

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: February 3, 2009 [X] Consent [] Regular
[] Ordinance [] Public Hearing

Department: Facilities Development & Operations / Purchasing Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) **authorize:** commencement of negotiations with AT&T Corp. for a new Master Services Agreement ("MSA") to be presented to the Board prior to the expiration of the current MSA on June 18, 2009, and

B) **approve:** Master Agreement with AT&T Corp. ("Construction Master Agreement") providing for the provision of development and installation of new communications systems and applications associated with construction projects where integration with AT&T provided network services pursuant to the Master Services Agreement is required.

Summary: On June 18, 2002, the Board approved a MSA with AT&T (formerly Bell South Communications, R2002-0956) providing for the local telephone, ESSX and 911 services, as well as voice, data and radio circuits in order to improve accountability for network performance and achieve higher volume discounts. The MSA also enables AT&T to discount eligible services beyond those in its tariff offerings. In addition, the MSA provides a service guarantee and makes available a dedicated multiple person support team. The MSA will expire on June 18, 2009 and Staff requires direction to commence negotiation with AT&T on the replacement MSA as AT&T is the only vendor capable of the meeting the County's need for this package of services delivered and maintained to all County facilities. The Construction Master Agreement provides the mechanism by which the County can approve individual task orders for the development, installation, integration of various communications systems associated with construction projects. Due to the comprehensive and critical network services provided and maintained by AT&T, AT&T, through its Network Integration Division, is uniquely qualified to develop, install, and integrate new communications systems and applications by providing for; 1) a high level of service, reliability, and resources for troubleshooting and timely repair of failures and 2) end to end performance responsibility. The term of the Construction Master Agreement is for three (3) years with two (2), two year extensions, or the termination of the MSA; whichever comes first. The funding source(s) for each individual task order will be identified prior to the award of the individual task order. (FDO Admin & Purchasing) Countywide (JM)

Background and Justification: On Page 3

Attachments:

Construction Master Agreement

Recommended by: Anthony Woy 1/12/09
Department Director Date

Recommended by: Kathleen Macarlett 1/12/09
Department Director Date

Approved by: [Signature] 1/27/09
County Administrator Date

I. FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	*	<u>-0</u>	<u>-0</u>	<u>-0</u>	<u>-0</u>

ADDITIONAL FTE POSITIONS (Cumulative)

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No: Fund _____ Department _____ Unit _____ Object _____
Reporting Category _____

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

* **Recommended Sources of Funding:** There is no fiscal impact associated with approval of the Construction Master Agreement. Funding will be identified and encumbered with the approval of individual task orders. The first and most substantial task orders to be awarded pursuant to the Construction Master Agreement are associated with the video visitation system being installed as part of the Jail Expansion Program.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS:

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

Jan Dink 1.21.09
OFMB NO ^{CV} 1/21/09

B. Legal Sufficiency:
James C. [Signature] 1/27/09
Assistant County Attorney

C. Other Department Review: _____

Dr. J. Jaelt 1/26/09
Contract Dev. and Control
The Master Construction Agreement will be utilized as an annual contract with work issued on a project by project basis.

BACKGROUND & JUSTIFICATION (Page 3)

In 1997, the County sought a single provider for local telephone, ESSX and 911 service, as well as voice, data and radio circuits in order to improve accountability for network performance and achieve higher volume discounts. At that time the County entered into a Master Service Agreement with BellSouth, as they were determined by Staff to be the only vendor capable of providing the total package of services to all County

locations. In June 2000, the Board approved extending that contract for a period of two years. In 2002, the Board entered into a Master Service Agreement and Volume and Term Attachment which provided for the discount off of tariff rates, expanded the list of discounted services, provided a service guarantee and made available a dedicated support team. That MSA is set to expire on June 18, 2009.

Staff desires to negotiate a new MSA with AT&T to provide for uninterrupted coverage and requires authorization from the Board to commence negotiations in order to complete that MSA prior to June, 2009.

In 2008, FDO Staff issued an RFP for a video visitation system. Staff received only one response and ultimately canceled the solicitation. All during the solicitation process, Staff was concerned about the ability of the various firms that were considering responding to the RFP to meet all of the requirements particularly related to, integrating with existing County systems and existing PBO computer applications, the reliability of the systems to be installed (including documented performance history) and the level of on-going support for installed systems. Further, because the video visitation system relies heavily on the performance of AT&T's network, troubleshooting system failures would have fallen on staff to identify the source of the problem, assign responsibility for repair and follow-up to ensure that the various parties' work was coordinated. As a result, Staff determined that a construction master agreement with AT&T to be the most beneficial course of action for the County in terms of procuring services and goods associated with the development, installation and ongoing support of various communications systems which need to be integrated with or rely on AT&T's network. The video visitation system is the first and most significant system to be procured via this Construction Master Agreement, however, it is likely that other integrated systems, procured through this Construction Master Agreement, will be identified.



MASTER AGREEMENT

Customer Palm Beach County Street Address: 301 S Olive Ave City: West Palm Beach State/Province: FL Zip Code: 33401 Country: USA	AT&T AT&T Corp. or enter the International Affiliate Name <input type="checkbox"/> One AT&T Way, Bedminster, NJ 07921 <input type="checkbox"/> 2600 Camino Ramon, San Ramon, CA 94583 <input type="checkbox"/> 225 W. Randolph Street, Chicago, IL 60606 <input type="checkbox"/> One AT&T Plaza, Dallas, TX 75202 <input type="checkbox"/> 310 Orange Street, New Haven, CT 06510 <input checked="" type="checkbox"/> 2180 Lake Blvd., 7th Floor, Atlanta, GA 30319 <input type="checkbox"/> International Affiliate Address
Customer Contact (for notices) Name: Audrey Wolf Title: Director, Facilities Development & Operations Street Address: 2633 Vista Parkway City: West Palm Beach State/Province: FL Zip Code: 33411 Country: USA Telephone: 561-233-0204 Fax: 561-233-0206 Email: awolf@pbcgov.com	AT&T Contact (for notices) Street Address: City: State/Province: Zip Code: Country: With a copy to: AT&T Corp. One AT&T Way Bedminster, NJ 07921-0752 ATTN: Master Agreement Support Team Email: mast@att.com

This Master Agreement ("Master Agreement") and Attachment #1 ("Attachment"), which is incorporated into and made part of the AT&T Master Agreement, between the customer named above ("Customer") and the AT&T entity named above ("AT&T"), is effective when signed by both Customer and AT&T, and dated _____ and continues in effect as long as Services are provided under this Master Agreement.

This Master Agreement will apply to all services and equipment Customer buys from AT&T, now and in the future, that are provided under Pricing Schedules attached to or referencing this Master Agreement ("Services"). Other Services may be provided by signing additional Pricing Schedules at any time. AT&T standard service offerings are described in Tariffs, Guidebooks, Catalogs, Service Guides and other documents identified in this Master Agreement.

ATTEST:
SHARON R. BOCK, Clerk &
Comptroller

PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of
Florida

By:
Deputy Clerk

BOARD OF COUNTY
COMMISSIONERS

By: _____
John F. Koons, Chairman

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

Assistant County Attorney

Director, Facilities Development &
Operations

AT&T Corp.

