



MIAMI-DADE EXPRESSWAY AUTHORITY

3790 NW 21 St. // Miami, FL 33142

www.mdxway.com

DESIGN-BUILD CONTRACT

MDX PROCUREMENT/CONTRACT NO.: MDX-16-01
MDX WORK PROGRAM NO.: 83611.101
MDX PROJECT/SERVICE TITLE: DESIGN-BUILD SERVICES FOR THE
RECONSTRUCTION OF SR 836/I-395 FROM
WEST OF NW 17TH AVENUE TO I-95/MIDTOWN
INTERCHANGE IN MIAMI-DADE COUNTY

THIS CONTRACT is made and entered into this 12th day of July 2018 (the "Effective Date"), by and between the **Miami-Dade County Expressway Authority d/b/a as Miami-Dade Expressway Authority**, a body politic and corporate, a public instrumentality and an agency of the State of Florida, created under Chapter 348, Part I, as amended, acting by and through its Governing Board, and **Archer Western - De Moya Joint Venture**, the Design-Build Firm, a corporation duly organized and existing under the laws of the State of Florida with its principle place of business located at 4343 Anchor Plaza Parkway, Suite 155, Tampa FL 33634 and duly authorized to conduct business in the State of Florida, Federal I.D. No. 383993222.

WITNESSETH:

WHEREAS, MDX and the Florida Department of Transportation separately engaged in the Project Development and Environment (PD&E) Study and design of improvements to the S.R. 836 and I-395 corridor and the Midtown Interchange to improve safety, reduce congestion and enhance mobility; and

WHEREAS, MDX and the Department agreed that pursuant to **MDX Procurement/Contract No.: AGMT-FDOT-FY16-01**, FDOT, in partnership with MDX, will competitively procure, and manage the construction contracts for both agencies; and

WHEREAS, the purpose of this Agreement is for MDX remit payment of its portion of the Total Project, the MDX Project, directly to the Design-Build Firm and for the Design-Build Firm to construct the Total Project.

NOW, THEREFORE in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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1. RECITALS

The foregoing recitals are true and correct and are incorporated herein by reference.

2. DEFINITIONS

The following terms, have the meaning set forth below:

- a. **Design-Build Firm** means the entity that executes the I-395 Agreements.
- b. **Department or FDOT** means the Florida Department of Transportation.
- c. **Department Contract** means the contract between the Department and the Design-Build Firm which requires the Design-Build Firm to construct the Department Project and the MDX Project with payment to the Design-Build Firm for construction of the Department Project, including payment of claims for extra work arising from the Department Project. Delay damages on the Total Project will be paid by the Department and MDX in a proportion to the amounts of the Department Contract and the MDX Contract as it pertains to the total value of the I-395 Agreements.
- d. **Department Project** means the reconstruction of I-395 from the I-95/Midtown Interchange to the C/L Pier 8 of the McArthur Causeway Bridge, concrete pavement reconstruction of I-95 from NW 8th Street to NW 29th Street, and the construction of a SR 9A/I-95 Southbound Ramp to Westbound SR 836.
- e. **I-395 Agreements** means, collectively, the Department Contract and the MDX Contract.
- f. **MDX or Authority** means Miami-Dade Expressway Authority.
- g. **MDX Contract or Contract or Agreement** means this contract between MDX and the Design-Build Firm for construction of the Total Project and for the payment of construction of the MDX Project, including payment of claims for extra work arising from the MDX Project. Delay damages on the Total Project will be paid by the Department and MDX in a proportion to the amounts of the Department Contract and the MDX Contract as it pertains to the total value of the I-395 Agreements.
- h. **MDX Project** means the reconstruction of SR 836/I-395 from west of NW 17th Ave to the I-95/Midtown Interchange.
- i. **Parties or parties** means, collectively, the Design-Build Firm and MDX.

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j. **Total Project** means, collectively, the Department Project and the MDX Project.

3. SCOPE OF WORK

The Design-Build Firm shall complete construction of the Total Project ("Work") in accordance with the Department Contract and MDX shall compensate the Design-Build Firm for construction of the MDX Project.

