

FOURTH AMENDMENT TO RESTATED AGREEMENT BETWEEN BROWARD COUNTY AND
LIFTECH CONSULTANTS, INC., FOR CONSULTANT ENGINEERING SERVICES FOR CRANES
(RLI # N1038712R1)

This Fourth Amendment to the Restated Agreement ("Fourth Amendment") between Broward County and Liftech Consultants, Inc., for Consultant Engineering Services for Cranes is made and entered into by and between Broward County, a political subdivision of the state of Florida ("County"), and Liftech Consultants, Inc., a California corporation authorized to transact business in the state of Florida ("Consultant") (collectively, the "Parties").

RECITALS

A. The Parties entered into that certain Restated Agreement between Broward County and Liftech Consultants, Inc., for Consultant Engineering Services for Cranes, dated April 8, 2016 (the "Restated Agreement"), to provide for consultant engineering services for container gantry cranes.

B. The Parties entered into a First Amendment to the Restated Agreement, dated March 14, 2017 (the "First Amendment"), a Second Amendment to the Restated Agreement, dated June 12, 2018 (the "Second Amendment"), and a Third Amendment to the Restated Agreement, dated June 10, 2019 (the "Third Amendment"). The Restated Agreement, as amended by the First Amendment, Second Amendment, and Third Amendment, is hereinafter referred to as the "Agreement."

C. The Parties desire to further amend the Agreement to extend the term of the Agreement to terminate on December 31, 2023, provide for additional compensation for additional work effort for the support services related to crane fabrication inspection and crane rail construction, and provide for compensation for new work effort for design and construction support services for extension of the crane rail, installation of a new generator for the switchgear building, and additional specialty inspections.

D. The additional compensation consists of a combination of a maximum not-to-exceed amount and lump sum amount in the total amount of \$3,642,649, and additional potential reimbursable costs in the amount of \$125,449, resulting in a total increase of \$3,768,098.

E. County has determined that the additional effort and new scope of services are in the County's best interest.

F. The Parties met and negotiated the additional effort and new scope of services, and related compensation, all in accordance with the Broward County Procurement Code, and this Fourth Amendment incorporates the results of such negotiation.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. The above Recitals are true and correct and are incorporated herein as if set forth in full hereunder.
2. Amendments made to the Agreement by this Fourth Amendment are indicated by use of strikethroughs to indicate deletions and underlining to indicate additions, unless otherwise stated.
3. All references to "Exhibits A, A-1, and A-2" in Sections 3.1, 4.2, and 7.3 of the Agreement are hereby revised to reference "Exhibits A, A-1, A-2, and A-4."

4. Section 4.1 of the Agreement is hereby amended to read as follows:

4.1 Consultant shall perform the services described in Exhibits A, A-1, ~~and A-2, and A-4~~ within the time periods specified in the Project Schedule included in ~~Exhibits A, A-1, and A-2~~ each exhibit; said time periods shall commence from the date of the Notice to Proceed for such services. The term of this Agreement, ~~shall be for a period of seven (7) years~~ having commenced on March 19, 2013, shall terminate on December 31, 2023, unless sooner terminated as provided herein.

5. Section 5.1 of the Agreement is hereby amended, in part, to read as follows (original underlining omitted):

5.1 AMOUNT AND METHOD OF COMPENSATION

5.1.1 Maximum Amount Not-To-Exceed Compensation. Compensation to Consultant for the performance of Basic Services and attendance at meetings and site visits in the U.S. and abroad at site of crane manufacturer for Phase 2 identified in Exhibits A and A-1 as payable on a "Maximum Amount Not-To-Exceed" basis, and as otherwise required by this Agreement, shall be based upon the Salary Costs as described in Section 5.2 up to a Maximum Amount Not-To-Exceed of ~~Seven Hundred Forty nine Thousand Four Hundred Seventeen Dollars (\$749,417.00)~~ Nine Hundred Seventy-eight Thousand Seven Hundred Twenty-six Dollars (\$978,726.00). The Maximum Amount Not-To-Exceed compensation of ~~Seven Hundred Forty nine Thousand Four Hundred Seventeen Dollars (\$749,417.00)~~ Nine Hundred Seventy-eight Thousand Seven Hundred Twenty-six Dollars (\$978,726.00) shall be paid out up to a maximum for each task in accordance with the percentage amount as follows:

