

Date: November 4, 2010  
To: Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

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



Resolution R-1094-10

From: Carlos Alvarez  
Mayor

George M. Burgess  
County Manager



Subject: Change Order No. 1 (a deductive change order) for South District Wastewater Treatment Plant, HLD Upgrade to 285 MGD, Upgrade Electrical Distribution System - Project No: N/A; Contract No: S-808 (A), to Munilla Construction Management, LLC d/b/a MCM

**Recommendation**

It is recommended that the Board of County Commissioners (Board) approve Change Order No. 1 (a deductive change order) to Contract No. S-808 (A) awarded to Munilla Construction Management, LLC d/b/a MCM (MCM) on May 5, 2009 pursuant to Resolution No. R-539-09. The change order waives formal competitive bid procedures pursuant to Section 2-8.1 of the Miami-Dade County Code and Section 5.03 (D) of the Home Rule Charter to purchase seven emergency electrical generators; reduces the total contract amount by \$16,590,872.04; and revises the project's scope of work to exclude the purchase of seven emergency electrical generators.

This project, Contract No. S-808 (A), is one in a series of projects under the Miami-Dade Water and Sewer Department's (WASD) High Level Disinfection Program at the South District Wastewater Treatment Plant (SDWWTP). It is being implemented to comply with Consent Order 03-1376 issued by the Florida Department of Environmental Protection, and with regulatory requirements resulting from a rule change enacted by the US Environmental Protection Agency to meet effluent quality standards for deep well disposal.

CHANGE ORDER NUMBER: 1

**Scope**

PROJECT NAME: South District Wastewater Treatment Plant, HLD Upgrade to 285 MGD, Upgrade Electrical Distribution System

PROJECT NO: N/A

CONTRACT NO: S-808 (A)

PROJECT DESCRIPTION: The work consists of furnishing all materials, labor, and equipment necessary to provide electrical service to all the new and upgraded facilities that will support the HLD upgrades and capacity rating increase to 285 MGD at the SDWWTP.

The scope of work includes, but is not limited to the following: constructing Florida

Power and Light (FPL) duct banks with switches, the associated conduits, and cables; constructing an electrical building; constructing a control room; constructing a bulk fuel storage facility with four 50,000-gallon above ground storage tanks; constructing fuel pumping facilities and fuel truck transfer facilities; furnishing and installing 13 kilo-volts (kV) and 5 kV electrical switchgears; furnishing and installing seven 2.6 mega-watts minimum, diesel engine-driven 900 revolutions per minute (rpm) generators; furnishing and installing 13 kV electrical service feed and transformers; furnishing and installing 13kV transformers in structures provided under other HLD contracts; and all other appurtenant and miscellaneous items and work.

It is WASD's intent to obtain a complete, functional, and satisfactory installation under this project, and any items of labor, equipment or materials which may be reasonably assumed as necessary to accomplish this end shall be supplied whether or not they are specifically shown on the plans or stated in the specifications. The Contractor shall provide all sheeting, shoring, bracing and all other labor, material or equipment required to preclude damage to, or loss of functionality of, any existing facility or system.

**PROJECT LOCATION:** 23300 SW 88th Avenue, in Miami-Dade County, Florida

**PRIMARY COMMISSION DISTRICT:** District 8 Katy Sorenson

**APPROVAL PATH:** Board of County Commissioners

**USING DEPARTMENT:** Miami-Dade Water and Sewer Department

**MANAGING DEPARTMENT:** Miami-Dade Water and Sewer Department

**Fiscal Impact / Funding Source**

**FUNDING SOURCE:** WASD Revenue Bonds Sold, HLD Special Construction Fund, Wastewater Connection Charges, Wastewater Renewal Fund, and Future WASD Revenue Bonds

**CHANGE ORDER FUNDING SOURCE:** WASD Revenue Bonds Sold, HLD Special Construction Fund, Wastewater Connection Charges, Wastewater Renewal Fund, and Future WASD Revenue Bonds

**PTP FUNDING:** No

**GOB FUNDING:** No

**ARRA FUNDING:** No

**CHANGE ORDER DESCRIPTION:** This is a deductive change order reassigning the Contractor's purchase contract for seven emergency electrical generators to Miami-Dade County. Please see the Monetary Justification for a complete description of the requested change.

**MONETARY JUSTIFICATION:** On May 5, 2009, the Board of County Commissioners (Board) approved the award of Contract No. S-808 (A) for \$62,407,392.61 to MCM to upgrade the electrical distribution system at the South District Wastewater Treatment Plant. The improvements to the electrical distribution system will support the high level disinfection upgrades being made at this time.

The contract documents (Proposal Item No. 6) requires MCM to coordinate, purchase, deliver, install, field test and warrant seven emergency electrical generators and associated equipment required for the upgrade to the electrical distribution system for a total dollar amount of \$19,952,916.76. The benefit to the County of having a single contractor responsible for the coordination, purchase, delivery, installation, field testing and warranty of complex equipment is the avoidance of any dispute regarding responsibility for the satisfactory performance of the equipment once it is installed. Under the terms of the existing contract, MCM has to procure the seven emergency electrical generators without any progress payments from the County.

In July 2009, MCM subcontracted Engine Systems, Inc. (ESI) to purchase the seven emergency electrical generators and associated equipment at a cost of \$16,549,498.29, including sales tax of \$864,828.04. A Standard Subcontract Agreement between MCM and ESI was signed which became effective on July 6, 2009. In August 2009, MCM contacted WASD staff regarding the purchase of the generators and proposed that the County make progress payments to MCM as each payment schedule milestone is met, however, the terms of the existing contract do not allow the County to make progress payments to MCM.

Several months later, MCM proposed that the County assume responsibility for the purchase of the generators instead of MCM. This approach, MCM stated, would save the County the cost of the sales tax. Following consultation with the County Attorney's Office, WASD staff determined that MCM's request to have the County purchase the emergency electrical generators would be in the County's best interest as it would result in a deductive change order to Contract No. S-808 (A) saving the County \$864,828.04. This new arrangement is now bound by an Agreement for Partial Assignment (as attached) executed between the County, MCM and ESI, in which MCM will continue to be responsible for all of the contractual requirements (excluding the purchase) of the seven emergency electrical generators and associated equipment, including the coordination, delivery, inspection, installation, field testing and warranties. The only responsibilities the County is assuming under the Agreement for Partial Assignment is waiving competitive bidding for the purchase of the seven emergency electrical generators, making the partial payments less sales tax as dictated by the payment schedule set forth in Exhibit B (as

attached) and the direct ownership of the equipment prior to installation. Payments will be made by the County upon notification by MCM to WASD in writing that ESI has satisfactorily completed each payment schedule milestone in the contract.

In the event the Florida Department of Revenue rejects the County's sales tax exemption application, the County will be responsible for the payment of the principal amount of the sales tax. At this time, there is no expectation that the transaction will not completely fulfill the requirements for sales tax exemption. MCM shall be responsible for payment of any assessments, penalties, and interest imposed by the Florida Department of Revenue.

With the approval of this deductive change order to purchase the seven emergency electrical generators and associated equipment at a cost of \$16,549,498.29, WASD will assume MCM's financial responsibility to ESI in the amount of \$15,684,670.25 which is the cost of the generators minus sales tax, plus \$39,211.68 for the Inspector General Fee. The total dollar amount WASD will be invoiced by ESI is \$15,723,881.93, see Exhibit B.

It is important to note that the difference between the purchase price of the generators set at \$16,549,498.29 and the dollar allocation in Contract Item No. 6 for \$19,952,916.76 will cover the project expenses related to the installation, field testing and warrant responsibilities, which will be carried out by MCM. In addition, the amount of \$41,373.75 will also be deducted from Contract No. S-808 (A) which is the amount of the Inspector General Fee for the Standard Subcontract Agreement between MCM and ESI.

MCM will remain liable to the County and the County will be added to ESI's insurance policy covering the equipment at no cost to the County.

The revisions to the Contract S-808 (A) proposed in the change order are summarized below:

Changes to Contract No. S-808 (A)

- Waive competitive bidding for the purchase of the seven emergency electrical generators.
- Reduction in the Scope of Work to exclude the purchase of seven emergency electrical generators and associated equipment.
- Reduction in the total contract dollar amount by \$16,590,872.04, which includes the purchase price of the seven emergency electrical generators and associated equipment for \$16,549,498.29, inclusive of delivery, installation, field testing and warranties, and \$41,373.75 in Inspector General fees, thereby decreasing the total contract dollar amount from \$62,407,392.61 to \$45,816,520.57.

Dollar balances in the following proposal items will remain the same as MCM continues to be responsible for the contractual requirements including the coordination, delivery, inspection, installation, field testing, and warranties of the seven emergency electrical

generators and associated equipment.

- Proposal Item #1: Mobilization Costs - \$2,566,415.00.
- Proposal Item #24: Contingency Account for Unforeseen Conditions - \$5,168,795.81.
- Proposal Item #25: Dedicated Allowance Account for Cost of Permits & Fees - \$1,550,638.74.

