

# Memorandum



**Date:** June 3, 2008

**To:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)(B)

**From:** George M. Burgess  
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of George M. Burgess.

**Subject:** Change Order No. MDAD-3, Sumitomo Corporation of America, North Terminal Development Program Automated People Mover System, Project No. B702B, which increases the Contract Amount by \$20,830,437.

## RECOMMENDATION

The attached Change Order No. MDAD-3 with Sumitomo Corporation of America ("SCOA") is recommended for approval by the Board. This change order increases the contract amount by \$20,830,437; includes a lump-sum settlement agreement through the scheduled substantial completion date of October 31, 2009; provides services to mitigate the natural effects of prolonged storage conditions on purchased equipment, including the cars and automated train control equipment; and revised contract language to accomplish this recommendation.

This agreement was assigned to Miami-Dade County pursuant to the Fourth Amendment to the Lease, Construction and Financing Agreement between American Airlines, Inc., and Miami-Dade County approved by the Board on June 21, 2005, by Resolution No. R-735-05.

**CHANGE ORDER NO.:** MDAD-3

### Scope

**PROJECT NAME:** North Terminal Development ("NTD") Automated People Mover (APM) System

**PROJECT NO.:** B702B (MDAD)/702A (AA)

**CONTRACT NO.:** MIA-702-R-2

**PROJECT DESCRIPTION:** Design, fabrication, manufacture, supply, installation, integration, testing and demonstration and commissioning of the vehicles, power distribution, controls, communication, track, other equipment, maintenance equipment and the finish-out and outfitting of facilities for the Automated People Mover System for the NTD Program at Miami International Airport.

**PROJECT LOCATION:** Miami International Airport

**PRIMARY COMMISSION DISTRICT:** Miami International Airport is located primarily within Commission District Six, Rebeca Sosa.

**APPROVAL PATH:** Board of County Commissioners

**USING DEPARTMENT:** Aviation Department

**MANAGING DEPARTMENT:** Aviation Department

**Fiscal Impact/Funding Source**

**CHANGE ORDER FUNDING SOURCE:** Of the \$20,830,437 included in this change order, \$12,830,437 is funded from Airport Revenue Bonds and \$8,000,000 from the American Airlines Claims Funds. (Of the \$105 million provided by AA through Amendment Four, approximately \$65 million remains after having paid all contractor and subcontractor claims.)

**PTP FUNDING:** No

**GOB FUNDING:** No

**CHANGE ORDER DESCRIPTION:** Increase the contract amount by \$20,830,437.

**Monetary Justification:**

The original agreement between American Airlines and SCOA called for a substantial completion date of June 1, 2004. In August 2003, the substantial completion date was extended by American to November 1, 2006. That Change Order was a time extension only, and Sumitomo reserved its rights to claims for cost impacts resulting from changes to the terminal availability dates.

Subsequent to that change order, SCOA notified American of such claims, alleging it was adversely impacted because of other contractors' failure to properly complete their work, which had a direct relationship to SCOA's work. SCOA claimed delays, interference, and other adverse impacts totaling \$23,000,000 through November 2004, they also gave notice of other impacts through 2006.

American Airlines' agreement with SCOA was assigned to Miami-Dade County pursuant to the Fourth Amendment to the Lease, Construction and Financing Agreement between American Airlines, Inc., and Miami-Dade County approved by the Board on June 21, 2005, by Resolution No. R-735-05. Since the County's assumption of the contract from American, MDAD staff has been working to resolve claims.

At its meeting of April 15, 2006, the Board approved Change Order No. MDAD-1 creating a general allowance account. Funding in the amount of \$5,280,766 was shifted to this general allowance account from an existing dedicated tax allowance account in which that amount was no longer required for tax purposes. These monies were to be used to fund the storage and maintenance of the APM cars being kept overseas with the remainder being held for contingency use.

On September 12, 2006, the Board approved Change Order No. MDAD-2 extending the substantial completion date to October 31, 2009, resolving claims through May 31, 2006, in an amount of \$7,600,000, and increasing the general allowance by \$22,500,000 to address any issues that may arise through the completion of the original scope of work. Some of the expected issues included any escalation of labor and materials; increased services including project and contract management work; unforeseen conditions; and any increased bond cost. The change order also provided funding for intermediate work for SCOA to mitigate potential wear and tear of purchased equipment due to the passage of time, correct fixed-facility deviations caused by other contractors, and provided a fee for interim extended project and construction management for a six-month period to move the project forward. This change order also provided a work order mechanism for MDAD to pay SCOA for the actual necessary and demonstrated costs, plus a mark-up consistent with the contract, resulting from extending the substantial completion date to October 31, 2009.

Currently, MDAD has been paying SCOA on a time and material basis for actual necessary and demonstrated additional costs as described in the above paragraph. It was not the preference, however, of MDAD to continue to pay these costs on a time and material basis through project completion. Time-and-materials and labor-hour contracts are considered high risk for an Owner because they provide no positive profit incentive to the contractor for cost control or labor efficiency. A contractor operating under a time-and-materials contract could conceivably work less efficiently so that more hours could be charged to the Owner. For these reasons, MDAD has pursued negotiating a lump-sum settlement for the time period of June 1, 2006 through October 31, 2009.

