MIAMI-DADE EXPRESSWAY AUTHORITY
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INVITATION TO BID (ITB)

MDX PROCUREMENT/CONTRACT NO.:
ITB-23-02

MDX PROJECT/SERVICE TITLE:
SYSTEMWIDE GUARDRAIL AND FENCING MAINTENANCE

SERVICE AGREEMENT

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THIS AGREEMENT ("Agreement"), is made and entered into as of this 24 day of October, 2022 (the "Effective Date"), by and between the ***Miami-Dade County Expressway Authority d/b/a as Miami-Dade Expressway Authority*** (the "Authority" or "MDX"), a body politic and corporate, a public instrumentality created by the Board of County Commissioners of Miami Dade County as amended, acting by and through its Governing Board, and ***Southeast Highway Guardrail & Attenuators, LLC*** (the "Contractor"), a corporation duly organized and existing under the laws of the State of ***Delaware***, with its principal place of business located at ***7760 Hooper Road, West Palm Beach, Florida 33411*** and duly authorized to conduct business in the State of Florida, Federal I.D. No. ***81-2488503*** (collectively, referred to herein as the "Parties" to this Agreement).

WITNESSETH:

WHEREAS, pursuant to ***MDX Procurement/Contract No.: ITB-23-02*** MDX competitively procured for all Services necessary to complete its maintenance services for ***Systemwide Guardrail and Fencing Maintenance*** (the "Services and/or Work"); and

WHEREAS, there exists on the MDX system ***Guardrail And Fencing Maintenance*** as described in ***Exhibit A-1, Scope of Services*** attached hereto and incorporated herein and;

WHEREAS, MDX now desires to enter into an Agreement with the aforementioned Contractor.

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

1. RECITALS

The foregoing recitals are true and correct and are incorporated herein by reference.

2. SCOPE OF SERVICES

MDX hereby retains the Contractor to provide the Services as described in ***Exhibit A-1, Scope of Services*** attached hereto and incorporated herein.

The Contractor shall, for the consideration herein mentioned and at its cost and expense, perform the Services and furnish all the Materials, Equipment, supplies and labor necessary to perform this Agreement and the associated Services, in the manner and to the full extent as set forth in the Contract Documents, all of which are hereby adopted and made part of this Agreement as completely as if incorporated herein.

The Agreement shall be performed to the satisfaction of the duly authorized representatives of MDX, who shall have at all times full opportunity to inspect the Materials furnished and the Services performed pursuant to the Contract Documents.

The Contractor agrees to provide the Services under this Agreement on a non-exclusive basis. At its option, MDX may elect to have any of the Services performed by other contractors or by MDX staff.

The Contractor and MDX mutually agree to furnish, each to the other, the respective service, information, and items as described in the Contract Documents.

3. PAYMENT TO CONTRACTOR

MDX will compensate the Contractor for the Services in accordance with ***Exhibit C, Contractor's Bid*** attached hereto and incorporated herein.

4. TERM OF THE AGREEMENT AND COMMENCEMENT OF SERVICES

Subject to the termination provisions set forth herein the duration of this Agreement shall be four (4) years with two (2) optional one (1) year renewals. At its sole discretion and subject to the Contractor receiving no less than an "Excellent" rating in the annual Contract Performance Evaluation for the four (4) years of the Agreement, MDX may renew the term of the Agreement for an additional optional two (2) one (1) year renewals.

If a Work Order is ongoing at the end of the term of the Agreement, MDX, at its sole discretion, may extend the term of the Work Order until the Work is completed. If the Contractor fails to complete the Work in accordance with the Contract Documents, the Contractor shall pay MDX liquidated damages as detailed in the ***MDX General Specifications for Construction.***

The Optional Terms shall be subject to all the terms and conditions of the Contract Documents, including but not limited to the termination provisions set forth in this Agreement and the prices included in the Bid Tabulation Sheet.

MDX will issue the Contractor a Notice to Proceed authorizing commencement of the Services after the Effective Date of the Agreement.

5. TERMS AND CONDITIONS

With respect to the Services under this Agreement, the Contractor agrees it shall meet all terms and conditions included in the Agreement, inclusive of Exhibits and any amendments to the Agreement (the Contract Documents).

This provision includes, but is not limited to the Contractor, Subcontractor(s) and their personnel who shall be properly prequalified, licensed, certified, and/or registered throughout the term of the Contract by the appropriate governmental authority, including certification for Small Business and/or Local Business as may be applicable to meet the requirements of the Contract Documents and to perform the Services.

6. CONTRACT BOND

Should MDX issue a Work Order that exceeds $200,000.00 a Contract Bond may be required.

With respect to the Work under this Agreement, the Contractor agrees it shall satisfy all of the Contract Bond requirements, as provided in the MDX General Specifications for Construction, and the Contract Bond which are attached hereto and incorporated herein.

7. SMALL BUSINESS PARTICIPATION REQUIREMENT

The Contractor agrees to meet the committed ***ten percent (10%)*** Small Business Participation Requirement for this Agreement (the "SB Participation Requirement").

MDX will monitor and enforce the SB Participation Requirement pursuant to the section of the ***MDX General Specifications for Construction*** entitled *Small Business Participation Requirement.*

The Contractor also agrees that it is bound by the provisions in *MDX's Small Business Participation Policy*, as amended, which is incorporated herein and made a part hereof.

8. LOCAL BUSINESS PARTICIPATION REQUIREMENT

NOT APPLICABLE TO THIS PROCUREMENT PROCESS.

