

Memorandum



Date: May 4, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Agenda Item No. 8(F)(1)

Subject: Recommendation for Approval to Award: RFP-01307, Metromover Comprehensive Wayside System Overhaul and Utilizing Charter County Transportation Surtax Funds for Such Purpose

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. RFP-01307, Metromover Comprehensive Wayside System Overhaul*, for the Department of Transportation and Public Works. The contract will provide the County with a comprehensive wayside equipment overhaul of the Metromover System, which is fully automated, driverless, and on a fixed-guideway. There is no current or prior contract for these services.

The Metromover has been in operation for 32 years. The current wayside system has now reached the end of its useful life. The project's objective is to replace and/or refurbish major subsystems of the Metromover in order to improve equipment reliability and availability. These subsystems include the Automatic Train Control System, Data Transmission System with Supervisory Control and Data Acquisition, Power Distribution System elements (e.g. low voltage breakers, protective relays, ground switches), guideway switch equipment and Central Control equipment.

The project will include the design, supply manufacturing, installation, testing and commissioning of the Automated People Mover System into a fully functional Miami-Dade County Metromover System.

This item is placed for Board review pursuant to Miami-Dade County Code Section 29-124(f). The Board may only consider this item if the Citizens' Independent Transportation Trust (CITT) has forwarded a recommendation to the Board prior to the date scheduled for Board consideration or 45 days have elapsed since the issuance of this recommendation. If CITT has not forwarded a recommendation and 45 days have not elapsed since the issuance of this recommendation, a withdrawal of this item will be requested.

Background

On December 20, 2019, the County issued a competitive Request for Proposals (RFP) to obtain proposals from qualified firms for the overhaul of the Metromover System. One proposal was received on July 30, 2020, from Bombardier Transportation (Holdings) USA Inc. (Bombardier). A survey of non-responding firms was conducted in order to ascertain why only one proposal was received; 12 firms responded as follows: nine firms were only interested as subcontractors; two firms indicated the scope of work was outside of their technical capability; and one firm indicated they deemed the as-built electrical and mechanical system documents provided by the County were insufficient for their needs to prepare a proposal.

The Competitive Selection Committee (Committee) completed an evaluation of the sole proposal received, following the guidelines published in the solicitation. The Committee determined that Bombardier's overall proposal demonstrated a strong approach in meeting the project objectives of the RFP and demonstrated its ability to meet all aspects of the project requirements. It was the consensus of the Committee that Bombardier demonstrated its ability to deliver system functionality requirements as specified in the solicitation. Bombardier's financial capacity shows evidence of sufficient financial strength, resources and capability to finance the project. The quality of Bombardier's Management

Program, Project Organization Plans, Project Schedule, Systems Operation Plan, Training Plan, and Maintenance Plan were deemed acceptable.

Scope

The Metromover system traverses County Commission Districts 3 and 5 represented by Commissioner Keon Hardemon and Commissioner Eileen Higgins, respectively. The scope of this item is countywide in nature.

Delegation of Authority

If this item is approved, the County Mayor or County Mayor’s designee will have the authority to exercise all provisions of the contract, including any cancellation, or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Fiscal Impact/Funding Source

The fiscal impact for the four-year term is \$152,920,983.22. Of the requested allocation, \$22,042,300.00 will be funded from a Federal Transit Administration grant and \$130,878,683.22 will be funded by Charter County Transportation Surtax funds. The County will receive a deduction of \$2,000,000.00 from the contract price, contingent up the execution of a contract by no later than May 21, 2021.

Department	Allocation*	Funding Source	Contract Manager
Transportation and Public Works	\$152,920,983.22	Charter County Transportation Surtax and Federal Transit Administration Funds	Jimmy Usma, P.E.
Total:	\$152,920,983.22		

*The allocation amount does not include the deduction specified above.

Track Record/Monitor

Vanessa Stroman of the Internal Services Department is the Procurement Contracting Manager. The County is supervising, monitoring, and inspecting all aspects of the Metromover overhaul implementation, deployment, and administration. Mr. Jimmy Usma, P.E., Assistant Director, Rail Services, DTPW, is responsible for this project.

Vendor Recommended for Award

A Request for Proposals was issued under full and open competition. One proposal was received in response to the solicitation.

Pursuant to Resolution No. R-477-18, the sole proposer is recommended in accordance with the method of award per the solicitation and is a non-local vendor. There were no local vendors identified during market research that have the specialized technical expertise commensurate with the requirements of the Scope of Work.

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Bombardier Transportation (Holdings) USA, Inc.	1251 Waterfront Place Pittsburgh, PA	None	0	Elliot G. Sander
			0%	


*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor’s employees who reside in Miami-Dade County as compared to the vendor’s total workforce

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision does not apply.
- The Small Business Enterprise Selection Factor did not apply due to the federal funding source.
- A Disadvantaged Business Enterprise Goal of 18 percent was assigned to the solicitation and the Proposer was deemed to be in compliance.
- The Local Preference does not apply.
- The Living Wage does not apply.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: May 4, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(F)(1)

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
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☒ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(1)
5-4-21

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-01307 TO BOMBARDIER TRANSPORTATION (HOLDINGS) USA, INC. FOR THE PURCHASE OF METROMOVER COMPREHENSIVE WAYSIDE SYSTEM OVERHAUL FOR THE DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS IN A TOTAL AMOUNT NOT TO EXCEED \$152,920,983.22, CONSISTING OF \$22,042,300.00 FROM A FEDERAL TRANSIT ADMINISTRATION GRANT AND \$130,878,683.22 FROM CHARTER COUNTY TRANSPORTATION SURTAX FUNDS FOR A FOUR-YEAR TERM; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38; AND AUTHORIZING THE USE OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS FOR A PORTION OF THIS PROJECT WHICH WAS ADDED TO THE FIVE-YEAR IMPLEMENTATION PLAN ON MARCH 06, 2018

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 award of Contract No. RFP-01307 to Bombardier Transportation (Holdings) USA, Inc. for the purchase of metromover comprehensive wayside system overhaul for the Department of Transportation and Public Works, in substantially the form attached and made a part hereof, in a total amount not to exceed \$152,920,983.22, consisting of

\$22,042,300.00 from a Federal Transit Administration Grant and \$130,878,683.22 from Charter County Transportation Surtax Funds for a four-year term.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade county and to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to section 2-8.1 of the code of Miami-Dade County, Florida and Implementing Order 3-38. A copy of the attachments and appendices to the contract are on file with and available upon request from the Internal Services Department, Strategic Procurement Division.

Section 3. This Board authorizes the use of Charter County Transportation Surtax Funds for a portion of this project which was added to the Five-Year Implementation Plan on March 06, 2018.

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:

Jose "Pepe" Diaz, Chairman	
Oliver G. Gilbert, III, Vice-Chairman	
Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

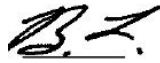
The Chairperson thereupon declared this resolution duly passed and adopted this 4th day of May, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the 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.



Bruce Libhaber

METROMOVER COMPREHENSIVE WAYSIDE SYSTEM OVERHAUL
CONTRACT NO. RFP-01307

THIS AGREEMENT made and entered into as of this _____ day of _____, 2021 by and between Bombardier Transportation (Holdings) USA Inc., a corporation organized and existing under the laws of the State of Delaware, having its principal office at 1251 Waterfront Place, Pittsburgh, Pennsylvania 15222 (hereinafter referred to as the "Contractor"), 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 provide a comprehensive wayside system overhaul of the Metromover System ("Overhaul Services"), on an exclusive basis, that shall conform to the Scope of Services (Attachment A); Miami-Dade County's Request for Proposals ("RFP") No. 01307, 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 July 30, 2020 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 Overhaul Services for the County, in accordance with the terms and conditions of this Agreement;

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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 "Agreement" to mean collectively these terms and conditions, the Scope of Work (Attachment A), all other appendices and attachments hereto, all amendments issued hereto, RFP No. 01307 and all associated addenda, and the Contractor's Proposal.
- 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, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Contract Term" to mean the time between the Award Date and Final Completion.
- e) The word "Contractor" to mean Bombardier Transportation (Holdings) USA Inc., its subcontractors/subconsultants, and its permitted successors.
- f) The word "Days" or "days" to mean Calendar Days.
- g) 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.
- h) The word "DTPW" to mean Miami-Dade County Department of Transportation and Public Works.
- i) 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.
- j) The words "Extra Work" or "Additional Work" to mean 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.
- k) The words "Project Manager" to mean the County Mayor, the County Project Manager, or the duly authorized representative(s) designated to manage the Project.
- l) The words "Scope of Work", "Work", "Services", "Technical Provisions", or "Program" to mean the document appended hereto as Attachment A, which details the work to be performed by the Contractor.
- m) 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.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of the Contract, the order of precedence is as follows: 1) the Form of Agreement; 2) agreed upon Scope of Work (as may be negotiated); 3) Special Provisions; 4) General Conditions; 5) addenda to the RFP; 6) attachments and exhibits to the Request for Proposal; 7) the Request for

Proposal; and 8) 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. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- B. The Contractor shall provide the services set forth in the Scope of Work, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- C. 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.
- D. 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.
- E. The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Work. 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, subject to Article 38 "Extra Work". 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.
- F. The Parties understand and agree that, by entering this Agreement, Contractor assumes all obligations to protect traffic and public safety during the performance of the Work, in accordance with the terms and conditions of the Agreement.

ARTICLE 5. CONTRACT TERM

This contract shall commence on the first calendar day of the month succeeding approval of the contract by the Board of County Commissioners, or designee, unless otherwise stipulated in the Blanket Purchase Order issued by the Internal Services Department, Strategic Procurement Division. The contract shall expire on the last day of the fourth (4th) year.

Notwithstanding the defined contract term, the period for expressed and/or implied warranty periods shall remain in full force and effect for the term of those agreements. DTPW will issue a Notice to Proceed ("NTP") to the Contractor.

ARTICLE 6. NOTICE REQUIREMENTS

A. 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 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:

Jimmy Usma
Miami-Dade County Public Works and Waste Management Department
7100 NW 36 Street
Miami, Florida 33166
E-mail: Jimmy.Usma@miamidade.gov

b) To the Contract Manager:

Miami-Dade County Internal Services Department
Internal Services Department, Strategic Procurement Division
Attention: Chief Procurement Officer
111 NW 1st Street, 13th Floor
Miami, FL 33128
Phone: 305-375-4900
E-mail: Namita.Uppal@miamidade.gov

(2) To the Contractor

Bombardier Transportation (Holdings) USA Inc.
1251 Waterfront Place
Pittsburgh, Pennsylvania 15222
Attn: Jennifer Callery, Esquire
Phone: 412.803.8300
E-mail: jennifer.callery@rail.bombardier.com

B. 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

- A. The Contractor warrants 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 in the total amount of One Hundred Fifty Two Million Nine Hundred Twenty Thousand Nine Hundred Eighty Three Dollars and Twenty Two Cents (\$152,920,983.22).** The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, or an adjustment to quantities associated with unit prices, which is approved and executed in writing by the County and the Contractor.
- B. This firm fixed price contract will be established at amounts represented by Table 8.1 Price Schedule.

