### PALM BEACH COUNTY **BOARD OF COUNTY COMMISSIONERS** AGENDA ITEM SUMMARY

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Meeting Date:	February 15, 2011	[X] []	Consent Workshop	[ ] Regular [ ] Public Hearing
Department:		:		
Submitted By:	Department of Airports			

### **Submitted For:**

### I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment No. 2 to the Construction Manager at Risk (CMR) Contract with David Brooks Enterprises, Inc. for the Miscellaneous Repair, Replacement and Improvement Projects for Palm Beach County Department of Airports exercising the second one (1) year renewal option for the continuation of services, and to modify the language regarding the Office of Inspector General Ordinance Fee.

Summary: On May 20, 2008, the Board approved the CMR Contract with David Brooks Enterprises, Inc., a Palm Beach County Company, for the Miscellaneous Repair, Replacement and Improvement Projects for Palm Beach County Department of Airports (R-2008-0848). The Contract is for 2 years with 3 one (1) year renewal options. Amendment No. 1 exercising the first one (1) year renewal option was approved by the Board on April 20, 2010 (R-2010-0607). Approval of Amendment 2 will allow the County, at its sole discretion, to exercise the second one (1) year renewal option for the continuation of services provided under the CMR Contract. In addition, this amendment will modify the contract to delete costs of the Office of Inspector General (OIG) Fee. The Small Business Enterprise (SBE) Goal for this contract was established at 15%. The total SBE contract participation to date including all tasks is 25.17%. Countywide (JCM)

**Background and Justification:** In order to carry out the approved Capital Improvement Program for the County, the Department of Airports uses several methods of procurement including the CMR Contract. By exercising the second one (1) year renewal option, this amendment allows for the continuation of CMR services necessary for the development and operation of the County's airport system. Approval of Amendment No. 2 will modify the Contract to delete the imposition of the Inspector General Fee in accordance with the amendment to Ordinance No. 2009-049 approved by the Board on September 28, 2010.

### Attachments:

1. Amendment No. 2 with David Brooks Enterprises, Inc. – 3 Originals

Recommended B	A Succell			
	Department Difector	Date		
Approved By:	An	2/3/1		
ş — — — — — — — — — — — — — — — — — — —	County Administrator	Date		

Agenda Item: 3F4

# II. FISCAL IMPACT ANALYSIS

# A. Five Year Summary of Fiscal Impact:

Fiscal Years	20 <u>11</u>	20 <u>12</u>	20 <u>13</u>	20 <u>14</u>	20 <u>15</u>
Capital Expenditures Operating Costs					
External Revenues Program Income (County) In-Kind Match (County)		6 12 12 12 12 12 12 12 12 12			
NET FISCAL IMPACT		: 			
# ADDITIONAL FTE POSITIONS (Cumulative)	* 0 See	below			
Is Item Included in Current Bu Budget Account No: Fund	dget? Ye Departr Reporting C	s N nent I ategory	o Jnit	_ Object	
B. Recommended Sources of	Funds/Sum	mary of Fisc	al Impact:		
* There is no Fiscal Impact for	or this item.				
C. Departmental Fiscal Review	w:(~	4 Sim	<u> </u>		
	III. REVIEW	COMMENT	<u>S</u>		
A. OFMB Fiscal and/or Contra	act Developn	nent and Co	ntrol Comme	ents:	
OFMB VA 1/24/14		Cont	ract Dev. and	Control	131)1(
B. Legal Sufficiency: Amer Muy Assistant County Attorney	= 2/2/11		This amendmer our review requ	t complies with irements.	
C. Other Department Review:					

# **Department Director**

REVISED 9/03 ADM FORM 01 (THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

200

# AMENDMENT NO. 2 TO THE CONSTRUCTION MANAGER (CM) AT RISK CONTRACT BETWEEN

### PALM BEACH COUNTY DEPARTMENT OF AIRPORTS

AND

# DAVID BROOKS ENTE RPRISES INCORPORATED

FOR

# MISCELLANEOUS REPAIR, REPLACEMENT & IMPROVEMENT PROJECTS AT PALM BEACH COUNTY AIRPORTS

This Amendment No. 2 to the Contract is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between Palm Beach County, Florida (COUNTY) and DAVID BROOKS ENTERPRISES INCORPORATED, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, having its office and principal place of business at 9000 Burma Road, Suite 101 Palm Beach Gardens, FL 33403.

#### WITNESSETH

WHEREAS, on May 20, 2008, the County entered into an Agreement (R2008-0848) with the CONTRACTOR for the CONTRACTOR to provide Construction Manager at Risk Services for the Palm Beach County Department of Airports, for a period of two (2) years, with three (3) one (1)-year renewal options, the exercise of which are within COUNTY'S sole control and discretion; and

WHEREAS, Article 12 defines the Terms of the Contract period of two (2) years, with three (3) one (1)-year renewal options, the exercise of which are within COUNTY'S sole control and discretion; and.