(witness signature)

By:
(Corporate Name)

(witness name printed)

a _____ corporation
(insert state of corporation)

(witness signature)

By:
(signatory)

(witness name printed)

(print signatory's name)

It's
(print title)

_____, 200
(date of execution)

(Corporate Seal)

1. INTRODUCTION

1.1 **Overview of Documents.** The terms and conditions governing the Services that AT&T provides to Customer are set forth in this Master Agreement, the following additional documents, and any other documents executed by the parties and referencing this Master Agreement (which documents together with this Master Agreement are called "this Agreement"):

- (a) **Pricing Schedules.** A Pricing Schedule (including related attachments) identifies the Services AT&T may provide to Customer, the price (including discounts, if applicable) for each Service, and the term during which such prices are in effect ("Pricing Schedule Term").
- (b) **Tariffs, Guidebooks and Catalogs.** "Tariffs" are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that AT&T files with regulatory commissions. "Guidebooks" or "Catalogs" are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that were, but no longer are, filed with regulatory commissions. Tariffs, Guidebooks and Catalogs may be found at att.sbc.com/search/tariffs.jsp, serviceguide.att.com/ABS/ext/index.cfm, cpr.bellsouth.com/index2.html or other locations AT&T may designate. Tariffs, Guidebooks and Catalogs applicable must be identified by a document or title name. (c) **Acceptable Use Policy.** AT&T's Acceptable Use Policy ("AUP") applies to Services provided over or accessing the Internet. The AUP may be found at att.com/aup, or other locations AT&T may designate.
- (d) **Service Guides.** The description, pricing, and other terms and conditions for the Service not covered by a Tariff, Guidebook or Catalog may be contained in a Service Guide, which may be found at new.serviceguide.att.com, or other locations AT&T may designate.
- (e) **Statement of Work.** A mutually agreed document setting forth the performance required for a given project.

1.2 **Priority of Documents.** The order of priority (descending) of the documents that form this Agreement is: Statement of Work, Equipment Order List or other attachment to the Pricing Schedule; Pricing Schedule; Tariffs, Guidebooks and Catalogs; this Master Agreement; the AUP; and Service Guides.

1.3 **Revisions to Documents.** Subject to Section 8.2(c) (Materially Adverse Change), AT&T may revise Tariffs, Guidebooks, Catalogs, Service Guides or the AUP (collectively "Service Publications") at any time.

1.4 **Execution by Affiliates.** An AT&T Affiliate or Customer Affiliate may sign a Pricing Schedule referencing this Agreement in its own name and such Affiliate contract will be a separate, but associated, contract incorporating the terms of this Master Agreement with respect to that Pricing Schedule. Customer and AT&T will arrange to have their respective Affiliates comply with this Agreement, regardless of whether an Affiliate has signed a Pricing Schedule.

1.5 **Capitalized Terms.** Capitalized terms not otherwise defined in this Agreement are defined in Section 11 (Definitions).

1.6 **Term of Agreement:** The term of the Master Agreement shall be for three (3) years from the date at which the Master Agreement is approved by the Customer and Customer shall have the option of two additional two (2) year extensions with 90 day notice given to AT&T, or until the termination of AT&T's Master Service Agreement; whichever comes first.

2. AT&T DELIVERABLES

2.1 **Services.** AT&T agrees to either provide or arrange to have an AT&T Affiliate provide Services to Customer in accordance with this Agreement, subject to availability and operational limitations of systems, facilities and equipment. Where required, an AT&T Affiliate authorized by the appropriate regulatory authority will be the service provider.

2.2 **AT&T Equipment.** Services may include use of certain equipment owned by AT&T that is located at the Site ("AT&T Equipment"), but title to the AT&T Equipment will remain with AT&T. Customer must provide electric power for the AT&T Equipment and keep the AT&T Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to AT&T Equipment (other than ordinary wear and tear) except to the extent caused by AT&T or its agents.

2.3 **Software.** Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software remains with AT&T or its supplier. Customer must comply with all such terms and conditions and they take precedence over this Agreement as to such software.

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3. CUSTOMER'S COOPERATION

3.1 **Access Right.** Customer will in a timely manner allow AT&T to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer's expense, timely access for AT&T to property that Customer does not control (other than public property) as reasonably required to provide the Services.

Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary for Customer's connection to AT&T's network. Customer must provide AT&T timely information and access to Customer's facilities and equipment as AT&T reasonably requires to provide the Services, subject to Customer's reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for AT&T to perform its work according to a mutually agreed schedule.

3.2 **Safe Working Environment.** Customer will ensure that the location at which AT&T installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. AT&T does not handle, remove or dispose of Hazardous Materials, and AT&T has no obligation to perform work at a location that is not a suitable and safe working environment. AT&T will not be liable for any Hazardous Materials. AT&T acknowledges that the work to be performed pursuant to this Agreement will be conducted on an active construction site and AT&T will be further subject to any security, safety and other construction site regulations of the construction manager or general contractor specified in each individual mutually acceptable Statement of Work.

3.3 **Users.** "User" means anyone employed by or affiliated with the customer who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement, and Customer agrees that Customer is responsible for Users' use of any Services, unless expressly provided to the contrary in applicable Service Publications.

3.4 **Internet Services.** If a Service is provided over or accesses the Internet, Customer, Customer's Affiliates, and Users must comply with the AUP.

3.5 **Resale of Services.** Customer may not resell the Services to third parties without AT&T's written consent. Where permitted under applicable law, Customer may resell the Services to Customer's Affiliates without AT&T's consent.

4. PRICING AND BILLING

4.1 **Pricing and Pricing Schedule Term Extension.** Unless a Pricing Schedule states otherwise, the prices listed in a Pricing Schedule are stabilized until the end of the Pricing Schedule Term. No discount, promotion, credit or waiver set forth in a Service Publication will apply unless specifically referenced in a Pricing Schedule. Except to the extent prohibited by applicable law or regulation, or unless a Pricing Schedule states otherwise, upon expiration of a Pricing Schedule Term, the Pricing Schedule (and all applicable terms and conditions) shall automatically extend for successive terms equal to the original Pricing Schedule Term (an "Extension Term"), unless notice is given not to extend a Pricing Schedule by either party not earlier than 180 days nor later than 60 days before the scheduled expiration of the applicable term, unless more notice is required by applicable law or regulation. The prices listed in the Pricing Schedule in effect immediately prior to the beginning of the Extension Term shall continue in effect throughout the Extension Term, and any MARC commitment in effect immediately prior to the Extension Term shall continue in effect throughout the Extension Term. Customer shall not be entitled to any one-time or up-front discount, promotion, credit, or waiver set forth in an original Pricing Schedule during an Extension Term. AT&T may modify prices that will be charged during an upcoming Extension Term by giving Customer notice not less than 120 days before the scheduled expiration of the then-current term; otherwise, prices will not change during any Extension Term unless allowed elsewhere in this Agreement. If Customer gives notice not to extend a Pricing Schedule as prescribed herein, Customer will have the option to either (a) cease using the Service, or (b) continue using the Service on a month-to-month basis until terminated by either party on 30 days' notice. During the month-to-month extension period, the prices in the Pricing Schedule will automatically be increased to the then-current monthly extension rates (if any) specified in the applicable Service Publication or Pricing Schedule. During the month-to-month extension period, AT&T may modify rates, terms and conditions on 30 days' notice to Customer.