9. INDEMNIFICATION

The Contractor agrees to meet the Indemnification requirements as detailed in the section of the ***MDX General Specifications for Construction*** entitled *Indemnification.*

10. INSURANCE

The Contractor shall furnish to MDX prior to the Notice to Proceed under this Agreement, certificate(s) of insurance as required by the Contract Documents. Required insurance types and limits are contained in the Contract Documents and attached hereto and incorporated herein.

If insurance coverage is scheduled to expire during the Term of the Agreement, the Contractor shall be responsible for submitting insurance certificates to MDX before such expiration that evidence of renewal or replacement of the expiring coverage(s).

In the event that expired coverage(s) are not replaced with new or renewed coverage(s) that cover the Term of the Agreement., MDX shall suspend this Agreement and all Services associated with this Agreement until certificates evidencing the replacement or renewed coverage(s) are received by MDX; provided however, that this suspension period shall not exceed ten (10) Calendar Days, as determined solely by MDX (the "Suspension Period"). At the end of the Suspension Period, MDX may, at its sole discretion, terminate the Agreement for cause, as described in the section of the ***MDX General Specifications for Construction*** entitled *Default and Termination of Contract.*

11. SOVEREIGN IMMUNITY

No provision of the Contract Documents, including this Agreement, shall be construed as a waiver of sovereign immunity by MDX.

12. INDEPENDENT CONTRACTOR

12.1 Acting as an Independent Contractor

The Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this Agreement it shall act as an independent Contractor and not as an employee of MDX. The Contractor has and retains full control of all the employment, compensation, and discharge of all employees of the Contractor assisting in its performance of the Services.

The Contractor shall be fully responsible for the Services performed under this Agreement, and all matters related to payment of its employees including compliance with Social Security, withholding tax, workers' compensation, immigration law and all other laws and regulations governing such matters.

The Contractor shall be responsible for its own acts and those of its agents, independent contractors, and employees during the term of this Agreement. Except as specifically provided and as an independent contractor, the Contractor shall be solely responsible for determining means and methods for performing the Services described in the Contract Documents.

12.2 Full and Complete Payment

The payment made to the Contractor pursuant to the requirements under this Agreement shall be full and complete compensation to which the Contractor is entitled. MDX shall not make any federal or state tax withholdings on behalf of the Contractor.

MDX shall not be required to pay any workers' compensation insurance on behalf of the Contractor.

12.3 No Authority to Act on MDX's Behalf

Except as MDX may specify in writing, the Contractor shall have no authority, express or implied, to act on behalf of MDX in any capacity whatsoever, as an agent or otherwise.

The Contractor shall have no authority, express or implied, to bind MDX or its members, agents or employees, to any obligation whatsoever, unless expressly provided in this Agreement.

13. CONTRACTOR, SUBCONTRACTORS/SUBCONSULTANTS, AND EMPLOYEES

The Contractor, Subcontractors/Subconsultants, and their respective employees providing Services under this Agreement shall remain, at all times throughout the term of the Agreement, authorized to do business within the State of Florida.

Throughout the Agreement, the Contractor, Subcontractor/Subconsultant(s) and their personnel shall be properly prequalified, licensed, certified, and/or registered by the appropriate governmental authority, including Small Business and/or Local Business certifications, as may be applicable to meet the requirements of the Contract Documents and to perform the Services.

Any changes in personnel and Subcontractors/Subconsultants shall require prior written approval from MDX as further detailed herein.

The Contractor will use due care in performing the Services and will have due regard for acceptable standards and principles. The Contractor's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement

13.1 Contractor's Personnel

The Contractor shall maintain adequate, dedicated, qualified, reliable and committed personnel for the performance of the Services. Such personnel must perform the Services, at a minimum, with a degree of care and skill common of the profession.

The Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement.

The Contractor also warrants that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration monetary or non-monetary, contingent upon or resulting from the award or making of this Agreement. It is further understood and agreed that the term "fee" shall include brokerage and finder's fees, however denoted.

If the Contractor breaches or violates the above mentioned provision, MDX shall have the right to deduct from the Work Order price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration or may in MDX's sole discretion pursue any other remedies available to MDX including termination of this Agreement.

13.2 Removal of Contractor's Personnel

If, in the opinion of MDX, any personnel assigned to the Agreement is not qualified to perform the Services or is insubordinate, disorderly, disruptive, or is detrimental to the progress of the Services, such person shall be immediately removed from the Agreement by the Contractor upon written request from MDX. Such person shall not be assigned to perform the Services under this Agreement again without the written permission of MDX. Upon the removal of such person, the Contractor shall promptly provide an acceptable substitute at no additional cost to MDX. If the Contractor fails to immediately remove such person and provide an acceptable substitute, MDX may, at its sole discretion, withhold payments due or which may become due, or may terminate the Agreement.

The Contractor shall protect, indemnify, and hold harmless MDX, its agents or representatives, officers and employees from any and all claims, actions, or suits arising from such removal, discharge, or suspension of a Contractor employee based on the direction of MDX to remove them from this Agreement.

13.3 Changes to Contractor's Personnel

For changes to personnel, the Contractor shall submit the following documentation for MDX's review and approval:

(1) *Personnel Change Request Form*

(2) A current resume

(3) Documentation demonstrating the personnel possesses the required technical qualifications and experience to perform the Services for which being contracted.

The Contractor shall ensure that MDX receives for approval a complete package, as described above, to the MDX Contract Manager for concurrence not less than ten (10) Calendar Days prior to the proposed personnel commencement of the Services.

