

CITY OF HIGH POINT

AGENDA ITEM



Title: Remedial Action Contractor Services Agreement

From: Terry L. Houk, Public Service Director

Meeting Date: June 17, 2019

Public Hearing: N/A

Advertising Date : N/A

Advertised By: N/A

Attachments: Remedial Action Contractor Services Agreement

PURPOSE:

Approval of Remedial Action Contractor Services Agreement between the City of High Point, Seaboard Group II and RoviSys Company. Public Services and the City Attorney's office have reviewed the document and have no concerns with the format.

BACKGROUND:

The agreement is for the RoviSys Company to replace the existing Supervisory and Data Acquisition (SCADA) control system. The existing system is failing and in need of replacement. The group solicited quotes for the replacement and upgrade of the existing system. The quotes involved upgrading the existing system or converting to a completely new control system. The decision of the group was to convert to a new control system as parts for this system are readily available. The total contract price will be \$317,460 which will follow the agreement of a 75% / 25% split of which the City's portion is 25%.

BUDGET IMPACT:

Funds for this system are in the FY 19-20 budget.

RECOMMENDATION / ACTION REQUESTED:

City Council is requested approve agreement with RoviSys Company for replacement of the SCADA control system and authorize the appropriate City Official to execute all necessary documents.

REMEDIAL ACTION CONTRACTOR SERVICES AGREEMENT

This Remedial Action Contractor Services Agreement (hereinafter the “**Agreement**” or “**CSA**”) is made on _____, 2019 (“**Effective Date**”), between the Seaboard Group II (hereinafter the “**Group**”), the City of High Point North Carolina (hereinafter the “**City**”) collectively hereinafter referred to as the “**Purchasers**,” and The RoviSys Company (hereinafter “**Contractor**”). Purchasers and Contractor may hereinafter be referred to individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

WHEREAS, at the request and direction of Purchasers and after evaluation of the Contractor’s bid submittals; the Purchasers have selected the Siemens to Rockwell conversion proposal dated 5/30/2019 (“**Contractor’s Proposal**”); and pursuant to the Contractor’s Proposal and other arrangements between the Parties, Contractor has developed or will develop the Custom Materials (as hereinafter defined and described in Contractor’s Proposal) which constitute works made for hire; and

WHEREAS, in consideration for value received by it from Purchasers, in the event that under the copyright laws of the United States, the Custom Materials are not considered works made for hire owned by Purchasers, Contractor now desires to assign, grant, convey and transfer all rights, title, interest and ownership in and to the Custom Materials to Purchasers pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises, covenants, and agreements set forth herein, and for the good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions.

(a) Goods, materials and equipment shall mean and are hereinafter collectively referred to as “**Goods**.”

(b) Tasks, duties, work and services of any type shall mean and are hereinafter referred to as “**Work**” or “**Services**.”

(c) The system design (including plan drawings as well as as-built drawings), hardware procurement, hardware installation and automation programming to control and operate a Groundwater and Leachate Remediation System, a Phytoremediation Irrigation System, a Fertigation System, integration of moisture and temperature probes, electrical wiring and an Alarm, Interlock and Monitoring System shall mean and are hereinafter referred to as the “**Project**.”

(d) **“Contract Documents”** shall mean this Agreement and the Contractor’s Proposal and any written amendments thereto approved by Purchasers and any documents and materials incorporated by reference in the Contractor’s Proposal and any written amendments thereto approved by Purchasers.

(e) **“Custom Materials”** shall mean all original works of authorship or inventorship that Contractor has created or developed, is creating or developing or creates or develops hereinafter that: (i) is or was created or developed using Purchasers’ Confidential Information (as defined below), (ii) was created or developed for use by Purchasers, or (iii) otherwise arises or results out of work performed by Contractor for Purchasers, including without limitation all drawings, designs, diagrams, instructions, schematics, Software Source Code and all other items set forth in Article 6.1 and Exhibit A (Contractor’s Proposal). For purposes of clarity, Pre-Existing Materials, Commercial Materials, and Commercial Software (as defined elsewhere in this Agreement) are not Custom Materials.

(f) **“Intellectual Property Rights”** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

(g) **“Software Source Code”** means the human readable source code of the Developed Software to which it relates, in the programming language in which such Developed Software was written, together with all related flow charts, code, and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain, and develop modifications, upgrades, updates, adaptations, enhancements, new versions, and other derivative works and improvements of, and to develop computer programs compatible with, the Developed Software.

(h) **“Site”** shall mean collectively the former Seaboard Chemical Corporation facility located at 5899 Riverdale Drive and the adjacent former City of High Point Riverdale Drive Landfill, Jamestown, Guilford County, North Carolina.

(i) **“Virus”** means any: (a) virus, trojan horse, worm, backdoor, or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems, or software; or (b) time bomb, drop-dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any person, or otherwise deprive Purchasers of its lawful right to use the software.

1.2 References.

(a) References to this Agreement include the Exhibits hereto; references to the Exhibits to this Agreement include any Attachments thereto; and references to any Schedule include any exhibits, attachments and schedules thereto.

(b) References to any law shall mean such law as changed, supplemented, amended or replaced.

(c) References to and mentions of the word “include,” “including” or the phrases “e.g.” or “such as” shall mean “including, without limitation.”

(d) References to “day”, “week”, “quarter” or “year” refer to a calendar day, week, quarter or year respectively, unless otherwise indicated.

(e) The symbol “\$” and references to “dollars” refers to United States dollars.

1.3 Headings. The Section headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement or any Appendices.

1.4 Precedence of Contract Documents. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any contract document, the terms and conditions of this Agreement shall prevail. In the event of a conflict between the terms and conditions of this Agreement (exclusive of the Exhibits) and the terms and conditions of any Exhibit, the terms and conditions of this Agreement (exclusive of the Exhibits) shall prevail. Notwithstanding the foregoing and anything to the contrary, in the event of a conflict between any of the terms and conditions of this Agreement and the terms and conditions of the Contractor’s Proposal or any other Contract Document, this Agreement shall prevail.

1.5 Consents, Approvals and Requests. Except as specifically set forth in this Agreement, all consents, acceptances and approvals to be given by either Party shall be in writing and shall not be unreasonably withheld, conditioned or delayed.