4.2 **Additional Charges and Taxes.** Prices set forth in a Pricing Schedule are exclusive of, and Customer will pay, all current and future taxes (excluding those on AT&T's net income), surcharges, recovery fees, custom clearances, duties, levies, shipping charges, and other similar charges (and any associated interest and penalties resulting from Customer's

failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent Customer provides satisfactory proof of a valid tax exemption prior to the delivery of Services. To the extent Customer is required by law to withhold or deduct any applicable taxes from payments due to AT&T, Customer will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty, and Customer will furnish AT&T with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that AT&T may claim any applicable credit. AT&T shall disclose to Palm Beach County, as part of the Pricing Schedule, all surcharges, recovery fees, custom clearances, duties, levies, shipping charges, and other similar charges which AT&T knows, or expects, may be associated with this transaction.

4.3 Billing. Unless a Pricing Schedule specifies otherwise, Customer's obligation to pay for all Services will begin upon installation and availability of the Services to Customer. AT&T will invoice Customer for the Services on a monthly basis, or otherwise as specified in the Pricing Schedule. Customer will pay AT&T without deduction (except for withholding taxes as provided in Section 4.2 – Additional Charges and Taxes), setoff (except as provided in Section 4.5 – Delayed Billing; Disputed Charges), or delay for any reason. At Customer's request, but subject to AT&T's consent (which may be withheld if there will be operational impediments or tax consequences), Customer's Affiliates may be invoiced separately and AT&T will accept payment from such Affiliates. Customer will be responsible for payment if Customer's Affiliates do not pay charges in accordance with this Agreement. AT&T may require Customer or its Affiliates to tender a deposit if AT&T determines, in its reasonable judgment, that Customer or Customer's Affiliates are not creditworthy.

4.4 Payments. Payments are within 30 days of the County's receipt of the invoice and shall be made in accordance with the Local Government Prompt Pay Act, Florida Statute 218.70, *et seq.*

4.5 Delayed Billing; Disputed Charges. Customer will not be required to pay charges for Services invoiced more than 6 months after close of the billing month in which the charges were incurred, except for automated or live operator assisted calls of any type. If Customer disputes a charge, Customer will provide notice to AT&T specifically identifying the charges and the reason it is disputed within 6 months after the date of the affected invoice or Customer waives the right to dispute the charge (except to the extent applicable law or regulation otherwise requires). Disputed charges may be withheld, but if not paid when due, Customer will incur late payment fees in accordance with Section 4.4 (Payments); however, to the extent AT&T determines the charges Customer disputed and withheld were invoiced in error, late payment fees for such charges will be reversed.

4.6 MARC. Minimum Annual Revenue Commitment ("MARC") means an annual revenue commitment of MARC-Eligible Charges set forth in a Pricing Schedule that Customer agrees to satisfy during each 12 consecutive month period of the Pricing Schedule Term. At the end of each such 12 month period, if Customer has failed to satisfy the MARC for the preceding 12 month period, Customer will be invoiced a shortfall charge in an amount equal to the difference between the MARC and the total of the applicable MARC-Eligible Charges incurred during the 12 month period, and payment will be due in accordance with Section 4.4 (Payments).

4.7 Adjustments to MARC.

(a) In the event of a business downturn beyond Customer's control, or a corporate divestiture, merger, acquisition or significant restructuring or reorganization of Customer's business, or network optimization using other Services, or reduction of AT&T's prices, or force majeure events, any of which significantly impairs Customer's ability to meet Customer's MARC, AT&T will offer to adjust the affected MARC to reflect Customer's reduced usage of Services (with a corresponding adjustment to the prices or discount available at the reduced MARC level). If the parties reach mutual agreement on a revised MARC, AT&T and Customer will amend the affected Pricing Schedule prospectively. This Section 4.7 will not apply to a change resulting from Customer's decision to use service providers other than AT&T. Customer will provide AT&T written notice and evidence of the conditions Customer believes will require the application of this provision. This provision does not constitute a waiver of any charges, including monthly recurring charges and shortfall charges Customer incurs prior to amendment of the affected Pricing Schedule.

(b) If Customer, through merger, consolidation, acquisition or otherwise, acquires a new business or operation, Customer and AT&T may mutually agree to include the new business or operation under this Agreement. Such agreement will specify the impact, if any, of such addition on Customer's MARC or other volume or growth discounts, and Customer's attainment thereof.

5. CONFIDENTIAL INFORMATION

5.1 Confidential Information. Confidential Information means: (a) information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, the terms of this Agreement and any pricing or other proposals. AT&T acknowledges that Palm Beach County's ability to comply with the provisions of this paragraph is regulated and constrained by the requirements of Florida's Public Records Act, Florida Statute Chapter 119.

5.2 **Obligations.** Each party's Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, which is indefinite): (a) be held in confidence; (b) be used and transmitted between countries only for purposes of using the Services or performing this Agreement (including in the case of AT&T, the ability to monitor Customer's transmissions in order to detect fraud, check quality, and to operate, maintain and repair the Services); and (c) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 5), or to the extent compelled to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is compelled by such legal process and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law or legal process).

5.3 **Exceptions.** The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

5.4 **Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business. If Customer does not want AT&T personnel to comprehend Customer data to which they may have access in performing Services, Customer should encrypt such data so that it will be unintelligible. Until directed otherwise by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information (CPNI) to any employee or agent of Customer without a need for further authentication or authorization.

6. DISCLAIMERS AND LIMITATIONS OF LIABILITY

6.1 **Disclaimer of Warranties.** Except as specified in a Statement of Work AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING. FURTHER, AT&T MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE CORRECTLY ROUTED OR COMPLETED (INCLUDING CALLS TO 911), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT AT&T'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

6.2 Limitation of Liability.

- (a) AT&T'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY CUSTOMER'S NEGLIGENCE, SHALL IN NO EVENT EXCEED THE APPLICABLE CREDITS SPECIFIED IN A SERVICE PUBLICATION OR PRICING SCHEDULE, OR IF NO CREDITS ARE SPECIFIED, the liquidated damages amount shown on the applicable Statement of Work TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT IN THE SERVICES OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO AT&T.
- (b) SECTION 6.2(a) WILL NOT APPLY TO:
- (i) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE;
 - (ii) BREACH OF SECTION 5 (Confidential Information), SECTION 10.1 (Publicity), OR SECTION 10.2 (Trademarks);
 - (iii) SETTLEMENT, DEFENSE OR PAYMENT OBLIGATIONS UNDER SECTION 7 (Third Party Claims); OR
 - (iv) DAMAGES ARISING FROM AT&T'S Gross Negligence OR WILLFUL MISCONDUCT.
- (c) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS.

6.3 **Disclaimer of Liability.** AT&T WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY AT&T'S Gross Negligence OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH, applications, equipment, services CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT or the applicable statement of work); FAILURE TO CORRECTLY ROUTE OR COMPLETE CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

6.4 **Application and Survival.** The disclaimer of warranties and limitations of liability set forth in this Agreement will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 6 will survive failure of any exclusive remedies provided in this Agreement.

