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**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-175**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING AWARD OF CONTRACT TO AIRVAC INC. FOR PURCHASE OF VACUUM STATION EQUIPMENT FOR SERVICE AREA # 4 WASTEWATER TREATMENT PLANTS IN AN AMOUNT NOT TO EXCEED \$419,000; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, City Council awarded the construction contract for Service Areas 4 & 6 to Lanzo Construction Company by Resolution 2007-165, holding out the treatment plant equipment from Airvac, Inc. and Siemens Water Technologies; and

WHEREAS, the purchase price for Service Area 4 equipment from Airvac Inc. is \$419,000 and Service Area 6 is \$261,000; and

WHEREAS, if the equipment for service area 6 is not purchased prior to the end of this calendar year the cost will increase \$7,830.00 and shipping will increase due to two shipments rather than one; and

WHEREAS, the sum of the Lanzo contract and the City's direct procurement of equipment results in a total cost for both the Area 4 and Area 6 treatment plants of \$12,862,219; and

WHEREAS, it is staff's recommendation the equipment for both Service Area 4 and 6 be purchased at this time.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

Section 1. The above recitals are true and correct and incorporated herein.


Section 2. The City Council hereby approves the Contract between Airvac Inc. and the City, a copy of which is attached hereto as Exhibit "A," for the purchase of vacuum station equipment for service area 4 wastewater treatment plants in the amount not to exceed \$419,000.00, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

Section 3. The City Manager is authorized to execute the contract on behalf of the City.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 27th day of November , 2007.

THE CITY OF MARATHON, FLORIDA


Edward P. Worthington, Mayor


AYES: Vasil, Cinque, Tempest, Bull, Worthington
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:


City Attorney



**THE WORLD LEADER IN
VACUUM SEWER TECHNOLOGY**

June 13, 2007

Area 4 & 6 – City of Marathon
Wastewater Treatment Facility
Vacuum Station Equipment Package

TAMPA OFFICE
AIRVAC, INC.
200 Tower Drive, Suite A
Oldsmar, FL 34677 U.S.A.
Phone: (813) 855-6297
Fax: (813) 855-9093
Web: www.airvac.com

Gentleman,

AIRVAC is pleased to offer the following equipment for the Area '4' & '6' Wastewater Treatment Facilities:

Vacuum Station equipment package – Area 4					
Bid ITEM #	DESCRIPTION	QTY	UNIT PRICE 2007	UNIT PRICE 2008	UNIT PRICE 2009
	Vacuum Station Equipment Package	1	\$419,000	\$431,570	\$444,517

Vacuum Station equipment package – Area 6					
Bid ITEM #	DESCRIPTION	QTY	UNIT PRICE 2007	UNIT PRICE 2008	UNIT PRICE 2009
	Vacuum Station Equipment Package	1	\$261,000	\$268,830	\$276,895

The items listed above were described in detail in our June 7, 2007 scope letters.

The prices are based on purchase orders received and equipment released into production by Dec 31, 2007. If released into production after Dec 31, 2007 the 2008 unit price would be in affect at the time of invoicing.

WARRANTY

A copy of AIRVAC's standard warranties are included with this offer.

TERMS AND CONDITIONS

AIRVAC's standard payment terms are 100% of the invoiced amount, net 30 days from the date of receipt. See also Section 00700 - Article 14.2, 14.2.1, 14.3, 14.6 – We will issue a "Conditional Release of Lien" with each invoice. See form attached. The price for the equipment package is F.O.B. jobsite, but does not include sales tax, or any other tax, if applicable.

TERMS AND CONDITIONS

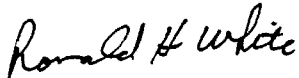
Any special shipping arrangements may result in additional freight costs. The Contractor will be responsible for freight cost on any returned items. All items being returned must be in "as new" condition. A 20% restocking fee will be assessed on any item returned.

PATENTS

As a matter of importance, AIRVAC's unique two-phase, plugless vacuum sewerage transport system and certain of its components are protected by certain United States patents. The patented system and components may not be used or sold without authorization by AIRVAC. Purchase of an equipment package from AIRVAC and use according to its specifications is an authorized use.

If you have any questions concerning this scope letter, please contact me at 813-855-6297.