After the Contractor follows the steps described above, MDX shall review the submitted documentation and determine, at its sole discretion, whether or not to approve the personnel change. MDX approval shall be documented through the *Personnel Change Request Form.*

13.4 Subcontractors

The Contractor shall ensure that all agreements entered into with its Subcontractors grant MDX all of the rights and privileges of such agreement, including but not limited to (so long as MDX is not in default of its obligations under this Agreement) MDX's right to secure materials or services from the Subcontractor which might be a part of the Subcontractor's work production.

All Subcontractors and their personnel shall be properly licensed, certified, and/or registered by the appropriate governmental authority, including Small Business and/or Local Business certifications, as may be applicable to meet the requirements of the Contract Documents and to perform the Services.

Upon request, the Contractor must furnish MDX with a copy of any subcontract related to the Services. Subcontracting/Subconsulting of any portion of the Services does not relieve the Contractor of their respective liabilities under the Agreement. MDX recognizes a Subcontractor only in the capacity of an employee or agent of the Contractor, and MDX may require the Contractor to remove the Subcontractor as in the case of an employee of the Contractor.

13.5 Changes to Subcontractors

For changes to Subcontractors, the Contractor shall follow the process as outlined in the ***MDX General Specifications for Construction*** section entitled *Request to Replace/Add Small Business.*

14. PROHIBITION ON ASSIGNMENT

The Contractor shall not subcontract, sell, assign, transfer or otherwise dispose of the Agreement or any portion thereof or the rights or responsibilities therein, without written consent by MDX, which consent may be withheld at MDX's sole and absolute discretion.

15. CHANGES IN THE SERVICES

Before making any additions or deletions to the Services and before undertaking any changes or revisions to such Services, the Parties shall negotiate any necessary pricing and schedule changes and shall enter into a Supplemental Agreement covering such modifications and the compensation to be paid to the Contractor as may be applicable. Reference herein to this Agreement shall be deemed to include any supplement hereto. Unless otherwise agreed to by MDX in writing, the Bid Tabulation Sheet shall apply to all Supplemental Agreements.

When MDX requires services, which are not covered by the Scope of Services in this Agreement and MDX finds that such service is essential to the satisfactory completion of this Agreement within its intended scope, MDX will make an adjustment to this Agreement through a Supplemental Agreement.

The basis of payment for such adjustment will be in the amount MDX determines to be fair and equitable, upon discussion and agreement with the Contractor in writing and in accordance with the relevant provisions of this Agreement, including but not limited to, the Method of Compensation. A Supplemental Agreement shall be executed by MDX and the Contractor for any additional service not contained in this Agreement.

16. CLAIMS

Contractor shall follow the procedures outlined in the section of the ***MDX General Specifications for Construction*** entitled *Claims by Contractor.*

17. FORCE MAJEURE

The failure of either MDX or the Contractor to comply with any provision of this Agreement due to an act of God, hurricane, war, fire, riot, earthquake, flood, strikes, act of public enemies, or actions of governmental authorities outside of the control of either MDX or the Contractor (excepting compliance with applicable codes and regulations) will not be considered a breach of this Agreement. In this event, the time for the performance of the obligations under this Agreement will be extended for a period commensurate with the delay but the Contractor will receive no additional compensation.

18. EMERGENCY PREPAREDNESS

As may be applicable to the Services, in the event of an emergency, the Contractor shall coordinate with MDX to identify and prepare to assume the necessary responsibilities of the Emergency Preparedness and Response Plan developed for MDX.

19. CONTRACT PERFORMANCE EVALUATION

The Contractor's performance will be evaluated pursuant to the requirements of Article 10, of the *MDX Procurement Policy* entitled *Contract Performance Evaluation* and in accordance with the *Procedures for Contract Performance Evaluation* attached hereto and incorporated herein.

20. CONTRACT DOCUMENTS ORDER OF PRECEDENCE

The Parties agree that the Agreement, inclusive of Exhibits and any amendments to the Agreement (the "Contract Documents"), shall control unless explicitly replaced or amended in writing and signed by both Parties.

The order of precedence for the Contract Documents shall be as defined in Section 5-2 Coordination of Contract Documents in the *MDX General Specifications for Construction.*

21. STANDARDS OF CONDUCT AND CONFLICT OF INTEREST

21.1 Standards of Conduct

This section shall apply to the Contractor, its Subcontractors and any other agent or employee engaged by the Contractor. The Contractor agrees to incorporate the provisions of this section and the section of the Solicitation Documents entitled "*Conflicts of Interest*" in any subcontract into which it might enter with reference to the Services performed for this Agreement and as it relates to the Services performed for the Project.

MDX at its sole discretion may conduct an audit of the Contractor's compliance of its obligations under this section.

The Contractor covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable Florida Statutes as they relate to the Services performed under this Agreement, which standards shall by reference be made a part of this Agreement as though set forth in full.

The Contractor shall also abide by the *MDX Procurement Policy, MDX Code of Ethics, MDX Small Business Participation Policy, MDX Local Business Participation Policy* and provisions of the *Vendor's Bill of Rights and Responsibilities.*

The Contractor shall not represent any other party before the State Legislature or any committee thereof, the office of the Governor or any member of the cabinet or any state agency on any matter where such party's interest may be adverse to MDX without the prior written permission of MDX.