7. THIRD PARTY CLAIMS

7.1 **AT&T's Obligations.** AT&T agrees at its expense to defend or settle any third-party claim against Customer, its Affiliates, and its and their respective employees and directors, and to pay all compensatory Damages that a court may finally award against such parties to the extent the claim alleges that a Service provided to Customer under this Agreement infringes any patent, trademark, copyright, or trade secret, but not in circumstances where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any services or products not provided by AT&T; (c) AT&T's adherence to Customer's or its Affiliate's written requirements; or (d) use of the Service in violation of this Agreement. AT&T agrees at its expense to defend or settle any third party claim against Customer, its Affiliates, and its and their respective employees and directors, and to pay all compensatory Damages relating to bodily injury, including death, or to loss of or damage to tangible property (without limitation or reference to Article 6, above) that a court may finally award against such parties to the extent the claim arises from the negligent or intentionally wrongful acts, errors, or omissions of AT&T. 7.2 **Customer's Obligations.** Customer agrees at its expense to defend or settle any third-party claim against AT&T, AT&T's Affiliates, and its and their respective employees, directors, subcontractors, and suppliers, and to pay all compensatory Damages that a court may finally award against such parties to the extent the claim: (a) arises out of Customer's, its Affiliate's, or a User's access to, or use of, the Services and the claim is not the responsibility of AT&T under Section 7.1; (b) alleges that a Service infringes any patent, trademark, copyright or trade secret, and falls within the exceptions in Section 7.1; or (c) alleges a breach by Customer, its Affiliates, or Users of a software license agreement governing software provided in connection with the Services.

7.3 **Infringing Services.** Whenever AT&T is liable under Section 7.1, AT&T may at its option either procure the right for Customer to continue using, or may replace or modify, the alleged infringing Service so that the Service becomes non-infringing.

7.4 **Notice and Cooperation.** The party seeking defense or settlement of a third party claim under this Section 7 will notify the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced thereby. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense; but the defending party will use counsel reasonably experienced in the subject matter at issue, and will not settle a claim without the consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required where relief on the claim is limited to monetary damages that are paid by the defending party under this Section 7.

8. SUSPENSION AND TERMINATION

8.1 **Termination of Agreement.** This Agreement may be terminated immediately upon notice by either party if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding, or makes an assignment for the benefit of its creditors.

8.2 **Termination or Suspension of Services.** The following additional termination provisions apply:

(a) **Fraud or Abuse.** AT&T may terminate or suspend an affected Service, and if the activity implicates the entire Agreement, terminate the entire Agreement, immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer (i) commits a fraud upon AT&T, (ii) utilizes the Service to commit a fraud upon another party, (iii) unlawfully uses the Service, (iv) abuses or misuses AT&T's network or Service, or (v) interferes with another customer's use of AT&T's network or services.

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- (b) **Material Breach.** If either party fails to perform or observe any material term or condition of this Agreement, including non-payment of charges (subject to Section 4.5 – Delayed Billing; Disputed Charges), and such failure continues unremedied for 30 days after receipt of notice, the non-breaching party may terminate the affected Service, and if the breach implicates the entire Agreement, terminate the entire Agreement. If Customer is in breach, AT&T may elect to suspend (and later terminate) the affected Service, and if the breach implicates the entire Agreement, suspend (and later terminate) the entire Agreement.
- (c) **Materially Adverse Change.** If AT&T revises a Service Publication and the revision has a materially adverse impact on Customer, and AT&T does not effect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to AT&T, given not later than 90 days after Customer first learns of the revision to the Service Publication. However, a revision to a Service Publication will not be considered materially adverse to Customer if it changes prices that are not fixed (stabilized) in a Pricing Schedule, if the price change was mandated by a governmental authority, or if the change affects a charge imposed under Section 4.2 (Additional Charges and Taxes).
- (d) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after notice from AT&T, AT&T may suspend (and later terminate) or terminate the Service. If Services are provided over or access the Internet, AT&T may act immediately and without notice to suspend or terminate Service in response to a court order or government notice that certain conduct must be stopped or when AT&T reasonably determines (i) that it may be exposed to sanctions or prosecution; (ii) that such violation may cause harm to or interfere with the integrity or normal operations or security of AT&T's network or networks with which AT&T is interconnected or interfere with another customer's use of AT&T services or the Internet; or (iii) that continuation of the Services otherwise presents imminent risk of harm to AT&T or AT&T's customers or their respective employees.
- (e) **Infringing Services.** If neither of the options described in Section 7.3 (Infringing Services) are reasonably available, AT&T may terminate the affected Service without liability other than as stated in Section 7.1 (AT&T's Obligations).
- (f) **Hazardous Materials.** If AT&T encounters any Hazardous Materials at the Site where AT&T is to install, maintain or provide Services, AT&T may terminate the affected Service or Service Component, or suspend performance until Customer removes and remediates Hazardous Materials at Customer's expense in accordance with applicable law.

8.3 **Withdrawal of Services.** Notwithstanding that a Pricing Schedule may commit AT&T to provide a Service to Customer for a Pricing Schedule Term, and unless applicable law or regulation mandates otherwise, AT&T may discontinue providing a Service upon 12 months' notice, or a Service Component upon 120 days' notice, but only where AT&T generally discontinues providing the Service or Service Component to similarly-situated customers.

8.4 **Effect of Termination.**

- (a) Termination by either party of a Service does not waive any other rights or remedies a party may have under this Agreement. Termination or suspension of a Service will not affect the rights and obligations of the parties regarding any other Service.
- (b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination. If Customer terminates a Service or Service Component prior to the date Customer's obligation to pay for Services begins as provided in Section 4.3 (Billing), Customer will reimburse AT&T for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

8.5 **Termination Charges.**

- (a) If Customer terminates this Agreement or an affected Service or Service Component pursuant to Sections 8.1 (Termination of Agreement), 8.2(b) (Material Breach) or 8.2(c) (Materially Adverse Change), AT&T terminates a Service pursuant to Section 8.2(e) (Infringing Services), or AT&T withdraws a Service pursuant to Section 8.3 (Withdrawal of Services), Customer will not be liable for the termination charges set forth in Section 8.5(b).
- (b) If Customer terminates a Service or Service Component other than as set forth in Section 8.5(a), or AT&T terminates an affected Service or Service Component pursuant to Sections 8.1 (Termination of Agreement), or 8.2(a) (Fraud or Abuse), 8.2(b) (Material Breach), 8.2(d) (Internet Services) or 8.2(f) (Hazardous Materials), Customer will pay applicable termination charges as follows: (i) if termination occurs before the end of the Minimum Payment Period, Customer will pay 50% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the Minimum

Payment Period, plus any waived or unpaid non-recurring charges identified in the Pricing Schedule, plus any charges incurred by AT&T from a third party (e.g., not an AT&T Affiliate) due to the termination, all of which will, if applicable, be applied to Customer's MARC-Eligible Charges; and (ii) if Customer terminates a Pricing Schedule that has a MARC, Customer will pay an amount equal to 50% of the unsatisfied MARC, after applying amounts received pursuant to (i), for the balance of the Pricing Schedule Term.