WHEREAS, on April 20, 2010, the County entered into Amendment #1 (R2010-0607) with the CONTRACTOR to exercise the first one (1)-year renewal option for the continuation of services provided by the CONTRACTOR under this contract.

WHEREAS it is the County's desire to exercise the second one (1)-year renewal option for the continuation of services provided by the CONTRACTOR under this contract.

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

1. Amend the Contract to delete the following language from ARTICLE 13 <u>Palm Beach County Office</u> of the Inspector General

The cost of the Office of Inspector General shall be incorporated into the contract price of all contracts and shall be one quarter  $(\frac{1}{2})$  of one (1) percent of the contract price.

2. Amend the Contract to delete the following language from <u>General Conditions</u> <u>GC 68 PROGRESS</u> <u>PAYMENT PROCEDURES</u>:

68.3.1 Without changing the contract price, a fee of 0.25% will be deducted by the Owner from each application for payment to defray costs of the Office of Inspector General in accordance with Ordinance R2009-049.

DAVID BROOKS ENTERPRISES INC FEBRUARY 2011

PAGE 1 OF 2

AMENDMENT 2 TO R20080848 TO CONSTRUCTION MANAGER @ RISK CONTRACT

- 3. The parties hereby agree to amend the Contract to include the second one (1) year renewal option for the continuation of services provided by the CONTRACTOR under this Contract.
- 4. 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 the Second Amendment to the Contract to be signed by the Chair of the Board of County Commissioners and the Seal of said Board to be fixed hereto and attested by the Clerk of said board, and the CONTRACTOR, DAVID BROOKS ENTERPRISES INCORPORATED, has caused these present to be signed in its corporate name by its duly authorized officer David Brooks, acting on behalf of said CONTRACTOR, and the Seal of said CONTRACTOR to be affixed hereto and attested by the Secretary of said CONTRACTOR, the day and year first written above.

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

BOARD OF COUNTY COMMISSIONERS

By:

Karen T. Marcus, Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY:

By:

ATTEST:

SHARON R. BOCK, Clerk and Comptroller

Deputy Clerk

County Attorney

APPROVED AS TO TERMS AND CONDITIONS:

Director of

Witness Signature - CONTRACTOR)

M. L. David Or Witness Name (Type or Print)

CONTRACTOR:

DAVID BROOKS ENTERPRISES INCORPORATED Company Name

8-15-91 A

(Date of Incorporation: )

(Signature)

David Brooks. (Print Signatory's Name)

President 1 - 29 - 11 (Date of Execution)

(Corporate Seal)