In the event the Contractor desires to represent another party before any of the aforementioned public officials, bodies or agencies on any matter where such party's interest may be adverse to MDX, it shall promptly inform the MDX Executive Director or his or her delegate in writing of the party it wishes to represent and of the nature of the proposed representation.

MDX, in its sole and absolute discretion may preclude the Contractor from simultaneously representing MDX and another party when MDX determines that representation of such other party may be adverse to MDX's interest.

In making such determination, MDX shall have sole and absolute discretion to determine the role of the Contractor and the nature of its representation of MDX. Should the Contractor fail, after five (5) Business Days' notice, to resolve a conflict as determined by MDX, MDX shall have the right to terminate this Agreement.

In the event that such determination shall cause MDX to incur any increased costs due to its inability to retain the Contractor for a particular matter, the Contractor shall promptly pay such costs upon being invoiced therefore by MDX. Absent manifest error, the determination of MDX of such increased costs shall be final and binding on the Contractor.

As used in this section, the term "increased costs" shall mean:

(1) Administrative costs incurred by MDX including but not limited to legal fees, associated with the retention of another contractor to perform the services that would have been performed by the Contractor absent such conflict of interest, and

(2) The difference between the amount paid by MDX to such replacement contractor to perform such services and the amount that would have been paid by MDX to the Contractor to perform such services. MDX and the Contractor shall use their best efforts to mitigate the conflict and any increase in costs.

In the event of a dispute between the Parties, the Parties agree to mediation prior to any litigation to resolve said dispute.

MDX is governed in its contracts and transactions by provisions of Florida law relating to conflicts of interest, prohibited transactions, and ethics in government. All parties to contracts with MDX relating to the Services shall familiarize themselves with the Chapter 112, and Chapter 348, Florida Statutes, the *MDX Procurement Policy*, the *MDX Code of Ethics* and with general Florida law regulating MDX's ethical requirements, prohibitions and limitations with respect to procurement and contracts.

The Contractor agrees that it shall make no statement, press releases, or other publicity of any kind concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement, without first notifying MDX and securing its consent in writing.

The Contractor also agrees that it shall not publish, copyright, or patent any of the data furnished in compliance with this Agreement, it being understood that under the provisions of this Agreement such data or information is the property of MDX.

MDX shall have the right to unilaterally cancel this Agreement for refusal by the Contractor to allow public access to all documents, papers, letters or other materials, subject to provisions of Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with this Agreement.

21.2 Conflicts of Interest:

The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to a potential or actual conflict of interest, including but not limited to, an Organizational Conflict of Interest, as defined herein, or a Personal Conflict of Interest, as defined herein, (hereinafter collectively referred to as "Conflict of Interest", "Conflicts of Interest" or "COI"), or that the Contractor has disclosed in writing to MDX all such relevant information relating to the Contractor, its employees, its agents or any of its Subcontractors.

The term *Organizational Conflict of Interest* as used herein means:

(a) Because of other activities or relationships with other persons or contractors, the Contractor, its employees, agents or Subcontractors or their respective employees, is/are unable or potentially unable to render impartial assistance or advice to MDX;

(b) The Contractor's, or any of its employees, agents, Subcontractors/Subconsultants or their respective employees, objectivity in performing the Services is or might otherwise be impaired; and

(c) The Contractor, its employees, agents, Subcontractors/Subconsultants or their respective employees, has/have an unfair competitive advantage.

21.2.1 Notification of Conflict of Interest

The term *Personal Conflict of Interest* as used herein means a relationship of an employee, Subcontractor, or the employees of a Subcontractor with an entity that will or may impair the objectivity of the employee, Subcontractor/Subconsultant employee, or Subcontractor in performing the Services.

Prior to commencement of any Services, or immediately after becoming aware of a Conflict of Interest, whichever is sooner, the Contractor agrees to notify MDX's Executive Director or his or her delegate either:

(1) That, to the best of its knowledge and belief, no Conflict of Interest exists, or

(2) To identify to MDX any Conflict of Interest the Contractor or its agents, employees, or Subcontractors may have. In emergency situations, however, Services may begin, but notification of Conflicts of Interest shall be made in writing to MDX's Executive Director or his or her delegate within five (5) Business Days.

The Contractor agrees that if a Conflict of Interest is identified during performance, the Contractor will immediately make a full disclosure in writing to MDX's Executive Director or his or her delegate. This disclosure shall include a description of actions, which the Contractor has taken or proposes to take, after consultation with MDX, to avoid, mitigate, or neutralize the Conflict of Interest. The Contractor shall discontinue any relevant performance until notified by MDX's Executive Director or his or her delegate of any contrary action to be taken.

MDX may, at its sole discretion, withhold payments due or which may become due, suspend the Services, terminate this Agreement for convenience, in whole or in part, if it deems such termination necessary to avoid a Conflict of Interest, or pursue such other remedies as may be permitted by law or this Agreement.

If the Contractor was aware of a Conflict of Interest prior to award or discovered a Conflict of Interest after award and did not disclose it, or misrepresented relevant information to MDX, or MDX becomes aware of a Conflict of Interest that was not disclosed by the Contractor, MDX may at its sole discretion, withhold payments due or which may become due, suspend the Services, terminate the Agreement in whole or in part for default, or pursue such other remedies as may be permitted by law or this Agreement.

21.2.2 Conflict of Interest Plan

The Contractor shall prepare and submit a Conflict of Interest (COI) Plan within twenty (20) Business Days after the execution of this Agreement or any other time requested by MDX, which outlines the procedures in place to avoid, neutralize or mitigate Conflicts of Interest, whether actual or potential, personal or organizational, throughout the period of performance of the Agreement. The Contractor's COI Plan is a document which describes the procedures the Contractor uses to identify and report COI's. Generally, a corporate COI plan will describe how a company, in its entirety, addresses conflicts, and will not be contract or program specific.

