By execution of this Agreement, the Program Manager certifies its compliance with Florida's Public Entity Crimes Act (Section 287.133, Florida Statutes), which provides that a contractor, consultant, or other provider which has been placed on Florida's convicted vendor list following a conviction for a "public entity crime" may not bid or propose on, or contract for, a public works project for thirty-six months from the date of placement on the convicted vendor list. An untrue representation of the foregoing shall result in the termination of this Agreement and recovery of all monies paid to Program Manager hereunder.

11.26 Addenda

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The following Addenda are attached hereto and incorporated herein by reference:

Addendum "A"	Rate Schedule
Addendum "B"	Project Scope
Addendum "C"	Staffing Plan
Addendum "D"	Intentionally Deleted
Addendum "E"	Sensitive Security Information Requirements
Addendum "F"	Invoicing Requirements
Addendum "G"	Security and Badging Requirements
Addendum "H"	Nondiscrimination Requirements

ARTICLE 12
NOTICES

12.1 Notices

Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand, by overnight courier, or by facsimile transmission ("fax"), or mailed by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at its address or to its fax number, as appropriate, as set forth below:

To Owner:

U. S. Mail Deliveries:
Delta Air Lines, Inc.
Corporate Real Estate
Department 877
P.O. Box 20706
Atlanta, Georgia 30320
Attention: Vice President - CRE
Fax Number: (404) 715-2548

Overnight Deliveries:
Delta Air Lines, Inc.
Corporate Real Estate
Department 877
1030 Delta Boulevard
Atlanta, Georgia 30354-1989
Attention: Vice President - CRE
Fax Number: (404) 715-2548

To Program Manager:

PM TECHNOLOGIES, INC.
5775 Glenridge Drive
Suite 500, Building B
Atlanta, GA 30328
Attention: Vice President


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURES ON
FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal,
the day and year first above written.

OWNER:
DELTA AIR LINES, INC.

PROGRAM MANAGER:
PM TECHNOLOGIES, INC.

By: 
Name: Wayne Aaron
Title: Senior Vice President

By: 
Name: David Barron
Title: Vice President

PO #: 9100060202
Contract Number: CW2287796

Addendum A
RATE SCHEDULE

Project Title: Fort Lauderdale Int'l Terminal Two Modernization Program
Consultant/Sub consultant Name: PM Technologies, Inc.

FILL IN POSITIONS AS APPLICABLE

TITLE	MAXIMUM HOURLY RATE (\$/HR)	X	MULTIPLIER	=	MAXIMUM BILLING RATE (\$/HR)
			(2.15)		(\$/HR)
Project Executive	\$91.07	X	(2.15)	=	\$195.53
Program Manager	\$69.21	x	(2.15)	=	\$148.61
Budget Administrator	\$62.45	x	(2.15)	=	\$134.08
Contract Manager	\$53.60	x	(2.15)	=	\$115.09
Construction Manager	\$77.02	x	(2.15)	=	\$165.37
Project Manager	\$50.47	x	(2.15)	=	\$108.38
Project Coordinator	\$39.03	X	(2.15)	=	\$83.81

Multiplier of X.XX is calculated as follows:
 OVERHEAD = HOURLY RATE X OVERHEAD (57.3)%
 FRINGE = HOURLY RATE X FRINGE (37.9) %
 OPERATING MARGIN = (HOURLY RATE + OVERHEAD + FRINGE) X OPERATING MARGIN (10.0)%

MULTIPLIER = (HOURLY RATE + OVERHEAD + FRINGE + OPERATING MARGIN) / HOURLY RATE

2.15

PO #: 9100060202
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Project Title: Fort Lauderdale Int'l Terminal Two Modernization Program
Consultant/Sub consultant Name: Messam Construction

FILL IN POSITIONS AS APPLICABLE

TITLE	MAXIMUM HOURLY RATE (\$/HR)	X	MULTIPLIER	=	MAXIMUM BILLING RATE
			(2.31)		(\$/HR)
Document Control Mgr.	\$36.42	x	(2.31)	=	\$84.14
QA/QC	\$47.09	x	(2.31)	=	\$108.77
		x		=	
		x		=	
		x		=	
		x		=	

Multiplier of X.XX is calculated as follows:
OVERHEAD = HOURLY RATE X OVERHEAD (65.0)%
FRINGE = HOURLY RATE X FRINGE (45.0) %
OPERATING MARGIN = (HOURLY RATE + OVERHEAD + FRINGE) X OPERATING MARGIN (10.0)%

$$\text{MULTIPLIER} = (\text{HOURLY RATE} + \text{OVERHEAD} + \text{FRINGE} + \text{OPERATING MARGIN}) / \text{HOURLY RATE} \quad \underline{\underline{2.31}}$$

PO #: 9100060202
Contract Number: CW2287796

Addendum B
PROJECT SCOPE

Project Description:

The Project is as described in the Second Addendum, including, without limitation, Exhibit B-1 attached thereto, which description is being incorporated herein by reference as if fully set forth herein.