DAVID BROOKS ENTERPRISES INC FEBRUARY 2011

PAGE 2 OF 2

AMENDMENT 2 TO R20080848 TO CONSTRUCTION MANAGER @ RISK CONTRACT

Ą	CFR <sup>-</sup>	LIE	-IC	ATE OF LIA	RII		ISHRA		DATE	(MM/DD/YYYY)
<u> </u>	HIS CERTIFICATE IS ISSUED AS A									3/2010
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	DUCER			<u></u>	CONTA NAME:	<sup>CT</sup> Debra 1	Neumann			
	questa Agency, Inc.				PHONE (A/C, N	o, Ext); (561)	746-4546	FAX (A/C, No):	(561)7	46-9599
	8 S. US Highway One ite 300				E-MAIL ADDRESS. dneumann@tequestaagency.com					
		2160	2		PRODUCER CUSTOMER ID #00001048					
Tequesta FL 33469 INSURED				INSURER(S) AFFORDING COVERAGE					NAIC #	
									18988	
	vid Brooks Enterprises, 00 Burma Road #101	Ind	2.		INSURE	Rc:Conti	nental C	asualty Company		20443C
90	00 Burma Road #101				INSURE	RD:Valle	y Forge	Insurance Co.		20508
Pa	lm Beach Gardens FL 33	3403	3		INSURE					+
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INSF LTR		ADDL		2	DECN		POLICY EXP		 9	
	GENERAL LIABILITY							EACH OCCURRENCE	\$	1,000,000
~						0/11/0000-		DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	100,000
A	CLAIMS-MADE X OCCUR	x		C2082846122		8/1/2010	8/1/2011	MED EXP (Any one person)	\$	5,000
								PERSONAL & ADV INJURY	\$	1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	\$ \$	2,000,000
	POLICY X PRO- JECT LOC							TRODUCTS - COMPTOP AGG	\$	2,000,000
	AUTOMOBILE LIABILITY							COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000
в	X ANY AUTO			4689563400		0/1/2010	0/1/0011	BODILY INJURY (Per person)	\$	
Ð	ALL OWNED AUTOS SCHEDULED AUTOS			4003303400		8/1/2010	8/1/2011	BODILY INJURY (Per accident)	\$	
	HIRED AUTOS							PROPERTY DAMAGE (Per accident)	\$	
	NON-OWNED AUTOS							Broad Form Endorsement	\$	
									\$	
	X UMBRELLA LIAB X OCCUR							EACH OCCURRENCE	\$	8,000,000
	DEDUCTIBLE							AGGREGATE	\$	8,000,000
С	X RETENTION \$ 10,000			C2025706404		8/1/2010	8/1/2011		\$ \$	
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY							X WC STATU- TORY LIMITS ER		······································
	ANY PROPRIETOR/PARTNER/EXECUTIVE	N/A						E.L. EACH ACCIDENT	\$	500,000
	(Mandatory in NH)			WC178965914		3/1/2010	3/1/2011	E.L. DISEASE - EA EMPLOYEE	\$	500,000
	DESCRIPTION OF OPERATIONS below							E.L. DISEASE - POLICY LIMIT	\$	500,000
DES	CRIPTION OF OPERATIONS / LOCATIONS / VEHIC	LES (	Attach	ACORD 101, Additional Remarks	Schedule	e, if more space i	is required)	<u>I , , , , , </u>		
ado	m Beach Co Board of Co Commis litional insureds per form G17	9570	<b>3 01</b> ,	/01 attached to the	Gener	al Liabili	tv policy	& the Automobile n	oliow	to the
ext	ent that the organization qua 957G & 79001 are attached. S	lifi	les a	as an Insured under	Secti	on II of t	the Coverad	Te Form 79001 3/99	Con	V of forme
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	PALM BEACH COUNTY			0.0	ACC	ORDANCE W	ITH THE POLIC	CY PROVISIONS.	3C DE	LIVERED IN
	c/o DEPARTMENT OF AIRPORTS									
WEST PALM BEACH, FL 33406-1470										
Mark Kasten/DEBBIE 2 for Andred										
	ORD 25 (2009/09) 025 (200909)	Т	he A	CORD name and logo a		© 19	88-2009 AC	ORD CORPORATION.	All rig	hts reserved.
				Solve name and logo al	re regi	stereu mark		,		

# COMMENTS/REMARKS

#PB07-3 Misc Repair Replacement & Improvement Projects PB Co Dept of Airport /CM@Risk Continuing Services Contract

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# CNA

IMPORTANT: THIS ENDORSEMENT CONTAINS DUTIES THAT APPLY TO THE ADDITIONAL INSURED IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT. SEE PARAGRAPH C.1. OF THIS ENDORSEMENT FOR THESE DUTIES.

ALSO, THIS ENDORSEMENT CHANGES THE CONTRACTUAL LIABILITY COVERAGE WITH RESPECTS TO THE "BODILY INJURY" OR "PROPERTY DAMAGE" ARISING OUT OF THE "PRODUCTS-COMPLETED OPERATIONS HAZARD". SEE PARAGRAPH B.3. OF THIS ENDORSEMENT FOR THIS COVERAGE CHANGE.

# THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# CONTRACTOR'S SCHEDULED AND BLANKET ADDITIONAL INSURED ENDORSEMENT WITH LIMITED PRODUCTS-COMPLETED OPERATIONS COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name of Person or Organization:

Designated Project:

As required by written contract

(Coverage under this endorsement is not affected by an entry or lack of entry in the Schedule above.)

- A. WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization, including any person or organization shown in the schedule above, (called additional insured) whom you are required to add as an additional insured on this policy under a written contract or written agreement; but the written contract or written agreement must be:
  - 1. Currently in effect or becoming effective during the term of this policy; and
  - 2. Executed prior to the "bodily injury," "property damage," or "personal and advertising injury".
- **B.** The insurance provided to the additional insured is limited as follows:
  - That person or organization is an additional insured solely for liability due to your negligence specifically resulting from "your work" for the additional insured which is the subject of the written contract or written agreement. No coverage applies to liability resulting from the sole negligence of the additional insured.

G-17957-G (Ed. 01/01)

- 2. The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.
- 3. The coverage provided to the additional insured by this endorsement and paragraph f. of the definition of "insured contract" under DEFINITIONS (Section V) do not apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" unless required by the written contract or written agreement. When coverage does apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" such coverage will not apply beyond:
  - a. The period of time required by the written contract or written agreement; or

Page 1 of 2



b. 5 years from the completion of "your work" on the project which is the subject of the written contract or written agreement,

whichever is less.