The plan may also describe the options a company will consider proposing to avoid, neutralize, or mitigate a COI whenever a Conflict of Interest is identified. The plan shall be evaluated and approved by MDX. The plan shall address step by step the checks and balances in place to detect any potential or actual Conflicts of Interest that could result from activities covered in the Scope of Services.

The Contractor's obligations with regard to providing notice of Conflict of Interest situations shall apply until the expiration date of this Agreement.

21.2.3 Restriction on Future Contracts

Should a Contractor be found in violation of the Conflict of Interest provisions of this Agreement the parties agree that the Contractor will be restricted in its future contracting with MDX in the manner described below:

(1) The Contractor may be ineligible to participate in any MDX solicitations and ensuing MDX agreements, either as a prime Contractor or Subcontractor/ Subconsultant.

(2) The Contractor, during the life of this Agreement, shall be ineligible to enter into any agreement with individuals or firms to perform services on projects related to the Services performed under this Agreement unless otherwise authorized in writing by MDX's Executive Director or his or her delegate.

(3) The Contractor agrees in advance that if any bids/proposals are submitted for any services that would require written approval of MDX prior to entering into another agreement subject to the restrictions of this section, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against MDX to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the other agreement is denied or approved.

21.2.4 Conflict of Interest Adverse Determination

A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to MDX's Executive Director or his or her delegate,

An adverse determination resulting from a request for reconsideration by the MDX Executive Director or his or her delegate will not preclude the Contractor from requesting a review.

Either a request for review or a request for reconsideration must be submitted to the appropriate level within thirty (30) Calendar Days after receipt of the initial adverse determination.

21.2.5 Subcontractor Contracts

The Contractor agrees to insert in each Subcontractor agreement hereunder, provisions which shall conform substantially to the language of the subsection entitled *Conflicts of Interest*, including this paragraph.

The Contractor may request in writing that MDX's Executive Director or his or her delegate exempt from this Conflict of Interest subsection a particular Subcontractor/ Subconsultant agreement for certain technical or contractor services. MDX will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

The Contractor agrees to insert in each Subcontractor agreement hereunder the requirement that any Subcontractor who performs Services as a Subcontractor pursuant to this Agreement and wishes to submit a proposal or bid, either as a prime contractor or as a Subcontractor/ Subconsultant on any MDX procurement, shall request in writing a determination from MDX that they may participate in the specific MDX procurement prior to the proposal or bid submittal date.

Such written request shall include justification as to why there is no Conflict of Interest in this situation. Failure to do so may result in the Subcontractor's proposal being deemed non-responsive.

21.2.6 Annual Disclosure Form

The Contractor is required to annually submit to the MDX Ethics Officer the MDX Annual Disclosure Form, incorporated herein by reference and found in the MDX website, and provide the following information:

(1) Any relationship that the Contractor has which affords a current or future financial benefit to the Contractor, or to a relative or business associate of the Contractor, and which a reasonable person would conclude has the potential to create a prohibited Conflict of Interest.

(2) Whether a relative of the Contractor is registered to lobby the Executive Branch of the State of Florida or the Florida Constitution Review Committee and, if so, the names of such lobbyist's clients must be provided in writing to the MDX Ethics Officer.

(3) Any and all interests in real property held by the Contractor or the immediate family member of the Contractor, if such real property is located in or within a ½ mile radius of any actual or prospective MDX project. Prior to the execution of the Agreement, the Contractor has been provided a corridor map and property ownership list reflecting the ownership of all real property within the disclosure area, or an alignment map with a list of associated owners.

The MDX Annual Disclosure Form must be submitted by the Contractor on the Effective Date of the Agreement and updated every year on the same date. It is the Contractor's responsibility to obtain from MDX an updated corridor map and a property ownership list for all real property within the disclosure area, and an alignment map with a list of associated owners in order to properly complete the MDX Annual Disclosure Form. Failure by the Contractor to timely submit the MDX Annual Disclosure Form is a default under the Agreement and MDX, at its sole discretion, may enforce all applicable provisions under the Agreement, including and up to termination of the Agreement.

22. CONVICTED VENDORS LIST AND DEBARMENT

The Contractor represents that it is not currently on the convicted vendor list, or debarred as described in the Solicitation Documents and that it shall notify MDX immediately if, during this Agreement, it is placed on said list. The Contractor agrees that placement on said list constitutes grounds for immediate termination of this Agreement by MDX.

By execution of this Agreement, the Contractor further certifies that the information provided in the executed *Sworn Statement on Public Entity Crimes and Debarment* form(s) for both the Contractor and the Subcontractors is true and correct.

The Contractor agrees to indemnify MDX for any costs and expenses, including but not limited to reasonable audit costs, attorneys' fees and expert witness fees that MDX incurs due to any fraudulent statements made by the Contractor in regards to this certification.

23. SCRUTINIZED COMPANIES LISTS

Pursuant to the prohibitions of section 287.135, Florida Statutes and Section 215.473, Florida Statutes, by execution and submittal of a Bid, the Contractor has certified to MDX that it is not on any of the following lists:

- Scrutinized Companies that Boycott Israel List;
- Scrutinized Companies with Activities in Sudan List;
- Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

The Contractor further certified that:

- It is not engaged in a boycott of Israel;
- It has not been engaged in business operations in Cuba & Syria.