ARTICLE 8. PRICING

- A. Prices shall remain firm and fixed for the term of the Contract, including any extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.
- B. Progress Payments will be issued by the County in accordance with Section 7.2 of the Special Provisions.

C. Price Schedule

Table 8.1 Price Schedule

	BASE SCOPE OF WORK:				
Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Total
1.1	Guideway Facilities – TP13	LUMP SUM	1	\$8,021,753.81	\$8,021,753.81
1.2	Station Facilities – TP14	LUMP SUM	1	\$0	\$0
1.3	Maintenance and Storage Facilities – TP15	LUMP SUM	1	\$0	\$0
1.4	Power Distribution System (PDS) Facilities – TP10	LUMP SUM	1	\$17,260,965.62	\$17,260,965.62
1.5	Central Control Facility – TP3.1	LUMP SUM	1	\$10,326,297.74	\$10,326,297.74
1.6	APM Equipment Rooms – TP14	LUMP SUM	1	\$0.00	\$0.00
1.7	Guideway Equipment – TP13	LUMP SUM	1	\$14,008,016.96	\$14,008,016.96
1.8	Station Equipment – TP14	LUMP SUM	1	\$7,079,751.24	\$7,079,751.24
1.9	Maintenance and Storage Facility Equipment – TP15	LUMP SUM	1	\$1,790,284.35	\$1,790,284.35
1.10	Power Distribution System (PDS) Equipment – TP10	LUMP SUM	1	\$14,200,880.82	\$14,200,880.82
1.11	Automatic Train Control (ATC) Equipment – TP11	LUMP SUM	1	\$26,883,052.11	\$26,883,052.11
1.12	Communications Equipment – TP12	LUMP SUM	1	\$9,475,644.99	\$9,475,644.99
1.13	Vehicles – TP9	LUMP SUM	1	\$17,728,888.79	\$17,728,888.79
1.14	Operating System Verification and Acceptance	LUMP SUM	1	\$2,279,410.85	\$2,279,410.85
1.15	Project Management and Administration	LUMP SUM	1	\$5,855,320.75	\$5,855,320.75
1.16	Additional Two (2) Year Warranty	LUMP SUM	1	\$640,963.71	\$640,963.71
1.17	Replacement of Gap Station Transfer Switches – TP10	LUMP SUM	1	\$151,592.05	\$151,592.05
1.18	Replacement of 600v Protective Devices – TP10	LUMP SUM	1	\$4,429,742.65	\$4,429,742.65
1.19	Replacement of Two (2) Motor Control Centers – TP10	LUMP SUM	1	\$151,592.05	\$151,592.05
1.20	Furnish and Install Cable Tray Cover	LF		\$178.50	
1.21	Furnish and Install Complete Cable Tray	LF		\$1,336.50	
1.22	Cleaning and Disinfecting Services	LUMP SUM	1	\$392,856.48	\$392,856.48
1.23	Public Relations & Community Awareness	LUMP SUM	1	\$1,287,972.51	\$1,287,972.51
1.24	Special Insurance	LUMP SUM	1	\$397,829.35	\$397,829.35
1.25	Bonds	LUMP SUM	1	\$4,258,166.39	\$4,258,166.39
TOTAL BASE CONTRACT PRICE*:				\$146,620,983.22	
* Note: A credit of \$2,000,000.00 shall be applied to the Total Base Contract Price, conditional to the contract being approved by the CITT on or about March 25, 2021 and the contract being executed on or before May 21, 2021. If these conditions are met, the Contractor shall apply the credit to the Schedule of Values, in accordance with Section 7.2.1, <i>Schedule of Values Requirements</i> , of the Special Provisions.					

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CONTRACT ALLOWANCE					
Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Total
2.1	The County adds to the proposal price a contingency as an allowance. The contingency is provided for County directed changes deemed necessary for the Contractor to deliver the specified system.	LUMP SUM	1	\$6,300,000.00	\$6,300,000.00
TOTAL CONTRACT PRICE (All Items):					\$152,920,983.22

ARTICLE 9. METHOD AND TIMES OF PAYMENT

- A. 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 periodically, but not more than once per month, upon invoices certified by the Contractor pursuant to Article 8 "Pricing". All invoices shall be taken from the books of account kept by the Contractor, and shall be supported by copies of receipt bills or other documents reasonably required by the County, upon the request of the County. Invoices 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. All firms, including Small Business Enterprises, providing goods and services to the County, shall receive payment to maintain sufficient cash flow. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. Billings from prime Contractors under services and goods contracts with the County or Public Health Trust, that are Small Business Enterprise contract set-aside, bid preference or contain a subcontractor goal, shall be promptly reviewed and payment made by the County or Trust on those amounts not under dispute within fourteen (14) calendar days of receipt of such billing by the County or the Trust pursuant to Sections 2-8.1.1.1.1 and 2-8.1.1.1.2 of the Code of Miami-Dade. 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 Mayor, 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.
- B. In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as instructed by the County Project Manager.

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

Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all direct liability, losses or damages, including reasonable 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 to the extent arising out of, relating to or resulting from the Contractor's negligent acts, omissions, or willful misconduct in the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors, except to the extent such actions, claims, damages to persons or property, penalties, obligations, or liabilities arise from the negligent acts, omissions, or willful misconduct of the County, its officers, employees and agents. The Contractor shall pay all direct 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. Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by 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.

Notwithstanding anything contained in this Contract to the contrary, the Contractor's maximum liability to the County for any and all claims for damages or losses which may arise in connection with the Contractor's performance or non-performance under this Contract shall not exceed one hundred percent (100%) of the total Contract amount (as more fully identified in Article 7 herein), as it may be adjusted, pursuant to the terms of this Contract.

The Contractor shall furnish to Internal Services Department, Procurement Management Division, 111 NW 1st Street, Miami, FL 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Design/Builder as required by Florida Statute 440.
- B. Contractor Controlled General Liability Insurance in an amount not less than \$100,000,000 per occurrence/per project limit including products/completed operations coverage with a 10 year reporting period. Miami-Dade County must be shown as an additional insured with respect to this coverage.
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
- D. Builder's Risk Insurance on an "all risk" basis in an amount not less than one hundred (100%) percent of the insurable value of the materials.
- E. Professional Liability Insurance in the name of the Design/Builder, or the licensed design professional employed by the Design/Builder, in an amount not less than \$1,000,000 per claim.

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 "A-" as to management, and no less than "Class VII" as to financial strength by 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 Financial Services.

**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 ten (10) business days. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business 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 fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

If the Certificate(s) of Insurance is scheduled to expire during the term of the Contract, the Contractor shall submit new or renewed Certificate(s) of Insurance to the County a minimum of ten (10) calendar days before such expiration. In the event that expired Certificates of Insurance are not replaced or renewed to cover the Contract period, the County may suspend the Contract until the new or renewed certificates are received by the County in the manner prescribed herein. If such suspension exceeds thirty (30) calendar days, the County may, at its sole discretion, terminate the Contract for cause and the Contractor shall be responsible for all direct costs associated with such termination.

ARTICLE 11. PERFORMANCE AND PAYMENT BOND

A minimum of ten (10) days' before Contractor commences any construction work or any materials are purchased from a supplier, Contractor shall execute, deliver to the County and record in the public records of the County, a Payment and Performance Bond equal to the total cost of construction (excluding design services and non-construction activities) to take place on County-owned property. Each Payment and Performance Bond shall be in compliance with all applicable laws including the terms and requirements of Florida Statutes, Section 255.05, including Sections 255.05(1)(a) and (c), 255.05(3), and 255.05(6), and shall name the County and the Contractor beneficiaries thereof, as joint obligees.

Alternatively to the Payment and Performance Bond described above, the Contractor may provide County with an alternate form of security ("Alternative Security") which fully complies with Section 255.05 of the Florida State Statutes and meets the following specifications:

- A. The Contractor shall provide to County either a certified check that the County may deposit in a County-controlled bank account or an Irrevocable Letter of Credit, in accordance with Article 12 "Irrevocable Letter of Credit", either of which shall be in a form and for an amount that is acceptable to the County and which shall remain in place until evidence reasonably satisfactory to the County is submitted to demonstrate that all contractors performing work and/or making improvements on County-owned property and all suppliers of materials have been paid and the Contractor has obtained Completion of Construction; and
- B. Require that each prime contractor hired by the Contractor to perform work and/or make improvements on County-owned property shall provide a Performance Bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in a form acceptable to the County to insure that his/her construction work shall be completed by the contractor or, on its default his/her surety, and shall name the County as an additional obligee; and
- C. Require that each prime contractor hired by the Contractor to perform work and/or make improvements on County-owned property shall provide a Payment Bond with a surety insurer authorized to do business in the State of Florida as a surety in an amount not less than 100% of his/her/its respective contract in a form acceptable to the County to secure the completion of the development free from all liens and claims of sub-contractors, mechanics, laborers and material men and shall name the County as an additional obligee and payee.

If the Contractor provides the Alternative Security, the Contractor shall also comply with the following obligations:

- A. The Contractor shall obtain a Conditional Release of Lien from each of its prime contractor(s) at the time each progress payment is made; and
- B. The Contractor shall obtain an Unconditional Release of Lien from each of its prime contractor(s) within five (5) business days after payment is made.

In the event the Contractor's contractor(s) claim non-payment(s), and/or, fail to timely provide Unconditional Releases of Lien within the timeframe stipulated under these terms, the Contractor reserves the right but not the obligation to:

- A. Reduce the amount(s) in question from the cash deposit(s) or security posted until the claim(s) is/are liquidated; or;
- B. Appropriate funds for such payment(s) from any cash deposit(s) or security posted and make payment(s) directly to the claimant(s).

In either case, the Contractor shall within ten (10) business days of the County's notification deposit an amount equal to the reduced/disbursed amount in the County's escrow account or increase the irrevocable letter of credit so as to replenish the original amount of the cash deposit(s) or security posted.