- (c) The charges set forth in Section 8.5(b)(i) will not apply if a terminated Service Component is replaced with an upgraded Service Component at the same Site, but only if (i) the Minimum Payment Period and associated charge for the replacement Service Component are equal to or greater than the Minimum Payment Period and associated charge for the terminated Service Component and (ii) the upgrade is not restricted in the applicable Service Publication.

9. IMPORT/EXPORT CONTROL

The parties acknowledge that equipment, services, software, and technical information (including technical assistance and training) provided under this Agreement may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all such laws, conventions and regulations. The parties will not use, distribute, transfer, or transmit the equipment, services, software, or technical information (even if incorporated into other products) except in compliance with such laws, conventions and regulations. Customer, not AT&T, is responsible for complying with such laws, conventions and regulations for all information, equipment and software Customer transmits between countries using the Services.

10. MISCELLANEOUS PROVISIONS

10.1 **Publicity.** Neither party may issue any public statements or announcements relating to the terms of this Agreement or the provision of Services without the prior written consent of the other party.

10.2 **Trademarks.** Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

10.3 **Force Majeure.** Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control.

10.4 **Amendments and Waivers.** Any supplement to or modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement will not operate as a waiver of any other breach of this Agreement.

10.5 **Assignment and Subcontracting.**

(a) This Agreement may not be assigned by either party without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed). Customer may, without AT&T's consent, but upon notice to AT&T, assign in whole or relevant part, its rights and obligations under this Agreement to an Affiliate, but Customer will remain financially responsible for the performance of such obligations. AT&T may, without Customer's consent, assign in whole or relevant part, its rights and obligations under this Agreement to an Affiliate, or subcontract to an Affiliate or a third party work to be performed under this Agreement, but AT&T will in each such case remain financially responsible for the performance of such obligations.

(b) In countries where AT&T does not have an Affiliate to provide Service, AT&T may assign its rights and obligations related to a Service to a local service provider, but AT&T will remain responsible to Customer for such obligations. In certain countries, Customer may be required to contract directly with the local service provider.

(c) Any assignment other than as permitted by this Section 10.5 is void.

10.6 **Severability.** If any portion of this Agreement is found to be invalid or unenforceable or if, notwithstanding Section 10.10 (Governing Law), applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

10.7 **Injunctive Relief.** Nothing in this Agreement is intended, or should be construed, to limit a party's right to seek preliminary or permanent injunctive relief from a court of competent jurisdiction for a breach of any provision of this Agreement.

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10.8 **Legal Action.** Any legal action arising in connection with this Agreement must be filed within 2 years after the cause of action accrues or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

10.9 **Notices.** All notices required under this Agreement will be delivered in writing to the recipient's contact designated on the cover page of this Master Agreement, or to such other contact as designated in writing from time to time. Notices shall be by internationally recognized overnight courier, certified or registered mail, email, or facsimile and will be effective upon receipt or when delivery is refused, whichever occurs sooner.

10.10 **Governing Law.** This Agreement will be governed by the law of the State of Florida, without regard to its conflict of law principles, unless a regulatory agency with jurisdiction over the applicable Service applies a different law. The United Nations Convention on Contracts for International Sale of Goods will not apply. Any legal proceeding shall be in a state or federal court of competent jurisdiction located in or having jurisdiction for Palm Beach County, Florida. 10.11 **Compliance with Laws.** Each party will comply with all applicable laws, regulations, and orders issued by courts or other governmental bodies of competent jurisdiction.

10.12 **No Third Party Beneficiaries.** This Agreement is for the benefit of Customer and AT&T, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

10.13 **Survival.** The respective obligations of Customer and AT&T that by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations set forth in Section 5 (Confidential Information), Section 6 (Disclaimers and Limitations of Liability) and Section 7 (Third Party Claims), will survive termination or expiration.

10.14 **Agreement Language.** The authentic language of this Agreement is English. If there is a conflict between this Agreement and any translation, the English version will take precedence.

10.15 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the Services provided under this Agreement. Except as provided in Section 2.3 (Software), this Agreement supersedes all other agreements, proposals, representations, statements or understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

11. DEFINITIONS

The following terms have the meanings set forth below:

"**Affiliate**" of a party means any entity that controls, is controlled by, or is under common control with, such party.

"**Damages**" means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

"**Effective Date**" means, for any Pricing Schedule, the date on which the last party signs the Pricing Schedule unless a later date is required by regulation or law.

"**MARC-Eligible Charges**" means, unless the applicable Pricing Schedule indicates otherwise, the recurring and usage charges, after deducting applicable discounts and credits (other than outage or SLA credits), that AT&T charges Customer for the Services identified in the applicable Pricing Schedule as MARC-contributing. The following are not MARC-Eligible Charges: (a) charges for or in connection with Customer's purchase of equipment; (b) taxes; and (c) charges imposed in connection with governmentally imposed costs or fees (such as USF, PICC, payphone service provider compensation, E911 and deaf relay charges).

"**Minimum Payment Period**" means, in respect to any Service, the minimum period for which Customer is required to pay recurring charges for the Service, as specified in the Pricing Schedules or Service Publication for that Service.

"**Service Component**" means an individual component of a Service provided under this Agreement.

"**Site**" means Customer's physical location, including Customer's collocation space on AT&T's, its Affiliate's, or subcontractor's property, where AT&T installs or provides a Service.

ATTACHMENT #1 TO AT&T MASTER AGREEMENT

This Attachment #1 ("Attachment") is incorporated into and made part of the attached AT&T Master Agreement, MA Reference No. 112842UA ("Agreement") between Palm Beach County, referred to as "Owner," and AT&T Corp., referred to as "Contractor". This Attachment relates to AT&T providing contractual services as described in the attached Agreement.

In consideration of the mutual covenants and stipulations set forth in the Agreement and Attachment, the parties hereby agree as follows:

1. Independent Contractor

Contractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such work. To the extent that Contractor is not properly licensed, equipped, organized and financed to perform such work, Contractor shall engage subcontractors or consultants who are. Contractor shall act as an independent contractor and not as the agent of Owner in performing the Agreement, maintaining complete control over its employees and all of its suppliers, consultants, and subcontractors. Nothing contained in this Agreement or any subcontract awarded by Contractor shall create any contractual relationship between any such supplier or subcontractor and Owner. Contractor shall perform all work in accordance with its own methods subject to compliance with the Agreement. Contractor represents that all subcontractor agreements entered into shall incorporate by reference the terms and conditions of this Agreement, and further warrants that the Owner is an intended express third party beneficiary of any such subcontract.

2. Standards and Codes

Wherever references are made in the Agreement to standards or codes in accordance with which work is to be performed or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any referenced standards and codes or between any referenced standards and codes the Owner will determine which shall govern. Contractor acknowledges that compliance with code requirements represents minimum standards for construction and is not evidence that the work has been completed in accordance with this Agreement.

