

Memorandum



Date: July 17, 2008

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

Agenda Item No. 8(O)(1)(E)

From: George M. Burgess
County Manager

Subject: Rejection of All Proposals Received for RFP 558: Metrorail HVAC Overhaul. Award of Contract 558A for Overhaul of Metrorail HVAC and Contract 558B for Replacement of Metromover HVAC.

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) reject all proposals received for the portion of the subject solicitation that would provide Miami-Dade Transit with Heating Ventilation Air Conditioning (HVAC) overhaul services for its fleet of 136 heavy Metrorail vehicles. It is further recommended that the Board waive the competitive process and the protest process in awarding Contract 558A for HVAC overhaul services for 68 of the 136 Metrorail vehicles, and award Contract 558B which resulted from an open and competitive Request For Proposals (RFP) process, for HVAC replacement services for 17 Metromover vehicles to Vapor Stone Rail Systems (VSRS), a division of Westinghouse Air Brake Technologies Corporation (WABTEC).

CONTRACT NOS.: 558A & 558B

CONTRACT TITLE: Metrorail HVAC Overhaul & Metromover HVAC Replacement

DESCRIPTION: These contracts will provide for the overhaul of the HVAC systems for 68 of the County's 136 Metrorail cars, with the option to overhaul the remaining 68 cars when County funds become available; and, the replacement of the HVAC systems for 17 of the County's Metromover cars.

TERM: Twenty-four months for Contract 558A to overhaul the Metrorail vehicle HVAC systems. Thirty-two months for Contract 558B to replace the HVAC systems on Metromover vehicles.

CONTRACT AMOUNTS: Contract 558A - \$3,650,976 for work on the initial 68 Metrorail vehicles. The County reserves the right to purchase HVAC overhaul services for up to an additional 68 Metrorail vehicles. The value of this "Option" is \$3,650,975 (or \$53,691 per vehicle), for a potential contract total of \$7,301,951.

Contract 558B - \$1,600,000 for replacement of HVAC systems on 17 Metromover vehicles.

USING/MANAGING AGENCY: Miami-Dade Transit

FUNDING SOURCE:

100% Charter County Transit System Surtax (Surtax)

On March 26, 2008, an amendment for the purchase of new Phase 2 Metromover vehicles was approved by the Citizens' Independent Transportation Trust (CITT) through Resolution R08-025. Subsequently, the Board of County Commission (Board) approved the Metromover amendment on April 8, 2008 (R-486-08). This amendment included the cost for a reliability campaign, inclusive of HVAC systems, for the Phase 2 vehicles.

On May 6, 2008, the Board approved an amendment for new Metrorail vehicles (R-488-08). This amendment also included the cost for a reliability campaign for the fleet. Prior to the Board's approval, the CITT approved this amendment on April 14, 2008 (R-08-027).

Since the Metromover (Phase 2) and Metrorail vehicles are not scheduled to arrive until 2010 and 2013, respectively, when the amendments were presented to both the Board and the CITT, the department indicated that interim maintenance would be required for both sets of vehicles.

METHOD OF AWARD:

An open, competitive Request For Proposals (RFP) was issued. The County requested offers for overhaul of the HVAC Systems for 136 Metrorail vehicles, and replacement of the HVAC Systems for 17 Metromover vehicles. Award of Contract 558A for the Metrorail vehicles is being recommended as a bid waiver because the original RFP solicitation sought HVAC overhaul services for all 136 Metrorail vehicles; however, the amount of available PTP funding only allows for overhaul of 68 of the 136 Metrorail vehicles. The contract includes an option to overhaul the HVAC Systems for the remaining 68 Metrorail vehicles if funds become available within the contract period. The bid waiver recommendation for the Metrorail Vehicle HVAC System overhaul (Contract 558A) results from the difference in the number of cars to receive services reflected in the solicitation when compared to the actual number of cars to receive services as noted in the award recommendation. Award of Contract 558B (HVAC replacement for Metromover vehicles) is recommended as a result of the open, competitive process.

VENDORS RECOMMENDED
FOR AWARD:

Vapor Stone Rail Systems, a division of WABTEC (non-local vendor)
72 Arizona Avenue
Plattsburg, New York 12903

Principal: Gianni Guerrera, Director of Aftermarket Sales

**VENDORS NOT RECOMMENDED
FOR AWARD:**

Westcode, Inc. (non-local vendor)
137 Enterprise Drive
Westchester, PA 19380
Principal: Michael von Lange, V.P. Sales & Marketing
(Proposed on the Metrorail vehicles only.)

CONTRACT MEASURES:

The Review Committee of March 7, 2007, recommended a Small Business Enterprise (SBE) selection factor for this contract.

LIVING WAGE:

The services required are not covered under the Living Wage Ordinance.

USER ACCESS PROGRAM:

The contract includes the 2% User Access Program provision. The program discount will be collected.

LOCAL PREFERENCE:

Applied in accordance with applicable ordinances.

PERFORMANCE DATA:

There are no performance issues with this firm.

COMPLIANCE DATA:

There are no compliance issues with this firm.

PROJECT MANAGERS:

Ivor Myers, Acting Chief, Metrorail
Genaro Alvarez, Chief Supervisor, Metromover

**ESTIMATED CONTRACT
COMMENCEMENT DATE:**

Ten days after date adopted by the Board of County Commissioners, unless vetoed by the Mayor and approval by the Citizens' Independent Transportation Trust (CITT).

DELEGATED AUTHORITY:

If this item is approved, the County Mayor or his designee will have the authority to exercise, at his discretion, subsequent options-to-renew and other extensions in accordance with the terms and conditions of the contract.

BACKGROUND

Miami-Dade's current fleet of 136 Metrorail vehicles was placed in service in 1984. The mid-life rehabilitation for the fleet was not performed due to funding constraints. The County anticipated that the fleet rehabilitation would replace the HVAC systems; however, the County rejected proposals for that solicitation and elected to purchase new vehicles. The HVAC systems on the Metrorail vehicles continue to require significant repair. This contract will allow for the HVAC systems in 68 Metrorail vehicles to be overhauled. The overhaul would allow effective operation of the HVAC systems for five years. The HVAC overhaul work needed on the Metrorail vehicles is essential to maintaining the fleet in workable and safe condition, and to ensure passenger comfort.

The Metromover fleet consists of 29 vehicles. Originally, 12 (Phase I) Metromover vehicles were placed in service in 1986. These vehicles have reached the end of their useful life expectancy. The remaining 17 (Phase II) vehicles were placed in service in 1994 with the opening of the Omni and Brickell extensions. These vehicles have a life expectancy of 20 years and have not undergone a comprehensive mid-life rehabilitation. A mid-life rehabilitation recommended by the Federal Transit Administration (FTA) was not performed due to funding constraints. A mileage report for January 1, 2008 shows that the 12 Phase I Mover vehicles accumulated an average of 611,681 miles over its life of 22 years, while the 17 Phase II vehicles had accumulated 559,681 miles over a life of 13 years. The Phase II vehicles are averaging 43,052 miles versus 27,803 miles per year for Phase I vehicles. Therefore, the wear and tear on the Phase II vehicles will result in a shorter life expectancy due to more frequent use and faster deterioration. In addition, the Mover ridership has increased about 70% since the Surtax was passed. This has led to more use of the 17 vehicles at higher loadings. The need to replace the HVAC Systems on the 17 Metromover vehicles is at a critical point.

The County issued a solicitation for the overhaul of the HVAC systems for County's 136 Metrorail vehicles and replacement of the HVAC Systems for the 17 Metromover vehicles installed in 1994. Proposers were able to submit offers on either the HVAC overhaul for the Metrorail vehicles, the HVAC replacement for the Metromover vehicles, or both. Proposals were received from two companies (Vapor Stone Rail Systems (VSRS), a division of WABTEC and Westcode, Inc.). Both companies proposed on the Metrorail vehicles. Only one company (VSRS) proposed on the Metromover vehicles. The proposals were reviewed and ranked based upon the requirements of the Request For Proposals. The proposal submitted by Vapor Stone Rail Systems (VSRS) for overhaul of the HVAC Systems for Metrorail vehicles was ranked highest based on technical and price evaluation, consistent with the evaluation criteria in the solicitation. Only VSRS proposed for the HVAC system replacement for the Metromover vehicles.

Sufficient funding to overhaul the HVAC systems for all 136 Metrorail vehicles is not available. The original Metrorail HVAC estimate was for \$4.1 million; the current bid price is \$7.3 million. As a result, the recommendation for award for the overhauling the HVAC systems on 68 of the 136 Metrorail vehicles (Contract 558A) is being made as a bid waiver because the original solicitation was advertised for the overhauling of all 136 Metrorail vehicles. The County may exercise an option to overhaul the HVAC systems on the remaining 68 Metrorail vehicles. The price negotiated for the replacement of the HVAC systems for 17 Metromover vehicles is consistent with the engineering estimate developed by MDT for the project. For the Metrorail vehicles, MDT's Maintenance Control has identified the chronic 68 which would be repaired under this contract based on repair history. The balance of the fleet remains in a good operating condition, due to routine in-house overhauls and will be addressed as needed. Award of this contract will allow MDT to address existing HVAC problems on 68 of the Metrorail vehicles and on the 17 Metromover vehicles. HVAC replacement for the 17 Metromover vehicles is requested under contract 558B. The County is receiving 12 new Metromover vehicles under Contract SS1908-0/7 approved in January 2006 that will replace the initial 12 Metromover (Phase I) vehicles that were placed in service in 1986.


Assistant County Manager



MEMORANDUM
(Revised)

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

DATE: July 17, 2008

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

SUBJECT: Agenda Item No. 8(O)(1)(E)

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
Veto _____
Override _____

Agenda Item No. 8(O)(1)(E)
7-17-08

RESOLUTION NO. _____

RESOLUTION REJECTING ALL PROPOSALS FOR THE METRORAIL PORTION OF WORK OF RFP NO. 558, WAIVING COMPETITIVE BID PROCEDURES PURSUANT TO SECTION 4.03(D) OF THE HOME RULE CHARTER AND SECTION 2-8.1 OF THE COUNTY CODE BY TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT, AND THE REQUIREMENTS OF SECTION 2-8.4 OF THE MIAMI-DADE COUNTY CODE PERTAINING TO BID PROTEST PROCEDURES BY TWO-THIRD VOTE OF THE MEMBERS PRESENT; AUTHORIZING AWARD OF CONTRACT 558A TO VAPOR STONE RAIL SYSTEMS (VSRS), A DIVISION OF WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION FOR METRORAIL HVAC OVERHAUL SERVICES AND CONTRACT 558B, WHICH RESULTED FROM AN OPEN AND COMPETITIVE REQUEST FOR PROPOSALS, FOR METROMOVER HVAC REPLACEMENT SERVICES, AUTHORIZING MAYOR OR HIS DESIGNEE TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION, OPTIONS AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN

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:

Section 1. This Board finds it in the best interest of the County to waive competitive bid procedures pursuant to Section 4.03(D) of the Home Rule Charter and Section 2-8.1 of the County Code by two-third (2/3) vote of the Board members present, and waive formal bid protest procedures pursuant to Section 2-8.4 of the Miami-Dade County Code by two-thirds (2/3) vote of the Board members present, and award Contract 558A to Vapor Stone Rail Systems.

Section 2. This Board awards Contract 558A to Vapor Stone Rail Systems, in substantially the form attached hereto and made part hereof, to overhaul the Heating Ventilation Air Conditioning (HVAC) systems on the Metrorail heavy rail vehicles, for and on behalf of Miami-Dade County and directs the County Manager or his designee to execute this agreement and to exercise any cancellation, options and renewal provisions and any other rights contained therein.

Section 3. This Board awards Contract 558B to Vapor Stone Rail Systems, in substantially the form attached hereto and made part hereof, to replace the Heating Ventilation Air Conditioning (HVAC) systems on 17 Metromover vehicles, for and on behalf of Miami-Dade County and directs the County Manager or his designee to execute this agreement and to exercise any cancellation, options and renewal provisions and any other rights contained therein.

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 17th day of July, 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 with the exception of those items which the attached list specifically describes as funded or potentially funded by proceeds from the Charter County Transit System Surtax. The effectiveness of those items is listed as follows: (1) 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, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final.

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.



Hugo Benitez

Contract No. 558 B

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Vapor Stone Rail Systems, a division of Westinghouse Air Brake Technologies Corp., a corporation organized and existing under the laws of the State of Delaware, having its principal office at 72 Arizona Avenue, Plattsburgh, New York, USA 12903 (hereinafter referred to as the "Contractor" or "Vapor Stone Rail Systems"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to Replace the Heating Ventilation and Air Conditioning (HVAC) systems on 17 Metromover vehicles, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 558, and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated October 4, 2007, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such HVAC overhaul service for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 558 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative designated to manage the contract.
- d) The word "Contractor" to mean Vapor Stone Rail Systems and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the project.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. 558 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on _____ and shall be for duration of up to 32 months; including a one year warranty period, for work to be completed to the County's satisfaction for the 17 Metromover vehicles. The County, at its sole discretion, reserves the right to extend this Contract for a period to cover additional work permitted under this agreement. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the Contract period. The County will notify the Contractor in writing of any extension(s). This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

a) to the Project Manager:

Miami-Dade County
Attention: Genaro "Steve" Alvarez
Phone: (305) 375-2971
Fax: (305) 375-2970

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) To the Contractor

Vapor Stone Rail Systems a division of Westinghouse Air Brake technologies
Corp.
72 Arizona Avenue
Plattsburgh, N.Y. 12903

Attention: Gianni Guerrera
Phone: (514) 335-4206
Fax: (514) 335-4231
E-mail: GGuerrera@wabtec.com

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Miami-Dade County

b) David M. Seitz, Vice President and Senior Counsel

Westinghouse Air Brake Technologies Corp.
1001 Air Brake Ave.
Wilmerding, PA 15148
Phone: 412-825-1142
Fax:
E-mail: DSeitz@wabtec.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor acknowledges that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be:

ONE MILLION SIX-HUNDRED THOUSAND DOLLARS (\$1,600,000) for work on the 17 Metromover vehicles.

This is the agreed to amount for replacement of 17 Metromover vehicle HVAC systems.

The County shall have no obligation to pay the Contractor any additional sum in excess of these amounts, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the initial term of the Contract which is solely limited to the 17 Metromover vehicles. In addition, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County once per month, upon invoices certified by the Contractor pursuant to the terms herein. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and

Miami-Dade County

not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
100 SW 1st Avenue
Miami, Florida 33128
Attention: Genaro "Steve" Álvarez

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, and agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature to the extent and arising out of or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. This indemnification shall not extend to the negligence, acts or omissions of County or third party not under the control of Vapor Stone Rail Systems.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, RFP Section, 111 N.W. 1st Street, Suite 1375, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance. Miami-Dade County requires insurance as specified herein.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single

Miami-Dade County

limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

The Contractor shall provide written notice to the County of material insurance coverage modifications and/or cancellation within thirty (30) days of the aforementioned changes.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1ST STREET
SUITE 2340
MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that

this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each

employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Manager may base this decision on such assistance as may be desirable,

including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope Of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to approve the use of any subcontractor to complete work on behalf of the Contractor for this project. All contractors used to complete work on this project must be approved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the

performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information and shall adhere to Section 28 - Confidentiality. The County shall have the right to request a copy of a subcontract for review and approval. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");

- ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;

- vii. the Contractor has failed in the representation of any warranties stated herein.

- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
 - i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprourement of Services, including procurement and administrative costs; and,
- b) such other direct damages.

The Contractor shall not be liable for indirect, incidental, consequential, punitive or special damages.

The Contractor shall remain liable for any liabilities and claims related to the Contractor's default.

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party intellectual property rights.

b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party intellectual property rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, in the course of performance or completion of, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability made against the County for infringement of patents, copyrights, service marks, trade secrets, or any other third party intellectual property rights, provided however, County:

- (i) promptly notifies Contractor of any third party claim subject to indemnification hereunder;
- (ii) works cooperatively with the Contractor in the preparation of a defense, the defense and any settlement of any such claim consistent with the laws of the State of Florida;
- (iii) gives full cooperation to Contractor for the defense of same; and
- (iv) complies with Contractor's direction to cease any use of the Work which, may be ruled by a competent and lawful party an infringement of a third party's Intellectual Property Right.

The foregoing provisions shall not apply to any infringement arising out of:

- (i) use of the Works other than in accordance with applicable documentation or instructions supplied by Contractor or for other than County's purposes as set forth in this Agreement and Scope of Work;
- (ii) (ii) any alteration, modification or revision of the Works not expressly authorized in writing by Contractor;
- (iii) (iii) County's failure to use or implement corrections or enhancements to the Works made available by Contractor;
- (iv) (iv) County's distribution, marketing, or use of the Works for the benefit of third parties;
- (v) (v) the combination of the Works with materials not supplied by Contractor; or
- (vi) (vi) information, materials or specifications provided by or on behalf of County or by a third party.

c) In case any of the Works or any portion thereof is held in any such suit to constitute infringement, Contractor shall within a reasonable time, either:

(i) secure for County the right to continue the use of such infringing item; or

(ii) replace, at Contractor's sole expense, such item with a substantially equivalent non-infringing item or modify such item so that it becomes non-infringing. In the event after reasonable efforts by the Contractor, the Contractor is unable to either procure the right to continued use of the allegedly infringing item or replace the allegedly infringing item, as provided in clauses (i) and (ii) of the immediately preceding sentence, the allegedly infringing item shall be returned to Contractor, and Contractor shall refund to County the amount paid to Contractor for such item. The County shall have such work performed by itself or others and the cost of such work shall be the responsibility of the Contractor and may be deducted from monies due, or to become due, to the Contractor under the Agreement or any other contract with the County. The County shall have the duty to mitigate damages. In the event that final payment under the Agreement has been made, the Contractor shall, within thirty (30) days of notification from the County, reimburse the County for such costs.

d) The provisions of this Article 27 state Contractor's entire liability and County's sole and exclusive remedies with respect to any infringement or claim of infringement.

e) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

f) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor (engaged by Contractor) is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

g) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 28. CONFIDENTIALITY

a) All Developed Works (excluding Contractor's pre-existing Intellectual Property) and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the

Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all county employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.
- d) Similarly, the County must protect the Contractor's information designated as confidential. The County's obligation to protect such confidential information is subject to applicable local, state, and federal law. Any compliance with, or good faith effort to comply with the Public Records Law by the County, shall not be considered a breach of this agreement.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein, but specifically excludes Contractor's pre-existing Intellectual Property.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County but specifically excludes Contractor's pre-existing Intellectual Property. (hereinafter "Computer

Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, as set forth in the Scope of Work, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- (d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County as set forth in the Scope of Work or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is

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not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

- (e) No transfer of Contractor's underlying and pre-existing Intellectual Property Rights (IPR) by Contractor to County is contemplated hereunder and shall not be deemed to have transferred unless with a written instrument of conveyance signed by both parties. Further, Contractor remains the owner of all rights, title, and interest to its intellectual property. To the extent that software is customized, if the underlying software or IPR is owned by the Contractor, the underlying software and IPR shall remain the property of the Contractor. This Section applies to any and all IPR under this Agreement and is not limited to Article 30.

- (f) Escrow Agreement: Within sixty days of Notice To Proceed, Contractor will deposit and will maintain with a mutually acceptable escrow agent, an copy of the source code belonging to the software provided to the County for use. Software source code ("the Source Code") will be in the form from which a data processing professional familiar with the software would be able, with generally available libraries and utilities, to create an executable copy of the software. In the event that the Contractor files for bankruptcy or is liquidated, dissolved or ceases to carry on business on a regular basis, or ceases to support the system, access to or a copy of the Source Code shall be made available to the County, pursuant to the terms and procedures of an agreement between the Contractor and the escrow agent. The contractor will deposit updated and modified versions of the Source Code with the escrow agent whenever such updates or modifications are incorporated into the Software for the County's use. The Contractor will pay all fees associated with the escrow of the Software. In addition, the County will sign a Source Code Use agreement which will set forth the terms and conditions pursuant to which the Source Code shall be used. Escrow Agreement contained herein as Appendix B

ARTICLE 31. BUSINESS APPLICATION AND FORMS

Business Application The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this

subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and

reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code

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pertaining to complying with the County's Domestic Leave Ordinance.

- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the

Contractor's knowledge any subcontractor or supplier to the Contractor.

- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in

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accordance with, the laws of the State of Florida.

ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 40. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County

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contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

ARTICLE 41. LETTERS OF CREDIT

The Contractor shall furnish the following: Performance Bonds or Letters of Credit (LOC) at its own expense:

(a) Performance LOC – In an amount of fifty (50) percent of the Contract Sum at its own expense;

(b)Warranty LOC – In the amount of ten (10) percent of the Contract Sum, as it may be changed, from time to time, in accordance with the Contract Documents. The Warranty LOC shall be furnished to Miami-Dade County by the Contractor upon the issuance by Miami-Dade County of the written Acceptance of the first accepted Vehicle HVAC systems overhaul. The Warranty LOC shall not limit, in any manner, the Contractor's liability or responsibility to Miami-Dade County for damages, costs, or expenses that exceed the amount covered by the Warranty LOC nor are the remedies provided by the Warranty LOC exclusive, but instead, the remedies provided thereby are in addition to any other rights and remedies provided by law or under the Contract Documents to Miami-Dade County. The Warranty LOC shall be accessible such that the County may, at its convenience, withdraw funds from the LOC in the event the Contractor fails to perform its warranty obligations in a timely manner; and

(C) Payment LOC – In the amount of \$800,000.00 at its own expense

The Bonds or LOC shall be in the form attached hereto as Exhibit 1 (Performance LOC), Exhibit 2 (Payment LOC), and Exhibit 3 (Warranty LOC) or on forms otherwise provided and approved by Miami-Dade County. Said LOC shall be drawn on a financial institution authorized to do business and with offices in the State of Florida. Provisions of the LOCs shall not limit, in any way, any liability of the Contractor to Miami-Dade County.

ARTICLE 42. ADDITIONAL FINANCIAL SECURITY

If any financial institution securing the LOC furnished in connection with the Agreement becomes unacceptable to Miami-Dade County, the Contractor shall promptly furnish additional

security acceptable to Miami-Dade County to protect the interests of Miami-Dade County and of persons or firms supplying labor or materials in the prosecution of the Work.

ARTICLE 43. CLAIMS AND DISPUTES

- (a) All actions, claims and disputes arising out of, under, or in connection with, the Agreement, the Contract Documents or for a breach thereof, except as provided in or limited by Article 47(xii) (written acceptance of a Change Order), Article 14(c) (condition precedent); this Article 43(xiv) related to a ninety day period, and Article 47(vi) (waiver by final payment), shall only be commenced in a court of competent jurisdiction in Miami, Miami-Dade County, Florida and the Contractor hereby consents and submits to the jurisdiction of such court.

- (b) As an express condition precedent to the Contractor's right to commence a court proceeding, the Contractor shall provide to Miami-Dade County:
 - (i) A written claim which shall set forth, in detail, the amount of additional compensation or time claimed and the basis for the claim and the amount claimed;

 - (ii) All materials utilized by the Contractor in preparation of its Proposal, including, but not limited to, all worksheets, quotations, , pricing data, estimates and correspondence relating thereto;

 - (iii) Written evidence of, and support for, any claim, including evidence regarding liability, causation and damages, sufficient to enable Miami-Dade County to render a decision with respect to such claim; and

 - (iv) Such other information as Miami-Dade County may reasonably request.

 - (v) Such claim and supporting information and evidence must be presented to the County within thirty (30) days of the Contractor's first knowledge of the beginning of the event giving rise to such claim. Failure to provide all such information and evidence will be just cause for the County denying the claim. Within ninety (90) days of receiving all such information and evidence, the County will render a written decision with respect to the claim.

 - (vi) In the event of any dispute under or in connection with the Contract, authorized representatives of Contractor and Miami-Dade County shall meet in person in Miami, Florida, no later than fifteen (15) calendar days after delivery of either party's request for a face-to-face good faith negotiations. If the parties meet and the dispute cannot be resolved within fifteen (15) days after commencing good faith negotiations, either party may declare an impasse and the parties shall proceed with the dispute resolution procedure set forth in this section.

Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.

- (vii) The parties to this contract hereby authorize the MDT Director, functioning as the Contracting Officer or his designee, to decide all questions, disputes or claims of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract and his decision shall be conclusive, final and binding on the parties, subject only to the limited right of review specified below. The parties hereto further agree that, upon timely request under this Section, both the Contractor and County are entitled to a hearing before the Contracting Officer, or his designee, at which both Contractor and the County may present evidence and live testimony, in accordance with the Florida Rules of Evidence, and the right to cross-examine each other's witnesses.
- (viii) If either party wishes to protest the determination of the Contracting Officer, such party may commence an appeal in a Court of competent jurisdiction no later than 30 calendar days from the issuance of the Contracting Officer's written decision, it being understood that the review of the Court shall be limited to the question of whether or not the Contracting Officer's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.
- (ix) Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the COR's interpretation.
- (x) No court proceeding arising from any such claim, dispute, or other matter shall or may be commenced by the Contractor until the earlier of:
 - (1) The date on which Miami-Dade County has rendered its written decision; or
 - (2) The ninetieth (90th) day after the Contractor has provided Miami-Dade County with all the materials and evidence, if Miami-Dade County has not rendered its written decision by that date.
- (xi) If a decision of Miami-Dade County is made in writing and states that it is final but subject to appeal, no court proceeding arising from a claim, dispute, or other matter covered by such decision shall or may be commenced later than thirty (30) days after the Contractor receives Miami-Dade County's written decision. The failure by the Contractor to commence a court proceeding within said thirty (30) day period shall result in

Miami-Dade County's decision becoming final and binding upon the Contractor.

- (xii) Unless otherwise agreed in writing by Miami-Dade County, the Contractor shall carry on and maintain the progress of the Work pending any claim or court proceeding.
- (xiii) Miami-Dade County's decisions in all matters relating to the Work shall be final and binding upon the Contractor.
- (xiv) No court proceeding shall or may be commenced, or claim raised, by the Contractor later than ninety (90) days following the issuance by Miami-Dade County of the Acceptance Certificate.
- (xv) Any court proceeding or action arising out of, under, or in connection with, the Agreement, the Contract Documents, a breach thereof, shall be conducted in accordance with, and governed by, the laws of the State of Florida.
- (xvi) Should the Contractor sustain any damage or costs through any act or omission of any other contractor having a contract with Miami-Dade County, a subcontractor of such a contractor or any other person or entity, the Contractor shall have no claim against Miami-Dade County or the Project Manager for such damage or costs, but instead, shall only have the right to recover such damage or costs from the other contractor, subcontractor, entity or person.
- (xvii) The Contractor's maximum liability to Miami-Dade County arising out of, or in connection with, the Agreement, including liquidated damages incurred shall not exceed the total of the Contract Sum, as it may be or have been changed from time to time in accordance with the Contract Documents, provided that this limitation shall not apply to or affect, in any way: any obligation of the Contractor to indemnify and/or hold harmless Miami-Dade County for claims of third parties (including employees of the Contractor, Miami-Dade County, or the Project Manager); claims for personal injury and/or third-party property damage; recovery under any insurance provided or acquired by the Contractor or the Letters of Credit; or the Contractor's liability resulting or arising from its gross negligence or willful or intentional misconduct.
- (xviii) Except for, and/or to the extent covered by, liquidated damages incurred, neither party to the Agreement shall be liable to the other party for the loss of profits or revenue. This limitation shall not apply to or affect, in any way: any obligation of the Contractor to indemnify and/or hold harmless Miami-Dade County for claims of third parties (including employees of the Contractor, Miami-Dade County, or the Project Manager); claims for personal injury and/or third-party property damage;

recovery under any insurance provided or acquired by the Contractor or the Letters of Credit; or the Contractor's liability resulting or arising from its gross negligence or willful or intentional misconduct.

ARTICLE 44. QUALITY ASSURANCE

CONTROL OF MATERIALS

(A) SOURCE OF SUPPLY AND QUALITY OF MATERIALS

- (i) The Contractor shall furnish all materials except those materials which Miami-Dade County may, at its discretion, choose to provide.
- (ii) Notwithstanding any prior inspection or approval, only materials specified in the OEM or approved "equal", including fit, form and function and which conform to the requirements of the Contract Documents shall be utilized by the Contractor. Approval of an "equal items" shall only be for the characteristics or use named in such approval and shall not be used to change or modify any other requirements of the Contract Documents. Further, each approval shall be limited to the portion of the Work for which it is given. Any and all costs and/or delays associated with utilization of an "equal item" shall be borne by the Contractor.
- (iii) The materials and parts furnished by the Contractor shall be new and not used or refurbished except as otherwise provided in the Contract Documents. The materials shall be, handled, stored and used in a proper and workmanlike manner to ensure that the Work is completed in accordance with the Contract Documents.
- (iv) The materials furnished shall conform to the requirements of the Contract Documents for the purposes specified, with properties necessary to withstand, safely and reliably, the strains and stresses to which they will be subjected in normal and/or expected operation.
- (v) All materials furnished under this Agreement shall be compatible with existing Miami-Dade County's Metromover vehicle HVAC systems, and maintenance equipment and practices.
- (vi) Upon request, the Contractor shall furnish to the Project Manager samples of the materials.
- (vii) In addition to inspection and testing performed by the Contractor, materials shall be subject to inspection and testing by the Project Manager at MDC prior to installation. The contractor shall notify the Project Manager within 24 hours of receiving shipments of materials. Inspection or the lack thereof, of materials by Miami-Dade County or the Project Manager does not relieve the Contractor from responsibility regarding any defect therein or other failure to meet the requirements of the Contract Documents and shall not be considered as a guarantee of acceptance of any materials furnished by the Contractor.