TIME JUSTIFICATION: N/A

	<u>Original Contract Values</u>	<u>Previous Adjustments To Values</u>	<u>This Change Order Values</u>	<u>Current Totals</u>	<u>Total Paid</u>	<u>Balance After Change Order</u>
BASE:	\$51,687,958.06	\$0.00	(\$16,590,872.04)	\$35,097,086.02	\$14,370,682.65	\$20,726,403.37
CONTINGENCY:	\$5,168,795.81	\$0.00	\$0.00	\$5,168,795.81	\$0.00	\$5,168,795.81
DEDICATED:	<u>\$5,550,638.74</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$5,550,638.74</u>	<u>\$204,069.43</u>	<u>\$5,346,569.31</u>
TOTALS:	\$62,407,392.61	\$0.00	(\$16,590,872.04)	\$45,816,520.57	\$14,574,752.08	\$31,241,768.49

	<u>Original Contract Duration</u>	<u>Previous Adjustments To Duration</u>	<u>This Change Order Duration</u>	<u>Current Totals</u>
BASE DURATION:	1360	0	0	1360
CONTINGENCY:	<u>136</u>	<u>0</u>	<u>0</u>	<u>136</u>
TOTAL DURATION:	1496	0	0	1496

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

<u>Reason</u>	<u>Cost</u>	<u>Duration</u>
Other	(\$16,590,872.04)	0
	(\$16,590,872.04)	0

**Track Record / Monitor**

**PERFORMANCE RECORD:**

The CIIS database lists eight (8) contracts for Munilla Construction Management, LLC d/b/a MCM, and five (5) performance evaluations with an average rating of 3.4 points out of a maximum score of 4.0 points. The Contractor received a rating of 3.5 on an interim evaluation for this contract.

5

Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners  
Page 6

**PRIME CONTRACTOR:** Munilla Construction Management, LLC d/b/a MCM

**COMPANY PRINCIPAL:** Jorge Munilla

**COMPANY QUALIFIERS:** Jorge Munilla

**COMPANY EMAIL ADDRESS:** bmcdonald@mcmcorp.com

**COMPANY STREET ADDRESS:** 6201 SW 70 St., 2nd Floor

**COMPANY CITY-STATE-ZIP:** Miami, FL 33143

**YEARS IN BUSINESS AT TIME OF AWARD:** 25

**PREVIOUS CONTRACTS WITH COUNTY IN THE LAST FIVE YEARS:** According to the Firm History Report provided by the Department of Small Business Development, Munilla Construction Management, LLC d/b/a MCM has received five contracts with Miami-Dade County for a total dollar value of \$124,365,223.61 and no change orders approved by the BCC.

**SUB CONTRACTORS AND SUPPLIERS (SECTION 10-34 MIAMI DADE COUNTY CODE):** HJ Foundation Company, Dilema Corporation, Decktight Roofing Services, Inc., Florida Handling Systems, Inc., Highland Tank & Manufacturing Co., Inc., Bristol Emerson Process Management, Inc., Eaton Electric Company Inc., Engine Systems, Inc., and Jorda Enterprises, Inc. d/b/a Jorda Mechanical Contractors.

<b>REVIEW COMMITTEE ASSIGNED CONTRACT MEASURES:</b>	<b>TYPE</b>	<b>GOAL</b>	<b>ESTIMATED VALUE</b>	<b>ACHIEVED</b>
	CSBE	8.15%	\$4,633,825.44	\$3,191,506.17
	CWP	0.00%	0	0

**CONTRACT MANAGER NAME / PHONE / EMAIL:** Mario Garcia 305-460-7111 GARCM@miamidade.gov

**PROJECT MANAGER NAME / PHONE / EMAIL:** John W. Chorlog, Jr. 786-552-7024 jwcho01@miamidade.gov

**Background**

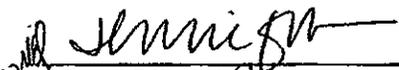
**BACKGROUND:** The work consists of furnishing all materials, labor, and equipment necessary to

6

provide electrical service to all the new and upgraded facilities that will support the HLD upgrades and capacity rating increase to 285 MGD at the SDWWTP.

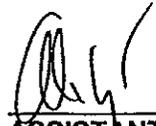
---

BUDGET APPROVAL  
FUNDS AVAILABLE:

  
\_\_\_\_\_  
OSBM DIRECTOR                      9/27/10  
DATE

APPROVED AS TO  
LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
COUNTY ATTORNEY                      9-27-10  
DATE

  
\_\_\_\_\_  
ASSISTANT COUNTY                      9/27/10  
MANAGER                                      DATE

CLERK DATE

\_\_\_\_\_  
DATE



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners **DATE:** November 4, 2010

**FROM:** R. A. Cuevas, Jr. County Attorney *[Signature]* **SUBJECT:** Agenda Item No. 8(R)(1)(B)

Please note any items checked.

- "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
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's , 3/5's , unanimous ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

*[Handwritten mark]*

Approved  Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(R)(1)(B)  
11-4-10

RESOLUTION NO. R-1094-10

RESOLUTION APPROVING DEDUCTIVE CHANGE ORDER TO WATER AND SEWER DEPARTMENT CONTRACT NO. S-808(A): UPGRADE OF ELECTRICAL DISTRIBUTION SYSTEM FOR THE SOUTH DISTRICT WASTEWATER TREATMENT PLANT WITH MUNILLA CONSTRUCTION MANAGEMENT LLC D/B/A MCM ("MCM") IN THE AMOUNT OF \$16,549,498.29; WAIVING COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING ACCEPTANCE OF PARTIAL ASSIGNMENT OF MCM STANDARD SUBCONTRACT AGREEMENT WITH ENGINE SYSTEMS CORPORATION FOR PURCHASE OF ELECTRICAL GENERATING EQUIPMENT; AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE DEDUCTIVE CHANGE ORDER AND TO EXECUTE AGREEMENT WITH MCM FOR PARTIAL ASSIGNMENT OF SUBCONTRACT LOG NO. CON-ESI IN THE AMOUNT OF \$15,723,881.93

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 approves a deductive change order to Water and Sewer Department Contract No. S-808(A): Upgrade of Electrical Distribution System for the South District Wastewater Treatment Plant with Munilla Construction Management LLC d/b/a MCM in the amount of \$16,549,498.29 to delete the purchase of electrical generating equipment, in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or the County Mayor's designee to execute same.

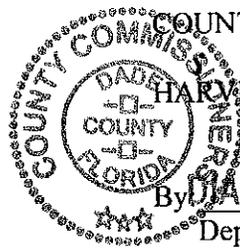
Section 2. This Board waives by a two-thirds vote of the Board members present the competitive bidding requirements of Section 5.03(D) of the Home Rule Charter and Section 2-8.1 of the Miami-Dade County Code; and approves the Agreement with MCM for the Partial Assignment of MCM Standard Subcontract Agreement Log No. CON-ESI with Engine Systems Corporation for purchase of electrical generating equipment in the amount of \$15,723,881.93, in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or the County Mayor's designee to execute same and exercise the provisions contained therein.

The foregoing resolution was offered by Commissioner Joe A. Martinez who moved its adoption. The motion was seconded by Commissioner Sally A. Heyman and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of November, 2010. 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 DIANE COLLINS  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

HNG (SED)

Henry N. Gillman

AGREEMENT FOR PARTIAL ASSIGNMENT

THIS Agreement for Partial Assignment ("Agreement") dated \_\_\_\_\_, 2010, is made and entered into between Munilla Construction Management, LLC d/b/a MCM ("MCM") and Miami-Dade County ("County"), with the consent of Engine Systems Inc. ("ESI") for partial assignment of MCM Standard Subcontract Agreement Log No. CON-ESI, dated July 6, 2009 (the "Subcontract") by MCM to County.

Whereas, the County and MCM entered into Contract No. S-808, dated November 9, 2009, for installation of an electrical distribution system as part of the County's Water and Sewer Department's High Level Disinfection Project at the South District Wastewater Treatment Plant ("Contract S-808"); and

Whereas, Contract S-808 has a lump sum value of \$62,407,392.61, which includes a subcontract with ESI for procurement of seven (7) diesel electric generators at a total cost of \$16,549,498.29; and

Whereas, MCM requested a deductive change order to Contract S-808 in the amount of \$16,549,498.29 ("Change Order") to avoid the financial hardship of procuring the electric generators without any progress payments from the County; and

Whereas, MCM has requested that MCM's obligations to make payments to ESI under the Subcontract be assigned to the County, thereby generating a project savings by the County of \$864,828.04 in the form of avoided sales tax costs; and

Whereas, MCM agrees to continue to be wholly responsible for the performance, delivery, installation, guarantees and warranties of the generators as if there was no Change Order or partial assignment of the Subcontract; and

Whereas, the amount of \$41,373.75 shall also be deducted from Contract S-808, which is the amount of the Inspector General Fee for the Subcontract Price set forth in the Subcontract; and

Whereas, the Subcontract Price set forth in the Subcontract shall be increased by \$39,211.68 to pay for the Inspector General Fee; and

Whereas, the County desires that MCM partially assign the Subcontract to the County, as more fully described herein, and ESI is willing to consent to such partial assignment.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and adequacy of which are expressly acknowledged, the parties agree as follows:

1. Effective as of the date of this Agreement, MCM hereby assigns to the County MCM's obligations under Section 3 of the Subcontract solely for purpose of

obligating the County to make payments to ESI under the Subcontract, as required therein. Also effective as of the date of this Agreement, MCM hereby assigns to the County MCM's obligations to make payments to ESI of each adjustment to the Subcontract Price which results from a Subcontract Change Order or Subcontract Construction Change Directive, issued by MCM pursuant to Section 10 of the Subcontract and accepted in writing by ESI, in the amount and on date specified in such Subcontract Change Order or Subcontract Construction Change Directive, solely for purpose of obligating the County to make payments to ESI under the Subcontract.