In order to eliminate risk associated with a time and material payment method, MDAD requested SCOA to submit a settlement proposal for consideration by MDAD. MDAD staff with the help of its APM, claim, and cost consultants has been working to develop a mutually agreeable approach to resolve the above described issues. SCOA originally proposed a settlement amount of \$43,120,000. MDAD and its consultants, after exhaustive analysis of SCOA's settlement proposal documents, could only support a settlement amount of \$23,645,372.10. This NTD evaluated amount did not include any valuation for Contractor's risk. In order to come to an agreement and in a spirit of cooperation, MDAD counter-offered \$30,500,000 to conclude the settlement negotiations. In addition, this lump-sum amount includes settling the few items that were excluded in Change Order No. MDAD-2 for which final costs were not yet known but were capped at \$1,500,000.

However, these deliberations were not without complications. One of the areas that presented particular difficulty is the status of the warranties on the automatic train control equipment and cars. SCOA advised that because of the extensive NTD delays much of the equipment that had been purchased was no longer under warranty including the APM cars. The Automatic Train Control equipment had been delivered to the site and set up and powered in the Central Control Equipment Room in the Maintenance & Storage Facility and in place for more than two years (September 2005). As has been reported, the cars were being stored and maintained in Japan because the NTD facilities were not ready to accept the vehicles (expected delivery date May 2008). Although the vehicles were maintained to minimize deterioration, these actions did not extend the warranties. In trying to establish what the costs would be to extend the warranties because of the NTD delays, SCOA inquired with its equipment suppliers, particularly Mitsubishi Heavy Industries (MHI) and its subcontractors, and later reported that extension of the warranties were either not commercially available or prohibitively expensive.

SCOA recommended that MDAD undertake intermediate work to mitigate the natural effects of prolonged storage conditions. The change order includes the costs of this intermediate work which

requires: 1) a successful high-speed running test of the vehicles on the test track of MHI; 2) a complete inspection, light overhaul (tune-up); 3) replacement of necessary consumable parts of the 20 cars (Item 3 of this Change Order); and 4) an inspection of the equipment (Item 4 of this Change Order) by the manufacturer of the automated train control equipment. Of particular concern to MDAD is that Automatic Train Control (ATC) system performs as specified. The ATC is the train protection system that ensures the safe, reliable, and efficient operation of trains on the ATC-enabled line. By doing these system checks, any equipment and component failures that are discovered during these tests and inspections can be replaced.

The change order also makes modifications of key access dates to NTD areas that MDAD plans to handover to SCOA. There are some discrepancies between those dates and POJV's master schedule. However, MDAD expects that the POJV schedule can be adjusted to meet the key access dates. If the two schedules cannot be coordinated there may be additional costs, which will be paid from the allowance account.

During the negotiation of this Change Order, MDAD was concerned that the system purchased would still be considered "current technology" and be usable into the future considering substantial completion of the system is now scheduled for October 31, 2009, and that much of the system and equipment were purchased in 2002. Therefore, MDAD staff asked its APM consultant, Lea + Elliott, Inc. (L+E), for assurance that the County would not be buying an "antiquated system" and that this system would be supported by SCOA. L+E reported that the NTD APM System is not an antiquated system and is a system being used worldwide and this type of system is one that will be supported by SCOA and its primary equipment supplier MHI through the specified 25 year design life of the vehicle.

However, L+E also advised that the vehicle-to-wayside communications system provided as part of the North Terminal APM system is not the latest technology communications system available. The communications system being provided is an analog-based communications system. L+E advised that on other recent APM projects, SCOA/MHI has upgraded the communications system package from analog to digital. Although the analog system is not the latest generation communications system available it is still a viable communications system, capable of performing all the necessary functions contained in the contract specifications, and will be supported by SCOA/MHI throughout the design life of the APM Vehicle and System.

Finally, I would like to refer the Board to my November 7, 2007, memorandum (attached) which provided a status report on the North Terminal Development Program. In that memorandum, I advised the Board that we were negotiating with SCOA for a settlement of cost impacts from May 31, 2006, through substantial completion and that there was a potential for a shortfall of \$27,112,689 from the \$115,420,000 amount allocated by the Miami-Dade Aviation Department for this project within the Board-approved \$6.2 billion CIP budget. The results of our negotiations were better than we predicted last November.

While the CIP contingency has capacity to cover these unanticipated expenses, we are concerned about future expenses. At the June meeting of the Aviation and Tourism Committee the status of the CIP contingency will be discussed in great detail.

**ORIGINAL AGREEMENT  
AMOUNT:**

Original AA Contract Amount: \$86,588,000.00  
As Assigned to the County: \$83,940,760.00

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**PREVIOUS COUNTY MODIFICATIONS:** Change Order No. 1 shifted \$5,280,766.04 from the Tax Allowance Account to the General Allowance Account and Change Order No. 2 provided a lump sum settlement as described in this memorandum and increased the general allowance account to address issues through the completion of the original scope of work.