(B) DEFECTIVE MATERIALS

- (i) Systems, components, parts or HVAC equipment for the Vehicles, spare parts or other portions of the Work which are defective or otherwise do not conform to the requirements of the Contract Documents, as determined by the Project Manager, may be rejected whether already installed or completed. If so directed by the Project Manager the Contractor shall promptly repair or remove and replace, in a manner acceptable to the Project Manager such system, subsystem, component, part, spare part, or portion of the Work. No compensation shall be allowed to the Contractor for such repair or removal and replacement.
- (ii) Rejected systems, subsystems, components, parts or equipment or other portions of the Work, the defects in which have been subsequently corrected, shall not be used in the Vehicles unless approved, in writing, by the Project Manager.
- (iii) Upon failure of the Contractor to repair, remove or replace defective or non-conforming systems, subsystems, components, parts, spare parts, or other portions of the Work, after notice in writing from the Project Manager, Miami-Dade County may cause the defective or non-conforming systems, subsystems, components, parts, spare parts, or other portions of the Work to be repaired, removed or replaced by others. Any costs incurred by Miami-Dade County in having defective or non-conforming systems, subsystems, components, parts, spare parts, or other portions of the Work repaired, removed or replaced shall be borne by the Contractor and such costs may be deducted from any monies due, or which become due, the Contractor.

(C) QUALITY ASSURANCE

- (i) The Contractor shall develop a Quality Assurance Plan (QAP) and Quality Inspection Plan for the heavy rail vehicles to describe, establish and implement a quality and inspection system in accordance with requirements of the Contract. The QAP shall be subject to Miami-Dade Transit approval prior to Work commencement. The implementation and maintenance of the QAP and Quality Inspection Plan will be subject to MDT approval and ongoing review and monitoring. The evaluation results will be considered during the progress payments.

(D) QA/QC PLAN GENERAL REQUIREMENTS

- (i) The Contractor shall develop an effective Quality Assurance/Quality Control QA/QC Plan to assure adequate quality throughout all areas of the contract and shall describe the methods used and means employed for implementation of the plan. The QA/QC Plan shall ensure compliance with the requirements of the contract documents within the Contractor's, subcontractor's and supplier's organizations. Personnel performing quality functions shall have sufficient, well-defined responsibility, authority and the organizational freedom to identify and evaluate quality problems, and to initiate, recommend or provide solutions. The Contractor's QA/QC Plan shall be subject to MDC's verification at any time. Verification may include but not be limited to:
 - Surveillance of the operations
 - Auditing of records and activities

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- Inspection to measure quality of the items to ensure compliance with all requirements.
- (ii) The responsibility for providing QA/QC disciplines for verifying the work is performed in accordance with the Contract document rests with the Contractor. The Contractor's QA/QC Plan shall apply to the control of quality throughout all areas of contract performance as specified in this section.
- (iii) QA/QC Plan submittal requirements.
 - (1) Three (3) copies of the QA/QC Plan shall be submitted to MDC for approval thirty (30) days after Notice to Proceed, for review and approval. The Plan shall include, as a minimum, the following:
 - (2) Organizational chart indicating lines of authority and reporting relationship including QA/QC personnel.
 - (3) Detailed QA/QC Plan procedures (including QC inspection procedures and testing procedures).
 - (4) Forms to be used for recording work, inspection, and testing activities. Traceability of work activities performed and parts replacement is to be identified at the car and AC unit level.
 - (5) Additional information as may be required by MDC to assure acceptability of the Contractor's QA/QC Plan.
 - (6) All work undertaken by the Contractor prior to the approval by MDC of the Contractor's QA/QC Plan will be strictly the responsibility of the Contractor.
- (E) QA/QC Plan Record Keeping Requirements.
 - (i) The Contractor shall maintain proper record-keeping of activities affecting Quality. These records shall be available for review by MDC at any time.
 - (ii) Records for all material tests, audits, and inspections performed, including data on conforming as well as nonconforming items shall be maintained at the job site current, up to date, and available for inspection by MDC at any time.
 - (iii) Records of personnel qualification and certification required shall be maintained.
 - (iv) Records of safety and environmental datasheets shall be maintained as required by law and this Contract (i.e., MSDS).
 - (v) Test Records and Calibration Identification status of testing equipment required for the project shall be maintained and available for inspection by MDC at any time.
 - (vi) Maintenance records.
- (F) Warranty: Attached hereto and incorporated herein as Schedule ___ are the Contractor's warranties.

THE EXPRESS WARRANTIES IN THIS AGREEMENT SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR SHALL NOT BE LIABLE FOR ANY LOST PROFITS OR DAMAGES OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION.

ARTICLE 45 LIQUIDATED DAMAGES

In the event a Metromover vehicle or related equipment is not completed and/or delivered to Miami-Dade County, or the Work or a portion thereof is not completed within the number of days or weeks set forth in Section 2.1.5, and/or the Project Manager approved Project Schedule, damage will be sustained by Miami-Dade County. In such event, the Contractor shall pay to Miami-Dade County, as liquidated damages and not as a penalty, the sums set forth below for every day or fraction thereof of delay in completing the referenced portion of the Work and failing to meet the corresponding interim milestone or the Time of Completion. The Contractor shall pay the referenced sums as fixed, and agreed to, liquidated damages, and not by way of a penalty, to Miami-Dade County and Miami-Dade County may deduct the sum of liquidated damages from any monies due or that become due to the Contractor under the Agreement or under any other contract with Miami-Dade County, or if such monies are insufficient, the Contractor or its Surety or Sureties shall pay to Miami-Dade County any deficiencies in such monies within thirty (30) days of written notice by Miami-Dade County. The remedies provided in this Article 47 are exclusive of any other rights and remedies provided by law or under the Contract Documents to Miami-Dade County.

Milestones	Amount Per Day/Fraction Thereof
Satisfactory completion of each Metromover vehicle HVAC system within the specified timeframe as outlined in Section 2.1.5 of the Technical Specification for the Metromover vehicles.	\$410 per Vehicle
Satisfactory completion of all the Work on the 17 Metromover vehicles within the specified timeframe as outlined in Section 2.1.5 of the Technical Specification for the Metromover vehicles.	\$410 per vehicle

In no event will the total liquidated damages paid by the Contractor to Miami-Dade County exceed ten percent (10%) of the Contract Sum stated for rail vehicles, as it may have been changed from time to time in accordance with the Contract Documents, and shall be the sole and exclusive remedy for delay within the 10% damage cap. Any delay in excess of the 10% liquidated damage cap shall be deemed to be a breach of the Agreement in accordance with Article 24.

ARTICLE 47 PAYMENTS

The Contractor will be paid the Contract Sum provided for in the Agreement which sum shall be full compensation for all costs incurred for furnishing all Work, including management, materials, labor, incidentals, tools and equipment, for performing the Work in a complete and acceptable manner, and for all risk, loss, damage and expense arising out of the nature and performance of the Work.

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Full compensation for conforming to all the requirements of the Contract Documents shall be included in the Contract Sum and no additional compensation shall be owed or allowed to the Contractor.

(A) PROGRESS PAYMENTS

- (i) The Contractor understands that funds to pay for the Work have been or will be made available from Miami Dade County. All such funds must be approved and/or administered by Miami-Dade County.
- (ii) The Agreement is subject to the availability of the above-referenced funds and the County's obligation under the Agreement is contingent upon the availability of such funds from which payment for the Agreement can be made. No obligation on the part of the County for any payment shall arise until such funds are made available to the County for the Agreement and until the Contractor receives written notice of such availability from the County.
- (iii) Miami-Dade County will make progress payments to the Contractor during the course of Contractor's satisfactory performance of the Work, based, as set forth below, on approved invoices submitted by the Contractor. Progress payment invoices shall be submitted by the Contractor in accordance with Article 9; and approved by Miami-Dade County.
- (iv) Invoices for progress payments shall be submitted by the Contractor to the Project Manager. Each invoice will be based on the number of completed heavy rail vehicles per month. Each invoice shall include:
 - (A) Agreement number;
 - (B) Serial number(s) of Vehicles invoiced (if applicable) and all documents required by Contract Documents;
 - (C) Total invoice amount;

The Contractor shall certify, in each invoice, that the Work invoiced has been done and approved by the Project Manager and performed in accordance with the requirements of the Contract Documents.

- (v) The eligibility of direct and indirect costs for invoicing by the Contractor shall be governed by the provisions, as applicable, of 48 CFR, Part 31, in effect at the time such expense was incurred, except as otherwise expressly provided in the Contract Documents. Also, no markup is permitted on expenses for Subcontractors, Suppliers, printing, communications, travel, subsistence or other such expenses.

After receipt, the Project Manager will review and evaluate each invoice for progress payments and the supporting data, and forward same to the County for approval with Project Manager's recommendation on payment. No progress payment will be approved by the Project Manager until an invoice therefore is received from the

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Contractor and accepted, and the Project Manager has verified that all Work covered thereby has been performed in accordance with the requirements of the Contract Documents.

- (vi) The County will notify the Contractor within ten (10) days of receipt of an invoice if there are any issues regarding the invoice. Each Project Manager approved invoice will be paid by the County within thirty (30) days of the County's receipt of a proper invoice in accordance with Florida Statute 218.74 and Section 2-8.1.4 of the Miami-Dade County Code. Progress payments shall not be construed as relieving the Contractor from sole responsibility for all material, equipment and work upon which payments have been made and the restoration of all defective work, or as waiving the right of the County to require the fulfillment of all of the requirements of the Contract Documents.
- (vii) Payments made under the Contract Documents by the County shall not be construed as an acceptance of defective work or acceptance of improper material, nor as condoning any omission of required work. No payment or certificate, final or otherwise, shall be construed as relieving the Contractor from its contractual obligations to make acceptable any defects and consequences thereof, discovered in the Work, even when discovered after completion or acceptance of same. No payment or certificate, final or otherwise, shall be construed as a waiver of any of the Contractor's obligations set forth in the Contract Documents.
- (viii) No progress payments will be owed or made for any portion of the Work not in accordance with the requirements of the Contract Documents.
- (ix) Miami-Dade County may withhold payment of any progress payment due the Contractor until the County has confirmed that the Contractor has performed all applicable administrative tasks to be completed as required by the Contract Documents. Also, if documents, data, samples, drawings, and submittals or any part thereof required to be supplied by the Contractor pursuant to the Contract Documents are not delivered within the time specified by the Contract Documents, or are deficient upon delivery, the County may, until such documents, data, samples, drawings or submittals are delivered or the deficiencies are corrected, withhold any monies due or that may become due to the Contractor. The withholding of any payments to the Contractor shall not be construed as a waiver of any rights accruing to the County under the Contract Documents or according to law.
- (xi) In the event that a dispute arises between the County and any other contractor, person or entity, which dispute is based upon increased costs claimed by such contractor as a result of delays or other actions of the Contractor, monies in the sum of one and one-half times the amount of any possible liability may be withheld by the County from the Contractor as retainage until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the

Contractor furnishes a Letter of Credit satisfactory to the County to indemnify and hold harmless the County against the claim.

- (xii) If the Project Manager, within its sole discretion, anticipates that the Contractor will not complete the Work or a designated portion of the Work within the number of days set forth in the Contract Documents, and subsequent revisions thereto by Change Order, monies in the sum of one and one-half the amount of any possible damages which may be sustained by the County may be withheld from the Contractor as retainage.
- (xiii) In the event that the Project Manager determines the Contractor has failed to complete an item or items of the Work in accordance with the requirements of the Contract Documents, the Project Manager shall identify, in detail, each uncompleted item of the Work and determine a reasonable cost of completion. Miami-Dade County may withhold additional monies in the sum of one and one-half times the cost of completing said items of the Work as retainage.

(B) AGREEMENT ADMINISTRATION CLOSE-OUT

The following list of items collectively constitute the administration close-out work for the Agreement:

- (i) The Contractor supplying a general release to Miami-Dade County in a form to be supplied by Miami-Dade County;
- (iii) Final and satisfactory delivery of all other remaining files and documents required by the Contract Documents to be supplied to Miami-Dade County by the Contractor;
- (iv) Completion of all availability testing.

All of the above-listed items shall be completed and submitted to Miami-Dade County, at the latest, within thirty (30) days after the completion by the Contractor and the acceptance by Miami-Dade County of all other portions of the Work. Agreement Administration Close-Out shall not be considered complete until all items which comprise the Agreement Administration Close-Out work are completed in a manner acceptable to Miami-Dade County.

(C) FINAL PAYMENT

- (i) Within thirty (30) days after the completion by the Contractor and acceptance by Miami-Dade County of all portions of the Administrative Close-Out Work, the Contractor shall prepare and submit a proposed invoice for the final pay estimate. Prior pay estimates and payments shall be subject to correction on the proposed final pay estimate.
- (ii) The Work shall not be complete until, as noted above, the Contractor has completed, and Miami-Dade County has accepted, all portions of the Work including, but not limited to the completion and, as

applicable, acceptance of all required tests; all availability periods; and all necessary repairs and modifications resulting from said tests, and availability periods as required by the Contract Documents.

- (iii) The Project Manager will review the Contractor's proposed invoice for the final pay estimate. Any changes or corrections found necessary by the Project Manager will be submitted to the Contractor for revision. Within ten (15) days thereafter, the Contractor shall submit to Miami-Dade County an invoice for the final pay estimate incorporating any changes or corrections made by the Project Manager. Said invoice will then be reviewed by Miami-Dade County and if approved by Miami-Dade County, this estimate will become the approved final pay estimate. If, however, a proposed invoice for the final pay estimate is not submitted by the Contractor within sixty (60) days after the completion by the Contractor and acceptance by Miami-Dade County of all portions of the Work, Miami-Dade County may elect to make payment of such sums which are not in dispute, without prejudice to the rights of either Miami-Dade County or the Contractor in connection with such sums which are in dispute.

- (iv) Upon approval of the invoice for the final pay estimate by Miami-Dade County, and after completion, to the satisfaction of Miami-Dade County, of the Agreement Administration Close-Out items as provided herein, Miami-Dade County will issue an Acceptance Certificate. The Acceptance Certificate shall certify that all the Work has been completed and accepted as of the date of the Acceptance Certificate subject to any guarantee or warranty, expressed or implied, provided by the Contractor or pursuant to the Contract Documents. The issuance by Miami-Dade County of the Acceptance Certificate shall not be construed to be acceptance by Miami-Dade County of any defective or inferior work, improper materials, or work not adhering to the requirements of the Contract Documents. Miami-Dade County will transmit copies of the Acceptance Certificate to the Contractor, Surety and other appropriate interested agencies.

