

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	(\$1,244,888)	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues (Grants)	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	(\$1,244,888)	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____

Budget Account No: Fund 4117 Department 121 Unit A270 Object 6502
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The attached Amendment will formally allow for the Direct Owner Purchase of materials thereby enabling the County to save approximately \$1,425,200 in Sales Tax. The attached Change Orders and Amendment will result in a net reduction to the project of \$1,244,888. This amount is comprised of items (B) \$106,440 and (C) \$73,872 which increases the contract and the \$1,425,200 Net Sales Tax savings. The reduction to the contract related to materials' sub-contractors as listed in Exhibit 'A' \$27,641,295 has been used to encumber funds for direct purchase contracts in the amount of \$26,216,095. The difference results in the sales tax savings to the County. \$2,463,592 of Direct Purchase value was for non-taxable Engineering Services, which did not produce a savings.

C. Departmental Fiscal Review: CM Sumner

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

5/14/07
OFMB
5/18/07
5/16/07
5/15/07

5/21/07
Contract Dev. and Control
5/18/07

B. Legal Sufficiency:

5/21/07
Assistant County Attorney

This item complies with current County policies.

C. Other Department Review:

Department Director

Background and Justification: (Continued from Page 1)

Change Order No. 8

Through discussion with the Contractor and the County, it was determined that an approximate 6% tax savings estimated to be \$1,425,200 could be realized by the County if the owner (County) purchased a portion of the construction materials directly from the supplier, rather than have the Contractor procure the materials. The Contract is being amended by separate document to formally define the responsibilities of both parties. Change Order No. 8 adjusts the contract to delete the owner purchased materials. It also includes payment to the contractor to administer the procurement of the materials in the amount of \$106,440 which was not part of the original contract.

For the total deductive amount of\$27,534,855

Change Order No. 9

The elevations of the existing garage foundations which support the new wind frames differs from the elevations indicated on the design drawings. The existing foundations are at a higher elevation than expected which necessitates a modification to be made to the grade level wind frame sections. Change Order No. 9 includes modification of wind frames along column line 0.1 at north and south connector bridges, per DOA Work Change Directive No. 4 dated 01/10/07 and JAC Change Proposal No. 29 dated 02/01/07.

For the total amount of..... \$21,482

In connecting the access from the new parking structure to the existing it was noted that there are several column connections on the existing garage that were starting to show fatigue and should be replaced. Change Order No. 9 includes Column repairs at existing Parking Structure No. 1, per DOA RFQ #9 dated 10/31/06, RFQ #9 Addendum No. 2 dated 01/29/07 and JAC Change Proposal No. 21 R1 dated 02/16/07.

For the total amount of.....\$52,390

FIRST AMENDMENT TO THE CONTRACT

BETWEEN

**PALM BEACH COUNTY
and
JAMES A. CUMMINGS, INC.**

THIS FIRST AMENDMENT is made and entered into this ____ day of _____, 2007, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and **JAMES A. CUMMINGS, INC.**, a corporation authorized to do business in the State of Florida, hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, on May 16, 2006, the County entered into a CONTRACT (R-2006-0842) with the CONTRACTOR to provide construction services for the Long Term Parking Garage No. 2 at Palm Beach International Airport (PBIA); and

WHEREAS, the CONTRACT allows for Changes in the CONTRACT in the form of an amendment approved and executed by the Board of County Commissioners of Palm Beach County; and

WHEREAS, the County will realize a sales tax savings of approximately \$1,425,200; and

WHEREAS, both parties agree to this Amendment.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and other such good and valuable consideration, the receipt of which the parties hereby acknowledge, the parties agree to the following terms and conditions:

1. The parties hereby agree to amend the CONTRACT to include the Special Provisions as outlined in Attachment 'A',
2. Except as specifically amended herein, all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this FIRST AMENDMENT to the CONTRACT to be signed by the Chairperson of the Board of County Commissioners and the Seal of said Board to be affixed hereto and attested by the Clerk of said Board. The CONTRACTOR has caused this FIRST AMENDMENT to be signed in its corporate name by its duly authorized officer, William R. Derrer, acting on behalf of said CONTRACTOR, and has caused the Seal of said CONTRACTOR to be affixed hereto and attested by the Secretary of said CONTRACTOR on the day and year first written above.