Sincerely,



Ron White
AIRVAC Inc.

cc: Mark Jones, David Elias, Sean Agans

AIRVAC

TERMS & CONDITIONS OF SALE

1. **ENTIRE CONTRACT.** The terms and conditions set forth below and on the face side hereof constitute the expression of all the terms of this agreement and a complete and exclusive statement of the agreement between Buyer and AIRVAC. All representations, promises, warranties or statements by any agent or employee of AIRVAC that differ in any way from the terms and conditions hereof shall be given no effect or force. Any additional, contradictory or different terms contained in any initial or subsequent order or communication from the Buyer are hereby objected to and rejected. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement is not relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection. All orders are subject to the approval by AIRVAC at its principal business offices at 4217 N. Old U.S. 31, Rochester, IN 46975.
2. **PRICES.** Unless otherwise noted on the face hereof, prices are net F.O.B. AIRVAC's producing factory. The amount of any applicable present or future tax or other government charge upon the production, sale, shipment or use of goods ordered or sold will be added to billing unless Buyer provides AIRVAC with an appropriate exemption certificate. AIRVAC's published or quoted prices, discounts, terms and conditions are subject to change without notice. All materials, products, goods, parts or equipment (collectively referred to herein as "Goods") will be invoiced at prices in effect at time of shipment.
3. **PAYMENT TERMS; CREDIT; SECURITY INTEREST.** Unless otherwise provided on the face of this Agreement or in a writing signed by AIRVAC, payment for Goods shall be 100% of the invoiced amount, net 30 days from date of receipt. No retainage or other deductions shall be made from such payments. Pro-rata payments shall become due with partial shipments. A late charge of 1½ percent per month or the maximum amount permitted by law, whichever is less, will be imposed on all past due payments.

AIRVAC is a material supplier and is not a party to Buyer's agreement with owner or others. Buyer agrees to pay AIRVAC without reference to Buyer's contract with owner or others. It is understood the Buyer has the ultimate obligation to pay AIRVAC within a reasonable time regardless of Buyer's payment status from the owner.

AIRVAC reserves the right at any time to suspend or change credit terms provided herein, when in AIRVAC's sole opinion Buyer's financial condition so warrants, and nothing contained herein shall be deemed to obligate AIRVAC to extend credit to Buyer. In such a case, in addition to any other remedies herein or by law provided, cash payment or satisfactory security from Buyer may be required by AIRVAC before shipment, or the due date of payment by Buyer under this Agreement may be accelerated. Failure to pay invoices at maturity date shall, at AIRVAC's election, make all subsequent invoices immediately due and payable irrespective of terms. Acceptance by AIRVAC of less than full payment shall not be a waiver of any of AIRVAC's rights hereunder or at law. In the event Buyer becomes insolvent before or upon delivery of any Goods purchased hereunder, Buyer shall so notify AIRVAC in writing. In the event Buyer becomes insolvent, repudiates this Agreement, or fails to make a payment due before delivery, or if for any other reason AIRVAC has a right to withhold or reclaim Goods under the applicable state and federal statutes, AIRVAC shall have the right to stop delivery of the Goods to Buyer. If Buyer is responsible for any delay in shipment, the date of completion of Goods may be treated by AIRVAC as the date of shipment for purposes of payment. Completed Goods shall be held at Buyer's cost and AIRVAC shall have the right to bill Buyer for reasonable storage and insurance expenses.

Until the purchase price and all other sums due pursuant hereto are paid in full, AIRVAC retains a security interest in the Goods and in all proceeds of said Goods. Buyer shall execute financing statement(s) at the request of AIRVAC and irrevocably authorizes AIRVAC to execute and file same.
4. **DELIVERY.** Delivery, shipment and installation dates are estimated dates only and, unless otherwise specified, are figured from date of receipt of complete technical data, approved drawings and Buyers authorization to AIRVAC to proceed with manufacturing, as each of the same may be necessary. In estimating such dates, no allowance has been made, nor shall AIRVAC be liable, directly or indirectly, for acts of Buyer, delays resulting from subcontractors or carriers, labor difficulties, shortages, strikes or stoppages of any sort, fires, flood, tornadoes, hurricanes, accidents, damage to AIRVAC's facilities, failure or delay in obtaining materials or manufacturing facilities, acts of government, any causes beyond AIRVAC's control or causes designated Acts of God or force majeure by any court of law, and the estimated date shall be extended accordingly in such events.
5. **SHIPPING & PACKAGING.** AIRVAC shall use its own discretion in choice of carrier and method of packing and packaging. The cost of special packaging, if any, will be borne by Buyer. AIRVAC will be responsible for insuring shipments with the cost of such insurance included in the freight cost.
6. **TITLE & RISK OF LOSS.** Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery of the Goods to the carrier by AIRVAC and any claims for loss or damage shall be made by the Buyer directly with the carrier.

