Agenda Item: 6A.4

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

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Meeting Date:	October 19, 2021	[[[X] Regular [] Public Hearing
Submitted By: Department of Airports					
L EVENITIVE DDIEF					

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Third Amendment to Contract for Operation and Maintenance of Baggage Handling Systems with ERMC Aviation LLC (ERMC) at the Palm Beach International Airport (PBI) per Master Agreement #16-013R/LJ (R-2016-1619, as amended) (Contract) extending the Contract by one additional year to November 27, 2022, increasing the total not to exceed amount by \$2,142,540.

Summary: The Contract provides for the operation, maintenance, and repair of all inbound and outbound automated Checked Baggage Inspection Systems/Checked Baggage Reconciliation Areas (CBIS/CBRA) and manual sortation Baggage Handling Systems (BHS) and their related equipment at PBI. The Contract expires on November 27, 2021 with no renewal options. The total contract amount for the initial five-year term was \$9,738,657.16 with \$6,909,698.38 expended. ERMC is located in Atlanta, Georgia. The Contract was established through a competitive solicitation. This Amendment provides for a one-year extension of the contract term to November 27, 2022. This Amendment will provide sufficient time for the issuance of a new competitive solicitation by the Purchasing Department, which was delayed due to workload reprioritization and the periodic non-availability of staff as a result of the COVID-19 pandemic. This Amendment will increase the total contract amount to \$11,881,197.16. The BHS is critical to on-going airport operations and security, requiring specialized technical knowledge for its operation, maintenance and repair. Accordingly, failure to extend this Contract would result in a substantial loss to the airport as contemplated by Section 332.0075, Florida Statutes. The Contract was advertised pursuant to the Small Business Enterprise (SBE) Ordinance in place at the time with an SBE goal of 15%. ERMC committed to 20% SBE participation. The cumulative SBE participation to date is 21.64%. Pursuant to changes to Chapter 332, Florida Statutes, a governing body of a commercial service airport may not approve purchases of contractual services in excess of the Category Five threshold amount of \$325,000 established by Section 287.017, Florida Statutes, on a consent agenda. The contract amounts exceed the threshold amount and must be approved on the regular agenda. Countywide (AH)

Background and Policy Issues: The BHS provides for the sortation and conveyance of checked baggage from the ticket counters to baggage makeup areas. The CBIS, as part of the BHS, begins when bags are diverted from the infeed mainline conveyor for inspection and ends when bags are merged back onto the outbound mainline conveyor for delivery to the airlines for transport. When bags are alarmed by the screening equipment they are sent to the CBRA room for further investigation by the Transportation Security Administration prior to processing to the airline for transport. The BHS system also provides for the delivery of baggage to carousels for passenger pick up.

Attachments: 1. Amendment (3)		
Recommended By:	Java Buby Department Director	9 - <u>27 - 21</u> Date
Approved By:	County Administrator	/0/7/2/ Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fisc	cal Impact:					
Fiscal Years	<u>2022</u>	2023	<u>2024</u>	<u>2025</u>	2026	
Capital Expenditures Operating Costs Operating Revenues Program Income (County) In-Kind Match (County) NET FISCAL IMPACT	\$1,948,582		\$-0-	\$-0-	\$-0-	
# ADDITIONAL FTE POSITIONS (Cumulative)						
Is Item Included in Current Bu Does this item include the us						
Budget Account No: Fund Reporting Categor			Unit <u>254</u>	7 Objec	et <u>4620</u>	
B. Recommended Sources of	f Funds/Sum	mary of Fisca	al Impact:			
This Amendment will extend the contract by one additional year and increase the total contract amount by \$2,142,540. This Amendment commences on November 28, 2021. The fiscal impact analysis above assumes payment of the fixed annual maintenance fee for 10 months and 3 days in FY2022 (\$1,031,042.14) and that all variable costs (\$917,539.44) are incurred in FY2022. For FY2023, the fiscal impact analysis assumes payment of the fixed annual maintenance fee for 1 month and 27 days (\$193,958.42). Partial months are paid on a per diem basis based on the actual number of days in the month pursuant to the Contract. C. Departmental Fiscal Review:						
III. REVIEW COMMENTS						
A. OFMB Fiscal and/or Contract Development and Control Comments:						
OFMB (H) (1-20) B. Legal Sufficiency: An if Autobout 10/5701 Contract Dev and Control 10-4-21 TW						
Assistant County Attorney						
C. Other Department Review:						
Department Director						