All bonds provided by the Contractor or its prime contractor(s) must meet the following requirements:

- A. Be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of a company listed in this circular is mandatory. Free copies of the circular may be obtained by writing directly to: U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, SW, 2nd Floor, West Wing, Washington, D.C. 20226.
- B. Clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond(s) shall be prior to the issuance of the NTP. The County may negotiate the amount of the bond(s) depending on the phase of the Project.

Failure by the Contractor to provide the required performance and payment bond(s) or Alternative Security in the manner and within the time specified, or within such extended period as the County may grant based upon reasons determined adequate by the County, shall render the Proposer ineligible for award and the County may retain the ineligible Proposer's bid security.

ARTICLE 12. IRREVOCABLE LETTER OF CREDIT

- A. An Irrevocable Letter of Credit (LOC) will be accepted as a substitution of security for the performance of work, in lieu of providing Payment and Performance Bonds. The Contractor shall, within ten (10) business days after contract award and before the County issues the Notice to Proceed, provide to the County a LOC in the amount of 100% of the estimated value of construction. The LOC shall be accessible such that the County may, at its convenience, withdraw funds from the LOC in the event the Contractor fails to execute its payment and performance obligations in a timely manner. The LOC shall be refreshed within five (5) days if drawdowns are made by the County, such that the amount of the LOC is continual at the amount equal to 100% of the cost of construction. The LOC shall remain in full force for the contract term that terminates upon Final Completion of construction, as the term may be extended by the County. On the first anniversary of the effective date and each

anniversary date thereafter contained in the Notice to Proceed, the Contractor may cause the amount of the LOC to decrease to reflect 100% of the outstanding amount for construction.

- B. The LOC shall be in an acceptable form to the County, and shall be executed by a financial institution acceptable to the County, authorized to issue surety LOC's in the State of Florida. Provisions of the LOC shall not limit, in any way, any liability of the Contractor to the County. The LOC shall be drawn on a financial institution which is federally insured and authorized to do business and with offices in the State of Florida.
- C. The Letter of Credit is required to be in place for the duration of design and construction work, terminating upon Final Completion of the construction work.

ARTICLE 13. 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, direct 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, which 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.
- G. The Contractor may request assistance from the County regarding its efforts to coordinate the Work with another County contractor, a utility company, or governmental entity. Whenever feasible the County will provide assistance.
- H. The County warrants and represents that it will employ, maintain and assign a sufficient number of competent and qualified professionals and other personnel to meet the requirements referenced in this agreement and further detailed in the Scope of Work and the Project Schedule. The County further warrants and represents to not exceed ten (10) business Days for Task Group 1 documents for the document review process. The County further warrants

and represents to not exceed twenty-one (21) calendar days for Task Groups 2 and 3 documents for the document review process.

ARTICLE 14. EMPLOYEES 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. The 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 15. 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 16. COUNTY'S RESPONSIBILITIES

- A. The County will have certain responsibilities related to the Work. In completing these responsibilities, the County may elect to involve the participation of design professionals and construction contractors who will not be under subcontract to the Contractor but will be separately contracted with the County. All interfacing between the Contractor and each such other entity will be coordinated through the County.
- B. A listing of the County's responsibilities for the Work is provided in Appendix A as the Technical Provisions. This listing is of a general nature, intended to define the division of Work responsibilities between the Contractor and the County. The Work is defined in greater detail throughout the Contract Documents.

ARTICLE 17. 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 Contractor's Proposal; questions as to the interpretation of the Scope of Work; and claims for damages, compensation and losses. All determinations by the County's Project Manager under this Article shall be reasonable and made in good faith in accordance with the Contract Documents and provided within the earliest practicable time.
- B. The Contractor shall be bound by all determinations or orders and shall promptly comply with 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. The Project Manager shall provide all necessary explanations as to the meaning and intention of the Scope of Work or Contract Drawings within a reasonable time, approximated to equal ten (10) Days, after the Contractor's written inquiry to ensure timely completion of the Work. In case of an unreasonably delayed response by the County's Project Manager, any

resulting delay of Work shall constitute an Excusable Delay in accordance with Article 21, if affected work is on the critical path

- 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.

ARTICLE 18. CONTRACTOR'S RESPONSIBILITIES

- A. The Contractor shall perform all of the Project management, quality assurance, design, analysis, documentation, construction, supply, fabrication, shipping, expediting, storing of materials, removal of equipment to be rejuvenated, installation, erection, debugging, testing and demonstration of facilities, material and equipment required to deliver an operable, safe, reliable, and sustainable System in conformance with all the requirements of this Contract. The Contractor shall be solely responsible for delivering all aspects of the Work; and integrating the Operating System and the Fixed Facilities Work into a fully functional System, meeting all of the requirements of the Contract.
- B. Contractor is responsible for the removal and disposal of existing equipment pertaining to the Contractor's scope of work. The Contractor is to identify as part of the Cut-over Plan CDRL the equipment to be removed.
- C. The Contractor is responsible to coordinate with any other independent contractors that are performing work adjacent to the Metromover guideway. This coordination must be through DTPW and their safety and security division. This may include work that is being performed within the Metromover Safety Zone and may impact the
- D. Contractor's ability to work on the Metromover Comprehensive Wayside System Overhaul Project.
- E. The Contractor shall be responsible for identifying and rectifying with the County any conflicting requirements within the Contract Documents, codes, standards, ordinances, rules and regulations. Where a conflict may exist among the Contract requirements, the more stringent requirement will be applied. Where conflicts are identified that require clarification, the Contractor shall notify the County in writing, describing in detail the conditions noted.
- F. The County will provide the Contractor with a written response including directions to resolve the conflicting information. This direction shall be final.
- G. All Contractor personnel must be approved by the County for access to County facilities. Contractor personnel must wear visually conspicuous Contractor identification and shall be required to undergo clearance measures that may include background checks to ensure Contractor personnel conform to the County.

ARTICLE 19. CONTRACTOR'S REPRESENTATIVE

Contractor shall have a Representative (or Project Manager) with full authority to represent and act for the Contractor. Prior to the County's issuance of a Notice to Proceed (NTP), Contractor shall submit (for the County's review and acceptance) the name, qualifications and experience of its proposed Contractor's Representative.

Contractor's Representative shall act for the Contractor in all matters concerning the Work, and, subject to all requirements of this Contract, shall have the following authority and obligations:

1. Ability to so organize the Work, and the Work of its Subcontractors, to complete the Work in accordance with the Contract and the Contractor's bar chart, as accepted by DTPW.
2. Ability to delegate defined authority to other Contractor personnel (who thus also become Contractor's

Representatives, as provided in this Contract, to the extent specified), subject to written notice to, and approval by, the Project Manager.

3. During performance of the Work, Contractor's Representative shall be present at the Worksite(s), or have its fully-empowered delegate present at the Worksite, at all times that any Work is in progress or at any time any employee or Subcontractor of the Contractor is present at the Worksite.

ARTICLE 20. DISPUTES

- A. In the event of such dispute, the parties to this Agreement authorize the County Mayor 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 Mayor's purview as set forth above shall be conclusive, the final determination of the County. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- B. The County Mayor 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 Mayor 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 Mayor 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 Mayor 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 Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor.
- C. If the Dispute is not resolved by the foregoing process, within five (5) days of the date of the notice to the Contractor referring to the determination of the County Mayor ("the determination"), the Contractor may, by the giving of written notice, cause the matter to be referred to mediation. Mediation shall be held within thirty (30) days of the date of the determination, or such later date as may be mutually agreed upon. The parties agree to submit the Dispute to settlement proceedings under the International Chamber of Commerce Alternative Dispute Resolution ("ADR") Rules. If the Dispute has not been settled within a period of two (2) months following the filing of a request for ADR pursuant to said Rules, such Dispute, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules. The arbitration shall be held in Miami, FL. The arbitral award shall be final and binding upon the Parties. The Parties agree if the Dispute is of a technical nature then to be qualified, the selected mediator and arbitrator, must have, at a minimum, experience with disputes arising from the Work as specified.

ARTICLE 21. PROJECT SCHEDULE

The Contractor shall submit an updated Critical Path Gantt Chart project schedule to DTPW for review and acceptance within fifteen (15) working days after issuance of the NTP. The project schedule shall include all work specified in the Attachment A (Scope of Work) including, but not limited to, mobilization, lead times, fabrication, inspections, installation, testing, system cutover, training, turnover of required documentation to the County by the Contractor and to the Contractor by the County, and all expected activities of subcontractors, vendors, suppliers and all other parties associated with the project. See Paragraph 2.07(F) of Attachment A (Scope of Work) for specific requirements.

ARTICLE 22. EXCUSABLE DELAY

- A. Upon providing the County notice and reasonably full particulars of an event of force majeure (as described below) in writing, within a reasonable time after the occurrence of such event of force majeure, the Contractor shall not be liable for any delay or failure to perform to the extent caused by fire, flood, severe weather conditions, explosion, labor disputes, strike, shortage of utilities, compliance with any laws, regulations, orders, acts or requirements from the government, civil authorities, government-mandated facility shutdowns or limitations, acts of God or the public enemy, or any other act or event of any nature reasonably beyond the Contractor's control. In such circumstances, the County may, at its option, elect to cancel or reschedule the portion of any order subject to such delay by providing to the Contractor prompt written notice of its election, provided that, such cancellation or rescheduling shall apply only to that portion of the order affected by the foregoing circumstances and the balance of the order shall continue in full force and effect.
- B. The Contractor shall not be liable for any delay or failure to perform the Work in the event that the Contractor is actually and necessarily delayed in the progress of the Work as a result of the act, neglect or failure of the County, another County contractor, a utility, governmental entity, local agency or FDOT (which act, neglect or failure occurs for reasons outside of the Contractor's control), hereinafter referred to as "Excusable Delay". In case of an Excusable Delay, the County will extend the contractual Substantial Completion Date and/or the Final Completion Date of the Work proportionate to the delay (hereinafter "Extension of Time"). The Contractor shall submit a request for such an extension within thirty (30) days after the time when Contractor knows or should reasonably have known the cause for which it may claim an Extension of Time, including the expected duration of the delay and its effect on the completion and milestone dates of the delayed part of the Work. Within thirty (30) days of receipt of such request, the County shall advise the Contractor of the new completion and milestone dates under the Extension of Time. Any revision to the projected completion dates that may result from such an Extension of Time shall become the new Substantial Completion date and/or Final Completion Date.
- C. An Excusable Delay shall be deemed compensable when such delay is caused by any act or omission of another contractor performing work on behalf of the County, including but not limited to the County, or any of their representatives, and as a result of any of the foregoing the Contractor demonstrates that it will be actually and necessarily delayed on the critical path, the Contractor shall be entitled to Extended Overhead, to the extent hereinafter set forth.
- D. Extended Overhead shall include the following, when applicable:
- a) Additional costs for work being performed by trades and other craft labor attributable to delay, including any applicable higher wage amounts.
 - b) Additional direct project and field office expenses of Contractor or its subcontractors, excluding any payments covered by item c) below attributable to the delay.
 - c) Increased costs to administrative personnel and software engineers attributable to the delay.
 - d) Increased cost to purchase material and furnish services.
 - e) Increased cost to store materials, to the extent that the Contractor can demonstrate that such storage is specific to this Contract.
 - f) Extended insurance and bonding.