2. Notwithstanding the partial assignment of the Subcontract to the County provided for herein, MCM shall be wholly liable and responsible for the coordination, delivery, inspection, installation, start-up and performance of the generators and all related systems supplied under the Subcontract in accordance with Contract S-808 and shall nonetheless remain liable and responsible to ESI for the County's performance and observance of all obligations assigned to the County hereunder, as if there was no partial assignment of the Subcontract.
3. MCM shall manage and guarantee the performance of the generators as if there was no partial assignment of the Subcontract.
4. In addition to the indemnification provisions provided in Contract S-808, MCM shall indemnify and hold harmless the County, its officers, employees, agents and instrumentalities, and ESI, its parent, affiliates and each of their respective directors, officers, employees, agents and subcontractors, from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County may or its officers, employees, agents and instrumentalities may incur, or that ESI, its parent, affiliates and each of their respective directors, officers, employees, agents and subcontractors may incur, as a result of claims, demands suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from (i) the issuance by County of the Change Order, , (ii) this partial assignment of the Subcontract, (iii) any adverse decision by the Florida Department of Revenue regarding the avoided sales tax costs, and (iv) the performance of this Agreement or any other action arising out of or relating to the Change Order or this Agreement. MCM shall pay all claims and losses, including any penalties, assessments, and interest 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. However, in the event that the Florida Department of Revenue disallows the transaction contemplated by this Agreement as a Sales and Use Tax Exempt Transaction, then, and in that event, the County will be responsible for and shall pay to ESI the principal amount of the sales tax. MCM shall be responsible for and shall pay to ESI all assessments, penalties and interest imposed by the Florida

Department of Revenue. The County shall also deduct from the retainage for Contract S-808 the amount of \$2,162.07 for the IG Fee and the interest amount that the County would have earned on \$16,549,498.29 had the Change Order not been issued.

5. Contemporaneous with MCM's execution of this Agreement, MCM shall provide the County with its surety's consent to this Agreement and the partial assignment of the Subcontract which shall provide that the principal must comply with all contractual requirements, guarantees and warranties of Contract S-808 as if there was no Change Order or partial assignment of the Subcontract.
6. ESI consents to MCM's partial assignment of the Subcontract to the County, as described herein.
7. Contemporaneous with ESI's execution of this Agreement, ESI shall cause the County to be named as an additional obligee under the performance and payment bond provided by ESI pursuant to the Subcontract.
8. Within 15 days of the execution of this Agreement, the County shall (i) issue a purchase order on its letterhead, subject only to the terms and conditions of the Subcontract, directly to ESI for the diesel electric generators and other items to be provided by ESI under the Subcontract, (ii) shall pay to ESI the amount paid by MCM to ESI under the Subcontract prior to such date, as set forth in Exhibit A, less the applicable sales and use tax, and (iii) shall incur the obligation to pay to ESI the retainage related to such amount, as provided in Section 3 of the Subcontract. ESI shall, in turn, reimburse to MCM all payments previously made by MCM to ESI under the Subcontract prior to such date, including any sales and use tax previously paid.
9. The parties agree that Subcontract Price set forth in the Subcontract will be increased by \$39,211.68 to cover the cost of the Inspector General Fee, which is one-quarter of one percent of the Subcontract Price. The Contract Price set forth in Contract S-808 will be reduced by \$41,373.75 to account for the Subcontract's Inspector General Fee. The County will deduct one-quarter of one percent from each milestone payment to ESI for the Inspector General Fee.
10. The County shall make subsequent payments directly to ESI for the generators and work performed under the Subcontract in accordance with the payment schedule, attached hereto as Exhibit B, following inspection, verification and certification by MCM to the County of the completion of each milestone reflected therein. The total amount of invoices from ESI to the County shall not exceed \$15,723,881.93, plus the amount of each adjustment to the Subcontract Price which results from a Subcontract Change Order or

Subcontract Construction Change Directive, issued by MCM pursuant to Section 10 of the Subcontract and accepted in writing by ESI.

11. The County will release retainage amounts to ESI in accordance with the Subcontract.
12. MCM accepts full responsibility for the timely delivery of the equipment to the County. If ESI delays the delivery of the generators or otherwise fails to perform the Subcontract, MCM shall remain liable to the County.
13. The County shall acquire title to the generators, and, as to ESI, the risk of loss of the generators will pass to the County, when ESI delivers the generators to the project site and MCM has certified that the generators are satisfactory and operational in accordance with the Subcontract.
14. ESI shall add the County as an additional insured on all insurance policies required to be maintained by ESI under the Subcontract, except Workers' Compensation, to the extent of the liabilities assumed by ESI thereunder.

#### 15. MISCELLANEOUS

- (a) **Prior Agreements in Effect.** Except as specifically amended by this Agreement, the parties' respective agreements, promises, obligations and covenants as set forth in Contract No. S-808 and in the Subcontract shall remain in full force and effect.
- (b) **Governing Law; Submission to Jurisdiction.** This Agreement will be governed by and construed under and in accordance with the laws of the State of Florida. Any litigation between the Parties shall be conducted in the United States District Court for the Southern District of Florida and the parties hereby submit to the exclusive jurisdiction of such courts. The Parties irrevocably waive any objection that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction, including any objection to the laying of venue based on the grounds of *forum non conveniens* and any objection based on the grounds of lack of *in personam* jurisdiction.
- (c) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- (d) **Severability.** If any provision of this Agreement is held to be unenforceable under applicable law, such provision will be excluded from this Agreement and the balance of the Agreement will be interpreted as if such provision were so excluded and will be enforceable in accordance with its terms.

(e) Further Assurances. From and after the date of this Agreement upon reasonable request of any party, the other party or parties shall execute and deliver such instruments, documents or other writings, and take such other actions, as may be reasonably necessary to carry out and to effectuate fully the intents and purposes of this Agreement.

IN WITNESS WHEREOF, the parties by their duly undersigned representatives have executed this Agreement as of the day and year first written above.

Witnesses:

MUNILLA CONSTRUCTION MANAGEMENT  
LLC d/b/a MCM

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ (Seal)

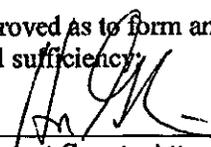
Attest:  
Harvey Ruvin, Clerk

MIAMI-DADE COUNTY  
By Its Board of County Commissioners

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

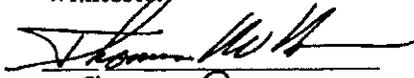
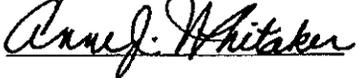
By: \_\_\_\_\_  
Mayor

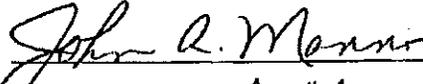
Approved as to form and  
legal sufficiency:

  
\_\_\_\_\_  
Assistant County Attorney

Witnesses:

ENGINE SYSTEMS INC.

By: 

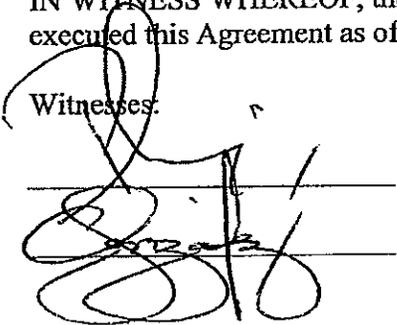
Print Name: John A. Manno

Title: Vice President

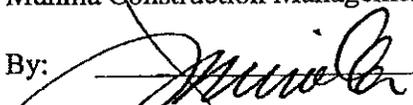
(e) Further Assurances. From and after the date of this Agreement upon reasonable request of any party, the other party or parties shall execute and deliver such instruments, documents or other writings, and take such other actions, as may be reasonably necessary to carry out and to effectuate fully the intents and purposes of this Agreement.

IN WITNESS WHEREOF, the parties by their duly undersigned representatives have executed this Agreement as of the day and year first written above.