2. WORK AND SERVICES.

2.1 Scope of Work. Contractor, and any approved subcontractors, contract employees or third parties, shall perform the tasks, duties, work and services (the “**Work**” or the “**Services**”) described in the Contractor’s Proposal, attached hereto as Exhibit A, and in accordance with the Contract Documents. Contractor represents itself to be experienced and competent to perform the Work under this Contract as set forth in the Contractor’s Proposal attached hereto as Exhibit A and made part hereof. The Purchasers reserve the right to change, modify, delete or expand any aspect, timing or element of the Work, and may do so at their sole discretion upon two days’ written notice to the Contractor. All change notices will include pricing agreed by Purchasers and Contractor. If a change notice fails to include agreed pricing, Purchasers may require Contractor to proceed with the change notice work, and agree to pay Contractor for any change notice work on a time and materials basis, in accordance with Contractor’s standard rate sheet in effect at the time of performance of the change notice work. All Work shall be performed in accordance with this Agreement.

3. OBLIGATIONS, FEES AND TAXES.

3.1 Compensation. As compensation for all Services satisfactorily rendered by Contractor for the Purchasers pursuant to this Contract, the Purchasers agree to pay Contractor as set forth in the Contractor’s Proposal attached hereto as Exhibit A and made part hereof. Prices

shall not exceed the prices stated in Contractor's Proposal without the prior written consent of Purchasers. The prices stated in Contractor's Proposal include packing, crating and transportation to the F.O.B. point shown unless otherwise stated in Contractor's Proposal.

3.2 Taxes. Contractor, at Contractor's expense, shall pay all taxes and other expenses incurred by reasons of the job or work to be performed by Contractor including, but not limited to, use taxes, licenses, fees, and personal property taxes, and all employment taxes or contributions imposed by any law or trade union contracts or regulations.

3.3 Invoices. All invoices rendered to the Purchasers by Contractor shall indicate the number of hours worked, date worked, and such additional information as the Purchasers shall reasonably request. The compensation shall in no event exceed that given as the total estimated cost in the Contractor's Proposal without express written approval by the Purchasers. The compensation provided for in Article 3.1 shall be the total consideration to Contractor and shall include all of Contractor's expenses incurred in rendering the Services.

(a) No later than the end of the fifteenth (15th) work day of each month, Contractor shall deliver via electronic mail each invoice to R. Craig Coslett (ccoslett@demaximis.com), Administrator. Seaboard Group II and the City of High Point, c/o de maximis, inc. 1550 Pond Road, Suite 120, Allentown, PA 18104, and to any other individual(s) designated by R. Craig Coslett, for Services rendered to the Purchasers during the preceding invoice period. Each invoice that includes charges for work performed by a subcontractor(s) shall include a release from such subcontractor(s) of any and all liens for labor or material arising out of such work.

(b) Payment for invoices submitted is due and payable net forty-five (45) days after the invoice is received by R Craig Coslett, subject to the Purchasers' right to retain up to 10% of the invoiced amounts for all labor and non-itemized materials for protection against unsatisfied claims or liens and further subject to the Purchasers' right to contest, in good faith, all or part of the charges set forth therein. All such retainage amounts may be held by the Purchasers until Contractor has completed all Work and Services in accordance with the terms of this Agreement, including without limitation, satisfactory production of all required deliverables and acceptance of the Work and Services by the Purchasers. In the event of any material default or breach of this Agreement by Contractor or Subcontractor which is not cured within thirty (30) days of receipt by Contractor of a notice of material default or breach, Contractor shall forfeit, and the Purchasers shall be entitled to keep, all retainage amounts necessary to fully compensate the Purchasers for any such default or breach. The Purchasers agree that the Contractor may, upon fourteen (14) days' prior written notice to Clients, suspend the performance of the Services in the event any undisputed invoices or undisputed portions thereof are not paid as provided for herein; such suspensions may continue until payment is made in full on all outstanding undisputed invoices or portions thereof.

(c) Payment of invoices shall not preclude the Purchasers from thereafter disputing any item invoiced nor shall it be construed as acknowledgment that any part of the Work and Services has been completed satisfactorily. Contractor and Purchasers agree to cooperate promptly and work together to resolve any disputed charges.

(d) Purchasers may refuse to pay the whole or any part of any invoice if Contractor's Services are defective or fail to conform to the standards set forth in the Agreement.

3.4 Accounting and Auditing. Contractor shall prepare and maintain accounting records in support of all amounts billed to the Purchasers. Contractor's files and records relating to performance of this Contract and billing therefore shall be subject to audit at all times during the course of the project and for a period of six (6) years after project completion.

3.5 Insurance. Contractor shall, at Contractor's sole expense, at all times during performance of the work described in this Agreement and related documents, maintain insurance coverage of the types and in the amounts set forth in the Contractor's Certificate of Insurance attached hereto as Exhibit C and made part hereof. Commencement of performance pursuant to this Agreement constitutes confirmation by Contractor that the required insurance coverages are in effect.

(a) Contractor shall maintain in effect at all times during performance of services described in this Contract the following coverages and limits of insurance (which may be satisfied with a combination of direct and umbrella policies):

A. Workers' Compensation and Employers Liability - Statutory workers' compensation limits required by law and \$500,000 per occurrence employers' liability. Coverage must provide coverage for occupational disease.

B. Liability Insurance - The following required liability policies, except for the Professional Liability/Errors and Omissions Policy(ies), shall be endorsed to include the Purchasers as additional insureds, and shall also include a waiver of subrogation against the Purchasers:

Type of Insurance	Limits Each Accident & Aggregate
Comprehensive General Liability.	\$2,000,000 aggregate, \$1,000,000 per occurrence
Automobile.	\$1,000,000 (including any owned, non-owned, or hired vehicles)
Professional Liability/Errors and Omissions	\$2,000,000 aggregate, \$1,000,000 per occurrence
Umbrella	\$5,000,000 aggregate, \$5,000,000 per occurrence

(b) Contractor shall maintain the above insurance, or renewals or replacements thereof, for not less than three (3) years after completion of work under this Contract. Certificates of insurance including additional insured and waiver of subrogation endorsements shall be furnished to the Purchasers immediately upon execution of this Agreement and prior to Contractor's commencing work. All certificates shall provide not less than thirty (30) days' advance written notice to the Purchasers prior to cancellation, termination,

or alteration of said policies of insurance. All insurers and policy forms must be satisfactory to the Purchasers.

(c) The foregoing requirements as to types and limits of insurance coverages to be maintained by Contractor are not intended to, and shall not in any manner, limit the liabilities and obligations assumed by Contractor under this Agreement.