4. CONTRACT AMOUNT

The Design-Build Firm has agreed to a Contract Amount of **One Hundred Eighty-Five Million, Nine Hundred Ninety-Nine Thousand, Nine Hundred Ninety-Eight Hundred Dollars and Zero Cents (\$185,999,998.00).**

5. METHOD OF COMPENSATION

A. Partial Payment

The Design-Build Firm will request payment for Work completed and accepted by the Department by submitting an Invoice. The Invoice shall be based on the approved Schedule of Values and shall include the Procurement/Contract number, the Work Program number, the Invoice number, the Invoice date, the period that the Invoice represents, and the required certifications.

The Design-Build Firm will receive partial payments on monthly Invoices, based on the amount of Work completed in accordance with the Schedule of Values prepared by the Design-Build Firm and approved by the Department, and extra work, if applicable, documented through approved Work Orders and/or executed Supplemental Agreements. Payment to the Design- Build Firm will be made in compliance with Chapter 218, Florida Statutes, Florida Prompt Payment Act. The monthly payments will be made only for those quantities approved by the Department. Invoices shall be submitted no later than twelve (12) o'clock Noon on the pre-established MDX Work Program Invoice Submittal Dates (a copy of the current year Work Program Invoice Submittal Dates may be found on the MDX's website). The Design-Build Firm shall refer to the "MDX Work Program Invoice Checklist" to ensure completeness of the Invoice. At MDX's sole discretion, late, incomplete and/or inaccurate monthly Invoices may be rejected and/or delayed for processing. The following documents shall accompany all monthly Invoices. Note the latest version of these documents can be found on MDX's website:

a) *MDX Work Program Invoice Submittal Form*

b) *MDX Invoice Tracking Form*

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*c) Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant**

*d) Certification of Disbursement to Subcontractors/Subconsultants/Suppliers**

e) Construction Compliance with Specifications and Plans

*These forms are not required with the submission of the first monthly Invoice.

B. Final Payment

When the Work has been completed by the Design-Build Firm and the Final Inspection and Final Acceptance have been given by the Department, an offer of final payment showing the value of the Work will be prepared by the Department as soon as the necessary measurements and computations can be made. All prior Invoices and payments will be subject to correction in the final payment. Provided that the requirements of a) through c) of this Article have been met, the amount of the final pay estimate, less any sums that may have been deducted or retained under the provisions of the Contract will be paid to the Design-Build Firm as soon as practicable after Final Acceptance of the Work and pursuant to Chapter 218, Florida Statutes, Florida Prompt Payment Act.

a) The Design-Build Firm has submitted written acceptance of the balance due, as determined by the Department, as full settlement of the Design-Build Firm's account under the Contract and of all claims in connection therewith.

1) The Design-Build Firm shall have the option of accepting the balance due with the stipulation that acceptance of such payment will not constitute a waiver of pending claims. In such case the Design-Build Firm shall specifically identify the claim filed and still pending settlement. No payments will be made under this option without the Design-Build Firm's qualified acceptance letter and required backup documentation.

2) By exercising this option, the Design-Build Firm agrees that any pending or future suit must be limited to the particulars in any unresolved claims filed pursuant to the Department Contract, and must be filed within three hundred and sixty-five (365) Calendar Days from the date of Final Acceptance. Failure by the Design-Build

Firm to file suit within this period shall constitute full acceptance without qualification.

b) The Design-Build Firm has furnished a sworn affidavit to the effect that all bills are paid and no suits are pending (other than those exceptions listed if any) in connection with the Contract and that the Design-Build Firm has not offered or made any gift or gratuity to, or made any financial transaction of any nature with, any employee of MDX or its designee.

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Any tort liability exceptions, if any, shall be accompanied by evidence of adequate insurance as required by the Department Contract.

c) The Surety on the Contract Bond has consented (by completion of its portion of the affidavit and surety release) to final payment to the Design-Build Firm and agrees that the making of such payment shall not relieve the Surety of any of its obligations under the Contract Bond.