REVISED 11/17

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)



Palm Beach County Compliance Summary Report

Vendor Number	Vendor Name	AM Best Rating	Insurance Carrier	Policy#	Eff. Date	Exp. Date	Coverage	Contract Number	Contract Name
DX00000365	ERMC Aviation, LLC	Modified	Compliant					16-013R/LJ	ERMC Aviation LLC
		Ap , XV	Liberty Mutual Fire Insurance Company	as2651291276031	2/1/2021	1/1/2022	Auto Liability		
		A++g , XV	ACE Property & Casualty Insurance Company	Multiple policy	12/21/2020	1/1/2022	Excess Liability		
		A++g , XV	ACE Property & Casualty Insurance Company	aapn17950289002	12/21/2020	1/1/2022	General Liability		
		NR-1,	Underwriters at Lloyd's, London	n9905849	12/21/2020	1/1/2022	General Liability		
		A+g,XV	Arch Indemnity Insurance Company	34wc11014102	1/1/2021	1/1/2022	Workers Comp		
		A+g,XI	Arch Insurance Company	31wc11014002	1/1/2021	1/1/2022	Workers Comp		

Risk Profile: Standard - General Services-AOA

Required Additional Insured: Palm Beach County Board of County Commissioners

Ownership Entity:

AFFIDAVIT OF LIMITED LIABILITY COMPANY

STATE OF G	eorgia
COUNTY OF	Fulton (State)
	(County)

BEFORE ME, the undersigned authority, personally appeared, the undersigned who by me being first duly sworn, depose(s) and say(s) that:

- 1. The undersigned is the Asst. Secretary of ERMC Aviation LLC (title e.g. Manager, Member, etc.)

 a limited liability company organized and existing under the laws of the State of Delaware ("Company").
- 2. Articles of Organization of the Company have been filed, and are on-file with, the Florida Department of State and such articles are incorporated herein by reference.
- 3. The Company is in good standing and is authorized to transact business in the State of Florida as of the date hereof.
- 4. The company is a [select (a) or (b)] (a) manager manager or (b) member managed limited liability company.
- 5. The undersigned is the sole managing member of the Company or has been authorized by majority vote of the managing members to act on behalf of the Company and legally bind the Company and execute contracts and other instruments relating to the transaction of business of the Company.
- 6. The undersigned has the right and authority to enter into that certain Third Amendment to Contract For Operation and Maintenance of Baggage Handling Sytems between Palm Beach County, (name of document)

a political subdivision of the State of Florida and the Company (the "Agreement"), which is incorporated herein by reference and made a part hereof, and such other instruments as may be necessary and appropriate for the Company to fulfill its obligations under such Agreement, including amendment(s) and termination of such Agreement.

- 7. Upon execution and delivery of such Agreement and documents by the undersigned, all of the aforesaid shall be valid agreements of and be binding upon the Company.
- 8. The transactions contemplated herein will not violate any of the terms and conditions of the Company's member agreement, operating agreement certificate of organization or of any other agreement and amendments thereto of whatever kind between the Company and any third person.

9. The undersigned acknowledges that affiant is familiar with the nature of an oath and the penalties provided by the laws of the State of Florida and that this Affidavit is being given to induce Palm Beach County to enter into the Agreement.