Project Phase 2	Fee%	Fee Amount/Task
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Exhibit A:		
Task 1 – New Cranes Procurement	25.34 <u>19.40</u> %	\$189,888.00
Task 2 – Upgrades to Existing Cranes	38.32 <u>52.78</u> %	\$287,207.00 <u>516,516.00</u>
Task 3 – Upgrades to Landside Infrastructure, Tasks 3.8 and 3.9	33.28 <u>25.48</u> %	\$249,385.00
Exhibit A-1:		
Task 3 – Revise 100% Design Documents for Electrical Infrastructure	3.06 <u>2.34</u> %	\$22,937.00
	=====	=====
	100%	\$749,417.00 <u>978,726.00</u>

Compensation to Consultant for the performance of Construction Support Services identified in Exhibit A, Phase 3 Task 1, and Basic Services identified in Exhibit A-2, as payable on a "Maximum Amount Not-To-Exceed" basis, and as otherwise required by this Agreement, shall be based upon the Salary Costs as described in Section 5.2 up to a Maximum Amount Not-To-Exceed of ~~Seven Million Three Hundred Forty five Thousand Seven Hundred Three Dollars (\$7,345,703.00)~~ Ten Million Two Hundred Fifty-six Thousand Six Hundred Forty-four Dollars (\$10,256,644.00). The Maximum Amount Not-To-Exceed compensation of ~~Seven Million Three Hundred Forty five Thousand Seven Hundred Three Dollars (\$7,345,703.00)~~ Ten Million Two Hundred Fifty-six Thousand Six Hundred Forty-four Dollars (\$10,256,644.00) shall be paid out up to a maximum for each task in accordance with the percentage amount as follows:

Project Phase 3	Fee%	Fee Amount/Task
Exhibit A:		
Task 1 – Construction Support Services	91.68 <u>90.63</u> %	\$6,734,774.00 <u>9,295,085.00</u>
Exhibit A-2:		
Task 2 – Crane Construction Support Services (Tasks 2.10.3B, 2.10.4B, 2.10.6, 2.10.7)	8.32 <u>9.37</u> %	\$610,929.00 <u>961,559.00</u>
	=====	=====
	100%	\$7,345,703.00 <u>10,256,644.00</u>

Consultant shall perform all services designated as Maximum Amount Not-To-Exceed set forth herein for total compensation in the amount of or less than that stated above.

5.1.2 Lump Sum Compensation. Compensation to Consultant for the performance of all Basic Services identified in Exhibits A, A-1, ~~and A-2, and A-4~~ as payable on a "Lump Sum" basis, and as otherwise required by this Agreement, shall be not more than the total lump sum amounts as follows:

...

County agrees to pay Consultant, as compensation for performance of all Basic Services related to Exhibits A, ~~and A-1, and A-4, for~~ Phase 2, Tasks 1 - 3, including Phase 2 Addition, Phase 2 Addition 2, and Phase 2 Task 3.11 and Task 3.12, that are required under the terms of this Agreement, a lump sum of ~~Three Million Eight Hundred Two Thousand One Hundred Sixteen Dollars (\$3,802,116.00)~~ Four Million Twenty-seven Thousand Eighteen Dollars (\$4,027,018.00).

The lump sum compensation of ~~Three Million Eight Hundred Two Thousand One Hundred Sixteen Dollars (\$3,802,116.00)~~ Four Million Twenty-seven Thousand Eighteen Dollars (\$4,027,018.00) shall be paid out in accordance with the percentage amount set forth below:

Project Phase 2	Fee%	Fee Amount/Task
Exhibit A:		
Task 1 – New Cranes Procurement, Tasks 1.1 – 1.8	25.14 <u>23.74</u> %	\$956,000.00
Task 2 – Upgrades to Existing Cranes, Tasks 2.1 – 2.8	15.26 <u>15.32</u> %	\$580,000.00 <u>617,000.00</u>
Task 3 – Upgrades to Landside Infrastructure, Tasks 3.1 – 3.7, 3.11, and 3.12, Phase 2 Addition, and Phase 2 Addition 2	57.79 <u>54.56</u> %	\$2,197,116.00
Exhibit A-1:		
Task 2 – Feasibility Study	1.81 <u>1.71</u> %	\$69,000.00
Exhibit A-4:		
<u>Task 3 – Upgrades to Landside Infrastructure</u> Tasks 3.13 – 3.14	<u>4.67</u> %	<u>\$187,902.00</u>

=====	=====
100%	\$3,802,116.00
	<u>4,027,018.00</u>

County agrees to pay Consultant, as compensation for all services related to Consultant's world-wide survey of suitable and available used container gantry cranes for purchase by County the lump sum amount of Seven Thousand Three Hundred Ninety-seven Dollars and Ninety-five Cents (\$7,397.95). County agrees to pay Consultant, as compensation for all services related to Consultant's work done in connection with Florida Power & Light related issues, a lump sum amount of Sixteen Thousand One Hundred Dollars (\$16,100.00).