3.6 Compliance with Laws. Contractor shall comply with the provisions of

all applicable federal, state and local laws, regulations, rules and ordinances applicable to this Agreement and purchased Goods or Services including, without limitation, any fair labor standards or statutes and any statute or regulation regulating occupational safety and health. Contractor shall, following Purchasers' reasonable request, certify such compliance to Purchasers in writing.

3.7 Non-discrimination. Contractor shall comply with all applicable laws, executive orders and regulations concerning non-discrimination in employment.

3.8 Shipping. Shipment shall be properly packed and shipped only by licensed carrier over the least expensive route, unless otherwise instructed. Shipments F.O.B. Purchasers' location shall be released at a declared valuation of the true replacement value, and in no event shall such declared value exceed the maximum permitted under the carrier's least expensive rate schedule applicable to Goods constituting such shipment. Contractor shall notify Purchasers at the time of shipping the Goods.

3.9 Utility Lines. Contractor shall be responsible for locating utility lines and other man-made objects that may exist beneath the surface at the Site and shall be liable for any damage to them in the performance of the Work or Services or for any delay in the performance of the Work or Services attributable to the subsequent discovery of utility lines or objects not previously located.

3.10 Tests. If the specifications, the Purchasers' prior instructions, laws, ordinances or any public authority require any part of the work to be tested or approved, Contractor shall give the Purchasers' Representative, and such public authority, as required, timely notice of its readiness for inspection. If any such part of the work is covered up without the Purchasers' approval or the required approval of public authority, it must be uncovered for inspection at no cost to the Purchasers.

3.11 Liens. Contractor agrees to furnish, at the Purchasers' request, a list of all fabricators, materialmen, subcontractors, suppliers and workmen involved in Contractor's performance, together with evidence satisfactory to the Purchasers that all claims for labor and material have been satisfied and paid and that there are no unsatisfied claims for injuries to persons or properties. The Purchasers retain the right to withhold from any payments to Contractor such amounts the Purchasers deem sufficient to protect the Purchasers and their property against any claim by Contractor's employees, fabricators, materialmen, subcontractors, suppliers, and workmen which could or may become a lien or claim against the Purchasers, or the property of either. The Purchasers may at any time pay and discharge such lien or claim and deduct the amount so paid, together with costs and attorneys' fees, from any payment then due or

thereafter to become due to Contractor. If any lien or claim remains unsatisfied after payment has been made by the Purchasers, Contractor shall pay or refund to the Purchasers the entire sum that the Purchasers may be compelled to pay in discharging such lien or claim, together with all costs and attorneys' fees.

4. PERFORMANCE OF SERVICES.

4.1 Performance of Services. Contractor agrees to render its Services at such time and places as the Purchasers may reasonably request. Contractor shall render Services only upon the specific request of the Purchasers. Contractor shall not be entitled to compensation for any Services rendered in excess of those specifically requested by the Purchasers. The Purchasers may modify any prior request for Services at any time. Contractor shall give immediate notice when any event occurs, or conditions arise which the Contractor considers to constitute a basis for any additional compensation.

4.2 Independent Contractor. Contractor shall perform its work as an independent contractor. Contractor shall have responsibility for, and control over, the details and means for performing its work. Contractor shall not be deemed an employee, subcontractor or agent of Seaboard Group II or the City of High Point.

4.3 Work For Hire. All Work performed in the creation of Custom Materials by Contractor in fulfillment of all labor, material and services provided to fulfill any obligation, duty or representation that is part of the Work or Services shall be provided strictly on a "work made for hire" basis, as defined under the copyright laws of the United States. If, under the copyright laws of the United States, any of the contracted Work or Services is determined not to be a "work made for hire," Contractor hereby assigns all rights, title and interest in any Custom Materials developed to Purchasers, pursuant to Article 7 of this Agreement.

4.4 Programming. All Goods and Services provided by Contractor, or by Contractor's employees, agents or subcontractors, which involve the development and preparation of automation programming or any other programming that may be copyrighted or otherwise legally protected in any manner, are included in the definition of "Custom Materials" provided above and shall conform to the following additional requirements:

(a) Contractor agrees to deliver the Custom Materials to Purchasers pursuant to agreed upon schedule attached to this agreement as Exhibit B in a manner and form satisfactory to Purchasers.

(b) Contractor expressly acknowledges that the Custom Materials to be contributed by them in fulfillment of their obligations contained in this Agreement, are being specially ordered and commissioned by Purchasers for use in connection with the remediation of the groundwater and leachate at the Site.

(c) All Custom Materials contributed by Contractor as a result of this Agreement shall be considered a "work made for hire" as defined by the copyright laws of the United States. As such, Purchasers shall be the sole and exclusive owner and copyright proprietor of all rights, title and interest in all Custom Materials provided under this Agreement, regardless of the stage of completion.

(d) Contractor agrees that the Purchasers may make any changes or additions to the Custom Materials, which the Purchasers, in their sole discretion, may consider necessary, and may engage other third parties to do any or all of the foregoing, with or without attribution to the Contractor. Contractor further waives any so-called “moral rights” in all Custom Materials provided under this Agreement.

(e) Contractor shall require that all contractors, subcontractors, and employees that provide Work or Services under this Agreement agree to and abide by these additional requirements defined in this Article 4.4.

(f) Contractor represents that, except with respect to material furnished to Contractor by the Purchasers, Contractor will be the sole author of the Custom Materials and all of Contractor’s services will be original with Contractor and not copied in whole or in part from any other third party work; and that Contractor’s Work will not be libelous or obscene, or knowingly violate the right of privacy or publicity, or any other rights of any person, firm or entity.

4.5 Health and Safety. Contractor shall place the highest priority on safety and health during the progress of all Work and Services. It shall be the responsibility of Contractor to provide and maintain a safe working environment for its workers, the Purchasers, the public, and any other third party at all times with respect to Work and Services performed under this Agreement.

4.6 The requirements of this Section 4 are applicable to all subcontractors and contract employees hired by Contractor, and Contractor’s contract with such subcontractor shall provide that subcontractor will be subject to the requirements of this Section. The terms of this Section concerning health and safety are agreed by both the Purchasers and Contractor to be of the highest importance. A breach or violation of any of the terms of said Section by Contractor shall be considered to be a material and substantial breach of this Agreement. If Contractor fails to promptly take the necessary steps to cure said breach or violation or to otherwise comply with this Section, the Purchasers may seek removal of Contractor as provided for in this Agreement and may take any other action permitted by the terms of this Agreement or under law, including termination of this Agreement. Nothing contained in this Section shall be interpreted as enlarging the legal duty of the Purchasers to Contractor or Contractor’s agents, employees, subcontractors, or third parties, or altering the status of Contractor.