**AMOUNT OF RECOMMENDED MODIFICATION:** \$20,830,437.00

**ADJUSTED AGREEMENT AMOUNT:** \$134,871,207.00

**PERCENT CHANGE THIS MODIFICATION FROM ASSIGNED AMOUNT:** 24.82%

	<u>Original Contract Values at Assignment</u>	<u>Previous Adjustments to Values</u>	<u>This Change Order Values</u>	<u>Current Totals</u>	<u>Total Paid</u>	<u>Balance After Change Order</u>
BASE:	\$75,361,954.00	\$7,600,010.00	\$20,830,437.00	\$103,792,401.00	\$62,836,518.14	\$40,955,882.86
CONTINGENCY:	\$0.00	\$27,780,766.04	\$0.00	\$27,780,766.04	\$8,654,996.48	\$19,125,769.56
DEDICATED:	\$8,578,806.00	(\$5,280,766.04)	\$0.00	\$3,298,039.96	\$0.00	\$3,298,039.96
<b>TOTALS</b>	<b>\$83,940,760.00</b>	<b>\$30,100,010.00</b>	<b>\$20,830,437.00</b>	<b>\$134,871,207.00</b>	<b>\$71,491,514.62</b>	<b>\$63,379,692.38</b>

	<u>Original Contract Completion Date at Assignment</u>	<u>Previous Adjustments to Duration</u>	<u>This Change Order Duration</u>	<u>Current Completion Date (Substantial Completion)</u>
<b>BASE DURATION:</b>	11/1/06	1,095 days	0	10/31/09
<b>CONTINGENCY:</b>	0	0	0	0
<b>TOTAL DURATION:</b>	11/1/2006	0	0	10/31/09

**INITIATING FACTOR(S) FOR CHANGE ORDER**

<u>Reason</u>	<u>Cost</u>	<u>Duration</u>
Regulatory Change	\$0.00	0
Other Agency Requested Change	\$0.00	0
Design Errors Change	\$0.00	0
Design Omissions Change	\$0.00	0
County Requested Change (Negotiated Lump Sum)	\$20,830,437.00	0
<u>Other</u>	<u>\$0.00</u>	<u>0</u>
<b>Total</b>	<b>\$20,830,437.00</b>	<b>0</b>

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**Track Record/Monitor**

**PRIME CONTRACTOR:** Sumitomo Corporation of America (SCOA)

**COMPANY PRINCIPAL(S):** Michihisa Shinagawa (Chief Executive Officer/Director),  
Kunio Fujimoto (Chief Financial Officer/Director), Toshifumi  
Shibuya (Senior Vice-President), and Yhasuhiro Tsuji  
(Senior Vice-President /Director)

**COMPANY QUALIFIER(S):** Jose Fabregas

**COMPANY EMAIL ADDRESS:** gino.antoniello@sumitomocorp.com

**COMPANY STREET ADDRESS:** 600 Third Ave

**COMPANY CITY-STATE-ZIP:** New York NY 10016-2001

**YEARS IN BUSINESS:** Since 10/29/1981

**PREVIOUS EXPERIENCE WITH  
COUNTY IN THE LAST FIVE YEARS:** None

**SUBCONTRACTORS AND  
SUPPLIERS (SECTION 10-34  
MIAMI-DADE COUNTY CODE):** First Tier Subs are: Mitsubishi Heavy Industries (MHI), L.K.  
Comstock & Company, Inc, DC Electric, Inc. (CSBE),  
High-Tech Concrete, Inc. (CSBE), D.K.G. & Associates,  
Ltd, and J.V. Electrical Services, Inc. (CSBE)

**CONSULTANT PERFORMANCE:** The Capital Improvement Information System (“CIIS”) procedures require that all Contractors and Consultants shall be evaluated for their performance at least once on each capital improvements contract or agreement and if a Department anticipates an evaluation containing an “Unresponsive” category, the Department will create an interim evaluation, if possible.

Performance on this existing contract is satisfactory so an interim evaluation was not completed.

**CONTRACT MEASURES:** The CSBE contract measures for this contract is 4.85% (\$5,530,977 prior to this change order and \$6,541,254 with the new adjusted contract amount). To date CSBE contractors have been paid \$4,367,761, which is 6.18% of what SCOA has been paid to date.

**COMPLIANCE DATA:** Small Business Development has reviewed their records and finds that there have been no violations listed against this firm on this project or any other County projects.

**DELEGATIONS OF AUTHORITY:**

The Aviation Director or designee has the authority to expend the contingency accounts, extend the contract completion time to complete any unfinished work, or reduce the scope of the project.

**CONTRACT MANAGER  
NAME/PHONE/EMAIL:**

Juan Carlos Arteaga 305-869-5694  
jcarteaga@miami-airport.com

**PROJECT MANAGER  
NAME/PHONE/EMAIL:**

John Reynolds 305-869-1218  
jreynolds@miami-airport.com

**SBD REVIEW:**

Yes

**LEGAL SUFFICIENCY:**

Yes

  
\_\_\_\_\_  
Assistant County Manager

\_\_\_\_\_  
Date



# MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

DATE: June 3, 2008

  
FROM: R. A. Cuevas, Jr.  
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(B)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved \_\_\_\_\_ Mayor

Agenda Item No. 8(A)(1)(B)

Veto \_\_\_\_\_

6-3-08

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING CHANGE ORDER MDAD-3 WITH SUMITOMO CORP. FOR NORTH TERMINAL DEVELOPMENT AUTOMATED PEOPLE MOVER SYSTEM, PROJECT NO. B702B, IN THE AMOUNT OF \$20,830,437, AND AUTHORIZING COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE SAME

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board hereby approves Change Order MDAD-3 with Sumitomo Corp., relating to North Terminal Development Automated People Mover System, Project No. B702B at Miami International Airport in substantially the form attached hereto and made a part hereof; which change order, among other items, increases the contract amount by a maximum additional amount of \$20,830,437, authorizes the County Mayor or his designee to execute same on behalf of the County.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman  
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 3<sup>rd</sup> day of June, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