C. Application for Final Payment

The Design-Build Firm's application for final payment shall be accompanied by the following:

- a) *MDX Work Program Invoice Submittal form*;
- b) *Certificate of Partial/Final Payment, Waiver and Release from Contractor/Consultant form*;
- c) *Final MDX Invoice Tracking Form*;
- d) *Final Schedule of Values*;
- e) *Consent of Surety to make Final Payment and Release, Signed and Sealed*;
- f) *Power of Attorney from Surety for Release of Final Payment, Signed, Sealed, and dated the same as Consent of Surety*;
- g) *Contractor's/Consultant's Final Release and Affidavit form*;
- h) *Release of Lien from each Subcontractor/ Supplier who has filed notices of non-payment to MDX*;
- i) *List of Subcontractors/Suppliers contact information, with telephone numbers, e-mail and location addresses*;
- j) *Construction Compliance with Specifications and Plans form*;
- k) *Other special warranties as required by the Department Contract, in the name of MDX.*

D. Waiver of Claims

The making of an offer for final payment by MDX and acceptance by the Design-Build Firm will constitute:

- a) A waiver of all claims by MDX against Design-Build Firm, except claims arising from unsettled liens, from defective Work appearing after Final Acceptance, from failure to comply with the Department Contract or the terms of any special guarantees specified therein; and
- b) A waiver of all claims by Design-Build Firm against MDX, other than those previously made in writing pursuant to the Department Contract and remaining unsettled.

E. Offsetting Payments

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If payment of any amount due MDX after settlement, or final adjudication of any claim is not made by the

Design-Build Firm within sixty (60) Calendar Days, MDX may, at its sole discretion, offset such amount from payments due the Design-Build Firm for work performed under any other contract with MDX, excluding amounts owed to Subcontractors/Subconsultants/Suppliers. Offsetting any amount in this manner shall not be considered a breach of the Contract by MDX.

6. CONTRACT BOND

With respect to the Work under this Contract, the Design-Build Firm agrees it shall satisfy all of the MDX Contract Bond requirements, as provided in the FDOT Request for Proposal for SR 836/I-395/I-95 (MDX Work Program No. 83611).

7. INSURANCE REQUIREMENTS AND INDEMNIFICATION REQUIREMENTS

Where the Department Contract requires the Design-Build Firm to provide insurance for the benefit of the Department, the Design-Build Firm shall provide the same insurance for the benefit of MDX. Where the Department Contract requires the Design-Build Firm to indemnify the Department, the Design-Build Firm shall also indemnify MDX.

All policies provided shall provide an endorsement to include MDX, its employees, their members, officers, agents, and successors named as additional insured specific to the Contract, excluding Workers' Compensation Insurance and Professional/ Errors & Omissions Liability Insurance.

8. CONFLICTS OF INTEREST

The following shall apply to the Contract:

The Design-Build Firm warrants that, to the best of the Design-Build Firm's knowledge and belief, there are no relevant facts or circumstances which could give rise to a potential or actual conflict of interest, including but not limited to, an Organizational Conflict of Interest, as defined herein, or a Personal Conflict of Interest, as defined herein, (hereinafter collectively referred to as "Conflict of Interest", "Conflicts of Interest" or "COI"), or that the Design-Build Firm has disclosed in writing to MDX all such relevant information relating to the Design-Build Firm, its employees, its agents or any of its Subcontractors or Subconsultants.

(1) Organizational Conflict of Interest:

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"Organizational Conflict of Interest" means:

- (a) Because of other activities or relationships with other persons or consultants, the Design-Build Firm, its employees, agents or Subcontractors or Subconsultants or their respective employees, is/are unable or potentially unable to render impartial assistance or advice to MDX;
- (b) The Design-Build Firm, or any of its employees, agents, Subcontractors or Subconsultants or their respective employees, objectivity in performing the Work is or might otherwise be impaired; and
- (c) The Design-Build Firm, its employees, agents, Subcontractors or Subconsultants or their respective employees, has/have an unfair competitive advantage.

(2) **Personal Conflict of Interest:**

"Personal Conflict of Interest" is defined as a relationship of an employee, Subcontractor/Subconsultant, or the employees of a Subcontractor/ Subconsultant with an entity that will or may impair the objectivity of the employee, Subcontractor/Subconsultant employee, or Subcontractor/Subconsultant in performing the Work.