Alternatively, if the Contractor was unable to provide such certification, the Contractor provided to MDX a duly executed written explanation of the facts supporting the applicable exception to the requirement for certification in compliance with section 287.135, Florida Statutes.

The Contractor shall provide written notification to MDX of any changes to the certification or exception provided, as described above, immediately upon becoming aware of any such changes. MDX shall have the right to terminate for default the Contract if the Contractor is found to have submitted a false certificate or to have been placed on any of the above listed lists.

The Contractor shall not engage any Firm to perform Services under the Contract that does not meet the requirements pursuant to this provision.

24. E-VERIFY REQUIREMENTS

U.S. law requires companies to employ only individuals who may legally work in the United States, either U.S. citizens, or foreign citizens who have the necessary authorization. Any Contractor providing services to MDX must verify the employment eligibility of employees through the U.S. Department of Homeland Security's E-Verify system. In addition, the Contractor shall verify that Subcontractors performing Services on the Agreement utilize the E-Verify system to verify the employment eligibility of employees hired by the Subcontractor during the Contract Term.

MDX will consider the employment by any Contractor or Subcontractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Agreement by MDX, if it is determined that the Contractor or Subcontractor knowingly employs unauthorized aliens.

25. PROOF OF VEHICLE REGISTRATION

The Contractor shall register all vehicles used in the course of performing the Services as required by Chapter 320, Florida Statutes.

If the Contractor fails to register any motor vehicle that it operates in Florida, pursuant to Chapter 320, Florida. Statutes, MDX may disqualify the Contractor from proposing on future MDX procurements, or MDX may suspend the Contractor from this and/or other MDX agreements.

26. COMPLIANCE WITH LAWS

The Contractor, its employees and representatives shall at all times comply with the federal, state, and local laws and ordinances, statutes, rules, regulations and orders of governmental authorities applicable to the Services or payment of Services thereof, and shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, age or national origin in the performance of the Services under this Agreement.

27. EXECUTION OF THE AGREEMENT

If the Contractor is a firm or company owned by an individual, this Agreement shall be executed in the name of the firm or company by the manual signature of the individual or sole proprietor.

If the firm is a Partnership, this Agreement shall be executed in the name of the partnership by the manual signature of the general partner.

If a corporation, the Agreement shall be executed in the name of the Corporation and shall bear the corporate seal and be signed by the President, the Vice-President, or a representative of the Contractor who is authorized either by position or by corporate resolution to contractually bind the Contractor in all aspects of the Agreement.

If a joint venture, the Agreement shall be executed in the name of the joint venture and be signed by a person authorized to sign on behalf of the joint venture.

28. ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS

The Contractor shall not take advantage of any apparent error or omissions which the Contractor discovers in the Contract Documents, and shall immediately notify MDX of such discovery. MDX will make such corrections and interpretations as necessary to reflect the intent of the Contract Documents.

29. OWNERSHIP OF DOCUMENTS

All tracings, documents, studies, data and/or reports prepared or obtained under the Contract Documents shall be considered works made for hire and shall become property of MDX without restriction or limitation on their use, and shall be made available upon request to MDX at any time.

The Contractor shall therefore agree not to publish, copyright or patent any of the data furnished in compliance with the Agreement.

MDX shall have the right to visit the offices of the Contractor for review of the Services at any time. The Contractor shall not be liable for use by MDX of said documents, studies, or other data for any purpose other than that intended by the terms of the Contract Documents.

30. AUDIT AND EXAMINATION OF CONTRACT RECORDS & PROPOSAL RECORDS

MDX reserves the right at any time, and from time to time for any reason whatsoever to review, audit, copy, examine and investigate in any manner, any Contract Records (as defined herein) or Proposal Records (as defined herein) of the Contractor or any Subcontractor/Subconsultant. The Contractor shall include in its contract with any Subcontractor/Subconsultant similar provisions as detailed herein and Subcontractor/ Subconsultants' agreements shall comply with the provisions of this section. Failure to provide reasonable access or comply with these requirements by the Contractor or any Subcontractor/ Subconsultant shall be considered a breach of the Contract.

Contract Records shall include, but are not limited to, all information, communications and data, whether in writing or stored on a computer, computer disks or drives, microfilm, CD's or DVD's, writings, working papers, drafts, computer printouts, field notes, charts or any other data compilations, books of account, photographs, videotapes and audio tapes, supporting documents, any other papers or preserved data related to the Agreement or the Contractor's performance of the Agreement determined necessary by MDX for any purpose.

Proposal Records shall include, but are not limited to, all information and data, whether in writing or stored on a computer, computer disks or drives, writings, working papers, computer printouts, charts or any other data compilations that contain or reflect information, data or calculations used by a Proposer in determining labor, unit price (where applicable), or any other component of a Proposal submitted to MDX, and any information relating to the determination or application of Equipment rates, home and field overhead rates, related time schedules, labor rates, efficiency or productivity factors, arithmetic extensions, quotations from Subcontractors, truckers or Materials Suppliers, profit contingencies and any standard manuals in the industry that may be used by a Proposer in determining a price for the Services.

If MDX requests access to or review of any Contract Records or Proposal Records and the Contractor refuses such access or review, the Contractor shall be in default under the Agreement with MDX, and such refusal shall, without any other or additional actions, constitute grounds for termination of the Agreement.

This provision shall not be limited in any manner by the existence of any Contractor claims or pending litigation relating to the Agreement.