- (v) Miami-Dade County will make final payment to the Contractor within thirty (30) days after issuance of the Acceptance Certificate. Such final payment shall constitute full and complete payment to the Contractor for the Work.

ARTICLE 48 SUSPENSION OF WORK

- (i) Miami-Dade County may, without cause, order the Contractor in writing to suspend or interrupt all or any part of the Work for such period of time as the County may determine to be appropriate.

- (ii) If the performance of all or any part of the Work is, for an unreasonable period of time (90 days), suspended or interrupted per the written request of the County, the Contractor's sole and exclusive remedies in such an event shall be an extension of time as determined in accordance with the provisions of the Contract Documents and/or an adjustment in the Contract Sum for any increase or decrease (excluding profit) in the Contractor's actual cost of the performance of any part of the Work which

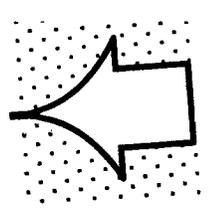
increase or decrease arises solely from such a suspension or interruption of the Work. No adjustment in the Time of Completion or the Contract Sum, however, shall be allowed for any such suspension or interruption if:

- (a) The performance is suspended or interrupted for a reasonable period of time;
 - (b) The performance would have been so suspended or interrupted by any other cause, including the fault or negligence of the Contractor; or
 - (c) An adjustment in the Time of Completion or the Contract Sum is provided for or excluded under any other provision of the Contract Documents.
- (iii) No request for an adjustment in the Time of Completion or the Contract Sum shall be allowed under this provision unless the request is asserted in writing to the Project Manager within twenty (20) days after the termination of such suspension or interruption, but not later than the date of the issuance of the Acceptance.

ARTICLE 43. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

Miami-Dade County



IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Vapor Stone Rail Systems
a division of WABTEC

Miami-Dade County

By: *Gerald M. Rowe*

By: _____

Name: Gerald M. Rowe

Name: _____

Title: President and General Manager

Title: _____

Date: May 30th, 2008

Date: _____

Attest: *Lina Kandalla*
Corporate Secretary/Notary Public

Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

[Signature]
Assistant County Attorney



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EXHIBIT 1- PERFORMANCE LETTER OF CREDIT

We hereby establish this Irrevocable Letter of Credit No _____ in favor of the aforesaid beneficiary _____ (Beneficiary) for drawings up to \$ _____ effective immediately. This Letter of Credit is available for payment at sight at our correspondent banking office, _____ (our Office) and expires with the close of banking business at our office on _____.

The term Beneficiary includes any successor by operation of law of the named beneficiary including, without limitation, any liquidator, rehabilitator, receiver, or conservator.

We hereby undertake to honor your sight draft(s) drawn on our office, within three banking days upon presentation of documents in _____, indicating our credit no. _____ for all or any part of this credit if presented at our office, in person or by mail, specified in the first paragraph on or before the expiration date. Partial drawings under this Letter of Credit are permitted.

The sight draft(s) shall be accompanied by at least one of the following statements purportedly signed by the Mayor, or his designee, reading as follows:

1. The undersigned, Executive Director _____, or designee, certifies that the amount demanded as per the attached draft is due to the _____ and that _____ has not fulfilled its performance obligations in the time and manner prescribed in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract or:
2. The undersigned, Executive Director of _____ or designee, certifies that the amount demanded as per the attached draft is claimed to be owed to a person or persons defined in section 255.05(1) or 713.01, Florida Statutes, who furnished labor, services, or materials used directly or indirectly by _____ in the prosecution of the work provided for in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract and that such claimant(s) allege(s) that _____ has not fulfilled its performance obligations under the Contract, by not making payments to such claimant.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. Our obligation under this Letter of Credit is our individual obligation and is in no way contingent upon reimbursement with respect thereto.

Any changes in or under the Contract documents and compliance or noncompliance with any formalities connected with the contract of the changes does not affect our duty to honor drafts under this Letter of Credit.

This Letter of Credit is subject to and governed by the 1993 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500) and, to extent not inconsistent therewith the laws of the State of Florida, including the Uniform Commercial Code as in effect in the State of Florida. In the event of any conflict, the laws of the State of Florida will control.

If the credit expires during an interruption of business as described in Article 17 of said Publication 500, the Bank hereby specifically agrees to effect payment if this Credit is drawn against within sixty (60) days after the resumption of business.

Communications with respect to the Letter of Credit shall be addressed to us at our office, _____, specifically referring to the number of this Letter of Credit.

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EXHIBIT 2 – PAYMENT LETTER OF CREDIT

We hereby establish this Irrevocable Letter of Credit No. _____ in favor of the aforesaid beneficiary _____ (Beneficiary) for drawings up to \$ _____ effective immediately. This Letter of Credit is available for payment at sight at our correspondent banking office, _____ (our Office) and expires with the close of banking business at our office on _____.

The term Beneficiary includes any successor by operation of law of the named beneficiary including, without limitation, any liquidator, rehabilitator, receiver, or conservator.

We hereby undertake to honor your sight draft(s) drawn on our office, within three banking days upon presentation of documents in _____, indicating our credit no. _____ for all or any part of this credit if presented at our office, in person or by mail, specified in the first paragraph on or before the expiration date. Partial drawings under this Letter of Credit are permitted.

The sight draft(s) shall be accompanied by at least one of the following statements purportedly signed by the Mayor, or his designee, reading as follows:

- 3. The undersigned, Executive Director _____, or designee, certifies that the amount demanded as per the attached draft is due to the _____ and that _____ has not fulfilled its performance obligations in the time and manner prescribed in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract or:
- 4. The undersigned, Executive Director of _____ or designee, certifies that the amount demanded as per the attached draft is claimed to be owed to a person or persons defined in section 255.05(1) or 713.01, Florida Statutes, who furnished labor, services, or materials used directly or indirectly by _____ in the prosecution of the work provided for in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract and that such claimant(s) allege(s) that _____ has not fulfilled its performance obligations under the Contract, by not making payments to such claimant.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. Our obligation under this Letter of Credit is our individual obligation and is in no way contingent upon reimbursement with respect thereto.

Any changes in or under the Contract documents and compliance or noncompliance with any formalities connected with the contract of the changes does not affect our duty to honor drafts under this Letter of Credit.

This Letter of Credit is subject to and governed by the 1993 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500) and, to extent not inconsistent therewith the laws of the State of Florida, including the Uniform Commercial Code as in effect in the State of Florida. In the event of any conflict, the laws of the State of Florida will control.

If the credit expires during an interruption of business as described in Article 17 of said Publication 500, the Bank hereby specifically agrees to effect payment if this Credit is drawn against within sixty (60) days after the resumption of business.

Communications with respect to the Letter of Credit shall be addressed to us at our office, _____, specifically referring to the number of this Letter of Credit.

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EXHIBIT 3 – WARRANTY LETTER OF CREDIT

We hereby establish this Irrevocable Letter of Credit No. _____ in favor of the aforesaid beneficiary _____ (Beneficiary) for drawings up to \$ _____ effective immediately. This Letter of Credit is available for payment at sight at our correspondent banking office, _____ (our Office) and expires with the close of banking business at our office on _____.

The term Beneficiary includes any successor by operation of law of the named beneficiary including, without limitation, any liquidator, rehabilitator, receiver, or conservator.

We hereby undertake to honor your sight draft(s) drawn on our office, within three banking days upon presentation of documents in _____, indicating our credit no. _____ for all or any part of this credit if presented at our office, in person or by mail, specified in the first paragraph on or before the expiration date. Partial drawings under this Letter of Credit are permitted.

The sight draft(s) shall be accompanied by at least one of the following statements purportedly signed by the Mayor, or his designee, reading as follows:

- 5. The undersigned, Executive Director _____, or designee, certifies that the amount demanded as per the attached draft is due to the _____ and that _____ has not fulfilled its performance obligations in the time and manner prescribed in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract or:
- 6. The undersigned, Executive Director of _____ or designee, certifies that the amount demanded as per the attached draft is claimed to be owed to a person or persons defined in section 255.05(1) or 713.01, Florida Statutes, who furnished labor, services, or materials used directly or indirectly by _____ in the prosecution of the work provided for in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract and that such claimant(s) allege(s) that _____ has not fulfilled its performance obligations under the Contract, by not making payments to such claimant.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. Our obligation under this Letter of Credit is our individual obligation and is in no way contingent upon reimbursement with respect thereto.

Any changes in or under the Contract documents and compliance or noncompliance with any formalities connected with the contract of the changes does not affect our duty to honor drafts under this Letter of Credit.

This Letter of Credit is subject to and governed by the 1993 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500) and, to extent not inconsistent therewith the laws of the State of Florida, including the Uniform Commercial Code as in effect in the State of Florida. In the event of any conflict, the laws of the State of Florida will control.

If the credit expires during an interruption of business as described in Article 17 of said Publication 500, the Bank hereby specifically agrees to effect payment if this Credit is drawn against within sixty (60) days after the resumption of business.

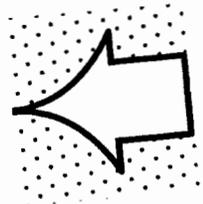
Communications with respect to the Letter of Credit shall be addressed to us at our office, _____, specifically referring to the number of this Letter of Credit.

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Vapor Stone Rail Systems
a division of WABTEC

Miami-Dade County



By: [Signature]

By: _____

Name: Gerald M. Rowe

Name: _____

Title: President and General Manager

Title: _____

Date: May 30th, 2008

Date: _____

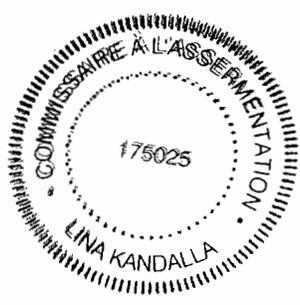
Attest: [Signature]
Corporate Secretary/Notary Public

Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

[Signature]
Assistant County Attorney



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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Vapor Stone Rail Systems
a division of WABTEC

Miami-Dade County

By: [Signature]
Name: Gerald M. Rowe

By: _____
Name: _____

Title: President and General Manager

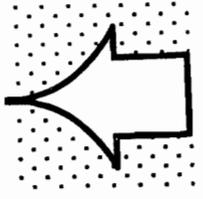
Title: _____

Date: May 30th, 2008

Date: _____

Attest: [Signature]
Corporate Secretary/Notary Public

Attest: _____
Clerk of the Board



Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

[Signature]
Assistant County Attorney



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Miami-Dade County

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Vapor Stone Rail Systems
a division of WABTEC

Miami-Dade County

By: [Signature]
Name: Gerald M. Rowe

By: _____
Name: _____

Title: President and General Manager

Title: _____

Date: May 30th, 2008

Date: _____

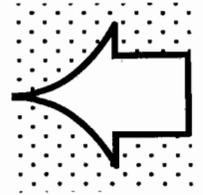
Attest: [Signature]
Corporate Secretary/Notary Public

Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

[Signature]
Assistant County Attorney



**SIGN
HERE**



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Section 5.0

Contract No. 558 A

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Vapor Stone Rail Systems, a division of Westinghouse Air Brake Technologies Corp., a corporation organized and existing under the laws of the State of Delaware, having its principal office at 72 Arizona Avenue, Plattsburgh, New York, USA 12903 (hereinafter referred to as the "Contractor" or "Vapor Stone Rail Systems"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to Overhaul the Heating Ventilation and Air Conditioning (HVAC) systems on 68 heavy rail (Metrorail) vehicles, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 558, and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the County may desire to have the HVAC systems of its remaining 68 heavy rail Metrorail vehicles overhauled, such Work shall conform to the Scope of Services defined herein (Appendix A); Miami-Dade County Request For Proposals No. 558, as may be amended for such work at the time the option is exercised.

WHEREAS, the Contractor has submitted a written proposal dated October 4, 2007, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such HVAC overhaul service for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 558 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative designated to manage the contract.
- d) The word "Contractor" to mean Vapor Stone Rail Systems and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the project.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

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ARTICLE 5. CONTRACT TERM

The Contract shall become effective on _____ and shall be for duration of up to 24 months; including the one year warranty period for work to be completed to the County's satisfaction for the first 68 vehicles. The term for Optional work (remaining 68 vehicles) shall be determined at the time the County elects to exercise the option. The County's decision to exercise the option for work on the additional 68 heavy rail vehicles must be made by the date work on the initial 68 heavy rail vehicles has been accepted by the County. The County, at its sole discretion, reserves the right to extend this Contract for a period to cover additional work permitted under this agreement. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the Contract period. The County will notify the Contractor in writing of any extension(s). This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

a) to the Project Manager:

Miami-Dade County
Attention: Ivor Myers
Phone: (305) 884-7581
Fax: (305) 884-7550

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) To the Contractor

Vapor Stone Rail Systems a division of Westinghouse Air Brake Corp.
72 Arizona Avenue
Plattsburgh, N.Y. 12903

Attention: Gianni Guerrera
Phone: (514) 335-4206
Fax: (514) 335-4231

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E-mail: GGuerrera@wabtec.com

b) David M. Seitz, Vice President and Senior Counsel

Westinghouse Air Brake Technologies Corp.
1001 Air Brake Ave.
Wilmerding, PA 15148
Phone: 412-825-1142
Fax:
E-mail: DSeitz@wabtec.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor acknowledges that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be:

THREE MILLION SIX HUNDREDFIFTYTHOUSAND NINE HUNDRED SEVENTY-SIX (\$3,650,976) for work on the initial 68 heavy rail vehicles.

The County reserves the right, if funds permit, to request up to an additional 68 heavy rail vehicle HVAC systems be overhauled ("Option") at a maximum price of THREE MILLION SIX HUNDRED FIFTY THOUSAND NINE HUNDRED SEVENTY-FIVE (\$3,650,975; at a rate of \$53,691 per vehicle. Pricing for the Option will be as specified herein, plus a price escalation based on the PPI for manufacturing at the time the Option is exercised. The County must exercise its Option by sending written notification to the Contractor no later than sixty (60) days before the date this Contract term is set to expire in accordance with Article 5 (Contract Term) above. Such overhaul will be completed by the contractor under these terms and conditions.

These are the agreed to amount for overhaul of the 136 heavy rail vehicle HVAC systems.

The County shall have no obligation to pay the Contractor any additional sum in excess of these amounts, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the initial term of the Contract which is solely limited to the 68 heavy rail Metrorail vehicles (and not the Option). In addition, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof. Pricing for the Option will be as defined in Article 7.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County once per month, upon invoices certified by the Contractor pursuant to the terms herein. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
100 SW 1st Avenue
Miami, Florida 33128
Attention: Genaro "Steve" Alvarez

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, and agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature to the extent and arising out of or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. This indemnification shall not extend to the negligence, acts or omissions of County or third party not under the control of Vapor Stone Rail Systems.