Basic Services:

- A. In addition to the Basic Services described in Article 3 hereof, Program Manager shall complete, as part of the Basic Services, the services listed in that certain Request for Proposals, issued April 30, 2016, as amended, supplemented and/or modified including by and in responses to the RFP and modifications to the RFP submitted by Program Manager in its response to the Request for Proposals, as amended, which services are being incorporated herein by reference as if fully set forth.

- B. In addition to the Basic Services listed in Article 3 hereof and Paragraph A, above, the following services are included in the Basic Services and the Not-to-Exceed Amount; provided, however, such services (or any portion thereof) will only be permitted to be performed by Program Manager or Owner approved subconsultants upon written authorization by Owner and County. In the event the subconsultant proposed costs exceed the allowances shown on the Sub Consultant Planning Worksheet on the following page of this Addendum B and Owner and County provide authorization therefor as contemplated above, Owner will issue a change order to modify the Not-to-Exceed Amount total show in Article 6.

PMTECHNOLOGIES project professionals		Resource Planning Worksheet Program Services																			
You May Enter Data in the light blue shaded areas. Also, you may format the bars for the phase start and end dates.																					
Project Delivery Model										Start Date	Phase End	2016	2017	2018	2019	2020					
Project Solution Delivery Summary:										8/25/2016											
Pre-Construction										8/25/2016	1/31/2017										
Enabling Project(s)										2/1/2017	2/28/2018										
Landside Phase										3/1/2017	12/31/2018										
Airside Phase										3/1/2017	9/31/2019										
Closeout										10/1/2019	12/31/2019										
Resource Requirements																					
Organizational Area	Role	QTY	Y16	Y17	Y18	Y19	Y20	Name	Requested Start Date	Projected End date	2016	2017	2018	2019	2020	Total Y16	Total Y17	Total Y18	Total Y19	Total Y20	Total Cost Allocated
			0	2%	2%	2%	2%	Days/Month													
STAFFING (EMPLOYEES)																					
Project Executive	Exec	1	\$ 180.64	\$184.26	\$187.94	\$191.70	\$195.53	David Barron	8/25/2016	1/31/2020						184	192	186	70	0	\$116,992.05
Program Manager	Program	1	\$ 137.29	\$140.04	\$142.84	\$145.70	\$148.61	Christopher Davis	8/25/2016	1/31/2020						1800	1832	1880	928	0	\$907,416.58
Administration	Budget Mgr.	1	\$ 123.87	\$126.35	\$128.88	\$131.45	\$134.08	Susan Joyoe	8/25/2016	1/31/2020						864	768	768	384	0	\$353,517.10
Administration	Contract Mgr.	1	\$ 106.33	\$108.46	\$110.63	\$112.84	\$115.09	Carmen Ellis	8/25/2016	1/31/2020						1414	1512	1482	720	0	\$559,524.42
Construction	Construction Mgr.	1	\$ 152.77	\$155.83	\$158.95	\$162.12	\$165.37	Shawn Masur	8/25/2016	1/31/2020						1720	1912	1920	280	0	\$911,284.40
Construction	Project Mgr.	1	\$ 100.12	\$102.13	\$104.17	\$106.25	\$108.38	Paul Ridge	9/1/2016	11/30/2018						1656	1872	264	0	0	\$384,486.49