The Contractor shall preserve all Contract Records and Proposal Records for the entire term of the Agreement which shall be in compliance with the section of the ***MDX General Specifications for Construction*** entitled *MDX Project Filing Structure*.

31. PUBLIC RECORDS

The Contractor shall enable reasonable and convenient access to all documents, papers, letters, or other material to any person making a request for such documents pursuant to the provisions of Chapter 119, Florida Statutes, for documents made or received by the Contractor in conjunction with the Agreement.

Failure to promptly afford such access may be grounds for immediate unilateral cancellation of the Agreement by MDX and the Contractor shall indemnify MDX against any costs or penalties MDX may incur as a result of the Contractor's failure to comply with, or impede MDX being able to comply with, the provisions of Chapter 119, Florida Statutes.

Upon receipt of any public records request, the Contractor shall immediately notify the MDX Public Records Custodian and secure prior written consent and coordination of response to the request before releasing such records:

Miami-Dade County Expressway Authority (MDX)
Public Records Custodian
3790 NW 21st Street
Miami, Florida 33142
305.637.3277 ext. 2000
publicrecords@mdxway.com

All documents related to the Agreement as detailed herein must be provided in accordance with the section herein entitled *Audit and Examination of Contract Records & Proposal Records.*

In the same manner, pursuant to the protection provided by Chapter 119, Florida Statutes, to the extent the Services under this Agreement require access to proprietary or confidential business or financial data of MDX or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

32. CONFIDENTIALITY

To the extent that the Services under this Contract requires access to proprietary or trade secrets or business or financial data of MDX or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure in accordance with the provisions of Chapter 119, Florida Statutes.

33. INSPECTION OF SERVICES AND DOCUMENTS AND ENDORSEMENT OF WORK PRODUCTS

MDX shall maintain the right to inspect the Services performed by the Contractor and request any documentation from the Contractor to ensure quality products and services are being provided. The Contractor shall make available to MDX, upon request, complete records of all costs incurred under the terms of this Agreement for purposes of auditing prior or current invoices. The Contractor acknowledges that all work products generated from the Services provided pursuant to this Agreement shall be subject to the provisions of Chapter 119, Florida Statutes.

34. TERMINATION

This Agreement is subject to the Termination provisions found in the ***MDX General Specification for Construction*** in the section entitled *Default and Termination of Contract.*

35. DISPUTES, DISPUTE RESOLUTION AND CLAIMS

If any dispute regarding the Contractor claims arising hereunder or relating to the Agreement and the Contractor's Services hereunder results in litigation, the prevailing Party in such litigation shall be entitled to recover reasonable attorney's fees and costs, including costs and expenses of expert witnesses.

The term "contested claim" or "claims" shall mean the initial written claim(s) submitted to MDX by the Contractor (disputed by MDX) which have not otherwise been resolved through ordinary close-out procedures of a Task Authorization/Work Order and/or this Agreement prior to the initiation of litigation. The Contractor claims or portions thereof, which MDX agreed to pay or offered to pay prior to initiation of litigation, shall not be deemed contested claims for purposes of this provision.

Attorney's fees and costs awarded to the prevailing Party shall mean reasonable fees and costs incurred in connection with and measured from the date a claim is initially submitted to MDX through and including trial, appeal and collection. In the circumstance where an original claim is subsequently modified, amended or a substituted claim is filed therefore, fees and costs shall accrue from the date of the first written claim submitted.

The term "litigation" shall include mediation proceedings. As a condition precedent to litigation, the Contractor shall have first submitted its claim (together with supporting documentation) to MDX, and MDX shall have had sixty (60) Business Days thereafter within which to respond thereto.

The purpose of this provision is to discourage frivolous or overstated claims and, as a result thereof, MDX and the Contractor agree that neither Party shall avail itself of Section 768.79, Florida Statutes, or any other like statute or rule involving offers of settlement or offers of judgment, it being understood and agreed that the purpose of such statute or rule are being served by this provision.

Should this provision be judged unenforceable or illegal, in whole or in substantial part, by a court of competent jurisdiction, this provision shall be void in its entirety and each Party shall bear its own attorney's fees and costs.

No court proceedings on any claim may be filed until the Parties have first participated in mediation.

All Services shall be performed by the Contractor in accordance with sound business and accounting practices to the satisfaction of MDX. MDX shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the Services hereunder, the character, quality, amount and value thereof; and its determination upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.

Adjustment of compensation and Agreement time because of any major changes in the Services that may become necessary or desirable as the Services progress shall be left to the absolute discretion of MDX and any such adjustments shall be evidenced by Supplemental Agreements between the parties in accordance herewith.

In the event that the Contractor and MDX are not able to reach an agreement as to the amount of compensation to be paid to the Contractor for supplemental Services desired by MDX, the Contractor will be obligated to proceed with the supplemental Services in a timely manner for the amount determined by MDX to be reasonable. In such event, the Contractor will have the right to file a claim with MDX for such additional amounts as the Contractor deems reasonable; however, in no event will the filing of the claim or the resolution or litigation thereof through the courts relieve the Contractor from the obligation to timely perform the supplemental Services.

36. CONSTRUCTION OF LANGUAGE

All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders. Capitalized terms used herein shall have the meaning ascribed to them in the Contract Documents.

37. CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Venue of any litigation arising out of this Agreement shall be in Miami-Dade County, Florida.