DBM

Deborah Bovarnick Mastin

LD

# Memorandum



**Date:** November 7, 2007

**To:** Honorable Carlos Alvarez  
Mayor

**From:** George M. Burgess  
County Manager 

**Subject:** Status of the North Terminal Development Program

This is to provide an update on the North Terminal Development Program (NTD) at Miami International Airport (MIA). As you know, the NTD comprises the majority of the \$6.2 billion Capital Improvement Program (CIP) that was approved by the Board on March 22, 2007. Aviation Director Jose Abreu and I pledged at the time that we would strive to stay within the \$6.2 billion budget and would report to you if there is a risk of exceeding that budget. We have made this same pledge to the financial rating agencies and take this commitment very seriously. In that spirit, I would like to give you the good news on the progress of the NTD and also share with you the challenges the program is experiencing relative to the approved budget. As is to be expected with any major capital project, unforeseen conditions have surfaced that are impacting project allowance accounts. While our projections indicate that the overall NTD program contingency has the capacity to cover the expenses known to us at this time, there is a risk that existing allowance accounts could be depleted. These risks are detailed below.

Director Abreu reports that the North Terminal Development Program is progressing well, perhaps like never before. I believe the restructured management team, the renegotiated POJV contract and aggressive design and construction change control procedures have placed us in a solid position to finally move forward to the successful completion of the program. In addition to the restructured management team, a NTD Steering Committee has been formed to make all major decisions relating to the NTD program. The Committee consists of the Aviation Director, his two Deputy Directors and the NTD Program Director, with the bond engineer HNTB acting as an advisor. With the direct involvement of the Director and senior Miami-Dade Aviation Department (MDAD) management and the strong project controls, I am confident that this project is now on the right track.

The results are already being seen – construction is progressing at an unprecedented pace; the work site is well organized; and project and safety controls are evident. MDAD is now paying out work in progress at nearly \$15 million per month and this will increase substantially next year. The number of construction workers has increased to over 600 and will also increase substantially in 2008.

The NTD program has achieved the following construction milestones: the A-B shell structure piling and foundation work has been completed; work is proceeding with columns and first floor structure; concourse B-C and concourse C-D Infill finishes are now under construction; Siemens started work on the Baggage Handling System; and the Automated People Mover (APM) Maintenance Facility was recently completed and turned over to the APM contractor, Sumitomo Corporation of America (SCOA).

The NTD program is also facing challenges. The construction activity is running into unforeseen conditions at the rate of \$1-2 million per month. This is eroding the \$49 million program allowance account at an unanticipated speed. The major contributing factors include the unprecedented increases in POJV's construction payment and performance bond, from an estimated \$4 million to more than \$12 million. At the time of contract award, State legislation was pending and negotiations with the insurers were in progress. Completing the work left unfinished by the previous contractor has also had a major impact on allowance accounts. The C-D Infill completion work will cost over twice the anticipated budget of \$14 million. In addition, POJV's Managing General Contractor Construction Schedule has not yet been approved. An initial submittal was late and not sufficiently detailed as required by the contract. The impacts and possible delay mitigation measures that may be required will not be known until the schedule obtains final approval, which is expected by the end of the year.

As I reported last May when the POJV contract amendment was approved, the NTD program budget is very tight. It provides a 5.7% (\$49 million) allowance for unforeseen conditions. This is less than the standard County practice of 10% and the industry standard of 15 to 20% typically used for large scale terminal building remodeling projects. Such projects have a higher allowance to account for logistics, age of the building and infrastructure, unforeseen conditions and airport and construction operational impacts that are beyond the norm. MDAD advises that at this time, \$24 million of the \$49 million allowance account for unforeseen conditions has been approved or identified mainly for the reasons stated above. That leaves approximately \$25 million remaining in the unforeseen conditions allowance account for approximately \$930 million of construction - a 2.7% allowance. The previous contractor completion work is also funded from this account. Although the balance of this allowance account is worrisome, the overall program budget contingency can absorb the known overages.

MDAD reports two other major challenges to the NTD program budget, which they are currently negotiating with the contractors of the Automated People Mover (APM) and the Baggage Handling System (BHS):

**Automated People Mover (APM) - Sumitomo Corporation of America (SCOA)**

The contract for the NTD APM system (Project No. B702) with Sumitomo Corporation of America (SCOA) was assigned to Miami-Dade County in June 2005 pursuant to the Fourth Amendment to the Lease, Construction and Financing Agreement with American Airlines (American). The original contract substantial completion date was June 1, 2004, and the original contract value was \$86,588,000. Later changes made by American eliminating two APM cars and other minor adjustments reduced the contract to \$83,940,760. In August 2003, American extended the substantial completion date to November 1, 2006, by its Change Order No. MIA702R-2. This change order was a time extension only, and Sumitomo reserved its rights to claims for cost impacts resulting from changes to the terminal availability dates.

Sumitomo's delay cost impact through May 31, 2006, was settled by the County in the amount of \$7,600,000 and approved by the Board on September 28, 2006, through MDAD Change Order MDAD-2 to Project No. B-702. This Change Order also established an allowance account in the estimated amount of \$22,500,000 for cost impacts from May 31, 2006, to the then projected substantial completion date of October 31, 2009. This brings the current contract value for this project to \$114,040,760. The total amount paid to date is \$67,459,483 leaving a remaining balance to complete of \$46,581,277.