5. ACCEPTANCE, TESTING AND MAINTENANCE.

5.1 Acceptance. Commencement of performance pursuant to this Agreement constitutes acceptance hereof by Contractor. If specified delivery dates cannot be met, Contractor shall notify Purchasers promptly of Contractor’s best alternative proposed delivery date, which Purchasers may accept or reject at Purchasers’ sole discretion. The terms of this Agreement may not be modified, superseded or amended except in a writing signed by an authorized agent of Purchasers. Each shipment received by Purchasers shall be upon the terms of this Agreement, notwithstanding any terms contained in any quotation, acknowledgement, invoice, shipping papers, or other form or document of Contractor, or Purchasers’ acceptance of, or payment for, any shipment, or any other action by Purchasers.

5.2 Excess Quantities. Except for quantities of Goods in excess of those ordered constituting customary quantity variations common to the trade or industry, any quantity of Goods in excess of the amount ordered need not be accepted, and such excess goods may be received, held and returned to Contractor by Purchasers at Contractor's risk and expense.

5.3 Inspection. All Goods or Services are subject to Purchasers' inspection, testing and approval, both at Contractor's facility and at Purchasers' point of destination. Purchasers reserve the right to reject and refuse acceptance of any Goods or Services which do not comply with all the terms of this Agreement. Acceptance, payment, use or resale of the Goods or Services by Purchasers shall not release Contractor of any of Contractor's obligations, representations or warranties hereunder. Payment for any Goods or Services shall not be deemed an acceptance thereof. Purchasers shall not be responsible for any of Contractor's commitments for materials or fabrication unless agreed to by Purchasers in writing in advance.

5.4 Performance Testing. There will be a period for performance testing of the Goods and Services. During the performance period the Contractor will demonstrate the functionality of the designed system to the Purchasers and representatives of the Purchasers. Following demonstration of the system, a two-week performance period will commence. The performance period will include two consecutive weeks of uninterrupted system/programming service with respect to the Goods and Services provided by the Contractor. The performance criteria in this Agreement will be supplemented with the relevant user manuals, technical materials, and related writings, to the extent that the specifications in those writings supplement and refine rather than contradict the performance criteria. Acceptance of the Goods and Services depends on a successful completion of the performance period defined in this section. This section applies to the Goods and Services, and any part of them, as well as replacements or substitutes for the Goods and Services after completion of a successful performance period.

(a) If the Goods and Services do not meet the standard of performance during the performance period, the Purchasers will give the Contractor details about the problems in a timely manner and in a useful and relevant form. Until all outstanding problems have been demonstrably corrected by the Contractor, the performance period will not restart and the Goods and Services (or part thereof) will not be accepted. The performance test will continue on a day-by-day basis until the standard of performance is met continuously for a total of 14 calendar days.

(b) If the Project fails to meet the standard of performance after 90 calendar days, in addition to all other remedies the Purchasers may have under this Agreement, the Purchasers will have the right to require correction or replacement of the relevant portion of the Goods and Services.

(c) The Goods and Services may have components that can be tested for acceptance individually. If that is so, there may be acceptance criteria listed in this Agreement, Contractors Proposal, or manufacturers' specifications for each part that will be independently tested and accepted. But, unless expressly otherwise provided, the failure of any independently tested component to meet its acceptance criteria will give the Purchasers the right to reject the entire Goods and Services. Alternatively, if the Purchasers determine that it is in the Purchasers' interest to reject only the part of the Project that was independently and unsuccessfully tested, it

may do so. If the Purchasers choose this option, the Purchasers will be entitled to a refund or credit toward the Contractor's compensation equal to the cost of acquiring a replacement for the rejected component. The Project will not be accepted until the performance period is complete.

5.5 Passage of Title. Title to any deliverable will pass to the Purchasers only on acceptance of the deliverable. All risk of loss, regardless of the cause, will remain with the Contractor until title to the deliverable passes to the Purchasers.

5.6 Software Maintenance. This Agreement involves software as a deliverable. During the warranty period, the Contractor will correct any material programming errors or failures to conform to requirements or specifications within a reasonable period of time; provided, however, the Purchasers must notify the Contractor, either orally or in writing, of a problem with the software and provide sufficient information for the Contractor to identify the problem.

5.7 Equipment Maintenance. This Agreement involves Equipment as a deliverable. On delivery and for 12 months after acceptance, the Contractor will provide Equipment maintenance to keep the Equipment in, or restore the Equipment to, good working order. This maintenance will include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance will include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Agreement, Equipment restored to good working condition means Equipment that performs in accordance with the manufacturer's published specifications and the Contractor's Proposal. The Contractor will exert its best efforts to perform all fault isolation and problem determination attributed to the Equipment covered under this Agreement.

5.8 Maintenance Access. The Contractor will keep the Goods and Services in good operating condition during the Warranty Period and any Maintenance Period during which the Purchasers contract for continued maintenance, and the Purchasers will provide the Contractor with reasonable access to the Site to perform maintenance.

(a) All maintenance that requires the System to be inoperable must be scheduled in advance with the Purchasers' Representative. Preventive or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

6. OWNERSHIP AND LICENSES.

6.1 Ownership of Custom Materials and Deliverables. Unless otherwise agreed in writing, all Custom Materials, deliverables, and any Intellectual Property Rights therein, are the sole and exclusive property of the Purchasers. All Custom Materials developed by the Contractor and covered by this Agreement will be treated as "work made for hire" on behalf of the Purchasers, with all rights, title, and interest in all Intellectual Property Rights that come into existence through the Contractor's work being owned by the Purchasers. In the event that any Custom Materials are not considered a "work made for hire" under the copyright laws of the United States, Contractor hereby assigns all rights, title and interest in the Custom Materials,

including all Intellectual Property Rights, to Purchasers, pursuant to Article 7 of this Agreement. Additionally, the Contractor waives any author rights and similar retained interests in the Custom Materials. The Contractor will provide the Purchasers with all assistance reasonably needed to vest such Intellectual Property rights of ownership in the Purchasers.

(a) All record of all Work shall be retained by Contractor for a minimum of six (6) years and shall not thereafter be disposed of without prior written notice to the Purchasers.

(b) Reuse of these Custom Materials by Contractor on projects other than with the Purchasers is prohibited without written permission. Contractor agrees to indemnify and hold harmless the Purchasers from all claims, damages, and expenses, including attorney's fees, arising out of such unauthorized use by Contractor.