Witnesses:



Munilla Construction Management, LLC d/b/a MCM

By: 

Print Name: \_\_\_\_\_

Jorge Munilla

Title: \_\_\_\_\_

President/Manager



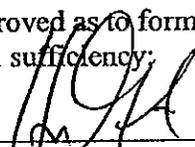
Attest:  
Harvey Ruvin, Clerk

MIAMI-DADE COUNTY  
By Its Board of County Commissioners

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

By: \_\_\_\_\_  
Mayor

Approved as to form and  
legal sufficiency:

  
\_\_\_\_\_  
Assistant County Attorney

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

ENGINE SYSTEMS INC.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A

MCM's Payments to ESI

<u>Inv #</u>	<u>Date</u>	<u>Progress Amount</u>	<u>Sales Tax</u>	<u>Total Invoiced</u>	<u>10% Retainage Fee Not Paid</u>	<u>10% Fee Sales Tax Not Paid</u>	<u>Paid Amount</u>	<u>Sales Tax Total</u>
23591	9/22/2009	1,441,296.73	86,527.80	1,527,824.53	143,615.50	9,166.95	1,451,435.81	77,360.85
23812	10/6/2009	80,000.00		80,000.00	8,000.00		72,000.00	
24176	11/6/2009	720,648.30	43,238.90	763,887.26	71,805.40	4,583.32	611,104.81	38,655.58
24746	6/17/2010	2,450,204.44	147,012.27	2,597,216.71	245,020.45	14,701.23	2,337,495.03	132,311.04
						<u>Total:</u>	<u>4,472,035.65</u>	<u>248,327.47</u>

**Exhibit B**  
**Contract No. S-808 (A) - Change Order No. 1**  
**Payment Schedules**

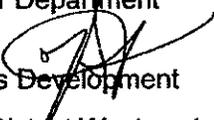
<u>ESI Scope Item Description</u>	<u>Original MCM Payment Schedule</u>	<u>Revised Miami-Dade County Payment Schedule Excluding Sales Tax</u>	<u>Revised Miami-Dade County Payment Schedule Excluding Sales Tax/Including IG Fee</u>
Award of Contract to ESI	\$1,527,824.53	\$1,441,296.24	\$1,444,899.48
Major Equipment Purchased by ESI	\$763,887.26	\$720,648.41	\$722,450.03
Approval of Engineering Submittals	\$763,887.26	\$720,648.41	\$722,450.03
ESI receives Engines 1 & 2	\$2,597,216.70	\$2,450,204.48	\$2,456,329.99
ESI receives Engines 3 & 4	\$2,597,216.70	\$2,450,204.48	\$2,456,329.99
ESI receives Engines 5 & 6	\$2,597,216.70	\$2,450,204.48	\$2,456,329.99
ESI receives Engines 7	\$1,527,774.53	\$1,441,296.84	\$1,444,900.08
Delivery of Unit 1 - 4	\$1,222,219.63	\$1,153,037.43	\$1,155,920.02
Delivery of Unit 5 - 7	\$916,664.72	\$864,778.07	\$866,940.02
Project Close Out	\$763,887.26	\$720,648.41	\$722,450.03
<u>Optional Items</u>			
Optional Freight outbound to Florida	\$157,765.00	\$157,765.00	\$158,159.41
Optional Payment & Performance Bond	\$80,000.00	\$80,000.00	\$80,200.00
Optional Extended Warranty	\$240,963.00	\$240,963.00	\$241,565.41
Optional Supervisory installation & start-up labor & expenses on site	\$777,999.00	\$777,999.00	\$779,944.00
Optional on site Training	\$14,976.00	\$14,976.00	\$15,013.44
<b>Subtotal Including Sales Tax:</b>	<b>\$16,549,498.29</b>	<b>\$15,684,670.25</b>	<b>\$15,723,881.93</b>
<b>Subtotal Excluding Sales Tax:</b>			
<b>Sales Tax:</b>	<b>\$864,828.04</b>		
<b>IG Fee:</b>			<b>\$39,211.68</b>

# Memorandum



**Date:** September 27, 2010

**To:** John Renfrow, Director  
Miami-Dade Water and Sewer Department

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

**Subject:** Project No. S-808(A), South District Wastewater Treatment Plant, HLD Upgrade to 285 MGD Upgrade Electrical Distribution System

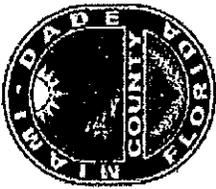
---

The subject project was reviewed by the Department of Small Business Development (SBD) for compliance with the Community Small Business Enterprise (CSBE), and Responsible Wages and Benefits Programs, §10-33.02, and 2-11.16 of the Code of Miami-Dade County. This project was awarded to Munilla Construction Management, Corp. with a 8.15% 2<sup>nd</sup> through 4<sup>th</sup> tier CSBE goal valued at \$4,633,825.44. This change order will decrease the required CSBE participation by \$1,352,156.07 to \$3,281,669.37.

To date, CSBEs meeting the goal have been paid \$3,191,506.17. The prime and its subcontractors are currently in compliance with the Responsible Wages and Benefits requirements.

Please do not hesitate to contact me at 305-375-3134 if you need additional information.

c: Alice Hidalgo-Gato, CMC Division Director, SBD  
Patrice King, Administrative Officer 2, SBD



# Capital Improvements Information System

## Contractor Evaluations Report

Exit

<u>Dept</u>	<u>Contract</u>	<u>Type</u>	<u>Contractor / Architect Name</u>	<u>Date</u>	<u>Rater</u>	<u>Period</u>	<u>Rate</u>
MT	<u>663011</u>	CON	<u>Munilla Construction Management, LLC dba MCM</u>	6/12/2008	Neville Hoo	Project conclusion or closeout	<u>3.0</u>
MT	<u>663012</u>	CON	<u>Munilla Construction Management, LLC dba MCM</u>	6/12/2008	Neville Hoo	Project conclusion or closeout	<u>3.0</u>
GS	<u>W80021</u>	DES	<u>Munilla Construction Management, LLC dba MCM</u>	9/9/2009	Jose R. Perez, A.I.A., LEED AP, Director	Completion of construction	<u>3.8</u>
GS	<u>W80021</u>	DES	<u>Munilla Construction Management, LLC dba MCM</u>	9/9/2009	Jose R. Perez, A.I.A., LEED AP, Director	Interim	<u>3.8</u>
WS	<u>S-808 (A)</u>	CON	<u>Munilla Construction Management, LLC dba MCM</u>	7/2/2010	Mario Garcia	Interim	<u>3.5</u>

Evaluation Count: 5 Contractors: 1 Average Evaluation: 3.4

2

Exit



**MIAMI DADE COUNTY**  
**Department of Small Business Development**  
**Firm History Report**

From: 09/21/2005 To: 09/21/2010

**FIRM NAME: MUNILLA CONSTRUCTION MANAGEMENT, LLC**  
**6201 SW 70th St, 2nd Floor**  
**Miami, FL 33143**

PRIMES

PROJECT #	CONTRACT	DEPT.	MEASURES	AWARD DATE	AWARD AMOUNT
DB07-GSA-02 (BUILD) DESIGN-BUILD SERVICES FOR THE NEW GENERAL SERVICES ADMINISTRATION (GSA) TRADE SHOP FACILITY (SIC 15)	1	GS	GOAL CSBE 20%	09/16/2008	\$12,588,027.00
A05-FIRE-01-CON ESP CONSTRUCTION SERVICES FOR THE MIAMI-DADE FIRE RESCUE TRAINING FACILITY (SIC 15)	1	FR	GOAL CSBE 20.91%	12/02/2008	\$25,299,169.00
B7461 MIA BC INFILL 3RD & 4TH LEVEL TENANT IMPROVEMENTS (SIC 15)	1	AV	GOAL CSBE 29%	04/21/2009	\$7,587,626.00
S-808 (A) SOUTH DISTRICT WASTEWATER TREATMENT PLANT, HLD UPGRADE TO 285 MGD UPGRADE ELECTRICAL DISTRIBUTION SYSTEM (SIC 16)	1	WS	GOAL CSBE 8.15%	05/05/2009	\$62,407,392.61
DB08-GSA-01 ESP (BUILD) DESIGN-BUILD SERVICES FOR THE NEW WEST LOT-MULTI USE FACILITY (SIC 15)	1	GS	GOAL CSBE 20%	02/08/2010	\$13,767,740.00

22



**MIAMI DADE COUNTY**  
**Department of Small Business Development**  
**Firm History Report**

From: 09/21/2005 To: 09/21/2010

**FIRM NAME:** MUNILLA CONSTRUCTION MANAGEMENT, LLC  
 6201 SW 70th St, 2nd Floor  
 Miami, FL 33143

**PRIMES**

PROJECT #	CONTRACT	DEPT.	MEASURES	AWARD DATE	AWARD AMOUNT
			Total Award Amount	\$121,649,954.61	
			Total Change Orders Approved by BCC	\$0.00	
				<u>\$121,649,954.61</u>	

23



**MIAMI DADE COUNTY**  
**Department of Small Business Development**  
**A&E Firm History Report**

From: 09/21/2005 To: 09/21/2010

**FIRM NAME: MUNILLA CONSTRUCTION MANAGEMENT, LLC**  
**6201 SW 70th St, 2nd Floor**  
**Miami, FL 33143**

**PRIMES**

PROJECT #	CONTRACT	DEPT.	MEASURES	AWARD DATE	AWARD AMOUNT
DB07-GSA-02 (DESIGN)	1	GS	GOAL CBE 25%	09/16/2008	\$785,305.00
DESIGN-BUILD SERVICES FOR THE NEW GENERAL SERVICES ADMINISTRATION (GSA) TRADE SHOP FACILITY (SIC 871)					
					<u>\$785,305.00</u>
DB08-GSA-01 ESP (DESIGN)	1	GS	GOAL CBE 20%	02/08/2010	\$1,929,964.00
DESIGN-BUILD SERVICES FOR THE NEW WEST LOT-MULTI USE FACILITY (SIC 871)					
					<u>\$1,929,964.00</u>
<b>Total Award Amount</b>					<b>\$2,715,269.00</b>
<b>Total Change Orders Approved by BCC</b>					<b>\$0.00</b>