7. **ACCEPTANCE.** Upon Buyer's receipt of shipment, Buyer and AIRVAC's representative shall immediately inspect the Goods. Unless Buyer provides AIRVAC with written notice of any claim for shortages or damage to the Goods within forty-eight (48) hours after receipt of shipment, such Goods shall be deemed finally inspected and accepted by Buyer.
8. **BACK-CHARGES.** AIRVAC is not liable for any charges incurred by Buyer for work, repairs, replacement or alternations to Goods without AIRVAC's prior written authorization and any adverse consequence resulting from such unauthorized work is Buyer's full responsibility. AIRVAC reserves the right to stop shipments until back-charge issues are resolved.
9. **START-UP SERVICE.** System start-up services will not be performed by AIRVAC until ninety percent (90%) of the aggregate invoiced amount is paid. Buyer shall provide three (3) weeks advance notice of request for AIRVAC start-up services. Buyer's failure to provide three weeks may result in additional charges for emergency response. It is Buyer's responsibility to ensure that water, electric service and any other related utilities are installed and available if such service is necessary for successful start-up. Should an AIRVAC technician arrive at the job site as scheduled and is unable to perform the work due to incomplete services, AIRVAC may bill Buyer for lost time at AIRVAC's prevailing rates.
10. **OPERATING CONDITIONS.** Recommendations and quotations are made upon the basis of operating conditions specified by Buyer. If actual conditions are different than those specified and performance of the equipment is adversely affected thereby, Buyer is responsible for the cost of all changes in the equipment required to accommodate such conditions.
11. **CANCELLATION & RETURNED EQUIPMENT.** Orders may be canceled or modified only with AIRVAC's written consent and upon payment by Buyer of reasonable and proper cancellation or modification charges. Goods may be returned by Buyer only when specifically authorized in writing by AIRVAC, and upon such return Buyer shall be charged for placing returned Goods in saleable condition, any related sales expenses, a restocking charge and any transportation costs associated with such return and resale.
12. **ADDITIONAL GOODS.** If Buyer purchases substitute or additional Goods from AIRVAC, the terms and conditions of this Agreement shall be applicable thereto.
13. **SPECIAL JIGS, FIXTURES & PATTERNS.** Any special jigs, fixtures, patterns and like items included in an order will remain AIRVAC's property without credit to Buyer. AIRVAC will assume the maintenance and replacement expenses of such items, but shall have the right to discard and scrap them, without credit to Buyer, after they have been inactive for one year.
14. **LIMITATION OF LIABILITY.** In no event or under any circumstance shall AIRVAC (including AIRVAC's directors, officers, employees and agents) be liable to Buyer (including such party's directors, officers, employees and agents) for any special, incidental, exemplary, indirect, punitive or consequential damages, whether based on contract, warranty or tort (including intentional acts, errors or omissions, negligence, indemnity, strict liability or otherwise), arising out of or in connection with this Agreement or the use of the Goods covered hereby.
15. **RECORDS, AUDITS & PROPRIETARY DATA.** Unless expressly authorized in writing by an authorized officer of AIRVAC, neither Buyer nor any representative of Buyer, nor any other person, shall have any right to examine or audit AIRVAC's accounts, books or records of any kind or on any matter, or be entitled to or have control over any engineering or production prints, drawings or technical data which AIRVAC, in its sole discretion, may consider in whole or in part proprietary.
16. **AMENDMENTS AND WAIVERS.** This Agreement may not be amended except in writing signed by an authorized representative of AIRVAC. No delay or omission by AIRVAC in exercising any right or remedy shall constitute a waiver of such right or remedy and shall not be considered as a bar to or a waiver of any such right or remedy on any future occasion. No agent, salesman or other person is authorized to bind AIRVAC by any agreement, warranty, statement, promise or understanding not herein expressed. The sale of Goods pursuant to this Agreement shall be governed by the laws of the State of Indiana (without regard to its conflicts of laws principles). Any clerical errors are subject to correction.
17. **SUCCESSORS AND ASSIGNS.** This Agreement is binding upon and shall inure to the benefit of the successors and assigns of Buyer and AIRVAC, provided, however, that Buyer or AIRVAC may not assign or transfer this Agreement, in whole or in part, except upon the prior written consent of the other.