3. Code Related Inspections

The Contractor recognizes that the Palm Beach County Department of Planning, Zoning, and Building (PZ&B) is a separate department within the County that is charged with the inspection of improvements to real property for code compliance. The improvements to be made by the Contractor pursuant to this Agreement may be subject to inspection by PZ&B. The Contractor agrees that it will not assert, as a County caused delay or as a defense of any delay on the part of the Contractor, any good faith action or series of actions on the part of PZ&B, including, but not limited to PZ&B's refusal to accept any portion of the Contractors work.

4. Cooperation with Others

Owner and other contractors and subcontractors will be working at the site during the performance of this Agreement. Contractor shall fully cooperate with the Owner, Owner's designated Representative, and other contractors to avoid any delay or hindrance of their work. Owner may require that certain facilities be used concurrently by Contractor and other parties and Contractor shall comply with such requirements.

If any part of the Contractor's work depends on proper execution or results from any work performed by the Owner or any separate contractor, the Contractor 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 Contractor to report such discrepancies or defects shall constitute an acceptance of the Owner's separate contractors' work as fit and proper to receive his work, except as to defects which may subsequently become apparent in such work performed by others. Any costs caused by defective or ill-timed work of others shall be borne by the Contractor unless Contractor gives written notice to Owner, if reasonably possible, prior to proceeding with the work and in any event within three business days of such defects becoming apparent. In no event shall the Owner be liable to the contractor for delay damages, however as provided for in this Agreement.

5. Examination of Contractor's Records

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The Owner shall, until the expiration of four years after final payment under this Agreement, have access at reasonable times and subject to reasonable requirements to any directly pertinent books, documents, papers and records of the Contractor involving transactions relating to this Agreement, and to make copies, excerpts and transcriptions thereof.

6. Coordination and Correlation of Drawings and Specifications

The Contractor represents that the Contractor, subcontractors, consultants, material and equipment suppliers have compared all Drawings and Specifications that Contractor has determined are applicable to, or which may impact, Contractor's work and have compared and reviewed all general and specific details on the Drawings and that all conflicts, discrepancies, errors and omissions, which are within the commonly accepted knowledge base of similarly situated contractors, subcontractors, trades persons, manufacturers or other parties required to carry out the Work involved in this Agreement, have been either corrected or clarified prior to execution of this Agreement.

The Contractor represents that the prices shown on the Pricing Schedule and Fees Schedule represent the total cost for complete and functional systems and therefore, the Contractor's review and comparison of all Drawings has taken into consideration the total and complete functioning of all systems.

7. Permit Drawings and Specifications

To the extent that any of Contractor's work is required to be permitted, Contractor shall provide the Owner with a complete set of the permitted drawings, documents, and addendum within five (5) days of issuance by the appropriate Building Official.

8. Suspension

- A. Owner may, at its sole option, decide to suspend at any time the performance of all or any portion of work to be performed under the Agreement. Contractor will be notified of such decision by Owner in writing. Such notice of suspension of work may designate the amount and type of plant, labor and equipment to be committed to the work. During the period of suspension, Contractor shall use its best efforts to utilize its plant, labor and equipment in such a manner as to minimize costs associated with suspension.
1. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise: immediately discontinue work on the date and to the extent specified in the notice;
 2. place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;
 3. promptly make every reasonable effort to obtain suspension, upon terms satisfactory to Owner, of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended;
 4. continue to protect and maintain the work including those portions on which work has been suspended, and
 5. take any other reasonable steps to minimize costs associated with such suspension.
- B. As full compensation for such suspension, Contractor will be reimbursed for the following verifiable costs (without profit), without duplication of any item, to the extent that such costs directly result from such suspension of work:
1. A standby charge to be paid to Contractor during the period of suspension of work which standby charge shall be sufficient to compensate Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the work in a standby status;
 2. All reasonable costs associated with mobilization and demobilization of Contractor's plant, forces and equipment;
 3. An equitable amount to reimburse Contractor for the cost of maintaining and protecting that portion of the work upon which work has been suspended; and
 4. If as a result of any such suspension of work the cost to Contractor of subsequently performing work is increased or decreased, an equitable adjustment will be made in the cost of performing the remaining portion of work.

In no event shall the Contractor be entitled to assert a claim for home office overhead in accordance with the Eichleay Formula or otherwise, in the event of an Owner suspension. Upon receipt of notice to resume suspended work, Contractor shall immediately resume performance of the suspended work to the extent required in the notice. Any claim on the part of Contractor for time and/or compensation arising from suspension shall be made within twenty-one (21) calendar days after receipt of notice to resume work and Contractor shall submit for review a revised construction schedule. No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any Contractor's non-compliance with the requirements of this Agreement.

9. Extension of Time/No Damages for Delay

Excluding Force Majeure events as provided in section 10.3 in the Master Agreement if the Contractor's performance of this Agreement is delayed, which delay is beyond the reasonable control and without the fault or negligence of the Contractor or its subcontractors, consultants, material men or suppliers, or by changes ordered in the Work and in either event where such delay or change in the work impacts the critical path of the project schedule, the schedule shall be extended by Change Order on a day per day basis.

The Contractor must request the extension of time in writing and must provide the following information within the time periods stated hereafter. Failure to submit such information and in compliance with the time requirements hereinafter stated, shall constitute a waiver by the Contractor and a denial of the claim for extension of time:

- A. Nature of the delay or change in the work;
- B. Dates of commencement/cessation of the delay or change in the work;
- C. Activities on the progress schedule current as of the time of the delay or change in the work affected by the delay or change in the work;
- D. Identification and demonstration that the delay or change in work impacts the project time;
- E. Identification of the source of delay or change in the work;
- F. Anticipated impact extent of the delay or change in the work; and
- G. Recommended action to minimize the delay.

The Contractor acknowledges and agrees that the evaluation of time extensions will be based upon the following criteria:

- All schedule updates, submittals and other requirements of this Special Condition have been met;
- The delay must be beyond the control of the Contractor and subcontractors and due to no direct or indirect fault of the Contractor;
- The delay which is the subject of the time extension must result in a direct delay to the project time;

Excluding Force Majeure events as provided in section 10.3 in the Master Agreement, the Contractor shall not be entitled to any extension of time for delays resulting from any cause unless it shall have notified the Owner in writing within twenty-four hours (24) after the commencement of such delay or 96 hours of knowledge of a potential delay, whichever is earlier. In any event, within seven (7) days of commencement of the delay, the Contractor shall provide in writing the information stated above.

The Contractor shall not be entitled to and hereby waives, any and all time delay related damages which it may suffer by reason of Act of God, unforeseen condition, delay, acceleration, cardinal changes, loss of efficiency or any other impacts to the work or time of performance and further, hereby waives all time delay related damages which it may suffer by reason of these events, including, but not limited to lost profits, overhead (whether determined by the Eichleay Formula or otherwise), increased insurance costs, loss of bonding capacity or lost profits on alternate or unperformed contracts, supervision, or home office expense. Contractor hereby affirms that the extension of time granted herein is the Contractor's sole and exclusive remedy for time delay related damages. Apart from extension of time, no payment of claim for time delay related damages shall be made to the Contractor as compensation for damages or any delays or hindrances from any cause whatsoever in the progress of the work whether such delay be avoidable or unavoidable.