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Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, RFP Section, 111 N.W. 1st Street, Suite 1375, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance. Miami-Dade County requires insurance as specified herein.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

The Contractor shall provide written notice to the County of material insurance coverage modifications and/or cancellation within thirty (30) days of the aforementioned changes.

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1ST STREET
SUITE 2340
MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the

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award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and

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licenses as necessary to perform the Services described herein, in a competent and professional manner.

- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

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- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and

thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope Of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

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- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to approve the use of any subcontractor to complete work on behalf of the Contractor for this project. All contractors used to complete work on this project must be approved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information and shall adhere to Section 28 - Confidentiality. The County shall have the right to request a copy of a subcontract for review and approval. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

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- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
 - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

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ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
- i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the

Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprocurement of Services, including procurement and administrative costs; and,
- b) such other direct damages.

The Contractor shall not be liable for indirect, incidental, consequential, punitive or special damages.

The Contractor shall remain liable for any liabilities and claims related to the Contractor's default.

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party intellectual property rights.

b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party intellectual property rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, in the course of performance or completion of, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability made against the County for infringement of patents, copyrights, service marks, trade secrets, or any other third party intellectual property rights, provided however, County:

- (i) promptly notifies Contractor of any third party claim subject to indemnification hereunder;

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- (ii) works cooperatively with the Contractor in the preparation of a defense, the defense and any settlement of any such claim consistent with the laws of the State of Florida;
- (iii) gives full cooperation to Contractor for the defense of same; and
- (iv) complies with Contractor's direction to cease any use of the Work which, may be ruled by a competent and lawful party an infringement of a third party's Intellectual Property Right.

The foregoing provisions shall not apply to any infringement arising out of:

- (i) use of the Works other than in accordance with applicable documentation or instructions supplied by Contractor or for other than County's purposes as set forth in this Agreement and Scope of Work;
 - (ii) (ii) any alteration, modification or revision of the Works not expressly authorized in writing by Contractor;
 - (iii) (iii) County's failure to use or implement corrections or enhancements to the Works made available by Contractor;
 - (iv) (iv) County's distribution, marketing, or use of the Works for the benefit of third parties;
 - (v) (v) the combination of the Works with materials not supplied by Contractor; or
 - (vi) (vi) information, materials or specifications provided by or on behalf of County or by a third party.
- c) In case any of the Works or any portion thereof is held in any such suit to constitute infringement, Contractor shall within a reasonable time, either:

- (i) secure for County the right to continue the use of such infringing item; or
- (ii) replace, at Contractor's sole expense, such item with a substantially equivalent non-infringing item or modify such item so that it becomes non-infringing. In the event after reasonable efforts by the Contractor, the Contractor is unable to either procure the right to continued use of the allegedly infringing item or replace the allegedly infringing item, as provided in clauses (i) and (ii) of the immediately preceding sentence, the allegedly infringing item shall be returned to Contractor, and Contractor shall refund to County the amount paid to Contractor for such item. The County shall have such work performed by itself or others and the cost of such work shall be the responsibility of the Contractor and may be deducted from monies due, or to become due, to the Contractor under the Agreement or any other contract with the County. The County shall have the duty to mitigate damages. In the event that final payment under the Agreement has been made, the Contractor shall, within thirty (30) days of notification from the County, reimburse the County for such costs.

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- d) The provisions of this Article 27 state Contractor's entire liability and County's sole and exclusive remedies with respect to any infringement or claim of infringement.
- e) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- f) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor (engaged by Contractor) is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- g) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works (excluding Contractor's pre-existing Intellectual Property) and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all county employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not

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be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

- d) Similarly, the County must protect the Contractor's information designated as confidential. The County's obligation to protect such confidential information is subject to applicable local, state, and federal law. Any compliance with, or good faith effort to comply with the Public Records Law by the County, shall not be considered a breach of this agreement.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein, but specifically excludes Contractor's pre-existing Intellectual Property.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County but specifically excludes Contractor's pre-existing Intellectual Property. (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in

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process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, as set forth in the Scope of Work, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- (d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County as set forth in the Scope of Work or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.
- (e) No transfer of Contractor's underlying and pre-existing Intellectual Property Rights (IPR) by Contractor to County is contemplated hereunder and shall not be deemed to have transferred unless with a written instrument of conveyance signed by both parties. Further, Contractor remains the owner of all rights, title, and interest to its intellectual property. To the extent that software is customized, if the underlying software or IPR is owned by the Contractor, the underlying software and IPR shall remain the property of the Contractor. This Section applies to any and all IPR under this Agreement and is not limited to Article 30.

- (f) Escrow Agreement: Within sixty days of Notice To Proceed, Contractor will deposit and will maintain with a mutually acceptable escrow agent, an copy of the source code belonging to the software provided to the County for use. Software source code ("the Source Code") will be in the form from which a data processing professional familiar with the software would be able, with generally available libraries and utilities, to create an executable copy of the software. In the event that the Contractor files for bankruptcy or is liquidated, dissolved or ceases to carry on business on a regular basis, or ceases to support the system, access to or a copy of the Source Code shall be made available to the County, pursuant to the terms and procedures of an agreement between the Contractor and the escrow agent. The contractor will deposit updated and modified versions of the Source Code with the escrow agent whenever such updates or modifications are incorporated into the Software for the County's use. The Contractor will pay all fees associated with the escrow of the Software. In addition, the County will sign a Source Code Use agreement which will set forth the terms and conditions pursuant to which the Source Code shall be used. Escrow Agreement contained herein as Appendix B

ARTICLE 31. BUSINESS APPLICATION AND FORMS

Business Application The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or

investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume

discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded

equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above

and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

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1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 40. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

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The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

ARTICLE 41. LETTERS OF CREDIT

The Contractor shall furnish the following: Performance Bonds or Letters of Credit (LOC) at its own expense:

(a) Performance LOC – In an amount of fifty (50) percent of the Contract Sum at its own expense;

(b)Warranty LOC – In the amount of ten (10) percent of the Contract Sum, as it may be changed, from time to time, in accordance with the Contract Documents. The Warranty LOC shall be furnished to Miami-Dade County by the Contractor upon the issuance by Miami-Dade County of the written Acceptance of the first accepted Vehicle HVAC systems overhaul. The Warranty LOC shall not limit, in any manner, the Contractor's liability or responsibility to Miami-Dade County for damages, costs, or expenses that exceed the amount covered by the Warranty LOC nor are the remedies provided by the Warranty LOC exclusive, but instead, the remedies provided thereby are in addition to any other rights and remedies provided by law or under the Contract Documents to Miami-Dade County. The Warranty LOC shall be accessible such that the County may, at its convenience, withdraw funds from the LOC in the event the Contractor fails to perform its warranty obligations in a timely manner; and

(C) Payment LOC – In the amount of \$3,250,000.00at its own expense

The Bonds or LOC shall be in the form attached hereto as Exhibit 1 (Performance LOC), Exhibit 2 (Payment LOC), and Exhibit 3 (Warranty LOC) or on forms otherwise provided and approved by Miami-Dade County. Said LOC shall be drawn on a financial institution authorized to do business and with offices in the State of Florida. Provisions of the LOCs shall not limit, in any way, any liability of the Contractor to Miami-Dade County.

ARTICLE 42. ADDITIONAL FINANCIAL SECURITY

If any financial institution securing the LOC furnished in connection with the Agreement becomes unacceptable to Miami-Dade County, the Contractor shall promptly furnish additional security acceptable to Miami-Dade County to protect the interests of Miami-Dade County and of persons or firms supplying labor or materials in the prosecution of the Work.

ARTICLE 43. CLAIMS AND DISPUTES

(a) All actions, claims and disputes arising out of, under, or in connection with, the Agreement, the Contract Documents or for a breach thereof, except as provided in or limited by Article 47(xii) (written acceptance of a Change Order), Article 14(c) (condition precedent); this Article 43(xiv) related to a ninety day period, and Article 47(vi) (waiver by final payment), shall only be commenced in a court of competent jurisdiction in Miami,

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Miami-Dade County, Florida and the Contractor hereby consents and submits to the jurisdiction of such court.

(b) As an express condition precedent to the Contractor's right to commence a court proceeding, the Contractor shall provide to Miami-Dade County:

- (i) A written claim which shall set forth, in detail, the amount of additional compensation or time claimed and the basis for the claim and the amount claimed;
- (ii) All materials utilized by the Contractor in preparation of its Proposal, including, but not limited to, all worksheets, quotations, , pricing data, estimates and correspondence relating thereto;
- (iii) Written evidence of, and support for, any claim, including evidence regarding liability, causation and damages, sufficient to enable Miami-Dade County to render a decision with respect to such claim; and
- (iv) Such other information as Miami-Dade County may reasonably request.
- (v) Such claim and supporting information and evidence must be presented to the County within thirty (30) days of the Contractor's first knowledge of the beginning of the event giving rise to such claim. Failure to provide all such information and evidence will be just cause for the County denying the claim. Within ninety (90) days of receiving all such information and evidence, the County will render a written decision with respect to the claim.
- (vi) In the event of any dispute under or in connection with the Contract, authorized representatives of Contractor and Miami-Dade County shall meet in person in Miami, Florida, no later than fifteen (15) calendar days after delivery of either party's request for a face-to-face good faith negotiations. If the parties meet and the dispute cannot be resolved within fifteen (15) days after commencing good faith negotiations, either party may declare an impasse and the parties shall proceed with the dispute resolution procedure set forth in this section. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.
- (vii) The parties to this contract hereby authorize the MDT Director, functioning as the Contracting Officer or his designee, to decide all questions, disputes or claims of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract and his decision shall be conclusive, final and binding on the parties, subject only to the limited right of review specified below. The parties hereto further agree that, upon timely request under

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this Section, both the Contractor and County are entitled to a hearing before the Contracting Officer, or his designee, at which both Contractor and the County may present evidence and live testimony, in accordance with the Florida Rules of Evidence, and the right to cross-examine each other's witnesses.

- (viii) If either party wishes to protest the determination of the Contracting Officer, such party may commence an appeal in a Court of competent jurisdiction no later than 30 calendar days from the issuance of the Contracting Officer's written decision, it being understood that the review of the Court shall be limited to the question of whether or not the Contracting Officer's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.
- (ix) Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the COR's interpretation.
- (x) No court proceeding arising from any such claim, dispute, or other matter shall or may be commenced by the Contractor until the earlier of:
 - (1) The date on which Miami-Dade County has rendered its written decision; or
 - (2) The ninetieth (90th) day after the Contractor has provided Miami-Dade County with all the materials and evidence, if Miami-Dade County has not rendered its written decision by that date.
- (xi) If a decision of Miami-Dade County is made in writing and states that it is final but subject to appeal, no court proceeding arising from a claim, dispute, or other matter covered by such decision shall or may be commenced later than thirty (30) days after the Contractor receives Miami-Dade County's written decision. The failure by the Contractor to commence a court proceeding within said thirty (30) day period shall result in Miami-Dade County's decision becoming final and binding upon the Contractor.
- (xii) Unless otherwise agreed in writing by Miami-Dade County, the Contractor shall carry on and maintain the progress of the Work pending any claim or court proceeding.
- (xiii) Miami-Dade County's decisions in all matters relating to the Work shall be final and binding upon the Contractor.
- (xiv) No court proceeding shall or may be commenced, or claim raised, by the Contractor later than ninety (90) days following

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the issuance by Miami-Dade County of the Acceptance Certificate.

- (xv) Any court proceeding or action arising out of, under, or in connection with, the Agreement, the Contract Documents, a breach thereof, shall be conducted in accordance with, and governed by, the laws of the State of Florida.
- (xvi) Should the Contractor sustain any damage or costs through any act or omission of any other contractor having a contract with Miami-Dade County, a subcontractor of such a contractor or any other person or entity, the Contractor shall have no claim against Miami-Dade County or the Project Manager for such damage or costs, but instead, shall only have the right to recover such damage or costs from the other contractor, subcontractor, entity or person.
- (xvii) The Contractor's maximum liability to Miami-Dade County arising out of, or in connection with, the Agreement, including liquidated damages incurred shall not exceed the total of the Contract Sum, as it may be or have been changed from time to time in accordance with the Contract Documents, provided that this limitation shall not apply to or affect, in any way: any obligation of the Contractor to indemnify and/or hold harmless Miami-Dade County for claims of third parties (including employees of the Contractor, Miami-Dade County, or the Project Manager); claims for personal injury and/or third-party property damage; recovery under any insurance provided or acquired by the Contractor or the Letters of Credit; or the Contractor's liability resulting or arising from its gross negligence or willful or intentional misconduct.
- (xviii) Except for, and/or to the extent covered by, liquidated damages incurred, neither party to the Agreement shall be liable to the other party for the loss of profits or revenue. This limitation shall not apply to or affect, in any way: any obligation of the Contractor to indemnify and/or hold harmless Miami-Dade County for claims of third parties (including employees of the Contractor, Miami-Dade County, or the Project Manager); claims for personal injury and/or third-party property damage; recovery under any insurance provided or acquired by the Contractor or the Letters of Credit; or the Contractor's liability resulting or arising from its gross negligence or willful or intentional misconduct.

ARTICLE 44. QUALITY ASSURANCE

CONTROL OF MATERIALS

(A) SOURCE OF SUPPLY AND QUALITY OF MATERIALS

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- (i) The Contractor shall furnish all materials except those materials which Miami-Dade County may, at its discretion, choose to provide.
- (ii) Notwithstanding any prior inspection or approval, only materials specified in the OEM or approved "equal", including fit, form and function and which conform to the requirements of the Contract Documents shall be utilized by the Contractor. Approval of an "equal items" shall only be for the characteristics or use named in such approval and shall not be used to change or modify any other requirements of the Contract Documents. Further, each approval shall be limited to the portion of the Work for which it is given. Any and all costs and/or delays associated with utilization of an "equal item" shall be borne by the Contractor.
- (iii) The materials and parts furnished by the Contractor shall be new and not used or refurbished except as otherwise provided in the Contract Documents. The materials shall be, handled, stored and used in a proper and workmanlike manner to ensure that the Work is completed in accordance with the Contract Documents.
- (iv) The materials furnished shall conform to the requirements of the Contract Documents for the purposes specified, with properties necessary to withstand, safely and reliably, the strains and stresses to which they will be subjected in normal and/or expected operation.
- (v) All materials furnished under this Agreement shall be compatible with existing Miami-Dade County's heavy rail vehicle HVAC systems, and maintenance equipment and practices.
- (vi) Upon request, the Contractor shall furnish to the Project Manager samples of the materials.
- (vii) In addition to inspection and testing performed by the Contractor, materials shall be subject to inspection and testing by the Project Manager at MDC prior to installation. The contractor shall notify the Project Manager within 24 hours of receiving shipments of materials. Inspection or the lack thereof, of materials by Miami-Dade County or the Project Manager does not relieve the Contractor from responsibility regarding any defect therein or other failure to meet the requirements of the Contract Documents and shall not be considered as a guarantee of acceptance of any materials furnished by the Contractor.