Signed and accepted this 11th day of December, 2007



AIRVAC VACUUM STATION & OTHER EQUIPMENT 1 YEAR WARRANTY

1. **WARRANTY.** AIRVAC warrants the following Goods within the Warranty Period (as hereinafter defined) to function properly under normal, proper and rated use and service and to be free of defects in material or workmanship.. The term "Warranty Period" shall mean the earlier of (i) 18 months following delivery of the Goods in question or (ii) the first anniversary from the date the vacuum system is placed in service (defined as successful station start-up completed by AIRVAC).

**AIRVAC Vacuum Station skid(s), including all individual skid component Goods supplied by AIRVAC
AIRVAC Trailer-mounted vacuum pump (TMVP)**

2. **MANUFACTURING DEFECTS.** Subject to the time limits specified in Section 1 hereof, AIRVAC will repair or replace, at its option and expense, Goods that have failed to function properly because of defects in material or workmanship demonstrated to AIRVAC's satisfaction to have existed at the time of delivery, or refund the purchase price therefor. If the Goods in question can be sent in a box or similar package, Buyer, at AIRVAC's request, will send any allegedly defective Goods to a location designated by AIRVAC for inspection and any warranty repairs. Buyer will bear the expense of such return of Goods to AIRVAC. AIRVAC shall review returned Goods and determine if such returned Goods were subject to misuse or neglect. AIRVAC shall pay for return shipment to Buyer unless AIRVAC determines that the returned Goods were misused or neglected, in which case the Buyer shall bear the cost of return shipment.

If the Goods in question cannot be so sent, AIRVAC shall arrange for a representative to make an on-site inspection of the Goods and any warranty repairs. In the event that the Goods in question are determined not to be covered by the Warranty set forth in this Section, then Buyer shall be responsible for any delivery costs associated with the delivery and return of the Goods and for all reasonable costs and standard field service charges for any on-site inspection. If the Goods in question are covered by the Warranty, AIRVAC shall reimburse the Buyer for its costs associated with the delivery and return of the Goods.

3. **WARRANTY LIMITATIONS AND EXCLUSIONS:** The Warranty set forth under WARRANTY above (the "Warranty") is provided by AIRVAC to the Buyer and does not extend, expressly or by implication, to any other person or entity. The Warranty is in lieu of all other warranties, express or implied, including warranties of merchantability, fitness for any purpose or infringement not expressly set forth herein; and all such other warranties are expressly disclaimed. The Warranty shall not apply to any Goods that (i) have been subjected to misuse, mishandling, improper installation, neglect, accident, modification or alteration performed by anyone other than AIRVAC, (ii) have not been maintained or operated in accordance with AIRVAC instructions or (iii) are affected by a change in condition of usage, for which Buyer assumes all responsibility. It shall be Buyer's sole responsibility to test Goods for use upon a change in condition affecting such use. The foregoing warranty does not cover labor or other cost or expenses to remove or install any defective or replaced Goods.
4. **DISCLAIMER OF CONSEQUENTIAL DAMAGES.** In no event shall AIRVAC be liable for consequential damages arising out of or in connection with this Warranty or the use of the Goods covered hereby. Consequential damages shall include, without limitation, loss of use, income or profit, or losses sustained as the result of injury (including death) to any person or loss of or damage to property, (including without limitation, property handled or processed by the use of the Goods). Buyer shall indemnify AIRVAC against all liability, cost or expense, which may be sustained by AIRVAC on account of any such loss or injury.
5. **SPECIFIC ACTIONS THAT WILL VOID THE WARRANTY.** In addition to provisions set forth in Section 3(1), 3(ii) and 3(iii) hereof, any of the following specific actions will void the Warranty:
 - Failing to perform the complete vacuum station start-up tasks recommended by AIRVAC
 - Disabling any protective device such as emergency lock-out valves, vacuum pump over-temperature limits, etc.
 - Manifolding multiple vacuum pump exhaust lines without AIRVAC's prior written permission
 - Installing isolation valves on vacuum pump exhaust lines without AIRVAC's prior written permission
 - Abusing or failing to protect the AIRVAC equipment during storage handling or installation
 - Allowing flow rates to enter the vacuum station that are in excess of the station's rated design capacity
 - Any installation or action that is in conflict with AIRVAC's Design Manual, Installation Manual or other written maintenance instructions without AIRVAC's prior written permission.