The amount for Extended Overhead is payable as part of the monthly invoices in the month following an agreement by the parties regarding the amount of such Extended Overhead, which shall be reached within a timely manner.

- E. The Contractor is expected to timely request its permits with the permitting agency within a timeframe that will allow the permitting agency its normal processing time to review a permit request. A schedule delay due to the processing time of a permitting agency would only be deemed excusable if the Contractor demonstrated to the satisfaction of the County, through documented evidence, the permitting agency exceeded its standard time to review such permit.

ARTICLE 23. WORK DAY AND HOURS

- A. Construction operations shall be confined to the following time periods: Between 12:45 a.m. and 4:00 a.m. of the same day.
- B. The Contractor may work outside the above hours only with authorization from the County. The Contractor shall submit a written program that has been coordinated with the Contractor's overall safety plan to the County for acceptance outlining special precautions to be taken to control the extraordinary hazards presented by night work and all other work outside of the normal work hours. That program shall include, at a minimum, supplementary lighting of work areas, availability of medical facilities, security precautions, and noise limitations. The County reserves the right to require changes or additions in such programs.
- C. If a request to work outside of the normal hours is authorized, the Work shall be carried out at no additional expense to the County. Any delay incurred by the Contractor resulting from a denial to work outside the normal hours of construction defined above shall not be termed as Force Majeure.
- D. The Contractor shall furnish sufficient forces, offices, facilities and equipment, and shall work such hours including night shift and authorized overtime operations, as necessary to ensure the performance of the Work in accordance with the currently accepted monthly updated Work Schedule. If, in the opinion of the County, the Contractor falls behind in meeting the schedule as presented in the current monthly update, the Contractor shall take such steps as may be necessary to improve its progress, and the County may require the Contractor to increase the hours of work, the number of shifts, the amount of supervision, overtime operations and/or the number of construction plants and equipment without additional cost to the County. The provisions of this section shall not be construed as prohibiting work on Saturdays, Sundays, and holidays, if the Contractor so elects and gives reasonable notice to the County. Contractor's work on Saturday, Sunday and holidays shall be subject to approval by the County. Should work outside of the normal work hours require the County to work outside of the normal work hours, the Contractor shall be responsible for all costs incurred.
- E. The County may elect throughout or at any time during the Work to record the number of workers and construction equipment working on each schedule activity in each area of the Project and to give a copy of this log to the Contractor who shall be responsible for advising the County, without additional cost to the County, of any error in this Work history, in writing, within seven days of receipt of same. This information will be used by the County in its evaluation of the adequacy of the Contractor's performance and on-site manpower staffing, as well as in the evaluation of any Contractor claims.
- F. Any provisions applicable to a **Standard Work Day**, set forth in the Contract Documents, will apply to this paragraph and is hereby incorporated by reference.

County Holidays are:

New Year's Day
Martin Luther King, Jr. Day
President's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving
Day after Thanksgiving
Christmas Day

ARTICLE 24. SEQUENCE OF OPERATIONS

The Contractor shall maintain a sequence of operations that best suits the proposed Project plan and Schedule. The proposed sequence of operations can be further enhanced if agreed by both the Contractor's Project Manager and the County's Project Manager.

ARTICLE 25. ERRORS, OMISSIONS, INTERPRETATIONS

Contractor shall carefully and continuously study and compare all Contract Documents; and verify all stated requirements in the Contract Documents before commencing Work.

Request for Information, Notification, and Contractor Performance:

- A. Should it appear that the Work to be done, or any of the matters relative thereto, is not sufficiently detailed or explained in any the County-furnished Contract Documents, Contractor shall submit a Request for Information (RFI), in writing to the County's Project Manager, asking for such further written explanations as may be necessary. Contractor shall conform to the explanation provided.
- B. Contractor shall promptly notify the County of all deficiencies (including inaccuracies and inconsistencies) it may discover in the County-furnished Contract Documents, and obtain specific instructions in writing regarding any such Deficiency, before proceeding with the Work affected thereby.
- C. Omission of any Technical Provision in the Contract Documents, or the misdescription of details of Work which are necessary to carry out the intent of the County-furnished Contract Documents, or which are customarily performed, shall not relieve Contractor from performing such omitted Work (no matter how extensive) or misdescribed details of the Work. Any such omitted or misdescribed Work shall be performed as if fully and correctly set forth and described in the Technical Provisions of the Contract Documents, without entitlement to a Contract Modification hereunder.

ARTICLE 26. ALTERNATIVE CODES AND STANDARDS

Codes and Standards not in accordance with those contained in the Contract shall not be used unless accepted by the County's Project Manager in writing. If the Contractor wishes to utilize codes or standards not specified in the Contract, Contractor shall submit for acceptance, sufficient information for the County's Project Manager to determine Equivalency. Information shall include, but not be limited to, detailed comparison of the substitute standard/code, the rationale for Substitution, and whether it meets or exceeds the existing standard/code specified in the Contract.

ARTICLE 27. CONTRACTOR NOTICES TO THE COUNTY

All Notices to the County under this Contract shall be in writing to the County's Project Manager for the subject matter of the Notice, with a copy to the Contracting Officer. No notice shall be effective unless it was delivered to the Project Manager and to the Contracting Officer, as provided in this Contract.

ARTICLE 28. OVERVIEW OF CONTRACTOR'S RESPONSIBILITIES

- A. Contractor shall complete the Project as specified in a timely manner, in accordance with all industry practices generally accepted as standards of the industry in the State of Florida, in a good and workmanlike manner, free from defects, and in accordance with Attachment A (Scope of Work).
- B. Compliance with Requirements – The Contractor shall provide all materials and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts that the Contract Documents specify will be

furnished by the County or other persons) to complete the Project in accordance with the requirements of the Contract Documents, the Schedule, all applicable Laws, all Governmental Approvals, the County-Approved Quality Assurance & Quality Control Plans, Contractor's approved Safety Program (if applicable), and all other applicable safety, environmental and other requirements, taking into account Right-of-Way constraints, if applicable, and other physical limits resulting from constraints affecting the Project, so as to achieve Substantial Completion and Final Completion and to perform all required tests by the deadlines specified herein, and otherwise to do everything required by and in accordance with the Contract Documents.

- C. Professional Qualifications – Contractor shall perform the Work under the supervision of persons licensed to practice the applicable function/profession in the State of Florida (if applicable), by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract, and who shall assume professional responsibility for the accuracy and completeness of the Work prepared or checked by them. Personnel are required to meet, where applicable, the qualification requirements stipulated in the Scope of Work (Attachment A) and its exhibits.
- D. Governing Dimensions – Before commencing any contracted work, Contractor shall verify all governing dimensions at the Worksite, examine all adjoining work and activities that may have an impact on Work, and ensure that the Contract Documents (and any other documents related to the Work) accurately depict all governing and adjoining dimensions.
- E. Means and Methods – Contractor shall be solely responsible for the performance of its Work in accordance with its own means, methods, sequences, and procedures, and for coordination of all portions of its Work in compliance with the Contract.
- F. Performance During Disputes – At all times during the term hereof, including during any Dispute, Contractor shall perform as directed by the County, and shall comply with all provisions of the Contract.
- G. Subcontractors & Suppliers – Contractor shall be responsible for the acts and omissions of its Subcontractors and Suppliers.
- H. Assistance to the County – Contractor shall provide such assistance as is reasonably requested by the County in prosecuting and defending Environmental lawsuits in any and all matters relating to the Work, which is caused by the Contractor's negligent acts/omissions. Such assistance may include providing information and reports regarding the Work, as well as executing declarations and attending meetings and hearings. In no event shall the Contractor be required to provide legal services.
- I. Cooperation – Cooperate with the County and its Authorized Representatives, in their review(s) and/or inspection(s) of any portion or phase of the Work, and other matters relating to the Work.
- J. Mitigation – Mitigate Delay in all circumstances, to the extent reasonably possible, including the re-sequencing, reallocating or redeploying of its forces to other work, as appropriate.

ARTICLE 29. CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Contractor represents, warrants and covenants for the benefit of the County that:

- A. Status – If it is a corporation, limited partnership, general partnership, and/or joint venture, it is duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation, and has full power and authority to own and operate its business and properties and perform the Work within the State of Florida.
- B. Review of Information and Inspection of the Worksite(s) – The Contractor has, in accordance with prudent and generally accepted engineering and industry practices:

1. Reviewed all of the information provided in the Contract (including reports provided by the County);
 2. Inspected and evaluated the Worksite(s) and surrounding locations to the extent the Contractor deems necessary or advisable for preparing its initially proposed project plan.
- C. The Contractor shall, post award, in accordance with prudent and generally accepted engineering and industry practices, inspect and evaluate the Worksite(s) and surrounding locations to the extent the Contractor deems necessary or advisable for performing all portions/phases of the Work under the Contract.

These inspections and evaluations include without limitation:

1. The character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Worksite(s), including review of the Contract Documents provided by the County.
 2. Conditions bearing upon transportation, disposal, handling, and storage of materials, goods, and equipment;
 3. The availability of labor, water, electric power, and roads;
 4. Uncertainties of weather, or physical conditions at the site;
 5. The conformation and conditions of the ground;
 6. The character of equipment and facilities needed preliminary to and during Work performance; and
 7. Conditions bearing upon security and protection of material, Goods, Equipment, and Work in progress.
- D. Physical Requirements – As a result of its inspection and examination of the Worksite(s), and other related and surrounding sites and conditions, it is familiar with and accepts the physical requirements of the Work.
- E. Feasibility – As a result of its review of all the information and its inspection and examination of the Worksite(s), it has evaluated the feasibility of performing the Contract within the Contract Term and for the Total Contract Price, and has reasonable grounds for believing and does believe that such performance, including achievement of Substantial Completion of the Project within the Contract Term, for the Total Contract Price is feasible and practicable.
- F. Permits and Governmental Approvals – Based upon its review of the Contract Documents, it shall be able to obtain and keep in effect throughout the Contract Term all permits and other Governmental Approvals the Contractor is obligated to obtain in accordance with the Contract.
- G. Difficulty and Cost of Work – It has estimated the difficulty and cost of successfully performing the Work, and based upon that estimate has concluded that it can successfully perform the Work at the Total Contract Price.