(B) DEFECTIVE MATERIALS

- (i) Systems, components, parts or HVAC equipment for the Vehicles, spare parts or other portions of the Work which are defective or otherwise do not conform to the requirements of the Contract Documents, as determined by the Project Manager, may be rejected whether already installed or completed. If so directed by the Project Manager the Contractor shall promptly repair or remove and replace, in a manner acceptable to the Project Manager such system, subsystem, component, part, spare part, or portion of the Work. No compensation shall be allowed to the Contractor for such repair or removal and replacement.

- (ii) Rejected systems, subsystems, components, parts or equipment or other portions of the Work, the defects in which have been subsequently corrected, shall not be used in the Vehicles unless approved, in writing, by the Project Manager.
- (iii) Upon failure of the Contractor to repair, remove or replace defective or non-conforming systems, subsystems, components, parts, spare parts, or other portions of the Work, after notice in writing from the Project Manager, Miami-Dade County may cause the defective or non-conforming systems, subsystems, components, parts, spare parts, or other portions of the Work to be repaired, removed or replaced by others. Any costs incurred by Miami-Dade County in having defective or non-conforming systems, subsystems, components, parts, spare parts, or other portions of the Work repaired, removed or replaced shall be borne by the Contractor and such costs may be deducted from any monies due, or which become due, the Contractor.

(C) QUALITY ASSURANCE

- (i) The Contractor shall develop a Quality Assurance Plan (QAP) and Quality Inspection Plan for the heavy rail vehicles to describe, establish and implement a quality and inspection system in accordance with requirements of the Contract. The QAP shall be subject to Miami-Dade Transit approval prior to Work commencement. The implementation and maintenance of the QAP and Quality Inspection Plan will be subject to MDT approval and ongoing review and monitoring. The evaluation results will be considered during the progress payments.

(D) QA/QC PLAN GENERAL REQUIREMENTS

- (i) The Contractor shall develop an effective Quality Assurance/Quality Control QA/QC Plan to assure adequate quality throughout all areas of the contract and shall describe the methods used and means employed for implementation of the plan. The QA/QC Plan shall ensure compliance with the requirements of the contract documents within the Contractor's, subcontractor's and supplier's organizations. Personnel performing quality functions shall have sufficient, well-defined responsibility, authority and the organizational freedom to identify and evaluate quality problems, and to initiate, recommend or provide solutions. The Contractor's QA/QC Plan shall be subject to MDC's verification at any time. Verification may include but not be limited to:
 - Surveillance of the operations
 - Auditing of records and activities
 - Inspection to measure quality of the items to ensure compliance with all requirements.
- (ii) The responsibility for providing QA/QC disciplines for verifying the work is performed in accordance with the Contract document rests with the Contractor. The Contractor's QA/QC Plan shall apply to the control of quality throughout all areas of contract performance as specified in this section.
- (iii) QA/QC Plan submittal requirements.

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- (1) Three (3) copies of the QA/QC Plan shall be submitted to MDC for approval thirty (30) days after Notice to Proceed, for review and approval. The Plan shall include, as a minimum, the following:
- (2) Organizational chart indicating lines of authority and reporting relationship including QA/QC personnel.
- (3) Detailed QA/QC Plan procedures (including QC inspection procedures and testing procedures).
- (4) Forms to be used for recording work, inspection, and testing activities. Traceability of work activities performed and parts replacement is to be identified at the car and AC unit level.
- (5) Additional information as may be required by MDC to assure acceptability of the Contractor's QA/QC Plan.
- (6) All work undertaken by the Contractor prior to the approval by MDC of the Contractor's QA/QC Plan will be strictly the responsibility of the Contractor.

(E) QA/QC Plan Record Keeping Requirements.

- (i) The Contractor shall maintain proper record-keeping of activities affecting Quality. These records shall be available for review by MDC at any time.
- (ii) Records for all material tests, audits, and inspections performed, including data on conforming as well as nonconforming items shall be maintained at the job site current, up to date, and available for inspection by MDC at any time.
- (iii) Records of personnel qualification and certification required shall be maintained.
- (iv) Records of safety and environmental datasheets shall be maintained as required by law and this Contract (i.e., MSDS).
- (v) Test Records and Calibration Identification status of testing equipment required for the project shall be maintained and available for inspection by MDC at any time.
- (vi) Maintenance records.

(F) Warranty: Attached hereto and incorporated herein as Schedule ___ are the Contractor's warranties.

THE EXPRESS WARRANTIES IN THIS AGREEMENT SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR SHALL NOT BE LIABLE FOR ANY LOST PROFITS OR DAMAGES OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION.

ARTICLE 45 LIQUIDATED DAMAGES

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In the event a rail vehicle or related equipment is not completed and/or delivered to Miami-Dade County, or the Work or a portion thereof is not completed within the number of days or weeks set forth in Section 2.2.5, and/or the Project Manager approved Project Schedule, damage will be sustained by Miami-Dade County. In such event, the Contractor shall pay to Miami-Dade County, as liquidated damages and not as a penalty, the sums set forth below for every day or fraction thereof of delay in completing the referenced portion of the Work and failing to meet the corresponding interim milestone or the Time of Completion. The Contractor shall pay the referenced sums as fixed, and agreed to, liquidated damages, and not by way of a penalty, to Miami-Dade County and Miami-Dade County may deduct the sum of liquidated damages from any monies due or that become due to the Contractor under the Agreement or under any other contract with Miami-Dade County, or if such monies are insufficient, the Contractor or its Surety or Sureties shall pay to Miami-Dade County any deficiencies in such monies within thirty (30) days of written notice by Miami-Dade County. The remedies provided in this Article 47 are exclusive of any other rights and remedies provided by law or under the Contract Documents to Miami-Dade County.

Milestones	Amount Per Day/Fraction Thereof
Satisfactory completion of each rail vehicle HVAC system within the specified timeframe as outlined in Section 2.2.5 of the Technical Specification for the rail vehicles; 7 days.	\$410 per Vehicle
Satisfactory completion of all the Work on 68 rail vehicle married pairs within the specified timeframe as outlined in Section 2.2.5 of the Technical Specification for the rail vehicles.	\$410 per vehicle

In no event will the total liquidated damages paid by the Contractor to Miami-Dade County exceed ten percent (10%) of the Contract Sum stated for rail vehicles, as it may have been changed from time to time in accordance with the Contract Documents, and shall be the sole and exclusive remedy for delay within the 10% damage cap. Any delay in excess of the 10% liquidated damage cap shall be deemed to be a breach of the Agreement in accordance with Article 24.

ARTICLE 47 PAYMENTS

The Contractor will be paid the Contract Sum provided for in the Agreement which sum shall be full compensation for all costs incurred for furnishing all Work, including management, materials, labor, incidentals, tools and equipment, for performing the Work in a complete and acceptable manner, and for all risk, loss, damage and expense arising out of the nature and performance of the Work.

Full compensation for conforming to all the requirements of the Contract Documents shall be included in the Contract Sum and no additional compensation shall be owed or allowed to the Contractor.

(A) PROGRESS PAYMENTS

- (i) The Contractor understands that funds to pay for the Work have been or will be made available from Miami Dade County. All such funds must be approved and/or administered by Miami-Dade County.

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- (ii) The Agreement is subject to the availability of the above-referenced funds and the County's obligation under the Agreement is contingent upon the availability of such funds from which payment for the Agreement can be made. No obligation on the part of the County for any payment shall arise until such funds are made available to the County for the Agreement and until the Contractor receives written notice of such availability from the County.
- (iii) Miami-Dade County will make progress payments to the Contractor during the course of Contractor's satisfactory performance of the Work, based, as set forth below, on approved invoices submitted by the Contractor. Progress payment invoices shall be submitted by the Contractor in accordance with Article 9; and approved by Miami-Dade County.
- (iv) Invoices for progress payments shall be submitted by the Contractor to the Project Manager. Each invoice will be based on the number of completed heavy rail vehicles per month. Each invoice shall include:
 - (A) Agreement number;
 - (B) Serial number(s) of Vehicles invoiced (if applicable) and all documents required by Contract Documents;
 - (C) Total invoice amount;

The Contractor shall certify, in each invoice, that the Work invoiced has been done and approved by the Project Manager and performed in accordance with the requirements of the Contract Documents.
- (v) The eligibility of direct and indirect costs for invoicing by the Contractor shall be governed by the provisions, as applicable, of 48 CFR, Part 31, in effect at the time such expense was incurred, except as otherwise expressly provided in the Contract Documents. Also, no markup is permitted on expenses for Subcontractors, Suppliers, printing, communications, travel, subsistence or other such expenses.

After receipt, the Project Manager will review and evaluate each invoice for progress payments and the supporting data, and forward same to the County for approval with Project Manager's recommendation on payment. No progress payment will be approved by the Project Manager until an invoice therefore is received from the Contractor and accepted, and the Project Manager has verified that all Work covered thereby has been performed in accordance with the requirements of the Contract Documents.
- (vi) The County will notify the Contractor within ten (10) days of receipt of an invoice if there are any issues regarding the invoice. Each Project Manager approved invoice will be paid by the County within thirty (30) days of the County's receipt of a proper invoice in accordance with Florida Statute 218.74 and Section 2-8.1.4 of the Miami-Dade County

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Code. Progress payments shall not be construed as relieving the Contractor from sole responsibility for all material, equipment and work upon which payments have been made and the restoration of all defective work, or as waiving the right of the County to require the fulfillment of all of the requirements of the Contract Documents.

- (vii) Payments made under the Contract Documents by the County shall not be construed as an acceptance of defective work or acceptance of improper material, nor as condoning any omission of required work. No payment or certificate, final or otherwise, shall be construed as relieving the Contractor from its contractual obligations to make acceptable any defects and consequences thereof, discovered in the Work, even when discovered after completion or acceptance of same. No payment or certificate, final or otherwise, shall be construed as a waiver of any of the Contractor's obligations set forth in the Contract Documents.
- (viii) No progress payments will be owed or made for any portion of the Work not in accordance with the requirements of the Contract Documents.
- (ix) Miami-Dade County may withhold payment of any progress payment due the Contractor until the County has confirmed that the Contractor has performed all applicable administrative tasks to be completed as required by the Contract Documents. Also, if documents, data, samples, drawings, and submittals or any part thereof required to be supplied by the Contractor pursuant to the Contract Documents are not delivered within the time specified by the Contract Documents, or are deficient upon delivery, the County may, until such documents, data, samples, drawings or submittals are delivered or the deficiencies are corrected, withhold any monies due or that may become due to the Contractor. The withholding of any payments to the Contractor shall not be construed as a waiver of any rights accruing to the County under the Contract Documents or according to law.
- (xi) In the event that a dispute arises between the County and any other contractor, person or entity, which dispute is based upon increased costs claimed by such contractor as a result of delays or other actions of the Contractor, monies in the sum of one and one-half times the amount of any possible liability may be withheld by the County from the Contractor as retainage until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the Contractor furnishes a Letter of Credit satisfactory to the County to indemnify and hold harmless the County against the claim.
- (xii) If the Project Manager, within its sole discretion, anticipates that the Contractor will not complete the Work or a designated portion of the Work within the number of days set forth in the Contract Documents, and subsequent revisions thereto by Change Order, monies in the sum of one and one-half the amount of any possible damages which

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may be sustained by the County may be withheld from the Contractor as retainage.

- (xiii) In the event that the Project Manager determines the Contractor has failed to complete an item or items of the Work in accordance with the requirements of the Contract Documents, the Project Manager shall identify, in detail, each uncompleted item of the Work and determine a reasonable cost of completion. Miami-Dade County may withhold additional monies in the sum of one and one-half times the cost of completing said items of the Work as retainage.

(B) AGREEMENT ADMINISTRATION CLOSE-OUT

The following list of items collectively constitute the administration close-out work for the Agreement:

- (i) The Contractor supplying a general release to Miami-Dade County in a form to be supplied by Miami-Dade County;
- (iii) Final and satisfactory delivery of all other remaining files and documents required by the Contract Documents to be supplied to Miami-Dade County by the Contractor;
- (iv) Completion of all availability testing.

All of the above-listed items shall be completed and submitted to Miami-Dade County, at the latest, within thirty (30) days after the completion by the Contractor and the acceptance by Miami-Dade County of all other portions of the Work. Agreement Administration Close-Out shall not be considered complete until all items which comprise the Agreement Administration Close-Out work are completed in a manner acceptable to Miami-Dade County.

(C) FINAL PAYMENT

- (i) Within thirty (30) days after the completion by the Contractor and acceptance by Miami-Dade County of all portions of the Administrative Close-Out Work, the Contractor shall prepare and submit a proposed invoice for the final pay estimate. Prior pay estimates and payments shall be subject to correction on the proposed final pay estimate.
- (ii) The Work shall not be complete until, as noted above, the Contractor has completed, and Miami-Dade County has accepted, all portions of the Work including, but not limited to the completion and, as applicable, acceptance of all required tests; all availability periods; and all necessary repairs and modifications resulting from said tests, and availability periods as required by the Contract Documents.
- (iii) The Project Manager will review the Contractor's proposed invoice for the final pay estimate. Any changes or corrections found necessary by the Project Manager will be submitted to the Contractor for revision. Within ten (15) days thereafter, the Contractor shall submit to Miami-

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Dade County an invoice for the final pay estimate incorporating any changes or corrections made by the Project Manager. Said invoice will then be reviewed by Miami-Dade County and if approved by Miami-Dade County, this estimate will become the approved final pay estimate. If, however, a proposed invoice for the final pay estimate is not submitted by the Contractor within sixty (60) days after the completion by the Contractor and acceptance by Miami-Dade County of all portions of the Work, Miami-Dade County may elect to make payment of such sums which are not in dispute, without prejudice to the rights of either Miami-Dade County or the Contractor in connection with such sums which are in dispute.

- (iv) Upon approval of the invoice for the final pay estimate by Miami-Dade County, and after completion, to the satisfaction of Miami-Dade County, of the Agreement Administration Close-Out items as provided herein, Miami-Dade County will issue an Acceptance Certificate. The Acceptance Certificate shall certify that all the Work has been completed and accepted as of the date of the Acceptance Certificate subject to any guarantee or warranty, expressed or implied, provided by the Contractor or pursuant to the Contract Documents. The issuance by Miami-Dade County of the Acceptance Certificate shall not be construed to be acceptance by Miami-Dade County of any defective or inferior work, improper materials, or work not adhering to the requirements of the Contract Documents. Miami-Dade County will transmit copies of the Acceptance Certificate to the Contractor, Surety and other appropriate interested agencies.
- (v) Miami-Dade County will make final payment to the Contractor within thirty (30) days after issuance of the Acceptance Certificate. Such final payment shall constitute full and complete payment to the Contractor for the Work.

