

MEMORANDUM

Agenda Item No. 11(A)(7)

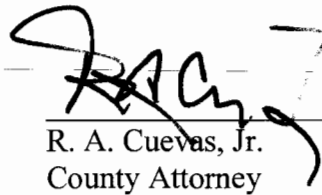
TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: May 5, 2009

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

SUBJECT: Resolution directing the
County Attorney's Office to
investigate the facts and
occurrences surrounding the
replacement of escalators on
the North Loop of the
Metromover

The accompanying resolution was prepared and placed on the agenda at the request of
Prime Sponsor Vice-Chairman Jose "Pepe" Diaz.



R. A. Cuevas, Jr.
County Attorney

RAC/jls




MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: May 5, 2009

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

SUBJECT: Agenda Item No. 11(A)(7)

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 Mayor'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. 11(A)(7)
5-5-09

RESOLUTION NO. _____

RESOLUTION DIRECTING THE COUNTY ATTORNEY'S OFFICE TO INVESTIGATE THE FACTS AND OCCURRENCES SURROUNDING THE REPLACEMENT OF ESCALATORS ON THE NORTH LOOP OF THE METROMOVER AND TO DETERMINE THE VIABILITY OF ANY LEGAL ACTION TO RECOVER THE COSTS INCURRED IN THE REPLACEMENT OF THOSE ESCALATORS

WHEREAS, numerous escalators in the northern loop of the Metromover system were damaged and/or destroyed as a result of lack of appropriate maintenance and/or lack of installation of specified materials; and

WHEREAS, the damage to two of these escalators required the removal and replacement of those escalators; and

WHEREAS, Miami-Dade County has been forced to pay some percentage of the cost of replacing those escalators; and

WHEREAS, there may be available legal remedies that allow the County to recover and/or recoup the cost of the replacement of those escalators,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board of County Commissioners directs the County Attorney's Office to conduct an investigation of the circumstances surrounding the repair and replacement of the damaged escalators and determine whether or not there are any available legal remedies to either offset or recover the costs incurred by the County in the replacement of the damaged escalators.

The Prime Sponsor of the foregoing resolution is Vice-Chairman Jose "Pepe" Diaz. It 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:

- | | |
|---------------------------------|--------------------|
| Dennis C. Moss, Chairman | |
| Jose "Pepe" Diaz, Vice-Chairman | |
| Bruno A. Barreiro | Audrey M. Edmonson |
| Carlos A. Gimenez | Sally A. Heyman |
| Barbara J. Jordan | Joe A. Martinez |
| Dorrian D. Rolle | Natacha Seijas |
| Katy Sorenson | Rebeca Sosa |
| Sen. Javier D. Souto | |

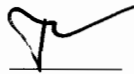
The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of May, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Thomas H. Robertson

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda No: 11(A) 7
File Number: 090745
**Committee(s)
of Reference:** Board of County Commissioners
Date of Analysis: April 23, 2009
Type of Item: Directive to County Attorney
Sponsor: Vice-Chairman Jose "Pepe" Diaz

Summary

This resolution directs the County Attorney's Office (CAO) to investigate the circumstances surrounding the repair and replacement of the damaged escalators serving the northern loop of the Metromover system and determine any available legal remedies to recoup or offset the cost that the County incurred in replacing the escalators.

Background and Relevant Legislation

In December 2007, the Miami-Dade County Office of the Inspector General (OIG) conducted an investigation into escalators serving the Metromover. The details of the OIG report were released in a March 2, 2009, final report, "Inspection and Repair of MetroMover Escalators by Kone, Inc., Ref. IG07-81." The OIG investigation was carried out at the request of Vice-Chairman Jose "Pepe" Diaz, following a funding request from the administration to pay an escalator manufacturer \$800,000 for the replacement of four escalators. The escalators, which normally have an operational life of 30 years, had corroded beyond reasonable repair after only 11 years in service, according to the OIG.