County agrees to pay Consultant, as compensation for performance of all Basic Services related to Exhibits A-2 and A-4, for Phase 3, Task 2, that are required under the terms of this Agreement, a lump sum of ~~Six Hundred Forty Thousand Dollars (\$640,000.00)~~ Nine Hundred Seventeen Thousand Four Hundred Ninety-seven Dollars (\$917,497.00).

The lump sum compensation of ~~Six Hundred Forty Thousand Dollars (\$640,000.00)~~ Nine Hundred Seventeen Thousand Four Hundred Ninety-seven Dollars (\$917,497.00) shall be paid out in accordance with the percentage amount set forth below:

Project Phase 3	Fee%	Fee Amount/Task
<u>Exhibit A-2:</u>		
<u>Task 2 – Crane Construction Support Services,</u>		
Task 2.10.1	20.03 <u>19.66%</u>	\$128,189.00 <u>180,389.00</u>
Task 2.10.2	27.66 <u>20.46%</u>	\$177,024.00 <u>187,724.00</u>
Task 2.10.3A	43.02 <u>52.08%</u>	\$275,337.00 <u>477,834.00</u>
Task 2.10.4A	2.52 <u>1.75%</u>	\$16,096.00
Task 2.10.5	6.77 <u>4.73%</u>	\$43,354.00
 <u>Exhibit A-4:</u>		
<u>Task 1 – Construction Support Services,</u>		
Task 1.1	<u>1.32%</u>	<u>\$12,100.00</u>
	=====	=====
	100%	\$640,000.00 <u>917,497.00</u>

5.1.4 Reimbursable Expenses. County has established a Maximum Amount Not-To-Exceed of ~~Four Hundred Eighty four Thousand Six Hundred Fifty Dollars (\$484,650.00)~~ Six Hundred Ten Thousand Ninety-nine Dollars (\$610,099.00) for potential reimbursable expenses for Phase 2 and Phase 3 work, which may be utilized pursuant to Section 5.3. Unused amounts of those monies established for reimbursable expenses shall be retained by County.

...

6. Section 10.3 of the Agreement is hereby amended to read as follows (original underlining omitted):

10.3 Public Records. To the extent Consultant is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Consultant shall:

- a. Keep and maintain public records required by County to perform the services under this Agreement;
- b. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and
- d. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Consultant or keep and maintain public records required by County to perform the services. If Consultant transfers the records to County, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt. If Consultant keeps and maintains public records, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

~~The failure of Consultant to comply with the provisions of this Section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under applicable law.~~

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Consultant will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Consultant contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes ~~Chapter 119~~) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Consultant must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, ~~Section 812.081~~ and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Consultant as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Consultant. Consultant shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the ~~non-disclosure~~ nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, ~~CHAPTER 119~~ TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 523-3404, ~~JORHERNANDEZ@broward.org~~ BROWARD.ORG, 1850 ELLER DRIVE, SUITE 603, FORT LAUDERDALE, FLORIDA 33316.

7. Exhibits A, A-1, and A-2, Scope of Services, of the Agreement are hereby supplemented by Exhibit A-4, attached hereto and incorporated into and made a part of the Agreement.
8. Preparation of this Fourth Amendment has been a joint effort of County and Consultant, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
9. Except as expressly modified herein, all other terms and conditions of the Agreement remain in full force and effect.
10. This Fourth Amendment is effective upon complete execution by the Parties.

11. This Fourth Amendment may be executed in multiple originals, and may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same document.

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IN WITNESS WHEREOF, the Parties have made and executed this Fourth Amendment to the Agreement: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ___ day of _____, 20___, and Liftech Consultants, Inc., signing by and through its President, duly authorized to execute same.