Construction	Project Coordinator	1	\$ 77.43	\$ 78.98	\$ 80.56	\$ 82.17	\$ 83.81														
Administration	Document	1	\$ 77.73	\$ 79.29	\$ 80.87	\$ 82.49	\$ 84.14	Kimberly Hochoy	9/1/2016	1/31/2020						1776	1952	1920	928	0	\$524,639.02
Administration	QA/QC	1	\$ 100.49	\$102.49	\$104.54	\$106.64	\$108.77	Craig	1/1/2017	6/1/2019						1456	1952	1920	648	0	\$616,208.51
Administration	Legal	1	\$ 200.00	\$200.00	\$200.00	\$200.00	\$200.00		1/1/2017	1/31/2020						40	64	64	24	0	\$38,400.00
																10,910	12,056	10,404	3,982	0	\$ 4,412,468.57
Project Executive	Exec	1	\$ 180.64	\$184.26	\$187.94	\$191.70	\$195.53	David Barron	8/25/2016	1/31/2020						\$ 33,238.48	\$ 35,377.31	\$ 34,957.20	\$ 13,419.06	\$ -	\$116,992.05
Program Manager	Program	1	\$ 137.29	\$140.04	\$142.84	\$145.70	\$148.61	Christopher Davis	8/25/2016	1/31/2020						\$ 247,125.54	\$ 256,549.26	\$ 268,536.50	\$ 135,205.27	\$ -	\$907,416.58
Administration	Budget Mgr.	1	\$ 123.87	\$126.35	\$128.88	\$131.45	\$134.08	Susan Joyoe	8/25/2016	1/31/2020						\$ 107,025.38	\$ 97,036.34	\$ 88,977.07	\$ 50,478.31	\$ -	\$353,517.10
Administration	Contract Mgr.	1	\$ 106.33	\$108.46	\$110.63	\$112.84	\$115.09	Carmen Ellis	8/25/2016	1/31/2020						\$ 150,349.69	\$ 163,985.37	\$ 163,946.32	\$ 81,243.04	\$ -	\$559,524.42
Construction	Construction Mgr.	1	\$ 152.77	\$155.83	\$158.95	\$162.12	\$165.37	Shawn Masur	8/25/2016	1/31/2020						\$ 262,770.04	\$ 297,944.56	\$ 305,175.02	\$ 45,394.78	\$ -	\$911,284.40
Construction	Project Mgr.	1	\$ 100.12	\$102.13	\$104.17	\$106.25	\$108.38	Paul Ridge	9/1/2016	11/30/2018						\$ 165,805.24	\$ 191,180.65	\$ 27,500.60	\$ -	\$ -	\$384,486.49
Construction	Project Coordinator	1	\$ 77.43	\$ 78.98	\$ 80.56	\$ 82.17	\$ 83.81														
Administration	Document	1	\$ 77.73	\$ 79.29	\$ 80.87	\$ 82.49	\$ 84.14	Kimberly Hochoy	9/1/2016	1/31/2020						\$ 138,048.48	\$ 154,786.53	\$ 155,273.96	\$ 76,550.06	\$ -	\$524,639.02
Administration	QA/QC	1	\$ 100.49	\$102.49	\$104.54	\$106.64	\$108.77	Craig	1/1/2017	6/1/2019						\$ 146,313.44	\$ 200,069.65	\$ 200,725.62	\$ 69,099.79	\$ -	\$616,208.51
Administration	Legal	1	\$ 200.00	\$200.00	\$200.00	\$200.00	\$200.00		1/1/2017	1/31/2020						\$ 8,000.00	\$ 12,800.00	\$ 12,800.00	\$ 4,800.00	\$ -	\$38,400.00
																\$ 1,258,676.30	\$ 1,409,709.67	\$ 1,267,892.29	\$ 476,190.31	\$ -	\$ 4,412,468.57



Sub Consultant Planning Worksheet
Program Services
Fort Lauderdale T2 Modernization Program

Resource Requirements								
Organizational Area	Requested Start Date	Projected End date	Total Y16	Total Y17	Total Y18	Total Y19	Total Y20	Total Cost Allocated
Days/Month								
Specialty Services								
Cost analysis	9/1/2016	12/30/2019						\$ 350,000.00
QA/QC	2/1/2017	12/30/2019						\$ 1,600,000.00
Dispute Avoidance Panel Member#1	3/1/2017	12/30/2019		4	4	4		\$ 40,000.00
Dispute Avoidance Panel Member#2	3/1/2017	12/30/2019		4	4	4		\$ 40,000.00
Dispute Avoidance Panel Member#3	3/1/2017	12/30/2019		4	4	4		\$ 40,000.00
Total			\$ -					\$ 2,070,000.00