ARTICLE 30. STORM OR DISASTER SERVICES

- A. Contractor agrees that should a storm or other severe and catastrophic natural disaster affect the Miami-Dade-County area during the performance of the work, Contractor shall provide services contracted for during the contract period, at the Contract unit prices and at the same or different locations from those covered by this Contract.
- B. For emergency services and conditions not addressed by this Contract, Contractor agrees to negotiate reasonable prices and terms with the County for any disaster-relief work required by the County. In all instances, Contractor agrees to negotiate reasonable time extensions for the performance of disaster-relief work.

ARTICLE 31. EMERGENCIES

In case of an Emergency or hazard to health or safety requiring immediate curative action, the County will notify Contractor, and Contractor shall immediately take such action(s) as it deems necessary, notifying the Project Manager of the action(s) taken as soon as possible but no later than **one (1) working day** thereafter. If Contractor does not undertake immediate curative action, the County may without prior notice undertake such action as is necessary to correct the hazard or deal with the Emergency, and the cost thereof shall be borne by the Contractor.

ARTICLE 32. COOPERATION AND COORDINATION WITH OTHER CONTRACTORS AND/OR COUNTY OPERATIONS

The County reserves the right and may undertake or award other contracts for additional Work on or near the Worksite(s). Contractor warrants that it has carefully reviewed the Contract Documents and all other pertinent information made available by the County that relate to the nature and scheduling of other contracts that may be awarded, and to constraints related to the County operations, and in executing this Contract, has taken into account the need to coordinate its Work with that of other Contractors and/or the County Operations.

The following shall apply:

- A. Contractor shall not have exclusive access to or use of Work areas or the Worksite(s). The County may require that Contractor use certain facilities and areas concurrently with others.
- B. The County will endeavor to advise the Contractor of the other known parties, including the County Operations.
- C. Contractor shall cooperate and communicate with any other Contractor performing Work that may connect, complement, and/or interfere with the Contractor's Work, and resolve any disputes or coordination problems with such Contractor.

ARTICLE 33. WORK SITE COORDINATION AND CONDITIONS

- A. The Contractor shall coordinate the performance of Work with public utilities, governmental bodies, private utilities, the Operating and Maintenance organization of the existing system, and other contractors performing work on, or adjacent to, the Work Site. The Contractor shall bear the sole responsibility to eliminate or minimize delays in the Work and conflicts with those utilities, bodies, and contractors.
- B. The County reserves the right to permit reasonable access to the Work Site for the performance of work by other contractors and persons at such times as the County deems proper. However, such access shall be coordinated with the Contractor. The exercise of such reserved right shall in no way, nor to any extent, relieve the Contractor from liability for loss and damage to the Work due to, or resulting from, its operations or from responsibility for complete and timely performance of the Contract. The Contractor shall cooperate with other contractors and persons in all matters including matters requiring common effort as a means to prevent and/or minimize any disruption and/or delays to either the Contractor's Work or the work of others at the Work Site.
- C. The Contractor shall confine Work Site operations to areas permitted by law, ordinances, rules, regulations, permits, and the Contract. The Contractor shall consider the safety of the Work and that of the people and property on and adjacent to the Work Site when determining amount, location, movement, and use of materials and equipment on the Work Site.
- D. The Contractor shall not load the Work Site with equipment and products which would interfere with the work of other contractors. Only equipment, tools or materials required for this Work may be stored at the Work Site. The Contractor shall protect products, equipment and materials stored on the Work Site. The Contractor shall relocate

at no cost to the County stored products, equipment and materials that interfere with operations of the County, government bodies, public and private utilities, and other contractors.

- E. Access to and egress from the Work Site will be gained only via routes and through gates previously authorized by the County. Access shall be permitted during periods of time specified in the Contract Documents or as may otherwise be approved by the County. Equipment weight and height limits will be strictly enforced.
- F. Automobiles of all construction workers on the Project shall be parked in an area designated for this purpose by the County. No construction workers' vehicles will be allowed on the construction site. The Contractor shall furnish transportation for construction workers from the designated parking area to the construction site. All areas at the Work Site for use as staging and lay down sites shall be provided by the Contractor.

ARTICLE 34. COORDINATION MEETINGS

Contractor's Project Manager or designated representative shall attend such meetings and conferences, including a pre-work meeting, arranged by the County for the purpose of coordinating the Work. Attendance to such meetings and conferences by Contractor's Project Manager or designated representative is considered a basic part of the Work, and thus Contractor shall not be entitled to any additional compensation from the County for such attendance.

ARTICLE 35. CLEAN UP

- A. Throughout all phases of contracted work, and until Final Completion of the Work, Contractor shall keep the Worksite, including storage and public areas used by Contractor, clean and free from rubbish and debris.
- B. Before completing the Work, Contractor shall remove from the Worksite any rubbish, tools, and equipment that are not the property of the County.

ARTICLE 36. DISPOSAL OF WASTE

Unless otherwise specified in the Contract, Contractor shall make its own arrangements for disposing of waste and excess substances generated from Contractor's performance of the Work at a legal disposal site outside the Worksite(s), and shall pay all associated costs and obtain necessary permits, if any.

ARTICLE 37. AIR AND WATER POLLUTION

The Contractor shall work to minimize air pollution and water pollution caused by the construction activities and control the generation and disposal of solid or hazardous wastes. See requirements in the Contract and General Conditions.

ARTICLE 38. EXTRA WORK

- A. The County reserves the right to order changes which may result in additions to or reductions from the amount, type or value of the Work shown in the Contract and which are within the general scope of the Contract in accordance with this Article. Any such changes which result in additions to the Work will be known as "Extra Work." The Parties further agree that any changes requested by the County, for the exclusive benefit of the County, to the Qualified Product List ("QPL") shall be also handled in accordance with this Article.
- B. No Extra Work shall be performed except pursuant to a written Change Order issued by the County expressly authorizing the performance of such Work and explicitly declaring the intention of the County to treat the Work described therein as Extra Work. In the absence of such a Change Order, if the County Project Manager shall direct, order or require any work, whether orally or in writing, which the Contractor deems to be Extra Work, the Contractor shall nevertheless comply therewith, but shall within five (5) days of the County Project Manager's order

or directive give written notice to the County Project Manager stating why the Contractor deems it to be Extra Work. Such notice is required to afford an opportunity to the County to (1) cancel promptly such order, direction or requirement; (2) keep an accurate record of the materials, labor and other items involved; and (3) take such action as may be deemed advisable in light of the Contractor's claim. The failure of the Contractor to give written notice within the time limit stated therefor shall be deemed a conclusive and binding acceptance on the Contractor's part that the direction, order or requirement of the County Project Manager does not involve the performance of Extra Work.

- C. Within thirty (30) days of the Contractor's submission of written notice that an order, direction or requirement of the County Project Manager is deemed by the Contractor to involve Extra Work, the Contractor and each Subcontractor shall submit in a form satisfactory to the County a detailed proposal ("Change Order Proposal")(including the elements of cost identified in Article 36, "CHANGE ORDER BASIS FOR PAYMENT," Paragraphs A., B., C., D, and E.) which shall include adjustments to the Contract price, to the extent permitted under Article 36 to the delivery schedule, or to any other provisions of the Contract necessary to accomplish the Extra Work. Upon written request of the Contractor, within the thirty (30) day period set forth above, for good cause shown, the County Project Manager may grant the Contractor additional time in which to submit a Change Order Proposal. The failure of the Contractor to submit a detailed proposal within the time limit stated therefor, or within such additional time as is granted by the County Project Manager at its sole discretion, shall be deemed a waiver of any claim for compensation that the Contractor may have with respect to the claimed Extra Work.
- D. The provisions of the Contract relating to the Work and its performance shall apply without exception to Extra Work and the performance thereof, except as otherwise provided in a written Change Order between the Contractor and the County.
- E. The Contractor must utilize the most recent updated Critical Path Method Schedule (CPM) or bar chart as required by the Contract to establish the price and schedule modifications. Contractor's Change Order Proposal must include a schedule subnet and an explanation of the cost and schedule impact of the claimed Extra Work on the Contract. The Contractor must demonstrate clearly how it proposes to incorporate the Extra Work into the schedule. If Contractor fails to notify the County Project Manager of the schedule changes associated with a Change Order Proposal by submitting a revised schedule, it will be deemed to be an acknowledgment by Contractor that the proposed Extra Work will not have any scheduling consequences.

ARTICLE 39. CHANGE ORDER BASIS FOR PAYMENT

If Extra Work requires the provision of items of Work or material of the same type as those for which unit prices are quoted in the Proposal, compensation for such Extra Work shall be computed on the basis of the unit price in the Contractor's Proposal for such items.

If Extra Work requires the provision of items of Work or material for which compensation cannot be computed on the basis of unit prices quoted in the Contractor's Proposal and the scope and extent of the Extra Work can be determined before the Extra Work is performed, the County will perform a cost analysis of the Contractor's proposal and negotiate a lump sum amount with the Contractor as compensation for such Work. The County Project Manager may in such case direct the Contractor to proceed with the Extra Work pending performance of the cost analysis and negotiation of the amount of compensation for such Extra Work.

If it is not possible beforehand to estimate the extent and duration of the Extra Work or to estimate costs with any degree of certainty, such Extra Work shall be compensated on a time and material basis, limited to the following amounts only:

- A. The sum of plant, field and engineering labor hours performed by the Contractor's or Subcontractor's own employees, and deemed by the County Project Manager to be reasonably required for such Extra Work, plus 21% for overhead, administrative expenses, and profit, plus actual increase in insurance premiums, not included above,

for insurances required by the Contract. Where Extra Work is performed on overtime or premium basis the 21% additive shall not apply to the premium portion of such costs.