In February 2007, SCOA submitted to MDAD a proposal for cost impacts resulting from the extended project substantial completion date in the amount of \$36,112,689 (6/1/06-10/31/09). These costs are attributed to escalation and increases in the cost and availability of materials. In addition, SCOA identified several necessary items that were not included in their contract. In September 2007, SCOA provided MDAD with a Rough Order of Magnitude (ROM) of approximately \$8,000,000 for these excluded items. Currently, the NTD Program Master Schedule projects a substantial completion date for the APM Project of November 15, 2010, more than one year later than the October 31, 2009, date established in MDAD Change Order MDAD-2. This is estimated to have an additional cost impact of \$5,500,000 (11/1/09-11/15/10). Therefore, the projected impact to the APM Project is estimated at \$49,612,689. Subtracting the general allowance account of \$22,500,000 leaves a potential deficit of \$27,112,689. It should be emphasized that these numbers are estimates only as negotiations with Sumitomo are ongoing.

\$36,112,689	SCOA claim for delay impact 6/1/06 – 10/31/09
+ 8,000,000	SCOA Rough Order of Magnitude for excluded items
+ 5,500,000	MDAD estimate for delay impact 11/1/09 – 11/15/10
\$49,612,689	Total potential increase from delay and excluded items
- 22,500,000	Change Order MDAD-2 allowance account for cost impacts 5/31/06 – 10/31/09
\$27,112,689	Potential Budget Shortfall

**Baggage Handling System (BHS) - Siemens Airport Logistics**

On May 15, 2002 American Airlines and Siemens Airport Logistics entered into a Contract Agreement to provide all engineering, manufacturing and installation of a Gate Delivery Baggage Handling System (BHS) for the NTD Project. When completed, the new NTD Baggage System will total over nine (9) miles of installed conveyors. The original Contract amount was \$97,648,670.00 and had a completion date of May 25, 2006.

Subsequent to the initial Contract Agreement, AA undertook various NTD Program cost reduction efforts, unforeseen conditions/circumstances were encountered and new homeland security requirements were mandated as a result of the 9/11. American increased the contract amount accordingly to \$104,694,804. On November 22, 2005 the Siemens Airport Logistics BHS Contract was assigned to Miami-Dade County pursuant to the Fourth Amendment to the Lease, Construction and Finance Agreement between American Airlines and Miami-Dade County. A Project Specific General Allowance Account in the amount of \$6,500,000 and a partial claim settlement with Siemens in the amount of \$999,900 was added via Change Orders to the Contract resulting in the adjusted current contract amount of \$112,194,704.

On August 8, 2007 Siemens submitted a proposal to complete the remaining work in the amount of \$51,818,670.00 as an additional cost to complete (escalation) the engineering, manufacturing and installation of the Baggage Handling System based on the current NTD Overall Program Schedule with a completion date of February 28, 2011 (Approximately 4.75 years beyond the original contract completion date of May 25, 2006).

The installation of the BHS Project is approximately 33% complete; Siemens has been paid \$37,206,386 to date; and the current balance to complete the project is \$74,988,318. At this time, the estimated cost to complete the BHS work including the escalation cost is \$126,806,988, representing a cost increase of 69% over a period of 4.7 years beyond the original Contract Completion Date.

The magnitude of the Siemens Claim was unanticipated and greatly exceeds the Program's current BHS budget allocation. The NTD Program's cost estimators and claim specialists - US Cost and Alpha Corporation - are reviewing, analyzing and validating the merits of the claim in preparation for negotiations with Siemens.

\$ 97,648,670	Original Contract Amount
+ 7,046,134	Department of Homeland Security Requirements
<u>\$104,694,804</u>	New Contract Amount
+ 6,500,000	General Allowance Account
+ 999,900	Partial Claim Settlement
<u>\$112,194,704</u>	Total
+ 51,818,670	Siemen's Proposal to Complete
<u>\$164,013,374</u>	Total
- 37,206,386	Paid to Siemens
<u>\$126,806,988</u>	Potential Cost to Complete
- 74,988,318	Original Contract Unpaid Balance
<u>\$ 51,818,670</u>	Potential Budget Shortfall

MDAD is hopeful that negotiations with Sumitomo and Siemens will result in final settlements that are closer to the budgeted amounts. **Again, the overall NTD program contingency has capacity to cover these unanticipated expenses. However, in the spirit of full disclosure, we wanted to bring this matter to your attention at this time.**

**Potential New Revenues**

As you know, following 9/11, the Aviation Transportation and Security Act mandated electronic screening of 100% of checked bags. The Transportation Security Administration has determined that an in-line Explosive Detection System (EDS) is the only feasible way of accomplishing this mandate in

the North Terminal. Unfortunately, this mandate has not been funded by the federal government. The estimated cost of the NTD in-line EDS project is \$82 million; the 75% federal share is \$61 million. These funds could offset any additional capital costs. I am encouraged by reports of recent meetings with senior TSA officials in Washington, the 9/11 bill recently passed by Congress and recently-passed and pending homeland security appropriations bills, which gives us hope that a funding agreement with TSA may be possible in the future. The receipt of federal funds is more critical now than ever to maintain an adequate NTD program contingency going forward.

Another potential new revenue source is Passenger Facility Charges (PFC). The House version of the Federal Aviation Administration reauthorization bill currently pending before Congress proposes a PFC increase from the current \$4.50 to \$7. Director Abreu informs me that the airport industry is strongly supporting this provision and believes that it has a good possibility of passage. MIA currently imposes a \$4.50 PFC. Should this PFC increase remain in the final bill, the MDAD would start the formal application process to increase the PFC to \$7 and recommend that the Board impose the additional charge, which would generate a net amount of approximately \$29.7 million. Additional PFC revenues could be used to either offset additional capital costs or pay down additional debt service.