FURTHER AFFIANT SAYETH	NAUGHT,
	Bryan Stillwagon [sign name] Bryan Stillwagon [print name] [select one: Manager or Member]
presence $-OR$ - \square online notarization.	efore me by means of <i>[select only]</i> physical this day of,
20, by Bryan Stillwagon [select one] Manager Member of ERMC A	viation LLC [company name] f of the Company, who [select one] is personally
known to me -OR- produced	
identification and who did take an oath.	
MOTAN GENTLING	Notary Signature Kinhil, Stoff Print Notary Name NOTARY PUBLIC State of Georgia at large My Commission Expires: March 25, 2025

THIRD AMENDMENT TO CONTRACT FOR OPERATION AND MAINTENANCE OF BAGGAGE HANDLING SYSTEMS AT PALM BEACH INTERNATIONAL AIRPORT (Contract No. 16-013R/LJ)

WITNESSETH:

WHEREAS, the parties have entered into that certain Contract dated November 22, 2016 (hereinafter referred to as the "Contract"), under which the CONTRACTOR is to operate, maintain, and repair all inbound, outbound automated Checked Baggage Inspection System/Checked Baggage Reconciliation Areas (hereinafter referred to as the "CBIS/CBRA") and manual sortation Baggage Handling Systems (hereinafter referred to as "BHS") for the Department of Airports; and

WHEREAS, the First Amendment to the Contract, dated March 12, 2018 (hereinafter referred to as the "First Amendment"), amended the Contract to accept the assignment of the Contract to ERMC Aviation LLC, from ERMC IV, L.P.; and

WHEREAS, the Second Amendment to the Contract, dated September 29, 2020 (hereinafter referred to as the "Second Amendment"), modified the Contract to decrease the baggage handling system positions of Manual Encoders and Bag Jammers based on the significant impact from COVID-19, reduced staffing and the amount payable by COUNTY for services under the Contract on a temporary basis, and reduced the Performance Bond or Clean Irrevocable Letter of Credit required by Article 6 to \$2,500,000.00; and

WHEREAS, the parties desire to extend the Contract for the period November 28, 2021, through November 27, 2022; and

WHEREAS, the parties desire to modify <u>ARTICLE 4 – PAYMENTS TO CONTRACTOR</u>, paragraph A, by increasing the authorized not-to-exceed total contract amount by Two Million One Hundred Forty-Two Thousand Five Hundred Forty Dollars and no cents (\$2,142,540.00); and

WHEREAS, the COUNTY has implemented a new insurance management system, and the parties desire to modify <u>ARTICLE 14 – INSURANCE REQUIREMENTS</u> to address changes as to where the CONTRACTOR shall provide evidence of insurance coverage; and

WHEREAS, the COUNTY desires to revise <u>ARTICLE 24 – PUBLIC RECORDS</u>, <u>ACCESS AND AUDITS</u> to revise the number of years records are to be maintained to five (5) years; and

WHEREAS, the COUNTY desires to modify <u>ARTICLE 29 – SCRUTINIZED COMPANIES</u> (when contract value is greater than \$1 million) in order to comply with F.S. 287.135, which requires that a CONSULTANT must certify that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, pursuant to F.S. 215.4725 and, when contract value is greater than \$1 million, placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria; and

WHEREAS, the COUNTY desires to add <u>ARTICLE 34 - E-VERIFY - EMPLOYMENT ELIGIBILTY</u> in order to comply with F.S. 448.09.

NOW THEREFORE, in consideration of the mutual covenants and agreements expressed herein, the COUNTY and the CONTRACTOR agree as follows:

1. <u>ARTICLE 3 - SCHEDULE</u> is hereby amended to read as follows:

"The CONTRACTOR shall commence services on November 28, 2016, and complete all services by November 27, 2022.

Reports and other items shall be delivered and/or completed in accordance with Exhibit A."

2. <u>ARTICLE 4 – PAYMENTS TO CONTRACTOR</u>, paragraph A, is hereby amended to read as follows:

"A. The total amount to be paid by the COUNTY under this Contract for all operations and maintenance services, subcontracted work, reimbursable parts/materials, and special project work shall not exceed a total contract amount of Eleven Million Eight Hundred Eighty-One Thousand One Hundred Ninety-Seven Dollars and Sixteen cents (\$11,881,197.16). For the performance of operation and maintenance of the Baggage Handling System, the CONTRACTOR will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit B and as provided below. The total amount to be paid by the COUNTY under this Contract for operations and maintenance shall not exceed Eight Million Five Hundred Thirty-Eight Thousand Six Hundred Fifty-Seven Dollars and Seventy-Two cents (\$8,538,657.72), comprised of Seven Million Two Hundred Thirty-Eight Thousand Six Hundred Fifty-Seven Dollars and Sixteen cents (\$7,238,657.16) for the period November 28, 2016, through November 27, 2021; and One Million Three Hundred Thousand Dollars and Fifty-Six cents (\$1,300,000.56), for the period November 28, 2021, through November 27, 2022 (hereinafter referred to as the "Extended Term").