(c) Any reuse or adaptation of this property occurring with or without the Purchasers' permission shall entitle the Purchasers to compensation in an amount to be agreed upon with Contractor.

(d) Subject to the limitations and obligations of the Purchasers with respect to Pre-existing Materials (defined below), the Purchasers may make all custom deliverables available to the general public without any proprietary notices of any kind.

6.2 Pre-Existing Materials. The Contractor shall retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines and similar material that Contractor owned or developed prior to beginning work on the Goods and Services and incorporated in any Custom Materials ("**Pre-existing Materials**") if the Contractor provides the non-exclusive license described below in Article 6.3 and identifies the Pre-Existing Materials in the Contractor's Proposal (Exhibit A). Notwithstanding the foregoing, Pre-Existing Materials includes (1) software development tools, know-how, methodologies, processes, technologies, and algorithms, which Contractor uses in performing its obligations pursuant to this Agreement, but which are not delivered with the Work ("Contractor Tools"); and (2) generic products or formats which constitute the basis of the templates, modules, forms, and graphics, which are delivered with the Work ("Contractor Templates"), and are deemed included in Exhibit A.

6.3 Pre-Existing Materials License. Contractor hereby grants to Purchasers such rights and licenses with respect to the Pre-existing Materials that will allow Purchasers to use for all or any purposes whatsoever, the Custom Materials and deliverables. In furtherance of the foregoing, the Contractor grants the Purchasers an irrevocable, perpetual, non-exclusive, royalty-free, fully paid up, license to use, modify, sell, reproduce, improve, import, make, have made, and otherwise distribute all Pre-existing Materials that are incorporated in any Custom Material. Contractor reserves all rights in the Pre-existing Materials not expressly granted to Purchasers herein. The Contractor shall not include in any Custom Material any intellectual property unless such has been created under this Agreement or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing Materials in a Custom Material, the Contractor must first disclose this in advance. On the request of the Contractor, the Purchasers will

incorporate any proprietary notice the Contractor may reasonably want for any Pre-existing Materials included in a Custom Material in all copies the Purchasers make of that deliverable.

6.4 Commercial Materials. As used in this section, "**Commercial Material**" means any materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content, and technology, in any form or media, in which any person other than Contractor or Purchasers owns any Intellectual Property Rights. Examples include written reports, books, pictures, videos, movies, computer programs, and computer source code and documentation. Contractor hereby grants, or prior to delivery for any deliverables shall procure for Purchasers the grant of, such licensed rights in the Commercial Material set forth in Contractor's Proposal. All royalties, license fees, or other consideration payable in respect of such licenses are included in the compensation to the Contractor specified in Contractor's Proposal unless the Contractor's Proposal expressly states otherwise. Any additional amounts shall be the sole responsibility of Contractor. Any Commercial Material that the Contractor intends to deliver as a deliverable must have the scope of the license granted in such material disclosed in the Contractor's Proposal or as an attachment referenced in the Contractor's Proposal.

7. INTELLECTUAL PROPERTY ASSIGNMENT.

7.1 Assignment. To the extent any Custom Materials, deliverables, or Intellectual Property Right therein does not qualify as, or otherwise fails to be, work made for hire, Contractor hereby grants, transfers, assigns and conveys to Purchasers, and their successors and assigns, all Intellectual Property Rights, title, interest, ownership and all subsidiary rights worldwide, in and to all Custom Materials, deliverables, or Intellectual Property Right therein. This transfer includes the right to sue for any past infringements and the right to recover any damages therefore. This transfer includes the full and exclusive rights, title and interest to any invention(s) disclosed in the Custom Materials throughout the world, including the right to file applications and obtain patents, utility models, industrial models and designs for said invention(s) in Purchasers' own names throughout the world and including all rights of priority; provided, however, that such transfer does not include any interest in any of the Pre-Existing Materials set forth in Article 6.2 and Exhibit A, which items were originally developed by Contractor prior to the engagement of Contractor by Purchasers to develop the Custom Materials. Contractor covenants to execute all documents reasonably necessary to convey to and/or vest in Purchasers all such Intellectual Property Rights, including without limitation Contractor's copyright in such Custom Materials, together with the right to secure in Purchasers' names all copyright registration(s) for such Custom Materials in the United States of America and any foreign country. Contractor shall, and shall cause its employees and subcontractors to, take all appropriate action and execute and deliver all documents necessary or reasonably requested by Purchasers to effectuate any of the provisions or purposes of this Section or otherwise, as may be necessary or useful for Purchasers to prosecute, register, perfect, record, or enforce its rights in or to any Custom Materials, deliverables, or any Intellectual Property Rights therein. Contractor hereby appoints Purchasers as Contractor's attorney-in-fact with full irrevocable power and authority to take any such actions and execute any such documents if Contractor refuses, or within a period deemed reasonable by Purchaser otherwise fails, to do so.

8. CONFIDENTIALITY.

8.1 Confidential Information. “**Confidential Information**” means all valuable or potentially valuable information, whether communicated in oral, written, electronic or other format, furnished or made available to, or received by, (i) Contractor or its Agents, or (ii) Purchasers or its Agents, after execution of this Agreement, in connection with the purposes set forth in this Agreement, including the Recitals of this agreement. During the performance of this Agreement, the Receiving Party may be given access to Confidential Information of the Disclosing Party. If and to the extent any Agents of the Receiving Party receive Confidential Information, the Receiving Party shall be responsible for such Agent’s full compliance with the terms and conditions of this Agreement and shall be liable for any such Agents’ non-compliance. All Confidential Information of the Disclosing Party is and shall remain property of the Disclosing Party. The disclosure of Confidential Information hereunder shall not be construed as a grant of any express or implied rights or license to the Receiving Party to or under any patents, patent applications, inventions, copyrights, trademarks, or other intellectual property rights owned now or in the future by the Disclosing Party except as provided in this Agreement.

(a) The Receiving Party agrees not to disclose any Confidential Information to third parties and to use it solely to do the Project. The Receiving Party will restrict circulation of Confidential Information within its organization and then only to people in the Receiving Party’s organization that have a need to know the Confidential Information to do the Project.

(b) The Receiving Party shall be liable for the disclosure of Confidential Information whether the disclosure is intentional, negligent, or accidental, unless otherwise provided.

(c) The Receiving Party shall not be liable for any unintentional disclosure of Confidential Information that results despite the Contractor’s exercise of at least the same degree of care as it would normally take to safeguard its own secrets, except when the Receiving Party’s procedures are not reasonable given the nature of the Confidential Information or when the disclosure nevertheless results in liability to the Disclosing Party.