- B. The actual reasonable cost of materials, together with the actual reasonable cost of the rental of equipment or use of Contractor or Subcontractor owned equipment, required by the Contractor or Subcontractor for performance of such Extra Work, plus material handling costs (inclusive of general and administrative expenses) of 10% of the cost of the material actually incorporated into the Extra Work.
- C. The actual reasonable cost of permitted Subcontract Work, as enumerated above, incorporated in such Extra Work, plus an amount for the Contractor's own administration, overhead and supervision, of 10% of the cost of such permitted Subcontract Work. A single allowance of 5% will be allowed notwithstanding that more than one tier of Subcontractors is employed with respect to such subcontract Work.
- D. For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of its actual incurred cost.
- E. Fees or other costs for required Bonds, and increases thereto, are deemed to be included in the overhead rates enumerated above, and in no event shall additional sums be allowed for such costs in connection with Extra Work under this Contract.

The County will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Department will pay for the time to perform this work at the rate for standby equipment. Equipment may include vehicles utilized only by Labor, as defined above.

For all Work or materials required to be done or furnished under the provisions of this Article, the Contractor shall furnish to the County upon request such documentation as the County may require for substantiating all costs of the Extra Work.

ARTICLE 40. NOTICE OF DISCOVERY OF DIFFERING SITE CONDITIONS

Contractor shall, before any of the existing conditions are disturbed, provide immediate oral and/or electronic mail notice of the discovery of such conditions to the County's Authorized Representative, followed by written notice to the County's Project Manager of the discovery within forty-eight (48) hours thereafter, of any of the following subsurface conditions:

- A. Type 1 Condition: Subsurface or latent physical conditions at the Worksite differing materially from those indicated in the Contract;
- B. Type 2 Condition: Unknown physical conditions at the Worksite of any unusual nature that differ materially from those ordinarily encountered in and generally recognized as inherent in Work of the character provided for in the Contract.
- C. Type 3 Condition: Substances that Contractor believes may be Hazardous Substances that are required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Law.

If Contractor encounters substances or conditions during performance of the Work that it reasonably believes to be a Type 1 Condition or Type 2 Condition, Contractor shall not disturb the condition or interfere with the County's right or ability to investigate, but may continue Work in the area. The Contractor shall document and submit such conditions in a written field report (including photographs) within five (5) Days of the initial notice to the County, and include a recommendation how to safely proceed with Work at the area.

If Contractor encounters substances during performance of the Work that it reasonably believes to be a Hazardous Substance, a Type 3 Condition, Contractor shall not disturb the condition and shall suspend Work in the immediate area of the suspected Hazardous Substances until the County authorizes it to resume. The Contractor shall document and submit such conditions in a written field report (including photographs) within five (5) Days of the initial notice to the County, and include a recommendation how to safely proceed Work at the area.

The County will promptly investigate the conditions, and if it finds the conditions do materially differ, or do involve previously unknown Hazardous Substances. The County may make an adjustment in Contract Term and/or Total Contract Price as agreed upon, in accordance with Article 38 "Extra Work" and Article 39 "Change Order Basis for Payment".

ARTICLE 41. CLAIMS REGARDING DIFFERING SITE CONDITIONS

Contractor shall not be entitled to any remedy for an asserted Differing Site Condition if it does not give the County both:

1. Timely notice of the asserted Differing Site Condition, as required in this paragraph;
2. Submit a written field report, including photographs, within five (5) Days of the initial notice to the County as required in Article 37 "Notice of Discovery of Differing Site Conditions" of this document; and
3. An opportunity to investigate prior to the asserted Differing Site Condition being disturbed.

ARTICLE 42. PROCEED WITH WORK

If a Dispute arises related to a claim of a Differing Site Condition, Contractor shall proceed with all Work to be performed under the Contract and shall not be excused from any provision of the Contract, including without limitation, the scheduled completion date of the disputed activity of the Work.

ARTICLE 43. ACCESS TO THE WORKSITE

- A. The County will, at all times during the term of the contract, have access to the Work at all Worksites, and all documents on which the Work is based.
- B. At any time during the Contract Term, upon reasonable notice, the County may review the documents on which the Work is based, inspect the Worksite, and review, inspect and test all Work, equipment, software, and all other materials wherever located (collectively "Inspect" or "Inspection").

ARTICLE 44. WORK PERFORMED WITHOUT INSPECTION

- A. At all times before Final Acceptance at each intersection, Contractor shall remove or uncover such portions of the finished contracted Work as directed by the County. After examination by the County, Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work, and recovery of any delay to any Critical Path occasioned thereby, shall be at Contractor's cost, and Contractor shall not be entitled to any time extension.
- B. Any Work done or materials used without adequate notice to and opportunity for prior inspection by the County, may be ordered uncovered, removed or restored at Contractor's cost and without a time extension, even if the Work proves acceptable after uncovering.

- C. If Work exposed or examined under this paragraph is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered a delay caused by the County, and Contractor shall be entitled to a Change Order for the cost of such efforts and recovery of any delay to the schedule occasioned thereby.

ARTICLE 45. SUBSTANTIAL COMPLETION

- A. The Work shall be deemed Substantially Complete when, in the opinion of the County Project Manager, there are no material and substantial variations from the Contract and the Work is fit for its intended purpose. Upon Substantial Completion the County Project Manager shall issue a Letter/Certificate of Substantial Completion. The issuance of this Letter/Certificate shall not relieve the Contractor from its obligation hereunder to complete the Work. Substantial Completion must be achieved sixty (60) days prior to Final Completion.
- B. When the Contractor is of the opinion that the Work is Substantially Complete, Contractor may submit to the County Project Manager a written request that the County Project Manager inspect the Work so as to determine whether Substantial Completion has been achieved. Upon such request, the County must respond within twenty-five (25) days of its receipt with either (i) a Letter/Certificate of Substantial Completion or (ii) an explanation of the reasons why the Work is not Substantially Complete, including a list of open items necessary to achieve Substantial Completion. Nothing in this paragraph precludes the County Project Manager from making a determination of Substantial Completion in the absence of a request therefor by the Contractor.
- C. The Work remaining after Substantial Completion shall be known as "Punchlist Work." The Punchlist Work shall be limited to minor omissions and defects except the County Project Manager may in his sole discretion, include an activity(ies) of the Contractor's Work which cannot be completed until the County or third persons perform other work which is not the Contractor's responsibility under the Contract. The County Project Manager shall issue a Punchlist with the Letter/Certificate of Substantial Completion.
- D. Upon Substantial Completion, the Contractor shall remove its tools, materials and equipment from the Work Site, except for the tools, materials and equipment needed to complete the Punchlist Work, or unless otherwise authorized in writing by the County Project Manager.

ARTICLE 46. FINAL COMPLETION

- A. Within ten (10) Days after the Contractor determines that all Work as required in the Contract, System Acceptance of all systems required by the contract, is fully completed, and all required submissions and deliveries to the County specified in the Contract have been made, written notice is required.

Contractor shall give the County Project Manager a written Request for Final Completion specifying that the Work is completed, the date on which it was completed and stating:

1. All of the Contractor's and Subcontractors' personnel, supplies, equipment, waste materials, rubbish and temporary facilities have been removed from the Worksites;
2. Contractor has complied with all requirements associated with closeout of the Contract; and
3. Contractor has delivered to the County Project Manager a Notice of Completion for the Work in recordable form.

Note: System acceptance is defined by Attachment A (Scope of Work), Paragraph 2.05(6).

- B. The County Project Manager shall advise the Contractor of the time reasonably required to complete all the Punchlist Work. The time set by the County Project Manager to complete Punchlist Work shall be no more than

sixty (60) days from the issuance of the Letter/Certificate of Substantial Completion. When in the opinion of the County Project Manager the Punchlist Work is properly completed, the County Project Manager shall issue a Letter/Certificate of Final Completion.

- C. In the event of an emergency or if the Contractor fails to diligently perform the Punchlist Work, the County may complete the Punchlist Work, either by its own forces or by other Contractors. The County's costs thereof will be deducted from the payment due to the Contractor, except that if the County completes the Punchlist Work because of an emergency, then the amount deducted from the payment shall be based on the Contractor's costs for completing the Punchlist Work. If such costs exceed the amount due the Contractor, the Contractor shall immediately upon demand pay such excess to the County.
- D. Acceptance of all Work by the County shall occur when in the opinion of the County Project Manager, the Work is complete in all respects including any outstanding items contained in the Punchlist provided with the Letter/Certificate of Substantial Completion. Upon acceptance the Contractor shall be given a Letter/Certificate of Final Completion.

ARTICLE 47. RESPONSIBILITY FOR MAINTENANCE, LOSS AND DAMAGE

- A. Upon the County's Partial Controller Acceptance of an individual intersection consisting of the controller, the County will be responsible for the operation and maintenance of the intersection and the controllers. Upon the County's Partial Acceptance of Detection system of an individual intersection, the County will be responsible for the operation and maintenance of the intersection and the installed vehicle detection systems. It is the Contractor's responsibility to maintain the equipment prior to its Partial Acceptance. The County is responsible for the operation and maintenance of intersections after Partial Acceptance.
- B. Upon the County Project Manager's issuance of a Letter of Acceptance, the County, shall be responsible for the maintenance, loss, or damage to the Work or any element thereof, except as follows:
 - 1. The County Project Manager's issuance of a Letter of Acceptance will not relieve the Contractor of its obligations to complete the Work or any element thereof, the non-completion of which was not disclosed to the County (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise); or
 - 2. The Contractor's action, negligence or breach of this Contract or the warranty causes loss or damage to the Work or any element thereof.

ARTICLE 48. RESPONSIBILITY TO COMPLETE THE WORK

Notwithstanding any other provision of this Contract that could be interpreted to the contrary (including in Contract Documents of higher precedence), it shall be the Contractor's continuing responsibility to complete and deliver every element, and the integrated whole, of the Work in accordance with all of the requirements of the Contract. The issuance of a Letter/Certificate of Substantial Completion by the County Project Manager for any element, or for the whole of the Work, shall not be construed to relieve the Contractor of this responsibility, or any part thereof. If, after the issuance of a Letter/Certificate of Substantial Completion, the County discovers any deficiency, or item not completed or otherwise requiring correction or remedial action, whether or not the item appears on any Punch List or other list of clean up items, the Contractor shall correct the deficiency, complete the item or otherwise remedy the condition to bring it in to full compliance with the Contract.

ARTICLE 49. THE COUNTY RIGHT TO CORRECT DEFICIENCIES

If Contractor fails to remedy Deficiencies or otherwise comply with this Warranty or any other Warranty in this Contract, or fails to propose a timely and adequate remedy, the County, after notice to Contractor, may perform or have performed by Third Parties the necessary remedy, and the costs thereof shall be borne by Contractor.