For all changes in the Work in which the Contractor claims entitlement to a time extension, the Contractor shall provide to the Owner the same information as required above within seven (7) days of the issuance of the request for change order or direction to change the scope of the work and the Contractor's failure to provide such information shall constitute a waiver by the Contractor and a denial of any time extension for that change in the work. Further, upon execution by the Owner of any Change Order where no time extension has been requested and/or granted, that Change Order shall constitute a complete waiver of all claims for time delay related damages or for any extension of time related to that work, or any work impacted by the change.

10. Insurance

Unless otherwise specified in this Agreement or granted by County's Risk Management Department, the Contractor shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement or the performance of work hereunder, insurance coverage as described herein at limits, including endorsements, set forth in the Insurance Coverage & Limit Table below. In lieu of providing the required insurance coverage directly, Contractor may, with Owner's written approval, require its subcontractors and consultants to provide the required coverage. Contractor shall deliver to Owner Certificate(s) of insurance evidencing that such policies are in full force and effect, not later than fourteen (14) calendar days after receipt of Notification of Intent to Award, but in any event, prior to execution of the Agreement by Owner and prior to commencement of work on the project. Such certificate(s) shall adhere in every respect to the conditions set forth herein. The requirement contained herein as to types and limits, as well as County's approval of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under the Agreement.

PROFESSIONAL LIABILITY

Contractor shall maintain, or require its consultants to maintain, Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Per claim or wrong act and \$1,000,000 in the aggregate. For policies written on a "Claims-Made" basis, Contractor or its consultant shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The retro date shall be shown on the certificate. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Agreement, Contractor shall purchase, or cause its consultant to purchase, a SERP with a minimum reporting period not less than 2 years. **The requirement to purchase a SERP shall not relieve the Contractor of the obligation to provide replacement coverage.** Contractor shall provide this coverage on a primary basis.

COMMERCIAL GENERAL LIABILITY

Contractor shall agree to maintain a standard ISO version Commercial General Liability policy form, or its equivalent providing coverage for, but not be limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Contractors, Contractual Liability, Broad Form Property Damage, X-C-U Coverages (if applicable), Severability of Interest including Cross Liability, and be in accordance with all of the limits, terms and conditions set forth herein. Contractor agrees this coverage shall be provided on a primary basis.

BUSINESS AUTOMOBILE LIABILITY

Contractor shall agree to maintain a standard ISO version Business Automobile Liability coverage form, or its equivalent, providing coverage for all owned, non-owned and hired automobiles, and in accordance with all of the limits, terms and conditions set forth herein. Contractor agrees this coverage shall be provided on a primary basis. Notwithstanding the foregoing, should the Contractor not own any automobiles, the business auto liability requirement shall be amended to allow the Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form.

WORKER'S COMPENSATION & EMPLOYER'S LIABILITY

Contractor shall agree to maintain Worker's Compensation Insurance & Employers Liability, including Federal Act endorsement for U.S. Longshoremen's and Harbor Workers Act when any work is on or contiguous to navigable bodies of U.S. waterways and ways adjoining, covering all of its employees on the work site. This coverage shall be in accordance with all of the limits, terms and conditions set forth herein. Exemptions for a Contractor in or doing work in the Construction Industry, or proof of worker's compensation coverage provided by an employee leasing arrangement shall not satisfy this requirement. If any work is sublet Contractor shall require all subcontractors to similarly comply with this requirement unless such subcontractors employees are covered by Contractor's Worker's Compensation insurance policy. Contractor agrees this coverage shall be provided on a primary basis.

ADDITIONAL REQUIRED INSURANCE WHEN WORK INVOLVES:

The Contractor shall agree to maintain the following additional required insurance coverages with respect to any work involving property, operations, or type of equipment for which each insurance coverages described below have been designed specifically to provide coverage for:

INLAND MARINE/TRANSIT INSURANCE

With respect to property with values in excess of \$100,000 which is rigged, hauled or situated at the site pending installation, the Contractor shall agree to maintain inland marine property/transit insurance provided the coverage is not afforded by a Builders Risk policy. Coverage shall be provided in accordance with all of the limits, terms and conditions set forth herein. Contractor agrees this coverage shall be provided on a primary basis. The Contractor agrees and understands the County shall not provide any inland marine nor transit insurance on behalf of Contractor for loss or damage to work, or to any other property of owned, hired, or borrowed by the Contractor. Permission is granted to Contractor to self insure this coverage.

SATISFYING LIMITS UNDER AN UMBRELLA POLICY

If necessary, the Contractor may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under an Umbrella or Excess Liability. The underlying limits may be set at the minimum amounts required by the Umbrella or Excess Liability provided the combined limits meet at least the minimum limit for each required policy. The Umbrella or Excess Liability shall have an Annual Aggregate at a limit not less than two (2) times the highest per occurrence minimum limit required above for any of

the required coverages. The County shall be included as an "Additional Insured" on the Umbrella or Excess Liability, unless the Umbrella or Excess Liability provides continuous coverage to the underlying policies on a complete "Follow-Form" basis without exceptions and stated as such on the Certificate of Insurance.

ADDITIONAL INSURED

The Contractor agrees to include the County as an Additional Insured on each insurance policies required to be maintained by the Contractor, except for Worker's Compensation, Business Auto Liability and Professional Liability. The CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, shall be endorsed to the Commercial General Liability. Other policies, when required, such as for watercraft, aircraft, builder's risk or transit insurance, shall provide a standard Additional Insured endorsement offered by the insurer providing coverage with respect to liability arising out of the operations of the Contractor. The endorsement shall read "Palm Beach County Board of County Commissioners". The Contractor shall agree the Additional Insured endorsements provide coverage on a primary basis. Coverage shall be in accordance with all of the limits, terms and conditions set forth herein.

LOSS PAYEE

The Contractor shall agree to endorse the County as a Loss Payee on the Inland Marine/Transit Insurance, when required to be maintained by the Contractor. The Loss Payee endorsement shall read "Palm Beach County Board of County Commissioners." Endorsement shall be in accordance with all of the limits, terms and conditions set forth herein. The Contractor shall agree the Loss Payee endorsement provides coverage on a primary basis.

WAIVER OF SUBROGATION

Contractor shall agree by entering into this Agreement to a Waiver of Subrogation for each required policy providing coverage during the life of this Agreement. When required by the insurer or should a policy condition not permit an Insured to enter into an pre-loss agreement to waive subrogation without an endorsement, then the Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should the insured enter into such an agreement on a pre-loss basis. The Waiver of Subrogation shall be in accordance with all of the limits, terms and conditions set forth herein.

RIGHT TO REVIEW & ADJUST

Furthermore, the County reserves the right to review and reject any insurer providing coverage because of poor financial condition or because it is not operating legally. In such event, County shall provide Contractor written notice of such adjusted limits and Contractor shall agree to comply within sixty (60) days of receipt thereof and to be responsible for any premium revisions as a result of any such reasonable adjustment.

NO REPRESENTATION OF COVERAGE ADEQUACY

The coverages and limits identified in the table have been determined to protect primarily interests of the County only, and the Contractor agrees in no way should the coverages and limits in the table be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of the construction project or otherwise.