24

SOUTH DISTRICT WASTEWATER TREATMENT PLANT  
 HLD UPGRADE TO 285 MGD, ELECTRICAL DISTRIBUTION SYSTEM  
 CONTRACT NO. S-808(A)

ESTIMATE: \$74,700,000

TABULATION OF BIDS		Munilla Construction Management		Poole & Kent Company of Florida		Bid Date: February 4, 2009	
BIDDERS		6201 SW 70th St., 2nd Fl. Miami, FL 33143		1781 NW North River Drive Miami, Florida 33125		Skansa USA Building, Inc. 1815 Griffin Road, Suite 204 Dania Beach, Florida 33004	

Item No.	Description	Quant.	Unit	Total	Unit	Total	Unit	Total
1.	Performing preparatory work & operations in mobilizing for beginning the work of the Project, but excluding materials & permit costs, both of which are paid under other payment items	Aggr. Sum		\$2,566,415.00		\$2,400,000.00		\$2,609,313.55
2A.	All cost of mobilizing plus demobilizing for production auger-cast pile installation, including submittals, pile rig installation & removal, cranes & all other equipment required to do piling at any or all locations on the treatment plant site	2 Units	8,562.56	17,125.12 *	8,000.00	16,000.00	8,160.00	16,320.00
2B.	All cost of installing production pressure grouted reinforced auger cast piling for foundations of the Electrical Distribution Building No. 2 and the Bulk Fuel Storage & Transfer Facility	9,000 L.F.	22.17	199,530.00 *	21.00	189,000.00	21.68	195,120.00
2C.	All costs of mobilizing, plus demobilizing & performing for auger-cast pile load testing including submittals, pile rig installation & removal cranes, test rig setup, load testing & test reports at locations identified on the plans	2 Units	20,336.09	40,672.18 *	23,000.00	46,000.00	25,500.00	51,000.00
3.	All cost of installing the FPL switch structure, FPL duct banks, tie-ins to existing duct banks, coordinating with FPL or its agents to install cable from FPL facilities to the switch structure, coordinate & support FPL or its agents to furnish & install FPL supplied switches on the structure & install duct banks from the switch structure into the Electrical Distribution Building No. 2, install all accessories for FPL service	Aggr. Sum		142,246.00		600,000.00		1,000,000.00
4.	All cost of furnishing & installing all civil, structural, architectural, mechanical, electrical, plumbing, ventilation AC elements & all required accessories for the construction of the Electrical Distribution Building No. 2, not including equipment furnished, installed, connected & tested in the building itemized in other bid items	Aggr. Sum		9,049,133.00		7,800,000.00		11,470,407.45
5.	All cost of furnishing & installing, connecting, wiring & testing of all electrical distribution equipment not including equipment & work specified in Section 16230 in Electrical Building No. 2 including but not limited to medium voltage switchgear, motor control centers, all transformers, batteries wire & cable to FPL switches & other inter equipment wiring, controls & accessories to provide primary electrical service at the switchgear room	Aggr. Sum		4,384,033.00		4,440,000.00		5,000,000.00

\*Revised due to error

25

MIAMI-DADE WATER AND SEWER DEPARTMENT  
MIAMI-DADE COUNTY

SOUTH DISTRICT WASTEWATER TREATMENT PLANT  
HLD UPGRADE TO 285 MGD, ELECTRICAL DISTRIBUTION SYSTEM  
CONTRACT NO. S-808(A)

ESTIMATE: \$74,700,000

TABULATION OF BIDS  
BIDDERS

Munilia Construction Management  
LLC, d/b/a MCM  
6201 SW 70th St., 2nd Fl.  
Miami, FL 33143

Poole & Kent Company of Florida  
1781 NW North River Drive  
Miami, Florida 33125

Skansa USA Building, Inc.  
1815 Griffin Road, Suite 204  
Dania Beach, Florida 33004

Bid Date: February 4, 2009

Item No.	Description	Quant.	Unit	Total	Unit	Total	Unit	Total
6.	All costs of manufacturing fabricating assembling factory testing, delivering, installing, connecting & furnishing & installing and field testing including cost of fuel for testing an electric generating system for all equipment as specified in Section 16230, including but not limited to the generator comprising of engine/alternator/skid, control panels, wiring, radiators & piping, exhaust mufflers & piping, day tanks, fuel piping & controls, air receiver tanks for starting & air piping & all necessary tie-ins to the switchgear system & all accessories, fuel for startup and field testing, spare parts and all items to provide a fully functioning generating system	7	Units	\$2,850,416.68		\$3,000,000.00		\$21,000,000.00
7.	All costs of manufacturing, fabricating assembling, factory testing, delivering, & storing a spare alternator matching the alternator provided under Bid Item 6		Aggr. Sum	281,494.00		400,000.00		300,000.00
8.	All cost of furnishing & installing all power & control duct banks, pull boxes, manholes & tie-ins to transfer rooms, tie-ins to duct banks & manholes provided by other contracts & existing systems excluding wire & cable tie-ins		Aggr. Sum	1,605,481.00		3,900,000.00		2,500,000.00
9.	All cost of furnishing & installing all twenty two (22) 13.2kV transformers in rooms/locations outside Electrical Distribution Building No. 2 as identified in the plans, installing wire & cable in the power & signal duct banks connecting these transformers to the Electrical Distribution Building No. 2, furnishing, installing & testing wire & cable in all other power & control duct banks depicted on the Drawings, tie-in to switchgears providing power to the transformers & testing		Aggr. Sum	7,885,052.00		5,000,000.00		5,700,000.00
10.	All cost incurred in the furnishing & installation of the bulk fuel storage & transfer facility including foundations, buildings, floors, trenches, bulk fuel tanks, transfer pumps & controls, platforms & accessories, civil, structural, mechanical, architectural, plumbing & electrical & instrumentation work for the facility, drainage facilities, bulk fuel transfer facility, fuel lines, trenches, controls & wiring between the facility & Electrical Distribution Building No. 2		Aggr. Sum	1,889,153.00		3,000,000.00		2,500,000.00

\*Revised due to error

26

MIAMI-DADE WATER AND SEWER DEPARTMENT  
MIAMI-DADE COUNTY

SOUTH DISTRICT WASTEWATER TREATMENT PLANT  
HLD UPGRADE TO 285 MGD, ELECTRICAL DISTRIBUTION SYSTEM  
CONTRACT NO. S-808(A)

ESTIMATE: \$74,700,000

TABULATION OF BIDS  
BIDDERS

Munilla Construction Management  
LLC, d/b/a MCM  
6201 SW 70th St., 2nd Fl.  
Miami, FL 33143

Poole & Kent Company of Florida  
1781 NW North River Drive  
Miami, Florida 33125

Skansa USA Building, Inc.  
1815 Griffin Road, Suite 204  
Dania Beach, Florida 33004

Bid Date: February 4, 2009

Item No.	Description	Quant.	Unit	Total	Unit	Total	Unit	Total
11.	All cost of furnishing & installing all earthwork, drainage grading, civil, structural, architectural, mechanical, electrical, instrumentation, fire, plumbing, ventilation & AC systems, & all other accessories for the construction of the Sludge Pump Station No. 3 Substation	Aggr. Sum		\$1,109,173.00		\$1,200,000.00		\$1,500,000.00
12.	All cost of furnishing & installing all earthwork, drainage grading, civil, structural, architectural, mechanical, electrical, instrumentation, fire, plumbing, ventilation & AC systems, & all other accessories for the construction of the Residual Solids Management Substation	Aggr. Sum		1,325,485.00		1,300,000.00		1,500,000.00
13.	All cost of furnishing & installing 12-inch stabilized subgrade, 8-inch limerock base material, & 1 1/2-inch Type I asphaltic concrete mix in unpaved areas	10,300 Sq. Yds.	37.93	390,679.00 *	31.00	319,300.00	23.70	244,110.00
14.	Total cost for all work defined in the bid documents not included in other Bid Items including, but not limited to civil, structural, mechanical, electrical, instrumentation plumbing, architectural, ventilation, AC, roadways & final site work	Aggr. Sum		650,370.00		300,000.00		100,000.00
15.	The total of Bid Items 1 through 14			\$51,687,958.06 *		\$51,910,300.00		\$52,166,271.00
16.	Securing permits, coordinating with power companies & suppliers, furnishing, installing, operating, maintaining in operation, alternate sources of power like new overhead power or modified duct bank feed from FPL, renting, fueling, installing, tie-in running generators or any other means as directed by the Department to provide constant & uninterrupted power service to the transformers installed in the transformer rooms constructed under this or other contracts if deemed necessary by the Department	Dedicated Allowance Account		\$2,000,000.00		\$2,000,000.00		\$2,000,000.00
17.	Modifying building & site designs to make provision for a future project to blend natural gas in the fuel system to supply blended fuel to the generators	Dedicated Allowance Account		\$250,000.00		\$250,000.00		\$250,000.00