- 4. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:
  - a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
  - **b.** Supervisory, or inspection activities performed as part of any related architectural or engineering activities.
- C. As respects the coverage provided under this endorsement, SECTION IV COMMERCIAL GENERAL LIABILITY CONDITIONS are amended as follows:
  - 1. The following is added to the Duties In The Event of Occurrence, Offense, Claim or Suit Condition:
    - e. An additional insured under this endorsement will as soon as practicable:

- Give written notice of an occurrence or an offense to us which may result in a claim or "suit" under this insurance;
- (2) Tender the defense and indemnity of any claim or "suit" to any other insurer which also has insurance for a loss we cover under this Coverage Part; and
- (3) Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- f. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a claim or "suit" from the additional insured.
- 2. Paragraph 4.b. of the Other Insurance Condition is deleted and replaced with the following:

### 4. Other Insurance

#### b. Excess Insurance

This insurance is excess over any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and noncontributing.

G-17957-G (Ed. 01/01) adoption. Relative includes a ward or foster child who resides with you.

- Suit means a civil court proceeding in which damages because of bodily injury or property damage to which this insurance applies are alleged.
- 11. Trailer means a vehicle which is designed to be connected to and towed by an automobile.

#### 1. COVERAGE

a. Liability Coverage - Bodily Injury and Property Damage

We will pay damages for bodily injury and property damage for which you become legally responsible because of or arising out of the ownership, maintenance or use of your automobile (that is not a trailer) as an automobile. We will pay such damages:

- (1) on your behalf;
- (2) on behalf of any relative using your automobile (that is not a trailer);
- (3) on behalf of any person using your automobile (that is not a trailer) with your permission or that of a relative; and
- (4) on behalf of any person or organization legally responsible for the use of your automobile (that is not a trailer) when used by you, a relative, or with your permission or that of a relative.

We will settle or defend, as we consider appropriate, any claim or suit for damages covered by this policy. We will do this at our expense, using attorneys of our choice. This agreement to settle or defend claims or suits ends when we have paid the limit of our liability.

b. Trailers

- 12. You or your means the first named insured shown in the Declarations and if an individual, your spouse who resides in the same household.
- 13. Your automobile means the automobile described in the Declarations.
- 14. We, us or our means the Company providing this insurance.

### SECTION II - LIABILITY COVERAGE

- (1) The Liability Coverage provided by this policy for your automobile (that is not a trailer) or provided for any other automobile (that is not a trailer) extends:
  - (a) to any trailer connected to or accidentally disconnected from such automobile. This coverage includes the trailer owner.
  - (b) to any non-motorized farm machine or farm wagon while connected to or accidentally disconnected from such automobile. This coverage includes the non-motorized farm machine or farm wagon owner. No coverage applies to the operation or to the loading or unloading of the non-motorized farm machine or the farm wagon.
- (2) The Liability Coverage provided by this policy for your automobile (that is not a trailer) also extends to any trailer not maintained or used for commercial purposes:
  - (a) which is owned by you.
  - (b) which is owned by a relative who also owns an automobile (that is not a trailer) scheduled in the Declarations.
  - (c) which is owned by a relative who does not own an automobile other than the trailer.
  - (d) which is not owned by an individual described in (a), (b) or (c) above while

2

the trailer is in the care, custody or control of such individual.

Coverage is extended only when such trailer:

- (a) is not connected to an **automobile**. This coverage applies to only **your** liability or **your relative's** liability arising from the ownership or use of the **trailer**.
- (b) is connected to an automobile (that is not a trailer) for which Liability Coverage is not provided by this policy. This coverage applies to only your liability or your relative's liability arising from use of the trailer by a person or organization other than you or your relative. No coverage applies to the owner or operator of the automobile or to the owner of a trailer described in (d) above.

#### c. Other Automobiles Covered

The Liability Coverage provided for your automobile also applies to certain other automobiles. It applies:

- (1) to an automobile you do not own which is temporarily used as a substitute for your automobile. Your automobile must be out of use because of breakdown, repair, servicing, loss or destruction. The owner of the substitute automobile is not covered.
- (2) to an automobile of the same type which you acquire after the inception date of the current policy term if:
  - (a) it replaces your automobile. You must report the replacement automobile to us no later than the expiration date of the policy term during which the automobile was acquired; or
  - (b) it is an additional automobile and we insure all automobiles you already own provided you:

3

- report the additional automobiles to us within 30 days of delivery; and
- pay any required additional premiums.

This extension does not apply if you have other liability insurance that applies to the automobile you acquire.

### 2. EXCLUSIONS

Liability Coverage does not apply:

- a. to any person for **bodily injury** or **property damage** arising out of or resulting from an intentional act of that person.
- to any person operating or employed by an automobile garage, repair shop, sales agency, service station or public parking place. This exclusion does not apply to:
  - (1) you;
  - (2) a relative; or
  - (3) any person associated with or employed by you;

while using your automobile in such business.

- c. to any automobile while used as a public or livery conveyance. This exclusion does not apply to car pooling on a share the expense basis.
- d. to any automobile while:
  - (1) preparing for;
  - (2) practicing for; or
  - (3) participating in;

any prearranged racing, speed or demolition contest.