ATTEST:

**PALM BEACH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS**

**SHARON R. BOCK
Clerk & Comptroller**

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

WITNESS:

CONTRACTOR:

Nancy Blake
Signature
NANCY BLAKE
Name (type or print)

James A. Cummings, Inc.
Company Name
William R. Derrer
Signature

William R. Derrer
Name (type or print)
President
Title

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
County Attorney

(Corporate Seal)

APPROVED AS TO TERMS
AND CONDITIONS

By: Sam Zell
Department Director

ATTACHMENT "A"

SP- 15 PROVISION GOVERNING STATE OF FLORIDA SALE AND USE TAX EXEMPTION FOR COUNTY-FURNISHED MATERIALS

During the course of this Project, County may issue a change order or change orders to delete from the contract certain items which the County desires to purchase directly and furnish to Contractor for use in the Project. Contractor agrees that if County desires to issue such Change Order, Contractor will assist the County in identifying appropriate materials and equipment to be included in the Change Order, will execute such Change Order and will participate in this tax savings program. Furthermore, Contractor agrees to abide by and comply with the following Special Conditions.

1. Sales and Use Taxes. The County is exempt from paying sales and use taxes on materials and equipment purchased for, and incorporated into the **LONG TERM PARKING GARAGE NO 2., Project Number PB 05-3**(hereinafter the "Project"). The County shall make direct purchases of all materials and equipment purchased for, or to be incorporated into the Project, as requested by the Contractor and agreed upon by the County in the form of a change order. All direct purchases of materials and equipment shall be made by the County with funds specifically allocated for the construction of the Project. The Contractor shall notify the County no later than **10 calendar days** after request by County of the requested materials and equipment to be purchased by the County for the Project. The standard Palm Beach County Terms and Conditions applicable to this program are included as Attachment A to this section. Each equipment supplier of equipment to be provided under the Sales Tax Recovery Program shall be obligated to meet the requirements of the Palm Beach County Terms and Conditions and the Technical Specifications.
 - 1.1 The Contractor shall: (a) compile Contractor's and any Subcontractors' itemized requirement for materials and equipment, including quantities, unit costs, manufacturers' or vendors' catalogue or order numbers, delivery instructions, and other specific terms and information that is required to order the specific materials and equipment, and terms and conditions to be imposed on suppliers regarding delivery and submittal time requirements, and quantities thereof required by Contractor or Subcontractors in accordance with the applicable requirements of the Construction Contract, from time to time, during the construction of the Project, as materials and equipment need to be ordered for the Project, and submit such compilation to the County's Construction Services Project Manager: (b) prepare a requisition for such materials and equipment on the County's form of requisition: and (c) deliver any such requisition to the County's Construction Services Project Manager no less than thirty (30) days prior to the date the manufacturer or vendor of the materials or equipment, as the case may be, requires orders for such materials or equipment to be placed to assure delivery of such materials or equipment to the Site in accordance with the Project Schedule (the "Order Date").

The requisition shall identify the Order Date. Upon receipt of any such requisition the County's Construction Services Project Manager shall forward same to the County. The County shall issue a Purchase Order directly to the vendor of the materials or equipment, prior to the Order Date (a Purchase Order). The County shall include with any such Purchase Order, a copy of the County's sales and use tax exemption certificate. The County shall make direct payment to the vendor from the County's account.