\*Revised due to error

27

MIAMI-DADE WATER AND SEWER DEPARTMENT  
MIAMI-DADE COUNTY

SOUTH DISTRICT WASTEWATER TREATMENT PLANT  
HLD UPGRADE TO 285 MGD, ELECTRICAL DISTRIBUTION SYSTEM  
CONTRACT NO. S-808(A)

ESTIMATE: \$74,700,000

**TABULATION OF BIDS** Bid Date: February 4, 2009

**BIDDERS**

Munilla Construction Management LLC, d/b/a MCM 6201 SW 70th St., 2nd Fl. Miami, FL 33143	Poole & Kent Company of Florida 1781 NW North River Drive Miami, Florida 33125	Skansa USA Building, Inc. 1815 Griffin Road, Suite 204 Dania Beach, Florida 33004
---	--	---

Item No.	Description	Quant.	Unit	Total	Unit	Total
18.	Permitting, modifying & performing any structural, architectural mechanical or electrical work in the transformer rooms constructed in other contracts to allow proper installation of medium voltage transformers in the rooms & for coordinating & providing support products & services to FPL to provide service to the FPL switches	Dedicated Allowance Account		\$500,000.00		\$500,000.00
19.	Permitting, & performing all necessary work activities to remove, relocate or assume leases for the office trailers currently in service south of the Electrical Distribution Building No. 2 including all demolition, roadway & cleanup work including drainage, paving traffic & other coordination as directed by the Department	Dedicated Allowance Account		\$200,000.00		\$200,000.00
20.	Selling hardware & providing programming & supervisory labor provided under Bristol, Inc. proposal to the Contractor for works at the Electrical Distribution Building No. 2, other buildings constructed under this contract & other buildings on site & associated systems as reviewed & approved by the County	Dedicated Allowance Account		\$200,000.00		\$200,000.00
21.	Additional hardware, software programming changes, factory acceptance or start-up services requested of the Contractor by the County for Bristol, Inc. services in a proposal from the Contractor, reviewed & approved by the County	Dedicated Allowance Account		\$100,000.00		\$100,000.00
22.	Selling, delivery, installing & compacting up to 2000 cubic yards of structural or suitable fill at locations directed & authorized by the Department	Dedicated Allowance Account		\$250,000.00		\$250,000.00
23.	Selling, delivery, installing of No. 2 diesel fuel into the bulk fuel storage tanks for emergency operation as directed & authorized by the Department	Dedicated Allowance Account		\$500,000.00		\$500,000.00
24.	Unforeseen conditions minor construction changes & for additional work or materials not covered by other Proposal items, calculated as ten (10) percent of Bid Item 15	Contingency Account		\$5,168,795.81 *		\$5,218,627.10
25.	Reimbursement of the Contractor's cost of required Construction permits & fees, calculated as three (3) percent of the sum of Bid Item 15	Dedicated Allowance Account		\$1,550,638.74 *		\$1,565,586.13
<b>TOTAL BID ITEMS 15 THROUGH 25</b>				<b>\$62,407,392.61 *</b>		<b>\$62,658,639.00</b>

\*Revised due to error

28

MIAMI-DADE WATER AND SEWER DEPARTMENT  
MIAMI-DADE COUNTY

SOUTH DISTRICT WASTEWATER TREATMENT PLANT  
HLD UPGRADE TO 285 MGD, ELECTRICAL DISTRIBUTION SYSTEM  
CONTRACT NO. S-808(A)

ESTIMATE: \$74,700,000

Bid Date: February 4, 2009

Harry Pepper & Associates, Inc.  
18902-A Northeast 5th Avenue  
Miami, FL 33179

TABULATION OF BIDS  
BIDDERS

Item No.	Description	Quant.	Unit	Total
1.	Performing preparatory work & operations in mobilizing for beginning the work of the Project, but excluding materials & permit costs, both of which are paid under other payment items	Aggr. Sum		\$2,592,007.00
2A.	All cost of mobilizing plus demobilizing for production auger-cast pile installation, including submittals, pile rig installation & removal, cranes & all other equipment required to do piling at any or all locations on the treatment plant site	2 Units	25,000.00	50,000.00
2B.	All cost of installing production pressure grouted reinforced auger cast piling for foundations of the Electrical Distribution Building No. 2 and the Bulk Fuel Storage & Transfer Facility	9,000 L.F.	94.639	851,751.00
2C.	All costs of mobilizing, plus demobilizing & performing for auger-cast pile load testing including submittals, pile rig installation & removal cranes, test rig setup, load testing & test reports at locations identified on the plans	2 Units	47,250.00	94,500.00
3.	All cost of installing the FPL switch structure, FPL duct banks, tie-ins to existing duct banks, coordinating with FPL or its agents to install cable from FPL facilities to the switch structure, coordinate & support FPL or its agents to furnish & install FPL supplied switches on the structure & install duct banks from the switch structure into the Electrical Distribution Building No. 2, install all accessories for FPL service	Aggr. Sum		354,200.00
4.	All cost of furnishing & installing all civil, structural, architectural, mechanical, electrical, plumbing, ventilation AC elements & all required accessories for the construction of the Electrical Distribution Building No. 2, not including equipment furnished, installed, connected & tested in the Building itemized in other bid items	Aggr. Sum		10,016,323.00
5.	All cost of furnishing & installing, connecting, wiring & testing of all electrical distribution equipment not including equipment & work specified in Section 16230 in Electrical Building No. 2 including but not limited to medium voltage switchgear, motor control centers, all transformers, batteries wire & cable to FPL switches & other inter equipment wiring, controls & accessories to provide primary electrical service at the switchgear room.	Aggr. Sum		4,761,150.00

29

MIAMI-DADE WATER AND SEWER DEPARTMENT  
MIAMI-DADE COUNTY

SOUTH DISTRICT WASTEWATER TREATMENT PLANT  
HLD UPGRADE TO 285 MGD, ELECTRICAL DISTRIBUTION SYSTEM  
CONTRACT NO. S-808(A)

ESTIMATE: \$74,700,000

Bid Date: February 4, 2009

HARRY PEPPER & ASSOCIATES, INC.  
18902-A NORTHEAST 5TH AVENUE  
MIAMI, FL 33179

Item No.	Description	Quant.	Unit	Total
6.	All costs of manufacturing fabricating assembling factory testing, delivering, installing, connecting & furnishing & installing and field testing including cost of fuel for testing an electric generating system for all equipment as specified in Section 16230, including but not limited to the generator comprising of engine/alternator/skid, control panels, wiring, radiators & piping, exhaust mufflers & piping, day tanks, fuel piping & controls, air receiver tanks for starting & air piping & all necessary tie-ins to the switchgear system & all accessories, fuel for startup and field testing, spare parts and all items to provide a fully functioning generating system	7	Units	\$23,544,966.97
7.	All costs of manufacturing, fabricating assembling, factory testing, delivering, & storing a spare alternator matching the alternator provided under Bid Item 6	Aggr. Sum		500,000.00
8.	All cost of furnishing & installing all power & control duct banks, pull boxes, manholes & tie-ins to transfer rooms, tie-ins to duct banks & manholes provided by other contracts & existing systems excluding wire & cable tie-ins	Aggr. Sum		3,350,000.00
9.	All cost of furnishing & installing all twenty two (22) 13.2KV transformers in rooms/locations outside Electrical Distribution Building No. 2 as identified in the plans, installing wire & cable in the power & signal duct banks connecting these transformers to the Electrical Distribution Building No. 2, furnishing, installing & testing wire & cable in all other power & control duct banks depicted on the Drawings, tie-in to switchgears providing power to the transformers & testing fuel storage & transfer facility including foundations, buildings, floors, trenches, bulk fuel tanks, transfer pumps & controls, platforms & accessories, civil, structural, mechanical, architectural, plumbing & electrical & instrumentation work for the facility, drainage facilities, bulk fuel transfer facility, fuel lines, trenches, controls & wiring between the facility & Electrical Distribution Building No. 2	Aggr. Sum		8,600,000.00
10.	All cost incurred in the furnishing & installation of the bulk fuel storage & transfer facility including foundations, buildings, floors, trenches, bulk fuel tanks, transfer pumps & controls, platforms & accessories, civil, structural, mechanical, architectural, plumbing & electrical & instrumentation work for the facility, drainage facilities, bulk fuel transfer facility, fuel lines, trenches, controls & wiring between the facility & Electrical Distribution Building No. 2	Aggr. Sum		1,027,269.00

\*Revised due to error

30

MIAMI-DADE WATER AND SEWER DEPARTMENT  
MIAMI-DADE COUNTY

SOUTH DISTRICT WASTEWATER TREATMENT PLANT  
HLD UPGRADE TO 285 MGD, ELECTRICAL DISTRIBUTION SYSTEM  
CONTRACT NO. S-808(A)