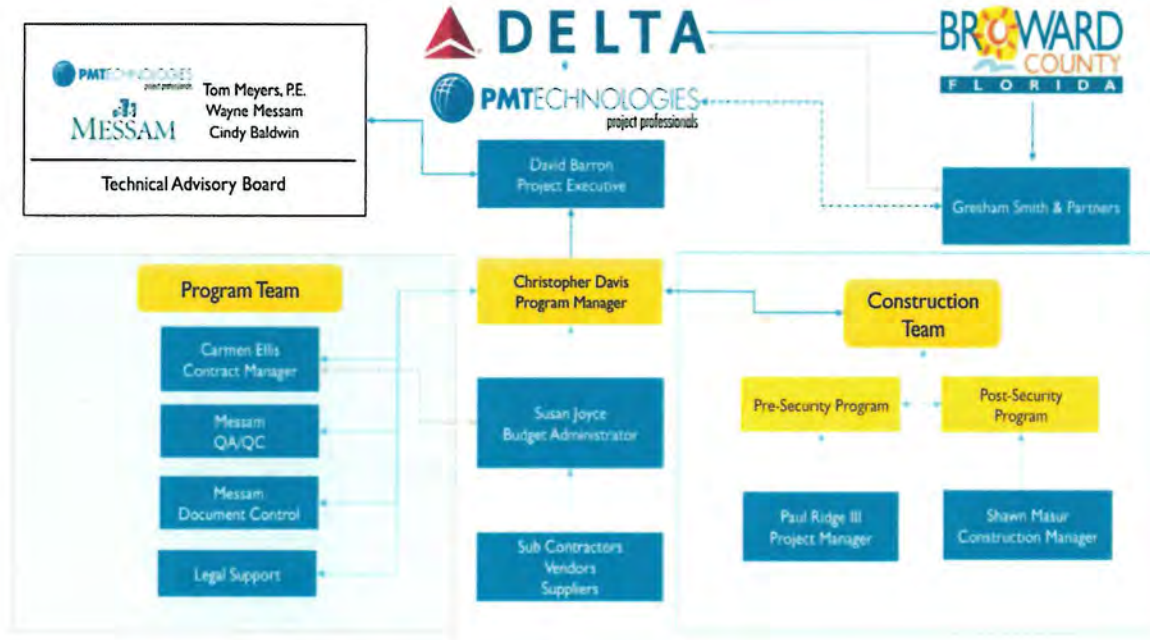


Expense Planning Worksheet
Program Services
Fort Lauderdale T2 Modernization Program

Project Delivery Model						Start Date	Phase End							
Project Solution Delivery Summary:						8/25/2016								
Pre-Construction						8/25/2016	1/31/2017							
Enabling Project(s)						2/1/2017	2/28/2018							
Landside Phase						3/1/2017	12/31/2018							
Airside Phase						3/1/2017	9/31/2019							
Closeout						10/1/2019	12/31/2019							
Resource Requirements														
Organizational Area	QTY	Y16	Y17	Y18	Y19	Requested Start Date	Projected End date	Total Y16	Total Y17	Total Y18	Total Y19	Total Y20	Total Cost Allocated	
Days/Month														
Category														
Web Base Program	1	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	8/26/2016	1/31/2020	\$ 25,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 5,001.00	\$ 210,001.00	
Susan Joyce	1	\$ 850.00	\$ 850.00	\$ 850.00	\$ 850.00	8/26/2016	1/31/2020	\$ 4,250.00	\$ 10,200.00	\$ 10,200.00	\$ 10,200.00	\$ 851.00	\$ 35,701.00	
Dave Barron	1	\$ 1,275.00	\$ 1,275.00	\$ 1,275.00	\$ 1,275.00	8/26/2016	1/31/2020	\$ 6,375.00	\$ 15,300.00	\$ 15,300.00	\$ 15,300.00	\$ 1,276.00	\$ 53,551.00	
Carmen Ellis	1	\$ 2,550.00	\$ 2,550.00	\$ -	\$ -	8/26/2016	1/31/2020	\$ 12,750.00	\$ 10,200.00	\$ -	\$ -	\$ -	\$ 22,950.00	
Site Car	2	\$ 1,200.00	\$ 1,200.00	\$ 1,200.00	\$ 1,200.00	8/26/2016	1/31/2020	\$ 3,000.00	\$ 14,400.00	\$ 14,400.00	\$ 14,400.00	\$ 1,201.00	\$ 47,401.00	
Local Transportation	1	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	8/26/2016	1/31/2020	\$ 2,000.00	\$ 4,800.00	\$ 4,800.00	\$ 4,800.00	\$ 401.00	\$ 16,801.00	
Computer/Cell		\$ 200.00	\$ 300.00	\$ 300.00	\$ 300.00			\$ 6,600.00	\$ 3,600.00	\$ 3,600.00	\$ 3,600.00	\$ 301.00	\$ 17,701.00	
Sub Total:								\$ 59,975.00	\$ 114,900.00	\$ 104,700.00	\$ 104,700.00	9,031	\$ 404,106.00	
Office Equipment	1	\$ 15,000.00		\$ -	\$ -	8/26/2016	1/31/2017	\$ 15,000.00	\$ -	\$ -	\$ -	\$ -	\$ 15,000.00	
Copier/Office Supplies	1	\$ 1,700.00	\$ 1,700.00	\$ 1,700.00	\$ 1,700.00	8/26/2016	1/31/2017	\$ 8,500.00	\$ 20,400.00	\$ 20,400.00	\$ 20,400.00	\$ 1,701.00	\$ 71,401.00	
Data/Tel	1	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	8/26/2016	1/31/2017	\$ 3,000.00	\$ 7,200.00	\$ 7,200.00	\$ 7,200.00	\$ 601.00	\$ 25,201.00	
FAR Audits	1	\$ 13,000.00						\$ 13,000.00	\$ -	\$ -	\$ -	\$ -	\$ 13,000.00	
Contingency		5%	5%	5%	5%			\$ 2,998.75	\$ 5,745.00	\$ 5,235.00	\$ 5,235.00	\$ -	\$ 19,213.75	
Sub Total:								\$ 102,473.75	\$ 148,245.00	\$ 137,535.00	\$ 137,535.00	2,302	\$ 547,921.75	