- 1.2 The Contractor, upon the delivery of any such materials or equipment, shall verify the conformity of such materials or equipment with the terms of the Purchase Order and the Contract Documents. If the Contractor determines that the materials and equipment are conforming, the County shall take title and possession of such material and equipment before such materials and equipment are incorporated into the Project. If the Contractor determines that the materials and equipment are non-conforming, the Contractor shall immediately notify the County in writing and the County shall reject such material and equipment.
- 1.3 The County shall assume all risk of loss on all materials and equipment purchased pursuant to its sales and use tax exemption, subject to the provisions of section 1.10 below.
- 1.4 To the extent that materials and equipment are purchased pursuant to the County's sales and use tax exemption, the Contractor shall reduce the Contract Amount and the penal sum of its public construction bond by 1.06 times the cost of the materials and equipment purchased directly by the County.
- 1.5 The Contractor shall be fully responsible for all matters relating to the receipt of materials and equipment furnished by the County in accordance with this Special Condition, including, but not limited to, the responsibility for verifying correct quantities, verifying documents or orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the materials and equipment at the time of delivery, and loss or damage to materials and equipment following acceptance of items due to the negligence of such Contractor or any Subcontractors. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by such Contractor for the particular materials furnished. The Contractor shall provide or arrange for all services required for the unloading, handling and storage of such materials and equipment through installation.
- 1.6 The Contractor shall visually inspect all shipments from material and equipment vendors purchased directly by the County in accordance with this Special Condition (the "County Furnished Materials") and approve the vendors' invoices for materials or equipment delivered, as County-Furnished Materials are furnished to the Site in accordance with this Special Condition. The Contractor shall assure that each delivery of County Furnished Materials is accomplished by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the vendor conforming to the Purchase Order, together with such

additional information as the County may require. The Contractor shall deliver to the County's Construction Services Project Manager all invoices for materials and equipment upon verification by such Contractor that the materials and equipment conform exactly to the Contract Documents and the Purchase Order. Upon receipt of any invoice for County Furnished Materials, the County's Construction Services Project Manager shall accept such materials and deliver such invoice to the County for payment directly to the vendor.

- 1.7 The Contractor shall inspect all County Furnished Materials to determine that such County Furnished Materials conform to the Contract Documents, including the Drawings and the Specifications, and to determine prior to incorporation into the Work whether any such County Furnished Materials are patently defective, and whether such County Furnished Materials are identical to the materials ordered and match the description of the bill of lading and the Purchase Order. If Contractor discovers defective or non-conforming County Furnished Materials upon such visual inspection, Contractor shall: (1) not recommend acceptance of such non-conforming materials and equipment, (b) not utilize such non-conforming or defective materials in the Work; (c) not allow Subcontractor to utilize such non-conforming or defective materials in the Work; and (d) promptly notify the County's Construction Services Project Manager, in writing, of the defective or non-conforming condition so that repair or replacement of those County Furnished Materials can occur without any undue delay or interruption to the Project. In the event that such Contractor fails to perform such inspection or otherwise incorporates into the Work such defective or non-conforming County Furnished Materials, the Contractor shall be responsible for the repair and replacement of defective or non-conforming materials, at its sole cost and expense.
- 1.8 The Contractor shall maintain records of all County Furnished Materials incorporated into the Work from the stock of County Furnished Materials. The Contractor shall account monthly to the County's Construction Services Project Manager and County for any County Furnished Materials delivered to the Site, indicating which County Furnished Materials have been incorporated into the Work.
- 1.9 The Contractor shall be responsible for obtaining and managing all warranties and guarantees for all County Furnished Materials. All repair, maintenance or damage-repair calls shall be forwarded by the County or the Contractor to the Contractor for resolution with the appropriate vendor, or Subcontractor.
- 1.10 After the County takes possession of the County Furnished Materials at the Site, possession of the County's Furnished Material shall immediately and automatically transfer to the Contractor without notice. The transfer of possession of County Furnished Materials from the County to the Contractor shall constitute a bailment for the mutual benefit of the County and such Contractor. The County shall be considered the bailor and such Contractor the bailee of the County Furnished Materials. County Furnished Materials shall be considered returned to the County for purposes of their bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project.