CERTIFICATE OF INSURANCE

Certificates of Insurance must provide clear evidence that Contractor's Insurance Policies contain the minimum limits of coverage and terms and conditions set forth herein. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be identified on the Certificate. In the event the County is notified that a required insurance coverage will cancel or non-renewed during the period of this Agreement, the Contractor shall agree to furnish at least ten (10) days prior to the expiration of such insurance, an additional certificate of insurance or renewal binder as proof that equal and like coverage for the balance of the period of the Agreement and any extension thereof is in effect. Contractor shall agree not continue to work pursuant to this Agreement unless all required insurance remains in effect. The County shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and accepted by the County. The County reserves the right to withhold payment, but not the obligation, to Contractor until coverage is reinstated. If the Contractor fails to maintain the insurance as set forth herein, the County shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

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ADDITIONAL REQUIREMENTS FOR CERTIFICATES OF INSURANCE

1. Shall clearly identify Palm Beach County, a political subdivision of the State of Florida, its officers, agents and employees as Additional Insured for all required insurance coverages, except Workers Compensation, Business Auto Liability and Professional Liability.
2. Shall clearly indicate project name and project number to which it applies.
3. Shall clearly indicate a minimum ten (10) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
4. Evidence of renewal coverage must be provided at least ten (10) days in advance of any policy that may expire during the term of this Agreement.
5. Shall clearly identify Palm Beach County, Board of County Commissioners as a Loss Payee on any Inland Marine coverages.
6. Contractor shall deliver original Certificate(s) of Insurance to the following Certificate Holder address:
 Palm Beach County
 Facilities Development & Operations Department
 Capital Improvements Division
 2633 Vista Parkway
 West Palm Beach, FL 33411

DEDUCTIBLES, COINSURANCE PENALTIES, & SELF-INSURED RETENTION

Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

SUBCONTRACTOR'S INSURANCE

The Contractor shall agree to cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified herein, unless the Contractor's insurance provides coverage on behalf of the subcontractor. When requested by the County, the Contractor shall agree to obtain and furnish copies of certificates of insurance evidencing coverage for each subcontractor.

INSURANCE COVERAGE & TABLE

The Contractor shall agree to maintain the coverages, endorsements, and limits of liability in accordance with and set forth by the Insurance Coverage & Table below:

INSURANCE COVERAGE & LIMIT TABLE		
TYPE OF COVERAGE	CONTRACTS LESS THAN \$500,000	CONTRACTS \$500,000 OR MORE
<u>COMMERCIAL GENERAL LIABILITY:</u> Limit of Liability not less than: Additional Insured endorsement required:	\$500,000 per occurrence Yes	\$1,000,000 per occurrence and in the aggregate Yes
<u>COMPREHENSIVE AUTO LIABILITY:</u> Limit of Liability not less than:	\$500,000 per occurrence	\$1,000,000 per occurrence
<u>WORKERS COMPENSATION & EMPLOYER'S LIABILITY:</u> Coverage not less than: Employers Liability Limits:	Statutory \$100/500/100	

11. Payment and Performance Bonds

For all subcontracts in excess of Two Hundred Thousand Dollars (\$200,000), Contractor shall cause its subcontractors to post a payment and performance bond in the full amount of the subcontract. Such bond shall be in a form acceptable to the Owner and shall name Palm Beach County as a additional obligee. Bonds written on the form contained in Florida Statute Section 255.05 will be acceptable.

The payment and performance bonds shall incorporate by reference all of the terms and conditions of the Agreement, including but not limited to the Contractor and Surety's obligation for liquidated damages, if any, as well as Surety's acknowledgment regarding any and all provisions addressing or regarding "no damages for delay", as provided for in these Special Conditions.

The Surety Company, in addition to the above requirements, shall be currently listed with the United States Department of Treasury for an amount greater than the contract amount.

Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the Surety to affix thereto a certified and current copy of his Power of Attorney, reflecting his/her authority as Power of Attorney in the State of Florida.

12. General and Local Conditions

Contractor shall have the sole responsibility of satisfying itself concerning the nature and location of work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials; availability, quantity and quality of labor, physical conditions of existing construction, equipment and facilities needed preliminary to and during performance of the Agreement; and all other matters which can in any way affect performance of the Agreement, or the cost associated with such performance. The failure of Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully and timely performing the Agreement.

13. CRIMINAL HISTORY RECORDS CHECK ORDINANCE

- A. The Contractor shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if Contractor's employees or subcontractors are required under this Agreement to enter a "critical facility" as identified in Resolution R2003-1274. The Contractor acknowledges and agrees that all employees and subcontractors who are to perform work in a critical facility will be subject to a fingerprint based criminal history check.
- B. Prior to commencement of work within a critical facility, the Contractor shall make arrangements through the County's Electronic Services and Security Division/Access Section for its employees and those of its subcontractors to have finger print based criminal history record checks performed. Those employees clear of disqualifying offenses will be granted an ID badge which must be worn at all times. A list of disqualifying offenses is available upon request. Any person found to have a disqualifying criminal offense will be denied unescorted access to the project. The Contractor will be charged a nominal fee for lost cards.
- C. Although County agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the Contractor shall be solely responsible for all direct and indirect costs associated with complying with Ordinance 2003-030.

14. Parking

- A. All parking at the Facility shall be in designated parking areas.
- B. All parking lots are County Property. As such, the County reserves the right to search any vehicle parked there and any vehicle entering or leaving the facilities. This is a warrantless search; the County does not need a warrant to search a vehicle. Workers shall take personal responsibility to search their own vehicles to ensure no articles therein are declared contraband. Examples include written communications, money, tobacco products, intoxicants, drugs/controlled substances, firearms or weapons or anything not specifically authorized.

15. Violations of Rules and Regulations

- A. Violations of the rules and regulations of the facility, Palm Beach County and laws of the State of Florida will be dealt with and governed by those rules and laws.
- B. Felony violations will be prosecuted.

16. Staging Areas

The Contractor's Staging Areas have been designated in the documents. All vehicles, tools and equipment will be stored in the designated staging areas.

17. Standard of Care

CONTRACTOR contracts with Owner to furnish its professional skill and judgment, and that of its subcontractors and consultants, with due care in accordance with applicable Federal, State and local laws, codes and regulations as amended and supplemented which are in effect on the date of this Agreement first written. It is specifically understood that the Florida Accessibility Code for Building Construction latest edition as acted by the Florida Building Code shall be complied with and incorporated into the project.

Although specific provisions of this Agreement refer to some services with terms such as "complete", "accurate", "full extent", "highest", "in detail", "verify", "certify", "represent", "substantiate", "inspect", "monitor", "discover", "as often as necessary", "approve", "accept", "reject", and "enforce", such terms and similar terms shall be qualified by the standard of care stated in the preceding paragraph.

18. Public Entity Crimes

As provided in F.S. 298.132-133, by entering into this Agreement or performing any work in furtherance hereof, the CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

19. Local Ordinances

In addition to Contractor's general obligation to comply with local ordinances, Contractor is specifically required to comply with Palm Beach County's Living Wage Ordinance and Palm Beach County's Small Business