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Addendum C STAFFING PLAN



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Addendum D
INTENTIONALLY DELETED

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Contract Number: CW2287796

Addendum E
SENSITIVE SECURITY INFORMATION REQUIREMENTS

(a) All contract documents relative to this Agreement and the Project, including without limitation all plans, specifications, sketches, drawings and other renderings and documents, as well as any documents provided to the Program Manager or prepared by the Program Manager may contain Sensitive Security Information, as that term is defined in the Homeland Security Act and all regulations promulgated thereunder, as it relates to the security program, systems, methods, and procedures of ATL. Therefore, the contract documents, and all information contained therein, are privileged and strictly confidential and are subject to the provisions of the Homeland Security Act and 49 C.F.R. F.A.R. Part 1520, et seq.

(b) Except as required for the discharge of its duties under this Agreement or as otherwise required by law, the Program Manager shall not reproduce, release, or distribute any such document or information in any form to any third party without the prior written permission of Owner. Unauthorized reproduction, release, or distribution may result in civil penalty or other action, as provided for in the Homeland Security Act and regulations promulgated thereunder by Owner, TSA, or others. The Program Manager shall not use such documents or information other than for the performance of its services under this Agreement.

(c) The Program Manager hereby agrees to defend, indemnify, and hold harmless Owner, its officers, agents, employees, and indemnitees, from and against, any and all claims, civil penalties, losses, suits, damages, legal and otherwise, arising out of or in any way connected with the Program Manager's failure to comply with or take any act contrary to any provisions of the Homeland Security Act or any regulations promulgated thereunder.

(d) The Program Manager shall include the requirements of this Addendum E in every contract or subconsultant agreement so that such provisions will be binding upon each of its subconsultants. Failure to include this provision in every such agreement shall be deemed to be and is a material breach of an essential covenant of this Agreement by the Program Manager.

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Addendum F
INVOICING REQUIREMENTS

1. AIA Forms G702 & G703.
2. Such other documentation as may be required by Owner and/or County, including, without limitation, detailed backup for past current pay requests that records actual hours, unit prices, actual salary costs, and direct non-salary expenses on an item basis, and by employee category, so that total hours and costs by item may be verified.
3. Upon request by Owner or County, certified payroll records for past and current pay requests for Work performed.
4. Program Manager shall submit an original pay request and at least two (2) copies (with all back-up) to Owner.

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Addendum G
SECURITY AND BADGING REQUIREMENTS

1. **SECURITY**

Airport Security Program and Aviation Regulations.