ARTICLE 48 SUSPENSION OF WORK

- (i) Miami-Dade County may, without cause, order the Contractor in writing to suspend or interrupt all or any part of the Work for such period of time as the County may determine to be appropriate.
- (ii) If the performance of all or any part of the Work is, for an unreasonable period of time (90 days), suspended or interrupted per the written request of the County, the Contractor's sole and exclusive remedies in such an event shall be an extension of time as determined in accordance with the provisions of the Contract Documents and/or an adjustment in the Contract Sum for any increase or decrease (excluding profit) in the Contractor's actual cost of the performance of any part of the Work which increase or decrease arises solely from such a suspension or interruption of the Work. No adjustment in the Time of Completion or the Contract Sum, however, shall be allowed for any such suspension or interruption if:
 - (a) The performance is suspended or interrupted for a reasonable period of time;

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- (b) The performance would have been so suspended or interrupted by any other cause, including the fault or negligence of the Contractor; or
 - (c) An adjustment in the Time of Completion or the Contract Sum is provided for or excluded under any other provision of the Contract Documents.
- (iii) No request for an adjustment in the Time of Completion or the Contract Sum shall be allowed under this provision unless the request is asserted in writing to the Project Manager within twenty (20) days after the termination of such suspension or interruption, but not later than the date of the issuance of the Acceptance.

ARTICLE 43. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.



IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Vapor Stone Rail Systems
a division of WABTEC

Miami-Dade County

By: CFKOVAC

By: _____

Name: CHARLES F. KOVAC

Name: _____

Title: VP and GROUP EXEC.

Title: _____

Date: 5/30/08

Date: _____

Attest: SEE Attachment
Corporate Secretary/Notary Public

Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

Assistant County Attorney

INDIVIDUAL ACKNOWLEDGMENT

State/Commonwealth of Pennsylvania
County of Allegheny } ss.

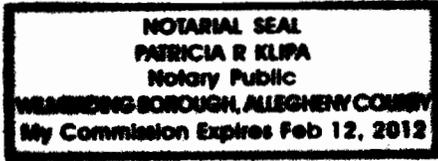
On this the 30th day of May, 2008, before
me, Patricia R. Klipa, the undersigned Notary
Name of Notary Public

Public, personally appeared Charles F. Kovac,
Name(s) of Signer(s)

- personally known to me – OR –
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same for the purposes therein stated.

WITNESS my hand and official seal.



Patricia R. Klipa
Signature of Notary Public

Other Required Information (Printed Name of Notary, Residence, etc.)

Place Notary Seal and/or Any Stamp Above

OPTIONAL

Although the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Right Thumbprint of Signer
Top of thumb here

EXHIBIT 1- PERFORMANCE LETTER OF CREDIT

We hereby establish this Irrevocable Letter of Credit No _____ in favor of the aforesaid beneficiary _____ (Beneficiary) for drawings up to \$ _____ effective immediately. This Letter of Credit is available for payment at sight at our correspondent banking office, _____ (our Office) and expires with the close of banking business at our office on _____.

The term Beneficiary includes any successor by operation of law of the named beneficiary including, without limitation, any liquidator, rehabilitator, receiver, or conservator.

We hereby undertake to honor your sight draft(s) drawn on our office, within three banking days upon presentation of documents in _____, indicating our credit no. _____ for all or any part of this credit if presented at our office, in person or by mail, specified in the first paragraph on or before the expiration date. Partial drawings under this Letter of Credit are permitted.

The sight draft(s) shall be accompanied by at least one of the following statements purportedly signed by the Mayor, or his designee, reading as follows:

1. The undersigned, Executive Director _____, or designee, certifies that the amount demanded as per the attached draft is due to the _____ and that _____ has not fulfilled its performance obligations in the time and manner prescribed in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract or:
2. The undersigned, Executive Director of _____ or designee, certifies that the amount demanded as per the attached draft is claimed to be owed to a person or persons defined in section 255.05(1) or 713.01, Florida Statutes, who furnished labor, services, or materials used directly or indirectly by _____ in the prosecution of the work provided for in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract and that such claimant(s) allege(s) that _____ has not fulfilled its performance obligations under the Contract, by not making payments to such claimant.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. Our obligation under this Letter of Credit is our individual obligation and is in no way contingent upon reimbursement with respect thereto.

Any changes in or under the Contract documents and compliance or noncompliance with any formalities connected with the contract of the changes does not affect our duty to honor drafts under this Letter of Credit.

This Letter of Credit is subject to and governed by the 1993 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500) and, to extent not inconsistent therewith the laws of the State of Florida, including the Uniform Commercial Code as in effect in the State of Florida. In the event of any conflict, the laws of the State of Florida will control.

If the credit expires during an interruption of business as described in Article 17 of said Publication 500, the Bank hereby specifically agrees to effect payment if this Credit is drawn against within sixty (60) days after the resumption of business.

Communications with respect to the Letter of Credit shall be addressed to us at our office, _____, specifically referring to the number of this Letter of Credit.

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EXHIBIT 2 – PAYMENT LETTER OF CREDIT

We hereby establish this Irrevocable Letter of Credit No. _____ in favor of the aforesaid beneficiary _____ (Beneficiary) for drawings up to \$ _____ effective immediately. This Letter of Credit is available for payment at sight at our correspondent banking office, _____ (our Office) and expires with the close of banking business at our office on _____.

The term Beneficiary includes any successor by operation of law of the named beneficiary including, without limitation, any liquidator, rehabilitator, receiver, or conservator.

We hereby undertake to honor your sight draft(s) drawn on our office, within three banking days upon presentation of documents in _____, indicating our credit no. _____ for all or any part of this credit if presented at our office, in person or by mail, specified in the first paragraph on or before the expiration date. Partial drawings under this Letter of Credit are permitted.

The sight draft(s) shall be accompanied by at least one of the following statements purportedly signed by the Mayor, or his designee, reading as follows:

- 3. The undersigned, Executive Director _____, or designee, certifies that the amount demanded as per the attached draft is due to the _____ and that _____ has not fulfilled its performance obligations in the time and manner prescribed in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract or:
- 4. The undersigned, Executive Director of _____ or designee, certifies that the amount demanded as per the attached draft is claimed to be owed to a person or persons defined in section 255.05(1) or 713.01, Florida Statutes, who furnished labor, services, or materials used directly or indirectly by _____ in the prosecution of the work provided for in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract and that such claimant(s) allege(s) that _____ has not fulfilled its performance obligations under the Contract, by not making payments to such claimant.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. Our obligation under this Letter of Credit is our individual obligation and is in no way contingent upon reimbursement with respect thereto.

Any changes in or under the Contract documents and compliance or noncompliance with any formalities connected with the contract of the changes does not affect our duty to honor drafts under this Letter of Credit.

This Letter of Credit is subject to and governed by the 1993 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500) and, to extent not inconsistent therewith the laws of the State of Florida, including the Uniform Commercial Code as in effect in the State of Florida. In the event of any conflict, the laws of the State of Florida will control.

If the credit expires during an interruption of business as described in Article 17 of said Publication 500, the Bank hereby specifically agrees to effect payment if this Credit is drawn against within sixty (60) days after the resumption of business.

Communications with respect to the Letter of Credit shall be addressed to us at our office, _____, specifically referring to the number of this Letter of Credit.

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EXHIBIT 3 – WARRANTY LETTER OF CREDIT

We hereby establish this Irrevocable Letter of Credit No. _____ in favor of the aforesaid beneficiary _____ (Beneficiary) for drawings up to \$ _____ effective immediately. This Letter of Credit is available for payment at sight at our correspondent banking office, _____ (our Office) and expires with the close of banking business at our office on _____.

The term Beneficiary includes any successor by operation of law of the named beneficiary including, without limitation, any liquidator, rehabilitator, receiver, or conservator.

We hereby undertake to honor your sight draft(s) drawn on our office, within three banking days upon presentation of documents in _____, indicating our credit no. _____ for all or any part of this credit if presented at our office, in person or by mail, specified in the first paragraph on or before the expiration date. Partial drawings under this Letter of Credit are permitted.

The sight draft(s) shall be accompanied by at least one of the following statements purportedly signed by the Mayor, or his designee, reading as follows:

- 5. The undersigned, Executive Director _____, or designee, certifies that the amount demanded as per the attached draft is due to the _____ and that _____ has not fulfilled its performance obligations in the time and manner prescribed in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract or:
- 6. The undersigned, Executive Director of _____ or designee, certifies that the amount demanded as per the attached draft is claimed to be owed to a person or persons defined in section 255.05(1) or 713.01, Florida Statutes, who furnished labor, services, or materials used directly or indirectly by _____ in the prosecution of the work provided for in the contract signed and dated on or about _____ entered into by the _____, Beneficiary, and _____ for the Contract and that such claimant(s) allege(s) that _____ has not fulfilled its performance obligations under the Contract, by not making payments to such claimant.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. Our obligation under this Letter of Credit is our individual obligation and is in no way contingent upon reimbursement with respect thereto.

Any changes in or under the Contract documents and compliance or noncompliance with any formalities connected with the contract of the changes does not affect our duty to honor drafts under this Letter of Credit.

This Letter of Credit is subject to and governed by the 1993 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500) and, to extent not inconsistent therewith the laws of the State of Florida, including the Uniform Commercial Code as in effect in the State of Florida. In the event of any conflict, the laws of the State of Florida will control.

If the credit expires during an interruption of business as described in Article 17 of said Publication 500, the Bank hereby specifically agrees to effect payment if this Credit is drawn against within sixty (60) days after the resumption of business.

Communications with respect to the Letter of Credit shall be addressed to us at our office, _____, specifically referring to the number of this Letter of Credit.

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Vapor Stone Rail Systems
a division of WABTEC

Miami-Dade County

By: CF KOVAC

By: _____

Name: CHARLES F. KOVAC

Name: _____

Title: V.P. and GROUP EXEC.

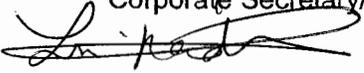
Title: _____

Date: 5/30/08

Date: _____

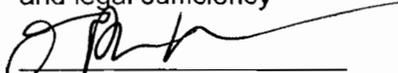
Attest: SEE Attachment
Corporate Secretary/Notary Public

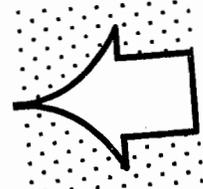
Attest: _____
Clerk of the Board



Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency


Assistant County Attorney



**SIGN
HERE**



94

INDIVIDUAL ACKNOWLEDGMENT

State/Commonwealth of Pennsylvania }
County of Allegheny } ss.

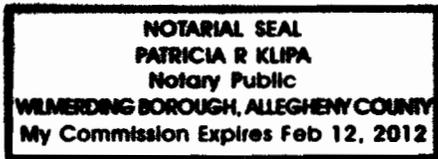
On this the 30th day of May, 2008, before
me, Patricia R. Klipa, the undersigned Notary
Name of Notary Public

Public, personally appeared Charles F. Kovac,
Name(s) of Signer(s)

- personally known to me – OR –
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same for the purposes therein stated.

WITNESS my hand and official seal.



Patricia R. Klipa
Signature of Notary Public

Other Required Information (Printed Name of Notary, Residence, etc.)

Place Notary Seal and/or Any Stamp Above

OPTIONAL

Although the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Right Thumbprint of Signer

Top of thumb here

Empty box for right thumbprint of signer.

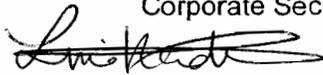
IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Vapor Stone Rail Systems
a division of WABTEC

Miami-Dade County

By: CK Kovac
Name: CHARLES F. KOVAC
Title: V.P. and GROUP EXEC.
Date: 5/30/08
Attest: SEE ATTACHMENT
Corporate Secretary/Notary Public

By: _____
Name: _____
Title: _____
Date: _____
Attest: _____
Clerk of the Board



Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency


Assistant County Attorney

INDIVIDUAL ACKNOWLEDGMENT

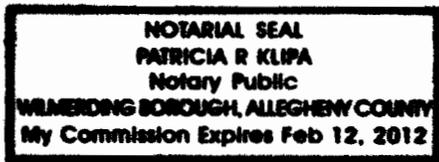
State/Commonwealth of Pennsylvania }
County of Allegheny } ss.

On this the 30th day of May, 2008, before
me, Patricia R. Klipa, the undersigned Notary
Name of Notary Public

Public, personally appeared Charles F. Kovac,
Name(s) of Signer(s)

- personally known to me – OR –
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to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same for the purposes therein stated.



WITNESS my hand and official seal.

Patricia R. Klipa
Signature of Notary Public

Other Required Information (Printed Name of Notary, Residence, etc.)

Place Notary Seal and/or Any Stamp Above

OPTIONAL

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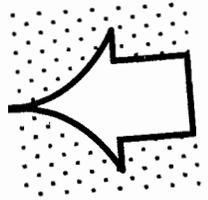
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Right Thumbprint of Signer
Top of thumb here

Section 5.0

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.



Vapor Stone Rail Systems
a division of WABTEC

Miami-Dade County

By: CF Kovac
Name: CHARLES F. KOVAC
Title: V.P. and Group EXEC
Date: 5/30/08
Attest: SEE ATTACHMENT
Corporate Secretary/Notary Public
[Signature]
Corporate Seal/Notary Seal

By: _____
Name: _____
Title: _____
Date: _____
Attest: _____
Clerk of the Board

Approved as to form
and legal sufficiency

[Signature]
Assistant County Attorney



INDIVIDUAL ACKNOWLEDGMENT

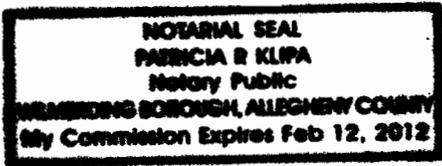
State/Commonwealth of Pennsylvania }
County of Allegheny } ss.

On this the 30th day of May, 2008, before
me, Patricia R. Klipa, the undersigned Notary
Name of Notary Public

Public, personally appeared Charles F. Kovac,
Name(s) of Signer(s)

- personally known to me – OR –
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same for the purposes therein stated.



WITNESS my hand and official seal.

Patricia R. Klipa
Signature of Notary Public

Other Required Information (Printed Name of Notary, Residence, etc.)

Place Notary Seal and/or Any Stamp Above

OPTIONAL

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Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Right Thumbprint of Signer
Top of thumb here

Memorandum



Date: November 8, 2007

To: Fred Simmons, Jr.
Manager
Department of Procurement Management

From: Terry Rolle 
Chairperson
Evaluation/Selection Committee

Subject: Report of Evaluation/Selection Committee for RFP No. 558 – Metromover HVAC Replacement and Metrorail HVAC Overhaul

The Evaluation/Selection Committee has completed the task of evaluating proposals submitted in response to the above referenced Request for Proposals ("RFP") following the guidelines published in the solicitation as summarized below.