During the Extended Term, the parties agree the following terms and conditions shall apply:

- (1) the total fixed annual maintenance fee shall be One Million Two Hundred Twenty-Five Thousand Dollars and Fifty-Six cents (\$1,225,000.56), which shall be payable in equal monthly installments of One Hundred Two Thousand Eighty-Three Dollars and Thirty-Eight cents (\$102,083.38); and
- (2) the provisions of paragraphs 1, 2(D) and 2(E) of the Second Amendment, providing for modifications to minimum staffing levels and payments at a rate of \$17.35 per hour based on reinstatement of Manual Encoder and Bag Jammer positions shall continue to remain in effect; provided, however, the total amount to be paid by the COUNTY for work performed pursuant to the aforementioned provisions during the Extended Term shall not exceed Seventy-Five Thousand Dollars and no cents (\$75,000.00).

The total amount to be paid by the COUNTY under this Contract for Special Project Work, subcontracted/support work, parts or materials, and upgrade for software/hardware shall not exceed Three Million Three Hundred Forty Two Thousand Five Hundred Thirty-Nine Dollars and Forty-Four Cents (\$3,342,539.44) and as indicated below.

The CONTRACTOR shall notify the COUNTY's representative, in writing, when ninety percent (90%) of the "not-to-exceed amount" has been reached."

- 3. <u>ARTICLE 14 INSURANCE REQUIREMENTS</u> is hereby amended as follows:
 - a. The first two paragraphs are hereby amended to read as follows:

"Prior to execution of this Contract, the CONTRACTOR shall provide evidence of the following minimum required insurance coverage and limits (i.e., a Certificate of Insurance) to COUNTY, c/o Purchasing Department, 50 South Military Trail, Suite 110, West Palm Beach, FL 33415, Attention: Donna Pagel, Purchasing Manager, until otherwise notified by the COUNTY.

The CONTRACTOR shall maintain at its sole expense, in full force and effect, at all times during the term of this Contract, insurance coverage and limits (including endorsements) as described herein. Failure to maintain the required insurance shall be considered default of the Contract. The requirements contained herein, as well as COUNTY's review or acceptance of insurance 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 Contract. CONTRACTOR agrees to notify the COUNTY at least ten (10) days prior to cancellation, non-renewal or material change to the required insurance coverage. Where applicable, coverage shall apply on a primary basis."

- b. Paragraph G is hereby amended to read as follows:
 - "G. Certificates of Insurance: Prior to each subsequent renewal of this Contract, within forty-eight (48) hours of a request by COUNTY, and subsequently, prior to expiration of any of the required coverage throughout the term of this Agreement, the CONTRACTOR shall deliver to the COUNTY a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Contract have been obtained and are in full force and effect. The Certificate Holder shall read:

Palm Beach County Board of County Commissioners Insurance Compliance PO Box 100085 – DX Duluth, GA 30096"

4. <u>ARTICLE 24 – PUBLIC RECORDS, ACCESS AND AUDITS</u> is hereby amended to read as follows:

"ARTICLE 24 - PUBLIC RECORDS, ACCESS AND AUDITS

The CONTRACTOR shall maintain records related to all charges, expenses, and costs incurred in estimating and performing the work for at

least five (5) years after completion or termination of this Contract. The COUNTY shall have access to such records as required in this section for the purpose of inspection or audit during normal business hours, at the CONTRACTOR's place of business.