Prior to commencement of any Work, or immediately after becoming aware of a Conflict of Interest, whichever is sooner, the Design-Build Firm agrees to notify MDX's Executive Director or his or her delegate either:

- (1) That, to the best of its knowledge and belief, no Conflict of Interest exists, or
- (2) To identify to MDX any Conflict of Interest the Design-Build Firm or its agents, employees, or Subcontractors or Subconsultants may have. In emergency situations, however, Work may begin, but notification of Conflicts of Interest shall be made in writing to MDX's Executive Director or his or her delegate within five (5) working days.

The Design-Build Firm agrees that if a Conflict of Interest is identified during performance, the Design-Build Firm will immediately make a full disclosure in writing to MDX's Executive Director or his or her delegate. This disclosure shall include a description of actions, which the Design-Build Firm has taken or proposes to take, after consultation with MDX, to avoid, mitigate, or neutralize the Conflict of Interest. The Design-Build Firm shall discontinue any relevant performance until notified by MDX's Executive Director or his or her delegate of any contrary action to be taken.

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MDX may, at its sole discretion, withhold payments due or which may become due, suspend the Work, terminate this Contract for convenience, in whole or in part, if it deems such termination necessary to avoid a Conflict of Interest, or pursue such other remedies as may be permitted by law or this Agreement. If the Design-Build Firm was aware of a Conflict of Interest prior to award or discovered a Conflict of Interest after award and did not disclose it, or misrepresented relevant information to MDX, or MDX becomes aware of a Conflict of Interest that was not disclosed by the Design-Build Firm, MDX may at its sole discretion, withhold payments due or which may become due, suspend the Work, terminate the Contract in whole or in part for default, or pursue such other remedies as may be permitted by law or this Contract.

In addition to all other herein required disclosures related to Conflict of Interest, the Design-Build Firm is also required to annually submit to the MDX Ethics Officer the MDX Annual Disclosure Form, attached hereto and incorporated herein as Exhibit C, and provide the following information:

- (1) Any relationship that the Design-Build Firm has that will afford a current or future financial benefit to the Design-Build Firm, or to a relative or business associate of the Design-Build Firm, and which a reasonable person would conclude has the potential to create a prohibited Conflict of Interest. The term relative shall have the same meaning as provided in §112.312, Florida Statutes.
- (2) Whether a relative of the Design-Build Firm is registered to lobby the Executive Branch of the State of Florida or the Florida Constitution Review Committee and, if so, the names of such lobbyist's clients must be provided in writing to the MDX Ethics Officer.
- (3) Any and all interest in real property held by the Design-Build Firm or the immediate family member of the Design-Build Firm, if such real property is located in or within a ½ mile radius of any actual or prospective MDX project. Prior to the execution of the Contract, the Design-Build Firm has been provided a corridor map and a related property ownership list for all real property within the disclosure area, and an alignment map with a list of associated owners.

The MDX Annual Disclosure Form must be submitted by the Design-Build Firm on the Effective Date of the Contract and updated every year on the same date. It is the Design-Build Firm's responsibility to obtain from MDX an updated corridor map and a property ownership list for all real property within the disclosure area, and an alignment map with a list of associated owners in order to properly complete the MDX Annual Disclosure Form. Failure by the Design-Build Firm to timely submit the MDX Annual Disclosure Form is a default under the Contract and MDX, at its sole discretion, may enforce all applicable

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provisions under the Contract, including and up to termination of the Contract.

The Design-Build Firm shall prepare and submit a Conflict of Interest (COI) Plan within twenty (20) business days after the execution of this Contract or any other time requested by MDX, which outlines the procedures in place to avoid, neutralize or mitigate Conflicts of Interest, whether actual or potential, personal or organizational, throughout the period of performance of the Contract. The Design-Build Firm's COI Plan is a document which describes the procedures the Design-Build Firm uses to identify and report COI's. Generally, a corporate COI plan will describe how a company, in its entirety, addresses conflicts, and will not be contract or program specific. The plan may also describe the options a company will consider proposing to avoid, neutralize, or mitigate a COI whenever a Conflict of Interest is identified. The plan shall be evaluated and approved by MDX. The plan shall address step by step the checks and balances in place to detect any potential or actual Conflicts of Interest that could result from activities covered in the I-395 Agreements.