(d) The Receiving Party’s obligation to maintain the confidentiality of the Confidential Information will not apply where such Confidential Information:

A. was already in the Receiving Party’s possession before disclosure by the Disclosing Party, and such was received by the Receiving Party without obligation of confidence;

B. is independently developed by the Receiving Party;

C. is or becomes publicly available without breach of this Agreement;

D. is rightfully received by the Receiving Party from a third party without an obligation of confidence;

E. is disclosed by the Receiving Party with the written consent of the Disclosing Party; or

F. is released in accordance with a valid order of a court or governmental agency, provided that the Receiving Party:

(i) notifies the Disclosing Party of such order immediately upon receipt of the order so that Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and

(ii) provides reasonable assistance to Disclosing Party in opposing such disclosure or seeking a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information.

(e) The Receiving Party will return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement.

(f) The Receiving Party may disclose Confidential Information to its subcontractors on a need-to-know basis, but they will be obligated to the requirements of this section.

(g) The Contractor will not incorporate any portion of any Confidential Information into any work or product, other than a deliverable, and will have no proprietary interest in any of the Confidential Information.

(h) The Contractor will cause all of its employees who have access to any Confidential Information to execute a confidentiality agreement incorporating the obligations in this section.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Software Warranty. Contractor warrants that:

(a) the software developed under this Agreement (“**Developed Software**”) will, in all material respects, operate on the automation control network for which the software is intended in the manner described in the relevant software documentation, the Contractor’s Proposal and this Agreement, and the software will possess the features, functionality, compatibility, configuration, scalability, performance and integration capabilities specified in the relevant software documentation, the Contractor’s Proposal and this Agreement.

(b) the Developed Software, including upgrades, will not include any Virus; and

(c) Contractor has and will use commercially reasonable efforts (including use and maintenance of commercially reasonable anti-virus software), to prevent the introduction of Viruses into the Developed Software, including upgrades, and that Contractor shall not knowingly include or knowingly permit the inclusion of any Virus in the Developed Software, including upgrades, or the operating environments of Purchasers ((a)-(c) collectively, the “**Developed Software Warranty**”).

9.2 Developed Software Warranty Period. The Developed Software Warranty shall apply for a period of twelve (12) months from final acceptance (the “**Developed Software Warranty Period**”).

9.3 Developed Software Remedy. If Purchasers notify Contractor during the Developed Software Warranty Period that the Developed Software failed to conform to the Developed Software Warranty, then Contractor shall promptly, at its option and sole expense: (i) correct the nonconformance; or (ii) provide Purchasers with a procedure reasonably acceptable to Purchasers to work-around the nonconformity without otherwise degrading or impairing the performance of the Developed Software. If Contractor is unable to accomplish (i) or (ii) within a reasonable period of time, Contractor shall return to Purchasers an amount of money reasonably estimated to compensate Purchasers for the deficiency in the Developed Software, unless such affected portion(s) substantially impairs the usefulness of the Developed Software to Purchasers, in which event Purchasers may elect within sixty (60) days of being notified by Contractor that it is unable to correct the nonconformity to receive a refund of all fees paid for the Developed Software. If Purchasers elect to receive a refund for the Developed Software, Purchasers’ use of the Developed Software shall be limited to using the Developed Software for purposes of migrating any data stored in the Developed Software to a replacement product and Purchasers shall promptly return or certify to Contractor destruction of the Developed Software once such use is no longer needed. If the nonconformity results from a breach of the obligation under Section 9.1(d) and a Virus is introduced into the operating environment of Purchasers, Contractor shall, at no additional charge to Purchasers, take commercially reasonable steps to eliminate the effects of the Virus, and if the Virus causes a loss of operational efficiency or loss of data, to mitigate the effects of the loss of efficiency and to restore such lost data from backups.

9.4 Equipment Warranty. Contractor warrants that:

(a) any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery delivered by Seller pursuant to this Agreement (“**Equipment**”) will, in all material respects, operate on the automation control network for which the Equipment is intended in the manner described in the relevant Equipment documentation, the Contractor’s Proposal and this Agreement, and the Equipment will possess the features, functionality, compatibility, configuration, scalability, performance and integration capabilities specified in the relevant Equipment documentation, the Contractor’s Proposal and this Agreement;

(b) any Equipment shall fully comply with all requirements of the Contractor’s Proposal and government environmental and safety standards applicable to the Equipment ((a)-(b) collectively, the “**Equipment Warranty**”).

9.5 Equipment Warranty Period. The Equipment Warranty shall apply for a period of twelve (12) months from final acceptance (the “**Equipment Warranty Period**”).

9.6 Equipment Remedy. If Purchasers notify Contractor during the Equipment Warranty Period that the Equipment failed to conform to the Equipment Warranty, then Contractor shall promptly, at its option and sole expense: (i) correct the nonconformance; or (ii) provide Purchasers with a procedure reasonably acceptable to Purchasers to work-around the

nonconformity without otherwise degrading or impairing the performance of the Equipment. If Contractor is unable to accomplish (i) or (ii) within a reasonable period of time, Contractor shall return to Purchasers an amount of money reasonably estimated to compensate Purchasers for the amount paid for the Equipment, or, if such has not been individually priced, the manufacturer's suggested retail price for the Equipment. Except where the Contractor's breach of the Equipment Warranty makes it not possible for Purchasers to do so, Purchasers shall return the nonconforming Equipment to the Contractor in the case of a refund.

9.7 Contractor's General Warranties. Contractor guarantees all work and materials developed or provided for the Project against original defects and against failure under ordinary usage, exclusive of ordinary wear and tear, and under such guarantee Contractor agrees to repair or replace defective work and materials at no expense to the Purchasers when notice of defects or failure is given to Contractor within one (1) year from the date of final acceptance of the work by the Purchasers. Contractor also makes such further guarantees as may be provided in the specifications. Contractor warrants and represents that:

(a) It understands the currently known and potential hazards and risks to human beings, property and the environment presented by hazardous substances at the Site.

(b) It is fully experienced, properly qualified, registered, equipped, organized and financed to perform the Work under this Agreement.