Committee meeting date: November 2, 2007 – (Technical and Price Evaluation)

Verification of compliance with contract measures: The Review Committee meeting of March 07, 2007 recommended a Small Business Enterprise (SBE) selection factor for this solicitation. The Chairperson has determined that no Proposers qualify for the selection factor.

Verification of compliance with minimum qualification requirements: The solicitation had minimum qualification requirements which were reviewed by the Chairperson and Jerry Blackman of the client department, MDT. All of the proposers met the requirements.

Summary of scores:

The Evaluation/Selection Committee decided not to hold oral presentations since the proposals did not require further clarification. Price was reviewed subjectively in conjunction with the technical criteria.

The final scores are as follows:

<i>Proposers for Metrorail HVAC Overhaul</i>	<i>Technical Score</i> <i>(max.350)</i>	<i>Selection Factor Score</i> <i>(max.35)</i>	<i>Price Score</i> <i>(max.150)</i>	<i>Total Combined Score</i> <i>(max. 500)</i>	<i>Price/Cost Submitted</i>
1. Vapor Stone Rail Systems (a Div. of Wabtec)	251	0	111	379	\$8,491,296
2. Westcode Inc.	148	0	94	242	\$9,094,787

<i>Proposers for Metromover HVAC Replacement</i>	<i>Technical Score</i> <i>(max.350)</i>	<i>Selection Factor Score</i> <i>(max.35)</i>	<i>Price Score</i> <i>(max.150)</i>	<i>Total Combined Score</i> <i>(max. 500)</i>	<i>Price/Cost Submitted</i>
1. Vapor Stone Rail Systems (a Div. of Wabtec)*	233	0	0	233	\$2,697,730

Local Preference: Local Preference was considered in accordance with applicable ordinances, but did not affect the outcome as no Proposer was eligible to receive Local Preference.

Other information: *Vapor Stone Rail Systems (VSRS) was the sole Proposer on the Metromover HVAC System Replacement portion of the solicitation and provided an Alternate Metromover HVAC solution. However, VSRS did not provide pricing on the Price Schedule – Form B-1 as required by Section 3.3 of the RFP. Pursuant to counsel from the County Attorney's office, the Evaluation/Selection Committee evaluated the alternate technical proposal and each committee member gave VSRS zero (0) points on the price score. After scoring, a determination was made by the Evaluation/Selection Committee to move forward to negotiations with VSRS. Oral presentations were not held.

Negotiations: The Evaluation/Selection Committee recommends that the County enter into negotiations with the highest ranked Proposer, Vapor Stone Rail Systems (a Div. of Wabtec).

The following individuals will participate in the negotiations:

Terry Rolle, Procurement Contracting Officer, DPM (Lead)
Fred Simmons, Jr., Manager, DPM Transit Unit
Jerry Blackman, General Superintendent Rail Maintenance, MDT
Ivor Myers, Lead Rail Maintenance Vehicle Supervisor, MDT
Jose Carbonell, Metro Mover Maintenance, MDT

Copies of the score sheets are attached for each Evaluation/Selection Committee member, as well as a composite score sheet.

Reviewed:



Manager, DPM Transit Unit

11/7/07
Date

RFP NO. 558
 Metrorail Vehicle HVAC Overhaul
 EVALUATION OF PROPOSALS

COMPOSITE

SELECTION CRITERIA	PROPOSERS	Maximum Points Per Member	Maximum Total Points (5 members)	Vapor Stone Rail Systems, Division of WABTEC	Westcode Inc.
Experience, qualifications, and past performance of the Proposer (the company) and subcontractor(s) (the company), if any, in providing the type of services requested in this Solicitation		20	100	81	67
Experience and qualifications of Proposer's key individuals, including individuals of subcontractor(s), that will be assigned to perform the Work outlined in the Technical Specifications		40	200	156	49
Proposer's approach and methodology to providing the services requested in the Technical Specification of this Solicitation		10	50	31	32
Total Technical Points (Total of technical rows)		70		268	148
Selection Factor (10% of the total Technical Evaluation Points on the Technical Portion)		10%		0	0
Price Points		30	150	111	94
TOTAL POINTS (Technical + Price)		100	150	379	242

Signature: _____
 Chairperson: J. Lee
 Reviewed By: _____
 DATE: 11-07-07
11/07/07

RFP NO. 558
Metrorail Vehicle HVAC Overhaul
EVALUATION OF PROPOSALS

IVOR MYERS (MDT)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Vapor Stone Rail Systems, Division of WABTEC	Westcode Inc.
Experience, qualifications, and past performance of the Proposer (the company) and subcontractor(s) (the company), if any, in providing the type of services requested in this Solicitation		20	18	10
Experience and qualifications of Proposer's key individuals, including individuals of subcontractor(s), that will be assigned to perform the Work outlined in the Technical Specifications		40	30	20
Proposer's approach and methodology to providing the services requested in the Technical Specification of this Solicitation		10	8	5
Technical Points <i>(Total of technical rows above)</i>		70	56	35
Selection Factor <i>(10% of the total Technical Evaluation Points on the Technical Portion)</i>		10%		
Price Points		30	22	16
TOTAL POINTS <i>(Technical + Price)</i>		100	78	51

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RFP NO. 558
 Metrorail Vehicle HVAC Overhaul
 EVALUATION OF PROPOSALS

JOSE CARBONELL (MDT)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Vapor Stone Rail Systems, Division of WABTEC	Westcode Inc.
Experience, qualifications, and past performance of the Proposer (the company) and subcontractor(s) (the company), if any, in providing the type of services requested in this Solicitation		20	12	20
Experience and qualifications of Proposer's key individuals, including individuals of subcontractor(s), that will be assigned to perform the Work outlined in the Technical Specifications		40	30	0
Proposer's approach and methodology to providing the services requested in the Technical Specification of this Solicitation		10	5	10
Technical Points <i>(Total of technical rows above)</i>		70	47	30
Selection Factor <i>(10% of the total Technical Evaluation Points on the Technical Portion)</i>		10%		
Price Points		30	20	18
TOTAL POINTS <i>(Technical + Price)</i>		100	67	48

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RFP NO. 558
Metrorail Vehicle HVAC Overhaul
EVALUATION OF PROPOSALS

JERRY BLACKMAN (MDT)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Vapor Stone Rail Systems, Division of WABTEC	Westcode Inc.
Experience, qualifications, and past performance of the Proposer (the company) and subcontractor(s) (the company), if any, in providing the type of services requested in this Solicitation		20	15	17
Experience and qualifications of Proposer's key individuals, including individuals of subcontractor(s), that will be assigned to perform the Work outlined in the Technical Specifications		40	35	0
Proposer's approach and methodology to providing the services requested in the Technical Specification of this Solicitation		10	5	7
Technical Points <i>(Total of technical rows above)</i>		70	55	24
Selection Factor <i>(10% of the total Technical Evaluation Points on the Technical Portion)</i>		10%		
Price Points		30	25	23
TOTAL POINTS <i>(Technical + Price)</i>		100	80	47

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RFP NO. 558
 Metrorail Vehicle HVAC Overhaul
 EVALUATION OF PROPOSALS

DAVID RACINE (GSA)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Vapor Stone Rail Systems, Division of WABTEC	Westcode Inc.
Experience, qualifications, and past performance of the Proposer (the company) and subcontractor(s) (the company), if any, in providing the type of services requested in this Solicitation		20	17	8
Experience and qualifications of Proposer's key individuals, including individuals of subcontractor(s), that will be assigned to perform the Work outlined in the Technical Specifications		40	25	0
Proposer's approach and methodology to providing the services requested in the Technical Specification of this Solicitation		10	6	3
Technical Points <i>(Total of technical rows above)</i>		70	48	11
Selection Factor <i>(10% of the total Technical Evaluation Points on the Technical Portion)</i>		10%		
Price Points		30	20	15
TOTAL POINTS <i>(Technical + Price)</i>		100	68	26

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RFP NO. 558
Metrorail Vehicle HVAC Overhaul
EVALUATION OF PROPOSALS

KEVA PACE (SBA/DPM)

SELECTION CRITERIA	PROPOSERS	Maximum Points	Vapor Stone Rail Systems, Division of WABTEC	Westcode Inc.
Experience, qualifications, and past performance of the Proposer (the company) and subcontractor(s) (the company), if any, in providing the type of services requested in this Solicitation		20	19	12
Experience and qualifications of Proposer's key individuals, including individuals of subcontractor(s), that will be assigned to perform the Work outlined in the Technical Specifications		40	36	29
Proposer's approach and methodology to providing the services requested in the Technical Specification of this Solicitation		10	7	7
Technical Points <i>(Total of technical rows above)</i>		70	62	48
Selection Factor <i>(10% of the total Technical Evaluation Points on the Technical Portion)</i>		10%		
Price Points		30	24	22
TOTAL POINTS <i>(Technical + Price)</i>		100	86	70 ✓

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Date:

To: Those Listed Below

From: George M. Burgess
County Manager

Subject: Request for Evaluation/Selection Committee for the Miami-Dade Transit Department Request for Proposals for Metromover HVAC Replacement and Metrorail HVAC Overhaul Program - RFP No. 558

In accordance with Administrative Order 3-34, I am hereby appointing those listed below as the Selection Committee for the Miami-Dade Transit Department Request for Proposals for Metromover HVAC Replacement and Metrorail HVAC Overhaul Program - RFP No. 558:

Selection Committee

Fred Simmons, Jr., DPM, Non-Voting Chairperson
Ivor Myers, MDT
Jose Carbonell, MDT
Jerry Blackman, MDT
David Racine, GSA
Keva Pace, SBA/DPM
Angel Perez, Seaport (Alternate)

Technical Advisor (Non-Voting)

Daniel Wilson, MDT (Alternate)

The Selection Committee will meet to review written or printed material regarding the qualifications of each of the certified firms as it relates to the requirements defined in the advertised document. If required, the Selection Committee will select several candidate firms meeting the published criteria, to make oral presentations at a properly noticed public hearing to the full Selection Committee.

The Selection Committee shall be responsible for evaluating, rating and ranking the proposals by each Committee member, based on the criteria and procedure contained in the advertised document. The Evaluation/Selection Committee will first evaluate and rank responsive proposals on the Technical (Quality) criteria. If responsive proposers are invited to make oral presentations, the Committee may re-rate and re-rank the proposals based upon the written documents combined with the oral presentation. You may utilize staff of the issuing department and the using agency to conduct a preliminary review of the proposals for responsiveness to the technical requirements. All requests for specific determinations shall be made in writing to the County Attorney's Office.

You are directed to assist me in the selection process considering the factors delineated in the advertised document. These factors may include methodology and management approach, qualifications and experience of principals and staff, financial stability, proposer's past performance of similar scope and size, proposer's detailed plans to meet the objectives of each task, activity, etc., pursuant to any schedule, proposer's previous County experience, history and experience of the firm or individual(s), understanding of the project and the County's objectives, responsiveness to the established requirements, and Cost/Revenue (normally separate and sealed). When the document requires the proposer to provide cost/revenue in a separate sealed envelope, cost/revenue will be considered separately and after the other criteria have been evaluated.

If you are unable to participate in the Selection process, contact this office through Small Business Affairs/DPM by memorandum documenting the reason why you cannot participate. Only in cases of dire urgency may you be excused from participation.

The alternate committee member will serve only in the event of an approved substitution. No substitution of committee members shall be allowed after the first official meeting of the committee. The Department of Procurement Management's (DPM) RFP Unit may substitute the chairperson to ensure the appropriate level of staffing expertise as deemed necessary to accommodate the needs of this solicitation.

Following the oral presentation, or upon completion of the review process, the Committee shall prepare and submit a memorandum to include a narrative of the evaluation and justification of the top recommended firm(s) based upon the reasoning and mathematical formula, if utilized, and attach supporting documentation and a summary sheet which **MUST** include the following information:

Name of firm(s)
Quality Rating Score
Price
Adjusted Score (if applicable)
Committee's Overall Ranking

This report should be submitted to me through the SBA/DPM for review and consideration for further recommendation to the Board of County Commissioners.

As a matter of administrative policy and to maintain a fair and impartial process, all individuals appointed to the Selection Committee (including the Chairperson) and staff are instructed to refrain from discussing the solicitation with prospective lobbyists and/or consultants. Committee members are reminded that in accordance with the Cone of Silence Ordinance 98-106, they are prohibited from having any communication with potential respondents and/or their representatives. Violation of this policy could lead to termination.

All questions must be directed to the staff contact person(s) designated by the issuing department.

c: Miriam Singer, Director, DPM
Penelope Townsley, Interim Director, SBA/DPM
Harpal S. Kapoor, Director, MDT
Wendi Norris, Director, GSA
Bill Johnson, Director, Seaport

Selection Committee

Fred Simmons, Jr., DPM, Non-Voting Chairperson
Ivor Myers, MDT
Jose Carbonell, MDT
Jerry Blackman, MDT
David Racine, GSA
Keva Pace, SBA/DPM
Angel Perez, Seaport (Alternate)

Technical Advisor (Non-Voting)
Daniel Wilson, MDT (Alternate)

**SELECTION COMMITTEE
MIAMI-DADE TRANSIT DEPARTMENT
REQUEST FOR PROPOSALS
METROMOVER HVAC REPLACEMENT AND
METRORAIL HVAC OVERHAUL PROGRAM**

RFP NO. 558

Committee Member/ Title	Department	Start Year With County	Ethnicity/ Gender	Education	Professional Licenses	Telephone #
Fred Simmons, Jr. Non-Voting Chairperson	DPM	--	--	--	--	(305) 375-4259
Ivor Myers, Acting Chief Metrorail/Metromover Rehabilitation Project	MDT	1982	Black Male	Bachelor of Science in Mechanical Engineering	Certifications: General Electric Diesel Locomotives, General Motors Diesel Electric Locomotives, Automatic Train Protection System, MDT/US&F Pneumatic Brake Systems (WABCO)	(305) 884-7565
Jose Carbonell Chief Supervisor Rail Vehicle Maintenance	MDT	1985	Hispanic Male	Associates of Science	N/A	(305) 375-2950
Jerry Blackman General Superintendent Rail Maintenance	MDT	2006	White Male	High School	N/A	(305) 884-7519
David Racine Building Manager 2	GSA	1998	White Male	High School	Real Property Administrator (RPA), Systems Facilities Administrator (SMA), Facilities Management Administrator (SMA), HVAC Journeyman	(305) 349-7600
Keva Pace Contract Development Specialist 2	SBA/DPM	1996	Black Female	Master of Science in Management Bachelor of Public Administration	N/A	(305) 375-3137
Angel Perez Seaport Facilities Superintendent (Alternate)	Seaport	1998	Hispanic Male	High School	Master Mechanical License, Air Conditioning Journeyman's License	(305) 347-4949
Technical Advisor (Non-Voting)						
Daniel Wilson Chief Supervisor Rail Vehicle Maintenance	MDT	1984	White Male	Associates of Arts in Business	N/A	(305) 889-6754