The Design-Build Firm's obligations with regard to providing notice of Conflict of Interest situations shall apply until the expiration date of this Contract. The Design-Build Firm agrees to:

- (1) Immediately notify MDX's Executive Director or his or her delegate when the Design-Build Firm becomes aware of any Conflicts of Interest.
- (2) Immediately notify MDX's Executive Director or his or her delegate prior to incurring costs for any Work when a Conflict of Interest situation may or does exist.

In the event that the Conflict of Interest does not become known until after performance of the Contract begins, the Design-Build Firm shall immediately notify MDX's Executive Director or his or her delegate of the Conflict of Interest. The Design-Build Firm shall cease performance of this Contract until notified by MDX's Executive Director or his or her delegate of the appropriate action to be taken.

The parties to this Contract agree that the Design-Build Firm will be restricted in its future contracting in the manner described below.

- (1) The Design-Build Firm may be ineligible to participate in any MDX solicitations and ensuing MDX contracts, either as a prime Design-Build Firm or Subcontractor or Subconsultant.
- (2) The Design-Build Firm, during the life of this Contract, shall be ineligible to enter into any contract with individuals or firms to perform work on projects related to the Work performed under this Contract unless otherwise authorized in writing by

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MDX's Executive Director or his or her delegate.

- (3) The Design-Build Firm agrees in advance that if any bids/proposals are submitted for any work that would require written approval of MDX prior to entering into another contract subject to the restrictions of this section, then the bids/proposals are submitted at the Design-Build Firm's own risk. Therefore, no claim shall be made against MDX to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the other contract is denied or approved.

A review process available to the Design-Build Firm when an adverse determination is received shall consist of a request for reconsideration to MDX's Executive Director or his or her delegate and a request for review submitted to MDX's Operations Committee. An adverse determination resulting from a request for reconsideration by the MDX Executive Director or his or her delegate will not preclude the Design-Build Firm from requesting a review by MDX's Operations Committee. Either a request for review or a request for reconsideration must be submitted to the appropriate level within thirty (30) calendar days after receipt of the initial adverse determination.

The Design-Build Firm agrees to insert in each Subcontractor/Subconsultant contract hereunder, provisions which shall conform substantially to the language of the subsection entitled **Conflicts of Interest**, including this paragraph. The Design-Build Firm may request in writing that MDX's Executive Director or his or her delegate exempt from this Conflicts of Interest subsection a particular Subcontractor/Subconsultant contract for certain technical or consultant services. MDX will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

The Design-Build Firm agrees to insert in each Subcontractor/Subconsultant contract hereunder the requirement that any Subcontractor/Subconsultant who performs Work as a Subcontractor/Subconsultant pursuant to this Contract and wishes to submit a proposal or bid, either as a prime Design-Build Firm or as a Subcontractor/Subconsultant on any MDX procurement, shall request in writing a determination from MDX that they may participate in the specific MDX procurement prior to the proposal or bid submittal date. Such written request shall include justification as to why there is no Conflict of Interest in this situation. Failure to do so may result in the Subcontractor/Subconsultant's proposal being deemed non-responsive.

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9. CONTRACT PERFORMANCE EVALUATION AND MDX POLICIES

The Design-Build Firm agrees that performance under the Contract shall be evaluated in accordance with Article 11 of the MDX Procurement Policy. In addition, the Design-Build Firm agrees to be bound by the MDX Code of Ethics. All of these policies are incorporated by reference herein and may be found on the MDX website.

10. SOVEREIGN IMMUNITY

No provision of this Contract, shall be construed as a waiver of sovereign immunity by MDX.

11. CONSTRUCTION OF LANGUAGE

All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.

12. EXECUTION OF THE CONTRACT

If the Design-Build Firm is a firm or company owned by an individual, this Contract shall be executed in the name of the firm or company by the manual signature of the individual or sole proprietor. If the firm is a Partnership, this Contract shall be executed in the name of the partnership by the manual signature of the general partner. If a corporation, the Contract shall be executed in the name of the Corporation and shall bear the corporate seal and be signed by the President or the Vice-President. If a joint venture, the Contract shall be executed in the name of the joint venture and be signed by a person authorized to sign on behalf of the joint venture.