ESTIMATE: \$74,700,000

TABULATION OF BIDS  
BIDDERS

Bid Date: February 4, 2009

Harry Pepper & Associates, Inc.  
18902-A Northeast 5th Avenue  
Miami, FL 33179

Item	No. Description	Quant.	Unit	Total
	11. All cost of furnishing & installing all earthwork, drainage grading, civil, structural, architectural, mechanical, electrical, instrumentation, fire, plumbing, ventilation & AC systems, & all other accessories for the construction of the Sludge Pump Station No. 3 Substation	Aggr. Sum		2,361,056.00
	12. All cost of furnishing & installing all earthwork, drainage grading, civil, structural, architectural, mechanical, electrical, instrumentation, fire, plumbing, ventilation & AC systems, & all other accessories for the construction of the Residual Solids Management Substation	Aggr. Sum		\$2,458,944.00
	13. All cost of furnishing & installing 12-inch stabilized subgrade, 8-inch limerock base material, & 1 1/2-inch Type I asphaltic concrete mix in unpaved areas	10,300 Sq. Yds.	9.495	97,808.80
	14. Total cost for all work defined in the bid documents not included in other Bid Items including, but not limited to civil, structural, mechanical, electrical, instrumentation plumbing, architectural, ventilation, AC, roadways & final site work	Aggr. Sum		360,500.00
	15. The total of Bid Items 1 through 14			\$61,022,477.77 *
	16. Securing permits, coordinating with power companies & suppliers, furnishing, installing, operating, maintaining in operation, alternate sources of power like new overhead power or modified duct bank feed from FPL, renting, fueling, installing, tie-in running generators or any other means as directed by the Department to provide constant & uninterrupted power service to the transformers installed in the transformer rooms constructed under this or other contracts if deemed necessary by the Department	Dedicated Allowance Account		\$2,000,000.00
	17. Modifying building & site designs to make provision for a future project to blend natural gas in the fuel system to supply blended fuel to the generators	Dedicated Allowance Account		\$250,000.00

\*Revised due to error

31

MIAMI-DADE WATER AND SEWER DEPARTMENT  
MIAMI-DADE COUNTY

SOUTH DISTRICT WASTEWATER TREATMENT PLANT  
HLD UPGRADE TO 285 MGD, ELECTRICAL DISTRIBUTION SYSTEM  
CONTRACT NO. S-808(A)

ESTIMATE: \$74,700,000

TABLULATION OF BIDS  
BIDDERS

Bid Date: February 4, 2009

Harry Pepper & Associates, Inc.  
18902-A Northeast 5th Avenue  
Miami, FL 33179

Item No.	Description	Quant.	Unit	Total
18.	Permitting, modifying & performing any structural, architectural mechanical or electrical work in the transformer rooms constructed in other contracts to allow proper installation of medium voltage transformers in the rooms & for coordinating & providing support products & services to FPL to provide service to the FPL switches	Dedicated Allowance Account		\$500,000.00
19.	Permitting, & performing all necessary work activities to remove, relocate or assume leases for the office trailers currently in service south of the Electrical Distribution Building No. 2 including all demolition, roadway & cleanup work including drainage, paving traffic & other coordination as directed by the Department	Dedicated Allowance Account		\$200,000.00
20.	Selling hardware & providing programming & supervisory labor provided under Bristol, Inc. proposal to the Contractor for works at the Electrical Distribution Building No. 2, other buildings constructed under this contract & other buildings on site & associated systems as reviewed & approved by the County	Dedicated Allowance Account		\$200,000.00
21.	Additional hardware, software programming changes, factory acceptance or start-up services requested of the Contractor by the County for Bristol, Inc. services in a proposal from the Contractor, reviewed & approved by the County	Dedicated Allowance Account		\$100,000.00
22.	Selling, delivery, installing & compacting up to 2000 cubic yards of structural or suitable fill at locations directed & authorized by the Department	Dedicated Allowance Account		\$250,000.00
23.	Selling, delivery, installing of No. 2 diesel fuel into the bulk fuel storage tanks for emergency operation as directed & authorized by the Department	Dedicated Allowance Account		\$500,000.00
24.	Unforeseen conditions minor construction changes & for additional work or materials not covered by other Proposal items, calculated as ten (10) percent of Bid Item 15	Contingency Account		\$6,102,247.78
25.	Reimbursement of the Contractor's cost of required Construction permits & fees, calculated as three (3) percent of the sum of Bid Item 15	Dedicated Allowance Account		\$1,830,674.33
TOTAL BID ITEMS 15 THROUGH 25				\$72,955,399.88 *

\*Revised due to error

32

**MIAMI-DADE COUNTY, FLORIDA**  
**MIAMI-DADE WATER AND SEWER DEPARTMENT**  
**CHANGE ORDER TO ORIGINAL CONTRACT**



**CHANGE ORDER 1**  
**NO:**

**CONTRACT NO: S-808 (A)**

**DATE: 9/21/2010**

**PROJECT TITLE:** South District Wastewater Treatment Plant, HLD Upgrade to 285 MGD, Upgrade Electrical Distribution System

**TO CONTRACTOR:** Munilla Construction Management, LLC d/b/a MCM 6201 SW 70 St., 2nd Floor Miami, FL 33143

YOU ARE HEREBY REQUESTED TO MAKE THE FOLLOWING CHANGES IN THE PLANS AND SPECIFICATIONS FOR THIS PROJECT AND TO PERFORM THE WORK ACCORDINGLY, SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS.

**Description of work authorized:**

This is a deductive change order reassigning the Contractor's purchase contract for seven emergency electrical generators to Miami-Dade County. Please see the Monetary Justification for a complete description of the requested change.

**Monetary Justification:**

On May 5, 2009, the Board of County Commissioners (Board) approved the award of Contract No. S-808 (A) for \$62,407,392.61 to MCM to upgrade the electrical distribution system at the South District Wastewater Treatment Plant. The improvements to the electrical distribution system will support the high level disinfection upgrades being made at this time.

The contract documents (Proposal Item No. 6) (Continued below Page 3)

**Time Justification:** N/A

This change order includes not only all direct costs of contractor such as labor, material, job overhead, and profit markup; but also includes any costs for modifications or changes in sequence of work to be performed, delays, rescheduling, disruption, extended direct overhead or general overhead, acceleration, material or other escalation which include wages and other impact costs.

Contractor hereby waives, fully releases, discharges and acquits Miami-Dade County of any and all liability for claims, additional costs, and any requests for additional time arising out of the fulfillment of the contract and this change order from the date of the contract award to and including execution of this change order.

**SUMMARY OF CONTRACT AMOUNT / TIME**

ORIGINAL CONTRACT AMOUNT-----	\$62,407,392.61
COST OF CHANGES PREVIOUSLY ORDERED-----	\$0.00
ADJUSTED CONTRACT AMOUNT PRIOR TO THIS CHANGE-----	\$62,407,392.61
COST OF CHANGES WITH THIS DOCUMENT-----	(\$16,590,872.04)
ADJUSTED CONTRACT AMOUNT INCLUDING THIS CHANGE-----	\$45,816,520.57
PERCENT INCREASE WITH THIS CHANGE-----	-27%
TOTAL PERCENT INCREASE TO DATE-----	-27%
TIME: ORIGINAL CONTRACT / PREVIOUS CHANGES / THIS CHANGE-----	1360 / 0 / 0
CONTINGENCY TIME: ORIGINAL CONTRACT / PREVIOUS CHANGES / THIS CHANGE-----	136 / 0 / 0
ADJUSTED DURATION INCLUDING THIS CHANGE-----	1496

Bond No. PRF08930931

CHANGE ORDER 1  
NO:

CONTRACT NO: S-808 (A)

DATE: 9/21/2010

CERTIFYING STATEMENT: I hereby certify that the changes and supporting cost data included is, in my considered opinion, necessary and accurate; that the prices quoted are fair and reasonable and in proper ratio to the cost of the original work contracted for under benefit of competitive bidding.

Approved: ENGINEER OR CONSULTING ENGINEER N/A Date: \_\_\_\_\_

Recommended By: PROJECT MANAGER James Fey Date: 9/27/2010

TO BE FILLED OUT BY MIAMI-DADE WATER AND SEWER DEPARTMENT

FUNDS BUDGET CODE \_\_\_\_\_

CERTIFIED BY DEPARTMENT'S FINANCE DIVISION: Rachelle Kelly Date: 9/27/10

	<u>Organization</u>	<u>Name</u>	<u>Accepted By:</u>	<u>Title</u>	<u>Date</u>
	<u>Munilla Construction Management, LLC d/b/a MCM</u>	<u>Munilla</u>	<u>Caroline K. Lamarre</u>	<u>Contractor</u>	<u>9-23-10</u>
	<u>Surety</u>	<u>Zurich American Insurance Company</u>	<u>Caroline K. Lamarre</u>	<u>Surety</u>	<u>9-24-2010</u>
				<u>Caroline K. Lamarre, Attorney-In-Fact</u>	

<u>Title</u>	<u>Name</u>	<u>Date</u>
Reviewed By: <u>Manager, Construction Division</u>	<u>[Signature]</u>	<u>9-27-10</u>
Approved By: <u>Assistant Director</u>	<u>[Signature]</u>	<u>9/26/10</u>
Approved By: <u>Director</u>	<u>[Signature]</u>	<u>9-26-10</u>
Approved By: <u>Director, SBD</u>	<u>[Signature]</u>	<u>9/27/10</u>
Approved By: <u>Director, OSBM</u>	<u>[Signature]</u>	<u>9/27/10</u>
Approved By: <u>County Attorney</u>	<u>[Signature]</u>	<u>9/27/10</u>
Approved By: <u>County Manager</u>	<u>[Signature]</u>	<u>9/27/10</u>
Attested By: <u>Clerk of the Board</u>	_____	_____

CHANGE ORDER 1  
NO:

CONTRACT NO: S-808 (A)

DATE: 9/21/2010

**Monetary Justification: (Continued)**

requires MCM to coordinate, purchase, deliver, install, field test and warrant seven emergency electrical generators and associated equipment required for the upgrade to the electrical distribution system for a total dollar amount of \$19,952,916.76. The benefit to the County of having a single contractor responsible for the coordination, purchase, delivery, installation, field testing and warranty of complex equipment is the avoidance of any dispute regarding responsibility for the satisfactory performance of the equipment once it is installed. Under the terms of the existing contract, MCM has to procure the seven emergency electrical generators without any progress payments from the County.