In the event of any litigation arising out of this Agreement, the Contractor agrees that service of process on the Contractor may be made on its registered agent as designated in the corporate records of the Florida Division of Corporations. The Contractor shall notify MDX in writing within thirty (30) Calendar Days of a change and the name of the successor registered agent. These provisions are in addition to any methods of service of process allowed by the Florida Statutes.

38. WAIVER OF TRIAL BY JURY:

The Contractor and MDX hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect to any litigation based hereon, or arising out of, under or in connection with this Agreement, and any agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, or actions of either Party.

39. ENTIRE AGREEMENT

This Agreement embodies the whole agreement between the Parties and there are no inducements, promises, terms, conditions, or obligations made or entered into by either MDX or the Contractor other than contained herein. This Agreement shall inure to the benefit of, and be binding on, the Parties or the successor(s).

40. THIRD-PARTY BENEFICIARY

It is specifically agreed between the Parties executing the Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Agreement to maintain a suit for personal injuries, bodily injury or property damage pursuant to the terms or provisions of the Agreement.

41. NOTICES

All Notices required under this Agreement shall be in writing. Notices shall be mailed or delivered as follows, unless a Party directs in writing that notices shall be provided to it at another location:

To the Authority:	Jacqueline Buitrago, CPPB Procurement Manager Miami-Dade County Expressway Authority (MDX) 3790 N.W. 21st Street Miami, Florida 33142
With a copy to:	Carlos M Zaldivar, Esq. MDX General Counsel Miami-Dade County Expressway Authority (MDX) 3790 N.W. 21st Street Miami, Florida 33142
To the Contractor:	Barry Snyder CEO Southeast Highway Guardrail & Attenuators, LLC 7760 Hooper Road, West Palm Beach, Florida 33411

42. SECTION HEADINGS

Any headings preceding the texts of the sections in this Agreement and any table of contents shall be solely for the convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

43. SEVERABILITY

If any one or more of the covenants, agreements or provisions of this Agreement shall be held invalid, it is the intent of the parties that such covenants, agreements or provisions shall be deemed severable and that the remaining provisions remain in full force and effect.

44. ADDITIONAL TERMS

All Exhibits attached hereto contain additional terms of this Agreement and are incorporated as if actually set forth herein.

45. COOPERATIVE PURCHASING (PIGGY-BACKING).

As may be applicable, pursuant to the *MDX Procurement Policy*, other governmental agencies may utilize MDX contracts if the Contractor agrees to enter into a separate contract with such governmental agency(ies) incorporating the MDX contract terms and conditions.

46. ACKNOWLEDGEMENT & REPRESENTATION.

The Parties to this Agreement individually represent, warrant, and agree that:

A. They have been represented by legal counsel of their choice in connection with the Agreement;

B. They are fully aware and clearly understand all of the terms and provisions contained in this Agreement;

C. They have voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Agreement;

D. They are not relying on any representation, either written or oral, express or implied, made to them by any other party other than as set forth in this Agreement; and

E. The consideration received by them to enter into this Agreement and the settlement contemplated by this Agreement has been actual and adequate.

47. CERTIFICATION

This document is an MDX form maintained in an electronic format and no changes may be made to this document without approval from MDX. The Contractor must submit any requested changes or revisions to MDX for approval prior to the Contractor executing this Agreement. By signing this document, the Contractor hereby represents that no change has been made to the text of this document.

You MUST certify by checking the box below:

☒ No changes have been made to this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the authorized signatures named below have executed this Agreement on behalf of the Parties on the date aforesaid mentioned.

MIAMI DADE COUNTY EXPRESSWAY AUTHORITY

By: _____
Darlene M. Fernandez, P.E.
Executive Director

SOUTHEAST HIGHWAY GUARDRAIL & ATTENUATORS, LLC

By: _____
Signature of Authorized Officer

Barry Snyder
Print Name of Authorized Officer

CEO
Title of Authorized Officer

ATTEST _____
Secretary/Assistant Secretary Signature

Approved by MDX Board: **10/11/2022**

EXHIBITS:

The following exhibits are incorporated herein and attached hereto, unless otherwise noted:

Exhibit A Specifications Package

- Exhibit A-1 Scope of Services
  - Exhibit A-1-1 MDX Lane Closure Requirements and Procedures
- Exhibit A-2 MDX General Specifications for Construction
- Exhibit A-3 Supplemental Specifications and MDX Supplemental Specifications

Exhibit B MDX Inventory Asset Management Information System (MIAMIS) Documents

- Exhibit B-1 MIAMIS – Bridges, Guardrails And Attenuators
- Exhibit B-2 MIAMIS – Fences

Exhibit C Contractor's Bid

Exhibit D Contract Bond (Should MDX issue a Work Order that exceeds $200,000.00 a Contract Bond may be required)

Exhibit E Solicitation Documents including associated Addenda

Exhibit F Sworn Statement on Public Entity Crimes and Debarment

Exhibit G Small Business and/or Local Business Participation Statements

Exhibit H Subcontractor/Subconsultant Utilization Report

Exhibit I Contract Performance Evaluation (CPE) Form (Sample)

Exhibit J Work Order (Sample)

Exhibit K MDX Procurement Policy *

Exhibit L MDX Small Business Participation Policy *

Exhibit M	MDX Local Business Participation Policy*
Exhibit N	MDX Code of Ethics *
Exhibit O	Request for Authorization to Subcontract Work*
Exhibit P	MDX Annual Disclosure Form
Exhibit Q	Insurance Requirements

* Current Policies and Forms available on the MDX website at:
http://www.mdxway.com/doing_business/procurement