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the CONTRACTOR: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2), F.S., the CONTRACTOR shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The CONTRACTOR is specifically required to:

- A. Keep and maintain public records required by the COUNTY to perform services as provided under this Contract.
- B. Upon request from the COUNTY's Custodian of Public Records (COUNTY's Custodian) or COUNTY's representative/liaison, on behalf of the COUNTY's Custodian, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The CONTRACTOR further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract, if the CONTRACTOR does not transfer the records to the public agency. Nothing contained herein shall prevent the disclosure of or the provision of records to the COUNTY.
- D. Upon completion of the Contract, the CONTRACTOR shall transfer, at no cost to the COUNTY, all public records in possession of the CONTRACTOR unless notified by COUNTY's representative/liaison, on behalf of the COUNTY's Custodian, to keep and maintain public records required by the COUNTY to perform the service. If the CONTRACTOR transfers all public records to the COUNTY upon completion of the Contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically by the

CONTRACTOR must be provided to COUNTY, upon request of the COUNTY's Custodian or the COUNTY's representative/liaison, on behalf of the COUNTY's Custodian, in a format that is compatible with the information technology systems of COUNTY, at no cost to COUNTY.

CONTRACTOR acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein. Failure of the CONTRACTOR to comply with the requirements of this Article, Chapter 119, F.S. and other applicable requirements of state law, shall be a material breach of this Contract. COUNTY shall have the right to exercise any and all remedies available to it for breach of contract, including but not limited to, the right to terminate for cause.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE **PUBLIC** RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC OLIVE **AFFAIRS** DEPARTMENT, 301 N. AVENUE. WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680."

5. <u>ARTICLE 29 – SCRUTINIZED COMPANIES (when contract value is greater than</u> \$1 million) is hereby amended to read as follows:

"ARTICLE 29 - SCRUTINIZED COMPANIES

- A. As provided in F.S. 287.135, by entering into this Contract 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 Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if CONSULTANT is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Contract may be terminated at the option of the COUNTY.
- B. When contract value is greater than \$1 million: As provided in F.S. 287.135, by entering into this Contract 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 Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by CONTRACTOR, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Contract renewal."

6. <u>ARTICLE 35 – E-VERIFY – EMPLOYMENT ELEGIBILITY</u> is hereby added to the Contract:

"ARTICLE 35 - E-VERIFY - EMPLOYMENT ELEGIBILITY

CONTRACTOR warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of CONTRACTOR's subcontractor's performing the duties and obligations of this Contract are registered with the E-Verify System, and beginning January 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

CONTRACTOR shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, Contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. CONTRACTOR shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontractor and any extension thereof. This provision shall not supersede any provision of this Contract which requires a longer retention period.

COUNTY shall terminate this Contract if it has a good faith belief that CONTRACTOR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If COUNTY has a good faith belief that CONTRACTOR's subcontractor has knowingly violated section 448.09(1), Florida Statutes, as may be amended, COUNTY shall notify CONTRACTOR to terminate its Contract with the subcontractor and CONTRACTOR shall immediately terminate its Contract with the subcontractor. If COUNTY terminates this Contract pursuant to the above,

CONTRACTOR shall be barred from being awarded a future Contract by COUNTY for a period of one (1) year from the date on which this Contract was terminated. In the event of such Contract termination, CONTRACTOR shall also be liable for any additional costs incurred by COUNTY as a result of the termination."

- 7. All other provisions of said Contract, dated November 22, 2016, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.
- 8. In accordance with Palm Beach County Code Chapter 2, Article III, Section 2.51, as amended, this THIRD AMENDMENT shall not take effect until executed by the CONTRACTOR and COUNTY.

THE REST OF THIS PAGE IS LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONTRACTOR has hereunto set its hand the day and year above written.

ATTEST: JOSEPH ABRUZZO CLERK AND COMPTROLLER	PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS
By: Deputy Clerk	By: Dave Kerner, Mayor
WITNESSES: Kimbili Scott	CONTRACTOR: ERMC Aviation LLC
Signature	Company Name
Kimbili Scott	Bryan Stillwagon BX:-4D23C03BAC6545F
Name (type or print)	Signature
Docusigned by: Documer Fichey OCD516EC197AAAF Signature Joshua Richey Name (type or print)	Bryan Stillwagon Typed Name Asst. Secretary & Assoc. General Counsel Title
APPROVED AS TO FORM AND LEGAL SUFFICIENCY	APPROVED AS TO TERMS AND CONDITIONS
BY:County Attorney	BY: Director, Department of Airports