The corrosion was discovered in September 2005, by a Miami-Dade Transit employee whose foot went through a corroded escalator floor plate at the Park West Metromover station. The escalator was taken out of service and the escalator manufacturer, Kone, was alerted to the problem. A structural assessment of all the Metromover escalators was conducted thereafter, according to the OIG's report. Nine of the Metromover escalators showed various stages of corrosion in July 2006. Kone agreed to repair five of the escalators at no cost to the County, and replace the remaining four escalators for \$800,000.

The OIG found that Kone "failed to adequately perform its duties and obligations pursuant to the maintenance contracts" by failing to comply with inspection and record-keeping functions specified in

the original contracts. The OIG also found that Miami-Dade Transit and GSA “failed to closely monitor Kone’s performance pursuant to the maintenance contracts.”

Corrective Actions

In response to the OIG’s report, MDT and GSA outlined a number of corrective actions they have taken including: 1) enhanced contractual oversight; 2) the institution of a computerized management system to monitor the performance of vendors and the County with respect to all elevator and escalator maintenance contracts; 3) the establishment of preventive maintenance and inspection protocols; and 4) the execution of a Memorandum Of Understanding (MOU) between GSA and MDT clearly delineating responsibilities for contract management and administration.

GSA has levied liquidated damages against Kone in the amount of \$1.2 million for past non-performance, which is pending a response from Kone.

Metromover Escalators Afflicted by Corrosion

Metromover Station Name	Escalator In Service Date	Date Corrosion Found and Escalator Take Out of Service	Degree of Structural Damage from Corrosion ¹ (1=no damage; 10=severe damage)	Replacement or Repair of Escalator	Replacement Back in Service Date (Or Repair Date)	Out of Service Duration
Park West Station	5/25/94	9/15/05	10	Full Replacement	90% Complete – Due Back in Service early 2009	3 years, 4 months
10 th Street Station	5/25/94	12/1/05	10	Full Replacement	90% Complete – Due Back in Service early 2009	3 years, 1 month
11 th Street Station	5/25/94	11/17/05	10	Full Replacement	90% Complete – Due Back in Service early 2009	3 years, 2 months
Brickell Station	5/25/94	12/2/05	9-10	Full Replacement	90% Complete – Due Back in Service early 2009	3 years, 1 month
School Board Station	5/25/94	12/5/05	6	Significant Corrective Action Required	Back in Service 11/1/2008	2 years, 11 month
Freedom Tower Station	5/25/94	12/5/05	6	Significant Corrective Action Required	0% Complete – Due Back in Service 1/1/2010	4 years, 1 month
8 th Street Station	5/25/94	12/2/05	5	Significant Corrective Action Required	Back in Service 11/1/2008	2 years, 11 months

Metromover Station Name	Escalator In Service Date	Date Corrosion Found and Escalator Take Out of Service	Degree of Structural Damage from Corrosion ¹ (1=no damage; 10=severe damage)	Replacement or Repair of Escalator	Replacement Back in Service Date (Or Repair Date)	Out of Service Duration
Financial District Station	5/25/94	12/1/05	4	Significant Corrective Action Required	50% Complete – Due Back in Service 9/30/2009	3 years, 9 months
Omni Station	5/25/94	12/5/05	4	Significant Corrective Action Required	0% Complete – Due Back in Service 1/1/2010	4 years, 1 month

¹ Kone's Letters of Assessment.

Source: Miami-Dade County Office of the Inspector General Final Report: Inspection and Repair of MetroMover Escalators by Kone, Inc., Ref. IG07-81

Budgetary Impact

None.

Comments

During the April 15, 2009 Transit, Infrastructure & Roads Committee, the CAO was asked whether there was a pending settlement with Kone, Inc. The CAO mentioned that the settlement agreement approved by the Board of County Commissioners had been substantially completed.

Prepared by: Jason T. Smith