ARTICLE 50. ACCEPTANCE OF NON-CONFORMING WORK

If the County Project Manager accepts any nonconforming Work without requiring it to be fully corrected, Contractor shall reimburse the County a portion of the Total Contract Price in an amount equal to the greater of:

- A. The difference in the value of the Work, plus the present value of additional operating costs, if any, caused by such nonconforming Work; or
- B. Contractor's cost savings in not correcting the Work. In either case above, Contractor shall, in addition, reimburse the County's costs to make the determination, including but not limited to staff costs, experts, tests and other actions necessary to make a determination. Such reimbursements shall be payable to the County within ten (10) Days after the Contractor's receipt of the County's demand for payment.

ARTICLE 51. OTHER REMEDIES

The Warranties herein are in addition to all rights and remedies available under the Contract or applicable Law, and shall not limit Contractor's liability or responsibility imposed by the Contract or applicable Law with respect to the Work, including liability for design defects, latent defects, strict liability, negligence or fraud. To the extent that any Warranty from any person other than the Contractor would be voided in whole or part by reason of any act or omission of the Contractor, Contractor shall be fully liable to the extent of said Warranty.

ARTICLE 52. SPARE PARTS

The County's spare parts, if ordered, shall not be used to repair warrantable failures and defects. The security, control, shipping, and disposition of Contractor owned parts shall be the responsibility of Contractor. Damage to the County's property caused by the Contractor shall be the sole responsibility of the Contractor and shall be corrected at Contractor's expense.

ARTICLE 53. REPAIR AND REPLACEMENT

Unless otherwise provided, Contractor shall repair or replace all existing Improvements damaged or removed by Contractor. Repairs and replacements shall be at least equal to Existing Improvements and shall match them in finish and dimension.

ARTICLE 54. MUTUAL OBLIGATIONS

- A. In accordance with Article 2 "Order of Precedence", this Agreement, including attachments, exhibits, appendices to the Agreement, and the Contractor's proposal 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 55. 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 Work (Attachment A). 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 56. AUDITS

- A. The County, or its duly authorized representatives and 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, as applicable, and shall only address those transactions related to this Agreement.
- B. Pursuant to Section 2-481 of the Code of Miami-Dade County, 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 57. CORRESPONDENCE CONTROLS

- A. In accordance with the CDRL, within seven (7) days after NTP, the Contractor and the County shall each designate in writing their authorized representatives, who shall receive copies of all or specific correspondence.
- B. All correspondence shall conform to any County standards and include the Project name and Contract number along with the specific subject of the letter. When replying to a specific letter, it is to be referenced. All correspondence to and from the County and the Contractor shall be serialized, and separate incoming and outgoing correspondence logs maintained. Each correspondence shall be limited to a single topic such that multiple submittals are not included with a single correspondence number.
- C. As a minimum a serialization similar to the following is required:

Serial No: Prefix - Letter No.

Prefixes shall be capitalized alphabetic acronyms identifying the entity originating letter.

ARTICLE 58. SUBSTITUTION OF PERSONNEL

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

ARTICLE 59. 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 60. 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 require the Contractor not to award any subcontract to a person, firm or corporation disapproved 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. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. 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 61. 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 62. 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 63. TERMINATION AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if the Contractor 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 the Contractor has with the County and that the Contractor shall be responsible for all direct costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, in the event the Contractor 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 Code of Miami-Dade County.
- d) 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.
- e) In the event that the County exercises its right to terminate this Agreement, 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 non-cancelable 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
- f) In the event that the County exercises its right to terminate this Agreement, 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. non-cancelable 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.
- g) All compensation pursuant to this Article are subject to audit.

ARTICLE 64. 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 unnecessarily or unreasonably delayed the performance of the Contract;

- ii. the Contractor has refused or failed 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 timeframe 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 the 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 timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement; and
 - 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 65. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County shall so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured within reasonable time 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 Effective Termination Date.

ARTICLE 66. REMEDIES IN THE EVENT OF DEFAULT

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

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

The Contractor shall also remain liable for any liabilities and claims directly related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 67. PATENT AND COPYRIGHT INDEMNIFICATION

- A. The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- B. 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 U.S. copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- C. The Contractor shall be liable and responsible for any and all claims made against the County by a third-party for infringement of any U.S. patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like caused by the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of reasonable attorney's fees, shall indemnify, and hold harmless the County and defend any action brought by a third-party against the County with respect to any claim, demand, cause of action, debt, or liability resulting from, or in connection with third-party claims of intellectual property infringement arising out of, resulting from, or in connection with any act or omission of the Contractor affecting the proprietary rights of third parties, including liability arising out of the publication, translation, reproduction, delivery, use, or disposition of any work furnished under this Agreement.
- D. The indemnification obligation is conditioned upon the following: (i) the County gives prompt written notice to Contractor of the claim, (ii) the County promptly and in writing grants to the Contractor sole control over defenses and settlement, (iii) the County provides all reasonable assistance in defense of the claims, and (iv) the County does not acknowledge the claims. The Contractor shall not be liable with respect to any claim arising out of or relating to either (i) use or incorporation in any product not supplied by the Contractor under this Contract, (ii) of any design, technique, modification or specification not originating with or furnished by Contractor; (iii) the combination with or incorporation into the Work and/or Deliverables supplied by the Contractor with any other product not supplied by the Contractor if such infringement would not have occurred without such combination; (iv) the modification of the Work and/or Deliverables supplied by the Contractor under this Agreement by the County or any person or entity other than the Contractor; (v) the use of the Work and/or Deliverables supplied by the Contractor under this Agreement other than as permitted under this Agreement; or (vi) use or distribution of other than the most current update, upgrade or version of the Work and/or Deliverable supplied by the Contractor under this Agreement (if such infringement or claim would have been prevented by the use of such update, upgrade or version).
- E. In the event any Deliverable or anything provided to the County hereunder, or portion thereof as a result of any suit or proceeding so defended is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the Contractor's option to either (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) so its use is non-infringing, (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s); or (iii) replace it with substantially equivalent non-infringing item(s).
- F. The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor 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 reasonably believes to be the subject of any such litigation or injunction, or if, in the County's reasonable judgment, use thereof would delay the Work or be unlawful.

ARTICLE 68. CONFIDENTIALITY

- A. All Developed Works 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.

ARTICLE 69. PROPRIETARY INFORMATION

- A. As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.
- B. The Contractor acknowledges 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.
- C. 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 (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.

- D. 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 70. 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 (collectively "County Work Products"). Contractor conveys and assigns to County all rights, title and interest in and to all materials, data and copies specifically created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Work and Services the Contractor performs in connection with this Agreement (collectively "County Developed Work Products"). The Contractor may retain copies of the County Developed Work Products for its archives. 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, which consent shall not be unreasonably withheld. 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, hereinafter referred to as "County Developed Work Products" 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 County Developed Work Products. The County Developed Work Products 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. For the avoidance of doubt, it is understood that Contractor may use its own previously developed data, documentation, software, ideas, concepts, materials, or information, in whatever form, in performing its obligations under the Contract (collectively "Preexisting Works"). All Contractor's Preexisting Works shall remain the sole, exclusive and unrestricted property of Contractor. It is understood that in performing its obligations, Contractor may develop new and unique work products for use in conjunction with this Agreement. For the purpose of this Agreement, "Contractors Work Product" shall mean all data, documentation, software, ideas, concepts, materials, and information, in whatever form, produced or created by Contractor which may or may not relate solely and exclusively to the performance of work or the rendition of obligations under this Agreement (hereinafter "Contractors Work Product"). All Contractors Work Product shall remain the sole, exclusive and unrestricted property of Contractor.
- E. The Contractor shall provide, at no additional costs to the County, a non-exclusive, non-transferable limited license(s) necessary for the County to use the Software of the ATC System (hereinafter referred to as "Software") in machine readable, object code form, but only in connection for the operation of the ATC System pursuant to the terms of this Contract, without the right to sub-license the Software. Title to the Software, tools or other packages utilized within the ATC System shall remain fully vested in the Contractor and the County shall have no right to adapt such software or programs.
- F. The County agrees that neither it nor any third party shall modify, reverse engineer, decompile or reproduce the

Software, without Contractor's prior written consent, except for making copies for backup or archival purposes in accordance with this Contract and with the related Contractor operating documentation, and provided that Contractor's confidential and proprietary legend is included. All copies of the Software are the property of Contractor, and all copies for which the license is terminated shall be returned to Contractor promptly after termination.

- G. Except to the extent that the Parties otherwise agree in writing, the County's license to use the copy of the Software shall terminate upon breach of this license or the Contract by the County, including, without limitation, breach of payment or confidentiality obligations.
- H. The County shall have the right to distribute any documentation to any authorized user. The authorized users shall be identified in writing by the County Project Manager.
- I. The County shall have the right to distribute any interface documentation to any other person working with a system on behalf of the County that will interface with the ATC System subject to the terms and conditions of this Contract, including but not limited to the terms dealing with confidentiality.

ARTICLE 71. VENDOR REGISTRATION/CONFLICT OF INTEREST

A. Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, Procurement Management Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

- | | |
|--|--|
| <ul style="list-style-type: none">1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the Code of Miami-Dade County)2. Miami-Dade County Employment Disclosure Affidavit (Section 2.8.1(d)(2) of the Code of Miami-Dade County)3. Miami-Dade County Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the Code of Miami-Dade County)4. Miami-Dade County Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the Code of Miami-Dade County)5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the Code of Miami-Dade County)6. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the Code of Miami-Dade County) | <ul style="list-style-type: none">7. Miami-Dade County Code of Business Ethics Affidavit
(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)8. Miami-Dade County Family Leave Affidavit
(Article V of Chapter 11 of the Code of Miami-Dade County)9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the Code of Miami-Dade County)10. Miami-Dade County Domestic Leave and Reporting Affidavit (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)11. Miami-Dade County E-Verify Affidavit
(Executive Order 11-116)12. Miami-Dade County Pay Parity Affidavit
(Resolution R-1072-17)13. Subcontracting Practices
(Section 2-8.8 of the Code of Miami-Dade County) |
|--|--|

14. Subcontractor/Supplier Listing*(Section 2-8.1 of the Code of Miami-Dade County)***15. Form W-9 and 147c Letter***(as required by the Internal Revenue Service)***16. FEIN Number or Social Security Number**

In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- *Identification of individual account records*
- *To make payments to individual/Contractor for goods and services provided to Miami-Dade County*

- *Tax reporting purposes*
- *To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records*

17. Office of the Inspector General*(Section 2-1076 of the Code of Miami-Dade County)***18. Small Business Enterprises**

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.