13. CHOICE OF LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any litigation arising out of this Contract shall be in Miami-Dade County, Florida, and the Design-Build Firm waives any rights it may have to a jury trial.

In the event of any litigation arising out of this Contract, the Design-Build Firm agrees that service of process on the Design-Build Firm may be made on its registered agent as designated in the corporate records of the Florida Division of Corporations. The Design-Build Firm shall notify the Authority in writing within thirty (30) days of a change and the name of the successor registered agent. These provisions are in addition to any methods of service of process allowed by the Florida Statutes.

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14. WAIVER OF TRIAL BY JURY:

The Design-Build Firm and MDX hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect to any litigation based hereon, or arising out of, under or in connection with this Contract, and any contract contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, or actions of either party.

15. ENTIRE CONTRACT

This Contract embodies the whole agreement between the parties and there are no inducements, promises, terms, conditions, or obligations made or entered into by either the Authority or the Design-Build Firm other than contained herein. This Contract shall inure to the benefit of, and be binding on, the parties or the successor(s).

16. THIRD-PARTY BENEFICIARY

It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries, bodily injury or property damage pursuant to the terms or provisions of the Contract.

17. E-VERIFY REQUIREMENTS

U.S. law requires companies to employ only individuals who may legally work in the United States, either U.S. citizens, or foreign citizens who have the necessary authorization. Any Design-Build Firm providing work to MDX must verify the employment eligibility of employees through the U.S. Department of Homeland Security's E-Verify system. In addition, the Design-Build Firm shall verify that Subcontractors and Subconsultants performing Work on the Contract utilize the E-Verify system to verify the employment eligibility of employees hired by the Subcontractor or Subconsultant during the Contract Term. MDX will consider the employment by any Design-Build Firm or Subcontractor or Subconsultant of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Contract by MDX, if it is determined that the Design-Build Firm or Subcontractor or Subconsultant knowingly employs unauthorized aliens.

18. NOTICES

Notices required under this Contract shall be mailed or delivered as follows, unless a party directs in writing that notices shall be provided to it at another location:

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There shall be no amendment to the MDX Contract without Department approval.

23. ACKNOWLEDGEMENT & REPRESENTATION

The parties to this Contract individually represent, warrant, and agree that:

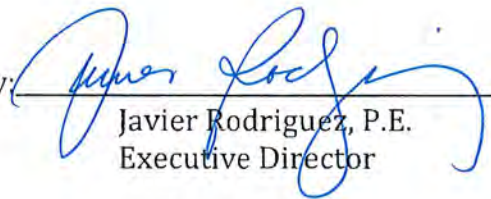
- A.** They have been represented by legal counsel of their choice in connection with the Contract;
- B.** They are fully aware and clearly understand all of the terms and provisions contained in this Contract;
- C.** They have voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Contract;
- D.** They are not relying on any representation, either written or oral, express or implied, made to them by any other party other than as set forth in this Contract; and
- E.** The consideration received by them to enter into this Contract and the settlement contemplated by this Contract has been actual and adequate.

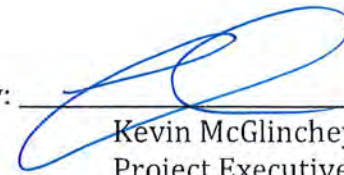
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IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their respective and duly authorized officers as of the Effective Date defined herein.

MIAMI-DADE EXPRESSWAY AUTHORITY ARCHER WESTERN - DE MOYA JOINT VENTURE

By: 
Javier Rodriguez, P.E.
Executive Director

By:  7/1/18
Kevin McGlinchey
Project Executive
ATTORNEY-IN-FACT

ATTEST 
Secretary Signature

[DESIGN-BUILD FIRM SEAL]

Endorsed by Operations Committee on 8/18/2015*
Approved by MDX Board on 8/25/15*
(* through MDX Contract No. AGMT-FDOT-FY16-01)

Exhibits:

The following exhibits are incorporated herein and attached hereto, unless otherwise noted:

- Exhibit A Contract Bond
- Exhibit B MDX Code of Ethics**
- Exhibit C MDX Annual Disclosure Form**

** Copy located on the MDX website: (www.mdxway.com)