County

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____ Mayor
____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
Telecopier: (954) 468-3690

By Al A DiCalvo 2/11/2020
Al A DiCalvo (Date)
Assistant County Attorney

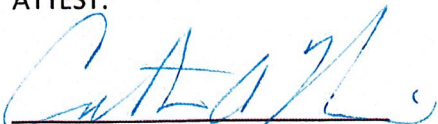
By RJ Morrison 2/11/2020
Russell J. Morrison (Date)
Senior Assistant County Attorney

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FOURTH AMENDMENT TO RESTATED AGREEMENT BETWEEN BROWARD COUNTY AND LIFTECH CONSULTANTS, INC., FOR CONSULTANT ENGINEERING SERVICES FOR CRANES (RLI# N1038712R1)

Consultant

ATTEST:



Corporate Secretary

CATHERINE A. MORRIS

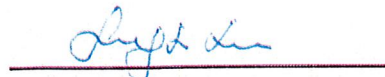
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(Corporate Seal)



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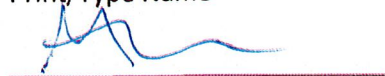
WITNESSES:



Signature

SUBRANTO (w/s)

Print/Type Name

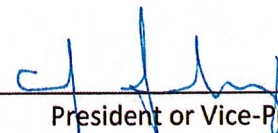


Signature

Alex Varwuel

Print/Type Name

LIFTECH CONSULTANTS, INC.

By 
President or Vice-President

ERIK SODERBERG - PRESIDENT
(Print/Type Name and Title)

10TH day of FEBRUARY, 2020

EXHIBIT – A-4

I. Basic Services

Consultant shall provide the following services in conformance with the existing project schedule:

A) Phase 2, Task 3 (Upgrades to Landside Infrastructure)

Task 3.13 Switchgear Building – Add New Generator

Consultant shall provide design services for installing a new generator providing full power back-up to the Switchgear building.

The scope of work shall include the following:

1. Initial kickoff meeting to confirm layout of generator location, generator design requirements, and schedule.
2. Design and Prepare 75% complete electrical, architecture, civil, structural construction documents for Port's review and comments.
3. Design review meeting to review Port's comments
4. Finalize construction documents and issue permit set to Port and Moss/Kiewit Joint Venture for City of Hollywood submittal.
5. Revise and correct plans in accordance with Port plan review comments
6. Construction support services consisting of periodic site visits to observe construction workmanship, RFI and submittal review, review of pay application, and EOR's sign-off for City of Hollywood's approval.

Task 3.14 Berth 30 Extension – Rail Girder Extension

The Port has an option to order three new 120 ft gauge cranes in the near future and requires an additional 300 ft of 120 ft gauge rail girders to the west in Berth 30 Extension. The 300 ft girder extension will result in 600 ft of 120 ft gauge, girders (from Sta 9+00 to Sta 15+00) for the Berth 30 Extension construction. The Port requires three crane stowage sets for the new cranes within the 600 ft section. These girders will also have crane stops at east and west ends. The east crane stops will be relocated when the Existing Berth 30 construction is complete. Consultant shall prepare construction documents for the additional girders, stowage sets and accessories.

To facilitate the civil design revisions to the Southport Turning Notch project, prepared by DeRose Design team under separate contract, Consultant shall revise the civil drawings background to reflect the 300 ft long, 120 ft rail girder extension. Consultant will coordinate the civil design requirements, particularly drainage, from the rail girder system to the Southport Turning Notch storm drain system.

Consultant shall prepare electrical drawings for the 300 ft long, 120 ft gauge rail girder extension and coordinate work related to New Vault #5 (NV5) impacted by the extension.

Consultant shall provide the following:

1. Updated construction documents including the additional 300 feet of crane rail and any modification to the original design required to incorporate the additional crane rail into the project.
2. Disks containing drawings in AutoCAD format for Issued for Construction.
3. Design calculations of 120 ft gauge crane rail for the additional 300 feet.
4. Revise and correct plans in accordance with Port plan review comments
5. Updated cost estimates

All deliverables shall be sent electronically in PDF format. Additionally, Consultant shall provide hard copy signed and sealed calculations, drawings, and specifications for Port records as well as any additional copies that may be required by the Building Official for issuance of Building Permit revisions.

B) Phase 3 (Construction Support Services)

Task 1.1 Special Crane Stowage Hardware Welding Inspection

The Contractor plans to fabricate the crane tie-down hardware, and since the tie-down components are fracture critical members they require special inspection. Consultant shall provide an experienced welding inspector to witness the welding procedures and inspect the first fabricated tie-down only at the fabricator's shop. Consultant shall provide an Inspection Report of the results of the welding inspector's observations.

II. Schedule - Attachment 1 replaces all previous project schedules for Phase 2 and Phase 3, Task 1 and Task 2.

2/6/20
Liftech_Amendment 4 Exhibit A4 2-6-20_Final