19. Antitrust Laws

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

B. Conflict of Interest and Code of Ethics

Section 2-11.1(d) of the Code of Miami-Dade County requires that 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, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics 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. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

ARTICLE 72. INSPECTOR GENERAL REVIEWS**A. 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 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.

B. Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, 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.

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 shall have the power 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 73. 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 Small Business Enterprises Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics."
- e) Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work."
- f) Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave."

- g) Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- h) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d)).
- i) Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited."
- j) Chapter 11A of the Code of Miami-Dade County (§ 11A-1 et seq.) "Discrimination."
- k) Chapter 22 of the Code of Miami-Dade County (§ 22-1 et seq.) "Wage Theft."
- l) Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 et seq.) "Business Regulations."
- m) Any other laws prohibiting wage rate discrimination based on sex.

Pursuant to Resolution R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "h" through "m" above.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Direct damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

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 74. NONDISCRIMINATION

- A. During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants 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.
- B. By entering into this Contract, 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 75. 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 award 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:
 - 1. 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
 - 2. 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 76. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

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

- 1. 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
- 2. 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
- 3. 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 77. 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 78. 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. Venue shall be Miami-Dade County.

ARTICLE 79. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The Contractor shall comply with the Public Records Laws of the State of Florida, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Agreement and shall be enforced in accordance with the terms and conditions of the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128

ARTICLE 80. VERIFICATION OF EMPLOYMENT ELIGIBILITY (E-VERIFY)

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

ARTICLE 81. 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.

ARTICLE 82. FEDERAL PROVISIONS**SECTION 1 FEDERAL REQUIREMENTS****A. FEDERAL REQUIREMENTS**

This Contract is subject to a financial assistance contract between the County and the United States of America, Department of Transportation, Federal Transit Administration (FTA). By reason of such an arrangement with FTA, certain Federal Provisions have been included in the Contract. Wherever an inconsistency exists between the Federal Provisions and any other provision of the Contract, the more stringent requirement shall apply.

B. BUY AMERICA

This Contract is subject to the Buy America requirements of 49 U.S.C. 5323(j) and the Federal Transit Administration's implementing regulations which can be found at 49 C.F.R. Part 661. These provisions affect the manner in which a Proposer prepares its Proposal, the manner in which Proposals are evaluated, and the manner in which the Proposer will perform the Work if it is awarded the Contract. Each Proposer must submit with its Proposal the completed Buy America certificate included in the Proposer's Proposal Section. A Proposer who seeks an exception to the Buy America requirements on the grounds that its application would be inconsistent with the public interest must seek the exception from Metro-North not less than 10 working days before the date set for the receipt of Proposals.

SECTION 2 INCORPORATION OF FTA TERMS

- A. This Contract includes, in part, certain Standard Terms and Conditions required by the United States Department of Transportation ("DOT"), whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, or any subsequent revision, including any flow down provisions, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor, or any of its subcontractors, shall not perform any act, fail to perform any act, or refuse to comply with any the County requests which would cause the County to be in violation of FTA terms and conditions.
- B. The Contractor agrees to include this requirement in all subcontracts issued pursuant to this Contract.

SECTION 3 NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

- A. The County and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the County, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 4 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

SECTION 5 FEDERAL CHANGES

- A. The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between the Metropolitan Transportation Authority and FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Contractor's failure to so comply shall constitute a material breach of this Contract.
- B. If change to applicable FTA regulations, policies, procedures or directives requires a change to any section of this Article, that change shall be incorporated into any subcontract in accordance with the flow down provision of the affected section, if any.

SECTION 6 CIVIL RIGHTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities

undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

SECTION 7 CLEAN AIR

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or part with Federal assistance provided by FTA.

SECTION 8 CLEAN WATER

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or part with Federal assistance provided by FTA.

SECTION 9 CARGO PREFERENCE – USE OF UNITED STATES-FLAG VESSELS

The Contractor agrees:

(1) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(2) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United

States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the County (through the Contractor in the case of a Subcontractor's bill-of-lading.)

- (3) to include these requirements in all Subcontracts issued pursuant to this Contract when the Subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

SECTION 10 FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all Subcontracts that may involve international air transportation.

SECTION 11 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

A. Minimum Wages

- (1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2) a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an

additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
 - b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (5) a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

B. Withholding

The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the County may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

- (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents

thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
 - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further

payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

- (1) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted

to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility

- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

Bombardier Transportation (Holdings) USA Inc.

Miami-Dade County

By: Jennifer A. Cavery
Name: JENNIFER A. CAVERY
Title: Vice President
Date: 31 DECEMBER 2020
Attest: Johnotta Falk
Corporate Secretary/Notary Public

Corporate Seal/Notary Seal

By: _____
Name: Daniella Levine Cava
Title: Mayor
Date: _____
Attest: _____
Clerk of the Board

Approved as to form
and legal sufficiency

Assistant County Attorney

ATTACHMENTS

- Attachment A Scope of Work
- Attachment B Special Provisions
- Attachment C General Conditions

APPENDICES

- Appendix A-1 Safety ID'S
- Appendix A-2 2016_DTPW_Rail_Fixed_Guideway_SSPP
- Appendix A-3 MDT_Safety_and_Security_Certification_Program_Plan_(SCPP)
- Appendix A-4 DTPW Hurricane Disaster Preparedness Memo 2017
- Appendix A-4 DTPW Hurricane Disaster Preparedness Memo 2017
- Appendix A-6 Fingerprinting and Background Checks Background Checks
- Appendix A-7 Daily Track Allocation Request Form
- Appendix A-8 Safety Certification

Appendix A	System and Operation
Appendix B-8	CDRL 710 Vehicle Door System - 3008382 Rev 03
Appendix B-10	Coupler Electric Head Wire List
Appendix B-13	1-6e,CS100, 75 Ft Radius Turn
Appendix B-17	1503F07, BOM
Appendix B-18	1503F07, Car Frame
Appendix B-20	Metromover Dynamic Performance Data and Stopping Distance
Appendix B-21	Vehicle 38 Parts List
Appendix C-7	MDT Mover IL Track Map
Appendix C-8	MDT Mover OL Track Map
Appendix D-1	DTS Manual
Appendix D-2	METROMOVER LEGACY PLC I-O Type and Count
Appendix D-3	Mover Allen Bradley PLC Specifications Sheets
Appendix D-4	PLC Configuration Control Registers all stations
Appendix D-5	21, 22 PCA 1
Appendix D-6	21, 22 PCA 2
Appendix D-7	21, 22 PCA 3
Appendix D-8	Metro Mover Stations-FINANCIAL DISTRICT 1-08-2018
Appendix D-9	21 Overall DTS Central Remote Drop Layout 2
Appendix D-10	21, 22 Remote DTS Drop Typical 2
Appendix D-11	21,22 Remote DTS Drop Typical
Appendix D-12	22 Overall DTS Central Remote Drop Layout
Appendix D-13	23-36 NetworkDistSysRev6
Appendix E-1	PDS Layout
Appendix E-2	PDS single line diagram
Appendix E-3	PDS-6, Emergency Trip Information
Appendix E-6	1-5a, PDS System, Nominal Voltage, Cable, etc
Appendix E-7	Metromover 15kV Schematics 1D81_SWGR_final
Appendix E-8	Mover 13.2kV cable routing
Appendix E-10	1-3a, Metromover System Wide Switchgear
Appendix E-12	Metromover Traction Power Load Flow Report
Appendix F-4	1D47461, Central Control Room Arrangement


Appendix F-5 Central Control Layout
Appendix F-6 Central Interface Term Cabinet - Termination Schedule
Appendix F-7 Central Interface Term Cabinet - Wire List
Appendix G-2 23-36 NetworkDistSysRev6
Appendix G-3 Metro Mover Stations-FINANCIAL DISTRICT 1-08-2018
Appendix H-1 48 Test Track Information
Appendix H-2 SER and Wayside Equipment Photos
Appendix H-5 Site and Work Restrictions
Appendix J-3 Metromover Track and Switches
Appendix L-1 Miami DPM System Architecture



Memorandum



To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Javier A. Betancourt, Executive Director 

Date: March 26, 2021

Re: **CITT AGENDA ITEM 7D:**
RESOLUTION BY THE CITIZENS’ INDEPENDENT TRANSPORTATION TRUST
RECOMMENDING THE BOARD OF COUNTY COMMISSIONERS (BCC) APPROVE
AWARD OF CONTRACT NO. RFP-01307 TO BOMBARDIER TRANSPORTATION
(HOLDINGS) USA, INC. FOR THE PURCHASE OF METROMOVER COMPREHENSIVE
WAYSIDE SYSTEM OVERHAUL FOR THE DEPARTMENT OF TRANSPORTATION
AND PUBLIC WORKS IN A TOTAL AMOUNT NOT TO EXCEED \$152,920,983.22,
CONSISTING OF \$22,042,300.00 FROM A FEDERAL TRANSIT ADMINISTRATION
GRANT AND **\$130,878,683.22** FROM CHARTER COUNTY TRANSPORTATION
SURTAX FUNDS FOR A FOUR-YEAR TERM; AUTHORIZING THE COUNTY MAYOR
OR COUNTY MAYOR’S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF
MIAMI-DADE COUNTY AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT,
INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO
SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND
IMPLEMENTING ORDER 3-38; AND AUTHORIZE THE USE OF CHARTER COUNTY
TRANSPORTATION SURTAX FUNDS FOR A PORTION OF THIS PROJECT WHICH
WAS ADDED TO THE FIVE-YEAR IMPLEMENTATION PLAN ON MARCH 06, 2018
(DTPW – BCC LEGISLATIVE FILE NO. 210540) SURTAX FUNDS ARE REQUESTED

On March 25, 2021, the CITT voted (9-0) to forward a favorable recommendation to the Board of County Commissioners (BCC) for the approval of the above referenced item, CITT Resolution No. 21-018. The vote was as follows:

Joseph Curbelo, Chairperson – Aye
Oscar J. Braynon, 1st Vice-Chairperson – Aye
Alfred J. Holzman, 2nd Vice-Chairperson – Aye

Peggy Bell – Aye
Glenn J. Downing, CFP® – Aye
Jonathan Martinez – Absent
Marilyn Smith – Aye
Robert Wolfarth – Aye

Meg Daly – Aye
Ashley V. Gantt, Esq. – Absent
Paul Schwiep, Esq. – Aye
L. Elijah Stiers, Esq. – Absent

c: Jimmy Morales, Chief Operations Officer
Bruce Libhaber, Assistant County Attorney