Additionally, MDAD is pursuing other new non-aeronautical revenue sources such as rock mining operations at the former Opa-locka West Airport and aggressive leasing packages of our assets, which will be used to pay down debt service. Again, we are striving to stay within the \$6.2 billion CIP budget, but it is reassuring to have these potential, new revenue sources to offset any additional capital costs and/or pay down any additional debt. The commitment stands that no additional debt service will be charged to the airlines in the foreseeable future.

In summary, the NTD program is facing major challenges but at the same time the program is progressing well, having recently achieved significant milestones. MDAD will continue to manage the risks and exercise strong project controls. Director Abreu and I will maintain day-to-day management oversight. The efficiencies in this state-of-the-art terminal will allow American Airlines to continue to build upon its Miami hub and expand air service, solidifying MIA's status as the Gateway to the Americas. Additionally, by consolidating American's operations in the North Terminal, the Central terminal will be available to low cost carriers, of which we are pursuing netting strong interest, that will bring new service to MIA. Operational efficiency will be enhanced for all air carriers, as the terminal and airfield will be balanced, allowing all airlines to operate more efficiently. With your continued support, we are confident that this project will be successfully delivered and be a source of pride for our community for years to come.

I will continue to provide you with regular updates on this critical project.

cc: Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners  
Ysela Llort, Assistant County Manager  
José Abreu, Aviation Director  
Robert A. Cuevas, County Attorney  
Hugo Benitez, Assistant County Attorney

# Memorandum



**Date:** April 21, 2008

**To:** Jose Abreu, Director  
Miami-Dade Aviation Department

**From:** Penelope Townsley, Director   
Department of Small Business Development

**Subject:** Project No. B702B, MIA 702R - MIA North Terminal APM System - Review of Change Order 3 of 3

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The Department of Small Business Development (SBD) has reviewed the subject project for compliance with the Community Small Business Enterprise (CSBE) Program § 10-33.05 et seq., Code of Miami-Dade County and the Responsible Wages and Benefits § 2-11.16 program requirements.

Sumitomo Corporation of America Company has completed 81% of the project and achieved CSBE utilization of 4.05%. D.C. Electric, Inc, High Tech Concrete, Inc, D.K.G. & Associates, Ltd., and J.V. Electrical Services, Inc. are the CSBE's being utilized to meet the 4.85% goal. This change order increases the contract amount by \$20,830,437.00, of which 75% is attributed to the extended general conditions and 25% to the escalation on material and labor costs, resulting in an increase to the CSBE participation in the amount of \$526,000.00. The goal does not apply to the entire change order. The goal applies to \$526,000.00 of the \$20,830,437.00 of which \$388,000.00 is for CSBE material and labor escalation and \$138,000.00 for CSBE D.C. Electrics general conditions.

Sumitomo of America and its subcontractors are in compliance with the wage requirements at this time.

- c. Alice Hidalgo-Gato, CRC Division Director, SBD
- Betty Alexander, BPD Division Director, SBD
- Patrice King, Administrative Officer, SBD



**MIAMI - DADE COUNTY  
CHANGE ORDER TO ORIGINAL CONTRACT**

CHANGE ORDER NO. MDAD-3

PROJECT NO. B702B

DATE: 03/17/08

PROJECT NAME: MIA North Terminal Automated People Mover System -  
Supply/Installation Contract

TO CONTRACTOR: Sumitomo Corporation of America

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**ITEM 1 – NEGOTIATED LUMP SUM SETTLEMENT:** Increase the Contract Sum to pay the lump sum settlement to achieve the scheduled Substantial Completion date of October 31, 2009 as described in this item and modifies the provisions relating to Substantial Completion, Liquidated Damages, Schedule of Work Area Availability Dates, and Warranty.

**1.1 NEGOTIATED LUMP SUM SETTLEMENT**

This Item No. 1 and Work Order No. 1-27 settle all damages from June 1, 2006 through the scheduled Substantial Completion Date of October 31, 2009 for extended project management and construction management for the period between May 31, 2006 and the extended substantial completion date of October 31, 2009 and pays for all costs related to the events or delays to date and escalation of labor and materials and any other contract obligations and impacts through the scheduled Substantial Completion date of October 31, 2009.

1.2 Delete the existing Section 6.4 of the General Provisions and substitute the following:

"Substantial Completion" shall be defined to include all work (exclusive of minor items of unfinished work which do not preclude beneficial use of the premises) required to complete the Work set forth in the Contract Documents and the conditions specified in SP Section 8.7.1. The scheduled date of Substantial Completion is October 31, 2009. The Contractor shall have a Grace Period during which liquidated damages will not be assessed against Contractor with a maximum 6 month duration composed of: A) a Technical Grace Period (TGP) due to circumstances associated with the extended duration of the Project and the related prolonged equipment storage of no more than 4 months after the scheduled date of Substantial Completion during which the Contractor shall be compensated for actual and demonstrated PM/CM and associated costs plus markup per the Contract; and B) a Commercial Grace Period (CGP) of no more than 2 months after the (TGP) within which to complete all remaining Work required by the Contract Documents, except the work specified in SP Section 8.7.2 as conditions for Final Acceptance, the completion of all such said Work (referred to here as "Final Completion"). The CGP shall be the period where the Contractor shall NOT be compensated for PM/CM and associated costs for the CGP period. The Contractor agrees to complete the APM system within the 6 month Grace Period from the scheduled date of Substantial Completion. If the scheduled date of Substantial Completion (without regard to grace period) is delayed beyond October 31, 2009 due to action or inaction occurring hereafter by any cause(s) beyond the control of Contractor, then the Contract Substantial Completion date shall be extended and the Contractor may seek additional compensation pursuant to the contract. Prior to the Contractor requesting the County and the APM Consultant to perform the Substantial Completion review, the Contractor shall inspect the Project and prepare a list of all deficient and unfinished