The Program Manager (“Consultant/contractor”) agrees to observe all security requirements and other requirements of the Federal Aviation Regulations applicable to it, including without limitation, all regulations of the United States Department of Transportation, the Federal Aviation Administration and the Transportation Security Administration. Consultant/contractor also agrees to comply with the County’s Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and any amendments thereto, and to comply with such other rules and regulations as may be reasonably prescribed by the County, and to take such steps as may be necessary or directed by the County to insure that subconsultants/subcontractors, employees, invitees and guests of Consultant/contractor observe these requirements. If required by the Aviation Department, Consultant/contractor shall conduct background checks of its employees in accordance with applicable Federal Regulations. If as a result of the acts or omissions of Consultant/contractor, its subconsultants/subcontractors, employees, invitees or guests, the County incurs any fines and/or penalties imposed by any governmental agency, including without limitation, the United States Department of Transportation, the Federal Aviation Administration or the Transportation Security Administration, or any expense in enforcing any Federal regulations, including without limitation, airport security regulations, or the rules or regulations of the County, and/or any expense in enforcing the County’s Airport Security Program, then Consultant/contractor agrees to pay and/or reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorney’s fees and all costs incurred by County in enforcing this provision. Consultant/contractor further agrees to rectify any security deficiency or other deficiency as may be determined as such by the County or the United States Department of Transportation, Federal Aviation Administration, the Transportation Security Administration, or any other Federal agency with jurisdiction. In the event Consultant/contractor fails to remedy any such deficiency, the County may do so at the sole cost and expense of Consultant/contractor. The County reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency.

- (a) Access to Security Identification Display Areas and Identification Media. The consultant/contractor shall be responsible for requesting the Aviation Department to issue Airport Issued Identification Media to all employees who are authorized access to Security Identification Display Areas (“SIDA”) on the Airport, as designated in the Airport Security Program. The office of Delta located at the Airport will sponsor the issuance of Airport Issued Identification Media; provided, however, that if the number of badges required becomes overly burdensome on Delta, Delta may designate Program Manager to sponsor the badges. In addition, consultant/contractor shall be responsible for the immediate reporting of all lost or stolen Airport Issued Identification Media and the

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immediate return of the media of consultant/contractor's personnel transferred from the Airport, or terminated from the employ of the consultant/contractor, or upon termination of this Agreement. Before an Airport Issued Identification Media is issued to an employee, consultant/contractor shall comply with the requirements of applicable Federal regulations with regard to fingerprinting for criminal history record checks and security threat assessments, and shall require that each employee complete security training programs conducted by the Aviation Department. The consultant/contractor shall pay or cause to be paid to the Aviation Department such charges as may be established from time to time for lost or stolen Airport Issued Identification Media and those not returned to the Aviation Department in accordance with these provisions. The Aviation Department shall have the right to require the consultant/contractor to conduct background investigations and to furnish certain data on such employees before the issuance of Airport Issued Identification Media, which data may include the fingerprinting of employee applicants for such media.

- (b) Operation of Vehicles on the AOA: Before the consultant/contractor shall permit any employee of consultant/contractor or of any subconsultant/subcontractor to operate a motor vehicle of any kind or type on the AOA (and unless escorted by an Aviation Department approved escort), the consultant/contractor shall ensure that all such vehicle operators possess current, valid, and appropriate driver's licenses. In addition, any motor vehicles and equipment of consultant/contractor or of any subconsultant/subcontractor operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department, which identification must be displayed as required by the Aviation Department.
- (c) Consent to Search/Inspection: The consultant/contractor agrees that its vehicles, cargo, goods and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. The consultant/contractor further agrees on behalf of itself and its subconsultant/subcontractors, that it shall not authorize any employee or other person to enter the AOA unless and until such employee or other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. Consultant/contractor acknowledges and understands that the foregoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts and other unlawful activities at the Airport. For this reason, consultant/contractor agrees that persons not executing such consent-to-search/inspection form shall not be employed by the consultant/contractor or by any subconsultant/subcontractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by the consultant/contractor or by any subconsultant/subcontractor.
- (d) Consultant/contractor understands and agrees that if any of its employees, or the employees of any of its subconsultants/subcontractors, are required in the course of the work to be performed under this Agreement to access or otherwise be in contact with Sensitive Security Information ("SSI") as defined and construed

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under Federal law, that individual will be required to execute a Sensitive Security Information Non-Disclosure Agreement promulgated by the Aviation Department.

- (e) The provisions hereof shall survive the expiration or any other termination of this Agreement.

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Addendum H
NONDISCRIMINATION REQUIREMENTS

1. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. The Program Manager shall comply with all requirements of the CBE/DBE Program, as applicable, in the award and administration of this Agreement. Failure by the Program Manager to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit Owner to terminate this Agreement or to exercise any other remedy provided under this Agreement, under the Broward County Code of Ordinances, or Administrative Code, or under applicable law, with all of such remedies being cumulative.
2. The Program Manager shall include the foregoing or similar language in its contracts with any subcontractors or suppliers, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Owner deems appropriate.
3. The Program Manager shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. The Program Manager shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by County or Owner, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, the Program Manager shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.