In July 2009, MCM subcontracted Engine Systems, Inc. (ESI) to purchase the seven emergency electrical generators and associated equipment at a cost of \$16,549,498.29, including sales tax of \$864,828.04. A Standard Subcontract Agreement between MCM and ESI was signed which became effective on July 6, 2009. In August 2009, MCM contacted WASD staff regarding the purchase of the generators and proposed that the County make progress payments to MCM as each payment schedule milestone is met, however, the terms of the existing contract do not allow the County to make progress payments to MCM.

Several months later, MCM proposed that the County assume responsibility for the purchase of the generators instead of MCM. This approach, MCM stated, would save the County the cost of the sales tax. Following consultation with the County Attorney's Office, WASD staff determined that MCM's request to have the County purchase the emergency electrical generators would be in the County's best interest as it would result in a deductive change order to Contract No. S-808 (A) saving the County \$864,828.04. This new arrangement is now bound by an Agreement for Partial Assignment (as attached) executed between the County, MCM and ESI, in which MCM will continue to be responsible for all of the contractual requirements (excluding the purchase) of the seven emergency electrical generators and associated equipment, including the coordination, delivery, inspection, installation, field testing and warranties. The only responsibilities the County is assuming under the Agreement for Partial Assignment is waiving competitive bidding for the purchase of the seven emergency electrical generators, making the partial payments less sales tax as dictated by the payment schedule set forth in Exhibit B (as attached) and the direct ownership of the equipment prior to installation. Payments will be made by the County upon notification by MCM to WASD in writing that ESI has satisfactorily completed each payment schedule milestone in the contract.

In the event the Florida Department of Revenue rejects the County's sales tax exemption application, the County will be responsible for the payment of the principal amount of the sales tax. At this time, there is no expectation that the transaction will not completely fulfill the requirements for sales tax exemption. MCM shall be responsible for payment of any assessments, penalties, and interest imposed by the Florida Department of Revenue.

With the approval of this deductive change order to purchase the seven emergency electrical generators and associated equipment at a cost of \$16,549,498.29, WASD will assume MCM's financial responsibility to ESI in the amount of \$15,684,670.25 which is the cost of the generators minus sales tax, plus \$39,211.68 for the Inspector General Fee. The total dollar amount WASD will be invoiced by ESI is \$15,723,881.93, see Exhibit B.

It is important to note that the difference between the purchase price of the generators set at \$16,549,498.29 and the dollar allocation in Contract Item No. 6 for \$19,952,916.76 will cover the project expenses related to the installation, field testing and warrant responsibilities, which will be carried out by MCM. In addition, the amount of \$41,373.75 will also be deducted from Contract No. S-808 (A) which is the amount of the Inspector General Fee for the Standard Subcontract Agreement between MCM and ESI.

MCM will remain liable to the County and the County will be added to ESI's insurance policy covering the equipment at no cost to the County.

35

CHANGE ORDER 1  
NO:

CONTRACT NO: S-808 (A)

DATE: 9/21/2010

The revisions to the Contract S-808 (A) proposed in the change order are summarized below:

Changes to Contract No. S-808 (A)

- Waive competitive bidding for the purchase of the seven emergency electrical generators.
- Reduction in the Scope of Work to exclude the purchase of seven emergency electrical generators and associated equipment.
- Reduction in the total contract dollar amount by \$16,590,872.04, which includes the purchase price of the seven emergency electrical generators and associated equipment for \$16,549,498.29, inclusive of delivery, installation, field testing and warranties, and \$41,373.75 in Inspector General fees, thereby decreasing the total contract dollar amount from \$62,407,392.61 to \$45,816,520.57.

Dollar balances in the following proposal items will remain the same as MCM continues to be responsible for the contractual requirements including the coordination, delivery, inspection, installation, field testing, and warranties of the seven emergency electrical generators and associated equipment.

- Proposal Item #1: Mobilization Costs - \$2,566,415.00.
- Proposal Item #24: Contingency Account for Unforeseen Conditions - \$5,168,795.81.
- Proposal Item #25: Dedicated Allowance Account for Cost of Permits & Fees - \$1,550,638.74.

Time Justification Declaration:

A time extension is provided for additional work performed outside the scope of the original Contract that affects the critical path schedule of the contracted work or previously approved changes. Should additional work be required which does not affect the critical path schedule, no time extension will be granted. Should one item of additional work run concurrent with another item of additional work, only time not duplicated can be provided.

346

ZURICH AMERICAN INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that the ZURICH AMERICAN INSURANCE COMPANY, a corporation created by and existing under the laws of the State of New York does hereby nominate, constitute and appoint Paul RODRIGUEZ, Claudette ALEXANDER, Caroline K. LAMARRE and Joseph M. PIETRANGELO, all of Miami, Florida, EACH its true and lawful Attorneys-In-Fact with power and authority hereby conferred to sign, seal, and execute in its behalf, during the period beginning with the date of issuance of this power, : any and all bonds and undertakings, recognizances or other written obligations in the nature thereof, and to bind ZURICH AMERICAN INSURANCE COMPANY thereby, and all of the acts of said Attorney[s]-in-Fact pursuant to these presents are hereby ratified and confirmed. This Power of Attorney is made and executed pursuant to and by the authority of the following By-Law duly adopted by the Board of Directors of the Company which By-Law has not been amended or rescinded.

Article VI, Section 5. "... The President or a Vice President in a written instrument attested by a Secretary or an Assistant Secretary may appoint any person Attorney-In-Fact with authority to execute surety bonds on behalf of the Company and other formal underwriting contracts in reference thereto and reinsurance agreements relating to individual policies and bonds of all kinds and attach the corporate seal. Any such officers may revoke the powers granted to any Attorney-In-Fact."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY by unanimous consent in lieu of a special meeting dated December 15, 1998

" RESOLVED, that the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the seal of the Company may be affixed by facsimile on any Power of Attorney pursuant to Article VI, Section 5 of the By-Laws, and the signature of a Secretary or an Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power. Any such power or any certificate thereof with such facsimile signature and seal shall be valid and binding on the Company. Furthermore, such power so executed, sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding on the Company."

IN WITNESS WHEREOF, the ZURICH AMERICAN INSURANCE COMPANY has caused these presents to be executed in its name and on its behalf and its Corporate Seal to be hereunto affixed and attested by its officers thereunto duly authorized, this 15th day of July, A.D. 2009. This power of attorney revokes that issued on behalf of Joseph M. PIETRANGELO, Olga IGLESIAS, Gicelle PAJON, dated April 4, 2006.



ZURICH AMERICAN INSURANCE COMPANY

Gerald F. Haley

Frank E. Martin Jr.

STATE OF MARYLAND }  
CITY OF BALTIMORE }

SS:

Gerald F. Haley

Secretary

By:

Frank E. Martin Jr.

Vice President

On the 15th day of July, A.D. 2009, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came the above named Vice President and Secretary of ZURICH AMERICAN INSURANCE COMPANY, to me personally known to be the individuals and officers described in and who executed the preceding instrument and they each acknowledged the execution of the same and being by me duly sworn, they severally and each for himself deposed and said that they respectively hold the offices in said Corporation as indicated, that the Seal affixed to the preceding instrument is the Corporate Seal of said Corporation, and that the said Corporate Seal, and their respective signature as such officers, were duly affixed and subscribed to the said instrument pursuant to all due corporate authorization. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above.



Constancia A. Dunn

Notary Public

My Commission Expires: July 14, 2011

This Power of Attorney limits the acts of those named therein to the bonds and undertaking specifically named therein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

CERTIFICATE

I, the undersigned, a Secretary of the ZURICH AMERICAN INSURANCE COMPANY, do hereby certify that the foregoing Power of Attorney is still in full force and effect, and further certify that Article VI, Section 5 of the By-Laws of the Company and the Resolution of the Board of Directors set forth in said Power of Attorney are still in force. IN TESTIMONY WHEREOF I have hereto subscribed my name and affixed the seal of said Company

the 24<sup>th</sup> day of September, 2010.

Eric D. Barnes

Eric D. Barnes

Secretary



37