Change Order No. MDAD-3  
Project No. B702B  
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**MIAMI - DADE COUNTY  
CHANGE ORDER TO ORIGINAL CONTRACT**

CHANGE ORDER NO. MDAD-3

PROJECT NO. B702B

DATE: 03/17/08

PROJECT NAME: MIA North Terminal Automated People Mover System -  
Supply/Installation Contract

TO CONTRACTOR: Sumitomo Corporation of America

work. The list shall be submitted to the APM Consultant for review. At Substantial Completion, a Final Punch List will be prepared and provided to the Contractor in accordance with the contract. The Final Punch List will contain a listing of all known remaining incomplete items of the Work, but is not to be considered by the Contractor as a waiver by the County of the Contractor's obligation to complete all the Work in complete compliance with the Contract Documents. Time is of the essence in the performance of the Work. Eligible delay shall be determined by critical path analysis supported by time impact analysis (TIA) prepared by the Contractor and evaluated and approved by the Owner.

1.3 Change the Milestone Completion and Completion Date in Exhibit C of the General Provisions to the following: October 31, 2010

1.4 PROJECT ACCESS DATES. Table 4.2-1 entitled "Schedule of Work Area Availability Dates" of the Special Provisions is changed to:

Work Area	Description of Work Area	Availability Date (mo/year)
Staging Area	Staging Area	6 months prior to start of APM Construction Activities on site
1	Station "D" Phase 1 and Phase 2	Partial Access Provided as modified below:
	Station "D" Platform Level Soffit Framing	September 1, 2008
2	Stations C and D and associated equipment rooms	No less than 27 months prior to Substantial Completion
	Station "C" Platform Level Electrical Conduit	June 1, 2008
	Station "C" Platform Level Soffit Framing	September 1, 2008
3	"B-C" Infill	Partial Access Provided as Modified below:
	Area 4 - B-C Infill	No less than 20 months prior to Substantial Completion - Partial Access Provided
4	Station "A", "B" and "A-B" Infill	Modified as Follows:
	Station "A" and "B" Platform Level - Electrical Conduit	August 31, 2008
	Station "A" and "B" Platform Level - Soffit Framing	December 1, 2008
	Guideway from Column Line 82 to Column Line 106	No less than 16 months prior to Substantial Completion
	Remainder of Area 5 Guideway, Station A & B Platforms & Equipment Rooms	No less than 14 months prior to Substantial Completion
5	Substation 1	No less than 18 months prior to Substantial Completion

Change Order No. MDAD-3

Project No. B702B

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**MIAMI - DADE COUNTY  
CHANGE ORDER TO ORIGINAL CONTRACT**

CHANGE ORDER NO. MDAD-3

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DATE: 03/17/08

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Supply/Installation Contract

TO CONTRACTOR: Sumitomo Corporation of America

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1.5 The County waives its right to warranty provisions of Articles 10.2, 10.3, and 10.4 of the Special Provisions of the Phase 1 Contract except for any item purchased by the Contractor June 1, 2006 or later. This Change Order does not change any of the warranty of construction requirements provided by Article 10.5 of the Special Provisions of the Phase 1 Contract.

1.6 When authorized in advance by Work Order, it is intended that the following items will be paid from the existing General Allowance Account:

- a. any PM/CM costs during the TGP Period, any equipment and component failures resulting from long term storage and/or whose warranty has expired; future hurricane damage and hurricane preparation costs; Interim APM System maintenance costs after substantial completion and prior to opening of the APM system to the public and start of the Operations and Maintenance Contract; and, unforeseen conditions that may further be encountered during the course of construction.
- b. the payment of increased bond costs, without markup, based on the Adjusted Contract Amount and upon evidence of payment of said costs by the Contractor, provided however that all previously paid bond costs under work orders previously issued shall be credited from the Contractor's documented bond costs.

1.7 Within 30 days of full execution of this Change Order, the contractor shall submit, for the APM Consultant's review and approval, a Revised Preliminary Schedule of Values (RPSOV). The contractor shall also submit a Final Revised Schedule of Values (FRSOV) within 30 days following receipt of the APM Consultant's comments on the preliminary schedule of values. The Contractor shall use the Approved RPSOV for invoicing while the FRSOV is being negotiated; upon approval of the FRSOV any discrepancies contained in the interim invoices shall be adjusted accordingly. Payment of this Item No. 1 Negotiated Lump Sum Settlement shall be in accordance with the Approved RPSOV and Approved FRSOV.

**ITEM 2- MODIFY CONTRACT TERMS AND CONDITIONS BY ELIMINATING TIME AND MATERIAL  
PAYMENT LIMITATIONS OF GENERAL ALLOWANCE ACCOUNT ESTABLISHED IN CHANGE  
ORDER NO. 2** **\$ 0.00**

Item No. 1 of Change Order No. 2 provided a mechanism for MDAD to pay SCOA its actual necessary and demonstrated costs, plus a reasonable markup consistent with the contract for recovery of costs to be incurred subsequent to May 31, 2006 through the Substantial Completion Date of October 31, 2009. This Item

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**MIAMI - DADE COUNTY  
CHANGE ORDER TO ORIGINAL CONTRACT**

CHANGE ORDER NO. MDAD-3

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Supply/Installation Contract

TO CONTRACTOR: Sumitomo Corporation of America

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No. 2 eliminates the limitation of only this payment method and adds lump sum as an additional payment method.