(c) It will conduct the Work and Services and provide the Goods in a safe and professional manner and in compliance with the December 29, 2008 Remedial Action Settlement Agreement between the Purchasers and the N.C. Division of Waste Management (the "RASA") and all applicable statutes, ordinances, orders, rules, AOCs and regulations of the federal, state and local governments in whose jurisdiction such activities are performed; it will perform the Work and Services in a manner consistent with that level of care and skill ordinarily exercised by other recognized and competent national contractors and professionals under similar circumstances; and it will conduct all of the Work and Services in a manner that is consistent with the National Contingency Plan (40 C.F.R. Part 300) in effect at the time the Services are rendered.

(d) Contractor will provide professional oversight and will cause the Goods and Services of each subcontractor to be accurate and free from material defects due to materials, workmanship, and/or design.

(e) It and/or its subcontractors have obtained, or will obtain, all permits, licenses, certificates or approvals necessary to perform the Work and Services required in the Contractor's Proposal and to comply with the RASA and all applicable statutes, ordinances, orders, rules, AOCs and regulations of the federal, state and local government.

(f) All applicable personnel, including subcontractors, have been fully trained in the health and environmental risks associated with the Work and Services at the Site and any safety precautions, personal protective equipment recommended or required.

(g) If any of its completed Goods and Services fail to conform to the above professional responsibility standard, it will, at its expense, perform corrective Services of the

type originally performed as may be required to correct any such defective Services of which it is notified by the Project Contacts in writing at any time.

(h) No portion of any payment pursuant to this Agreement shall be used: (i) as a bribe, kickback, rebate or illegal political contribution for the purpose of obtaining political influence; or (ii) in violation of applicable foreign exchange control regulations, tax laws or regulations, or other laws or regulations of any jurisdiction.

9.8 Non-Infringement Warranty.

(a) Contractor represents, warrants, and covenants that as delivered, installed, specified, or approved by Contractor and used by Purchasers or any third party authorized by Purchasers: (1) the Custom Materials are and will be at all times Contractor's original creation(s); (2) Contractor has and will not sell, grant, convey or assign any of Contractor's right, title or interest in or to the Custom Materials, deliverables, or any Intellectual Property Rights included therein to any person; and (3) the Custom Materials will not misappropriate, include or infringe, or otherwise violate any Intellectual Property Rights of any third party.

(b) Contractor will use reasonable efforts to further evidence, record and perfect assignments of the Custom Materials which shall be at the expense and under the control of Purchasers. Contractor agrees that Purchasers may apply for and receive domestic and foreign Letters Patent or rights of any other kind for inventions and discoveries associated with or later derived from the Custom Materials. At the reasonable request of Purchasers, Contractor shall execute and deliver any instruments, and do and perform any other acts and things as may be necessary or desirable for effecting completely the consummation of the transactions contemplated hereby, including without limitation execution, acknowledgment, and recordation of any documents, any and all powers of attorney, applications, assignments, declarations, affidavits, divisional, continuation, continuation-in-part, renewal, reissue, substitute and all other applications, and any other papers in connection therewith necessary to perfect such rights, title and interest in Purchasers, their successors, assigns and legal representatives.

(c) Contractor represents and warrants to Purchasers that (i) to the best of its knowledge Contractor has good and marketable title to the Custom Materials, and the exclusive right to sue for past, present, and future infringement thereof; (ii) the Custom Materials are free and clear of all liens, mortgages, security interests, or other encumbrances, and restrictions on transfer; (iii) to the best of its knowledge there are no actions, suits, investigations, claims, or proceedings threatened, pending, or in progress relating in any way to the Custom Materials; and (iv) there are no existing contracts, agreements, options, commitments, proposals, bids, offers, or rights with, to, or in any person to acquire, license or use any of the Custom Materials or any interest therein.

10. TERM AND TERMINATION.

10.1 Termination. In addition to any other remedies provided herein, the Purchasers may terminate this Contract by written notice to Contractor of the occurrence of any of the following events:

(a) Contractor fails to commence its services hereunder, or any portion thereof, within the specified time, or fails to complete its services within the specified time, or otherwise fails to comply with any term of this Contract or any request of the Purchasers made in accordance with its terms, provided that the Purchasers have given Contractor written notice of such failure and Contractor has not within forty-eight (48) hours remedied such failure, or commenced such remedy and thereafter continuously proceeds to complete such remedy; or

(b) If after two prior written notices by the Purchasers the Contractor thereafter fails to comply with any term of this Contract or any request of the Purchasers made in accordance with its terms; or

(c) Contractor becomes insolvent, petitions for any bankruptcy court proceeding, or has an involuntary bankruptcy proceeding for it filed by any creditor or group of creditors.

10.2 Effect of Termination. In the event of termination under this Article 10.1, no further payment shall be made to Contractor until the services provided for hereunder have been completed by another party or parties selected by the Purchasers and paid for. If the total amount paid to all Purchasers for services contracted for hereunder has been less than the maximum compensation provided for in the bid documents, the difference (but not more than the contract amount otherwise actually earned by Contractor) shall be paid to Contractor; and if said total amount paid to all parties has been more than the maximum compensation, Contractor shall repay the deficiency to the Purchasers. The Purchasers shall pay Contractor for services performed to the effective date of termination.

11. INDEMNITY PROVISIONS.

11.1 General Indemnity Obligations; Limitations of Liability. Contractor agrees to indemnify, hold harmless and defend the Purchasers and any and all of their affiliates, partners, directors, officers, members, agents or employees from and against all loss, injury, damage and legal liability, including attorneys' fees and other costs of defense, arising out of or resulting from any negligent act, error or omission of Contractor, its employees, subcontractors or representatives.

(a) Contractor assumes all liability for workers' compensation and employer's liability coverage for its own employees.

(b) Contractor shall be responsible for, and shall hold the Purchasers harmless from, loss of or damage to Contractor's or its subcontractor's construction tools and equipment and rented items which are used or intended for use in performing work, and for any consequential, special or indirect damages, or loss of anticipated profits sustained by Contractor or its subcontractors, unless such loss or damage is caused by Purchasers' negligence or willful misconduct.

(c) Contractors shall be responsible for, and shall hold the Purchasers harmless from all claims arising from a violation of any federal, state, local or foreign law, rule, regulation or order applicable to Contractor or any of its Agents.

(d) In no event shall either party be liable for any incidental or consequential damages, loss of use, lost profits, or business interruption damages, even if the parties may be aware of the possibility of such damages. In no event shall either party's total liability arising from or connected with this Agreement exceed \$ 2,000,000. The foregoing disclaimers and limitations of liability will apply notwithstanding any other contrary provision of any agreement between the parties, and regardless of the form of action, whether in contract, tort, warranty, indemnity or otherwise.