**ITEM 3 - VEHICLE CONSUMABLES REPLACEMENT (LUMP SUM) \$ 1,417,656**

All labor costs necessary for the complete inspection, light overhaul (tune-up), and replacement of necessary consumable parts of the twenty (20) Cars. This work will be conducted on-site after the completion of M&SF as more completely described in SCOA-LE-L-1889A. This task is expected to take ten (10) months (2 cars per month) to complete and will be performed at the heavy maintenance track at the M&SF.

**ITEM 4 - ATC EQUIPMENT INSPECTION (LUMP SUM) \$412,781**

This item provides for all of the labor costs for the manufacturer of the ATC Equipment to perform the pre-installation mechanical, functional, and static inspection of the ATC Equipment in order to minimize equipment failures attributable to its long term equipment storage at Miami International Airport as more completely described in SCOA-LE-L1873 – Tab #1 (MAPM-SCOA-0058). This activity does not extend or revive the warranty period. The cost to replace any equipment and component failures discovered during this process will be addressed by a work order from the General Allowance Account.

**RELEASE OF CLAIM**

Item Number 1 of this Change Order The settlement contemplates a lump sum price based on stated conditions. This does not waive any claims that may arise after execution of this Change Order based on future activity by Owner. In consideration of and conditional upon payment to the Contractor by Miami-Dade County (hereinafter "County") of the amount set forth in Item 1 of this Change Order, the Contractor releases County, its officers, employees and agents from, and waives and relinquishes, any and all claims, disputes, and causes of action of any kind, inclusive of claims at law or equity, or for direct or indirect costs, or for time it has or may have against the County, its officers, employees and agents for all costs associated with Item No. 1, 1 through 8 of the Release of Claim in Change Order No. 2, and for all costs incurred after May 31, 2006 through the Substantial Completion date of October 31, 2009 in accordance herewith. Contractor accepts Item 1 of this Change Order as full accord and satisfaction of all monies due it under or in connection with Item No. 1, 1 through 8 of the Release of Claim in Change Order No. 2, and for all costs incurred after May 31, 2006 through the Substantial Completion date of October 31, 2009 as provided in this Change Order. Should the County not meet any of the access dates in Table 4-2.1 of this change order or otherwise cause a delay after execution of this Change Order by the Contractor, this release does not release any valid claims resulting from

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Project No. B702B  
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**MIAMI - DADE COUNTY  
CHANGE ORDER TO ORIGINAL CONTRACT**

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PROJECT NO. B702B

DATE: 03/17/08

PROJECT NAME: MIA North Terminal Automated People Mover System -  
Supply/Installation Contract

TO CONTRACTOR: Sumitomo Corporation of America

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any lack of access as stated in this change order or subsequent delay. If the scheduled date of Substantial Completion (without regard to grace period) is delayed beyond October 31, 2009 due to action or inaction occurring hereafter by any cause(s) beyond the control of Contractor, then the Contract Substantial Completion date shall be extended and the Contractor may seek additional compensation pursuant to the contract.

Item No. 2 of this Change Order. The Contractor acknowledges that Item No. 2 creates an additional payment mechanism for the General Allowance Account and the Contractor agrees it is not grounds for entitlement for additional compensation.

Item Numbers 3 and 4 of this Change Order In consideration of and conditional upon payment to Contractor by Miami-Dade County (hereinafter "County") of the amounts set forth in Items 3 and 4 of this Change Order, the Contractor releases the County, its officers, employees and agents from, and waives and relinquishes, any and all claims, disputes or causes of action of any kind, inclusive of claims at law or equity, or for direct or indirect costs, or for time it has or may have against the County, its officers, employees and agents for all events arising out of or in connection with the Contract. The Contractor accepts Items 3 and 4 of this Change Order as full accord and satisfaction of all time and monies due it under or in connection with the lump sum provisions of the Change Order. Should any Owner delay or interference occurring subsequent to the execution of this Change Order by the Contractor cause increased costs, such potential future claims are not waived.

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Chubb  
Surety

POWER  
OF  
ATTORNEY

Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company

Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Jeannette Porri and Stacy Rivera of Farmington, Connecticut

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 4th day of October, 2005

Kenneth C. Wendel, Assistant Secretary

John P. Smith, Vice President

STATE OF NEW JERSEY  
County of Somerset ss.

On this 4th day of October, 2005 before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with John P. Smith, and knows him to be Vice President of said Companies; and that the signature of John P. Smith, subscribed to said Power of Attorney is in the genuine handwriting of John P. Smith, and was thereto subscribed by authority of said By-Laws and in deponent's presence.



KAREN A. EDER  
Notary Public, State of New Jersey  
No. 2231647  
Commission Expires Oct. 28, 2009

Notary Public

CERTIFICATION

Extract from the By-Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this  
March 17, 2008



Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

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FLORIDA DEPARTMENT OF INSURANCE  
ANETT ELISABETH CARDINALE

License Number E012336

IS LICENSED TO TRANSACT THE FOLLOWING CLASSES OF INSURANCE

PROPERTY-CASUALTY



This Licensee must have an active appointment in the State of Florida to transact business in this State. See Florida Statutes, Chapter 626, for additional requirements.