11.2 Intellectual Property Infringement Indemnity. Contractor hereby indemnifies, defends and holds Purchasers and their Affiliates, and their respective officers, Members, directors, employees, advisors, successors and assigns (the "Purchasers' Party"), harmless from and against any and all damages, liabilities, losses, fines, penalties, costs, and expenses (including, without limitation, reasonable attorneys fees), as the same are incurred, of any kind or nature whatsoever which may be sustained or suffered by any such Purchasers' Party, based upon, arising out of, by reason of or otherwise in respect of or in connection with (i) any breach of, untruth or inaccuracy in any representation or warranty made by or on behalf of Contractor in this Agreement; and (ii) any claim that any of the Custom Materials, as delivered by Contractor to Purchasers, infringes any Intellectual Property Right, or any right of confidentiality, of a third party.

12. GENERAL PROVISIONS.

12.1 Subcontracting. The services under this Contract shall be rendered by Contractor and shall not be subcontracted to be performed by any other party without the prior written consent of the Purchasers. However, minor subcontracts, defined as those subcontracts comprising less than 15% (fifteen %) of the total contract price, may be let upon written notice to the Purchasers without waiting for prior written consent.

12.2 Delays. Neither the Purchasers nor Contractor shall be liable for default or delay under this Contract caused by acts of God, or other events beyond the control of such party. Such acts or events shall include storms, floods, fires, epidemics, war, riot, strikes, lockouts or other labor disputes, and acts of the government, its agencies or officers, federal, state, or local.

12.3 Suspension of Services. The Purchasers may suspend performance of services hereunder at any time by written notice to Contractor. All suspensions shall extend the Contract completion date commensurately. The Purchasers shall pay Contractor necessary and reasonable costs incurred by Contractor directly attributable to the suspension in addition to other compensation provided for by this Contract.

12.4 Notices. Notices of change, deficiencies, delays, claims or disputes shall be in writing, and shall furnish full information to the extent possible. The Party notified will acknowledge receipt by endorsement of a copy, if requested, or will otherwise confirm receipt in writing. Unless otherwise provided herein, notice will be given by delivery to the Purchasers' Representative or Project Coordinator, respectively. Any notice required or permitted under this contract shall be deemed to have been duly given if same shall have been delivered by hand or mailed via certified or registered mail (return receipt requested), or by any commercial express

delivery or courier service (with receipt), with postage or other charges prepaid, in an envelope addressed to the party to whom notice is to be given at the address shown below:

If to Contractor:

The RoviSys Company
480 Green Oaks Parkway
Holly Springs, NC 27540
Attn: Dan McLaughlin

If to Project Contact for Seaboard Group II and The City of High Point:

de maximis, inc.
1550 Pond Road, Suite 120
Allentown PA 18104
Attn: R. Craig Coslett, Administrator

If to City of High Point:

The Director of Public Services of
The City of High Point
211 South Hamilton Street
P.O. Box 230
High Point, NC 27061
Attn: Terry Houck

If to Seaboard Group II

de maximis, Inc
1550 Pond Road, Suite 120
Allentown, PA 18104
Attn: R Craig Coslett

With Copy to:

Seaboard Group II Group Counsel
c/o Williams Mullen
301 Fayetteville St.
Suite 1700
Raleigh, NC 27601
Attn: Amos C. Dawson III, Esquire

12.5 Dispute Resolution. Except to the extent it may invalidate or prejudice any insurance coverage of a Party, all disputes between the Parties arising out of or related to this Agreement shall be decided by alternate dispute resolution procedures as mutually agreed, and in

the absence of such agreement, disputes shall be decided by arbitration in accordance with the existing Construction Industry Arbitration Rules of the American Arbitration Association.

(a) Written notice of demand for arbitration must be given to the other party and to the American Arbitration Association within a reasonable time after the dispute has arisen, in no event after the date when the institution of court proceedings based on such dispute would be barred by the applicable statute of limitations.

(b) Unless otherwise agreed in this contract, the arbitration hearings shall be held at a place designated by the Purchasers. Costs of arbitration shall be apportioned between the parties as the arbitrator(s) may decide, consistent with the parties' intent that the non-prevailing party should bear said costs.

(c) The award shall be final. The award and this agreement to arbitrate may be specifically enforced and judgment entered thereon by any court having jurisdiction thereof.

(d) Contractor shall obtain from each subcontractor such subcontractor's written agreement to resolve disputes and controversies related to the Work or its subcontract with Contractor by arbitration in accordance with this Agreement and to be a party to arbitration between Purchasers and Contractor if requested by the Parties to this Agreement.

12.6 Attorneys' Fees. In the event of arbitration or litigation between the Parties to this Agreement, all reasonable attorneys' fees and other costs to protect or enforce the prevailing Party's rights shall be paid or reimbursed by the other Party.

12.7 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any provision of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

12.8 Assignment. Contractor shall not assign or otherwise transfer its rights or obligations hereunder without the Purchasers' prior written consent.

12.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

12.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties, shall supersede all previous communications, and may not be changed except by a signed writing. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors and assigns.

12.11 Signatures. The undersigned signatories represent and warrant that each is the authorized representative of the Party for whom the contract is executed and that each is duly authorized to execute the Agreement on behalf of said Party.

12.12. No Employee Solicitation. During the term of this Agreement and a period of 12 months thereafter, Purchaser shall not hire, contract for, or otherwise engage the services of any person who provided any services in connection with this Agreement as an employee of Contractor. If Purchaser violates this paragraph, in addition to all other rights and remedies Contractor may have under this Agreement, at law or in equity, Contractor shall be entitled to (i) immediate and permanent injunctive relief (without no requirement to post bond), and (ii) as part of its damages, Contractor's reasonable legal costs and expenses for bringing and maintaining any such action.

12.13. This Agreement may be signed in counterparts, each of which, once the Parties have signed their respective counterparts, shall be deemed an original, fully enforceable counterpart for all purposes hereof, but all of which shall constitute one and the same Agreement. A signature transmitted electronically or by facsimile shall be deemed an original.

The RoviSys Company

By: _____

Printed Name: Daniel A. McLaughlin

Title: Group Manager

Seaboard Group II

By: _____

Printed Name: Jeffrey Heyward, Esq.

Title: Chairman, Executive Committee

City of High Point

By: _____

Printed Name: _____

Title: _____

Attachments: Exhibit A – Contractor's Proposal
Exhibit B – Schedule
Exhibit C– Contractor's Certificate of Insurance