

Lee County Board Of County Commissioners

Agenda Item Summary

Blue Sheet No. 20031318

1. REQUESTED MOTION:

ACTION REQUESTED: Approve and authorize the Chairman to execute the Launch Customer Purchase Agreement (Contract No. 2736) between Max-Viz, Inc. and Lee County Board of County Commissioners for Eurocopter EC145 – Full System Installed and Eurocopter BO105 – Parts and Provisioning, for an amount of \$80,000.00.

WHY ACTION IS NECESSARY: Board approval is required.

WHAT ACTION ACCOMPLISHES: To allow Lee County Public Safety to purchase an EVS system for the Primary Aircraft and to participate as Max Viz's launch customer for EVS on Eurocopter EC145 helicopter.

2. DEPARTMENTAL CATEGORY:

7. Public Safety

COMMISSION DISTRICT #:

C7A

3. MEETING DATE:

03-23-2004

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE *AC-4-4*
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT *Public Safety*
- C. DIVISION
- BY: *John Wilson, Director*

7. BACKGROUND:

Lee County Public Safety owns a Eurocopter EC145 helicopter (the Primary Aircraft) and a Eurocopter BO105 helicopter (the Alternate Aircraft).

Max Viz is in the business of developing, manufacturing and supplying proprietary Enhanced Visions Systems (EVS) and has experience and expertise in manufacturing and installing EVS products. Max-Viz has proposed that Lee County act as a launch customer for the use of EVS on Eurocopter EC145 helicopter. As a launch customer, Lee County receives a substantial price reduction from Max-Viz on the purchase and installation of an EVS in exchange for making the Primary Aircraft available for and cooperating with Max-Viz's process of obtaining Supplemental Type Certification (STC) from the FAA for the installation and use of EVS on Eurocopter EC145 helicopter.

On July 1, 2003 the Board approved the acceptance of a matching grant by EMS in the amount of \$60,000.00 from the Bureau of Emergency Medical Service and also approved a budget amendment resolution in the amount of \$60,000.00 for FY'04.

The grant funds represent 75% of the project cost. Lee County's 25% contribution will be \$20,000.00. Total project cost is \$80,000.00. No recurring cost of equipment is expected for 3 years.

Grant proceeds will be available in account string: 12072000100.334290.9008.

Lee County's contribution will be available in account string: 14072000100.506410.7100

Attachment: Two (2) original purchase agreements

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>WDL 3/24/04</i>	<i>Cindy 3/24/04 GMB 3/1/04</i>	N/A		<i>Andrea 3/24/04</i>	<i>3/9/04</i>	<i>3/9/04</i>	<i>3/9/04</i>	<i>3/9/04</i>	<i>3/11/04</i>

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

Rec. by CoAtty
 Date: *3/5/04*
 Time: *3:45 pm*
 Forwarded To:
*Co. Atty
3/8/04*

RECEIVED BY
 COUNTY ADMIN: *PM*
3/8/04
4:10 pm
 COUNTY ADMIN
 FORWARDED TO: *HS*
3-11-04
4:30 pm

PURCHASE AGREEMENT

This Launch Customer Purchase Agreement ("Agreement"), dated as of the ____ day of _____, 2004 (the "Effective Date") is made between Max-Viz, Inc. an Oregon corporation ("Max-Viz") and Lee County Board of County Commissioners ("Customer").

RECITALS

- A. Customer owns a Eurocopter EC145 helicopter bearing manufacturer's serial number 9040 and Federal Aviation Administration ("FAA") registration number N911LZ.
- B. Customer also owns a Eurocopter BO105 helicopter bearing manufacturer's serial number 798 and Federal Aviation Administration ("FAA") registration number N5417J.
- C. Max-Viz is in the business of developing, manufacturing and supplying proprietary Enhanced Visions Systems ("EVS") and has experience and expertise in manufacturing and subcontracting the installation of its EVS products. Such EVS is referred to herein as the "System".
- D. Max-Viz has proposed that Customer act as a launch customer for the use the System on N911LZ. As a launch customer, the Customer receives a substantial price reduction on the purchase and installation the System.
- E. Customer wishes to purchase a System for N911LZ and to participate as Max-Viz's launch customer for EVS subject to the terms and conditions specified below.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises, covenants and agreements herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. EVS-1000 – SALE AND INSTALLATION

- 1.1 Subject to the terms and conditions specified herein, Max-Viz agrees to sell to Customer, which agrees to purchase, an EVS suitable for installation, operation and use on N911LZ as more fully described in the Product Description and Specifications ("Specification") attached hereto as Exhibit 1 and incorporated herein by reference, and including:
 - a) EVS-1000 Enhanced Vision System which includes:
 - Two Line Replaceable Units (LRU's):
 - EVS-1000 Sensor Unit
 - Power Supply Unit
 - and also includes
 - EVS-1000 Installation Manual
 - EVS-1000 Maintenance Manual
 - Boland 6.8" monitor,
 - EVS-1000 Exterior Mount
 - Interior Monitor Mount
 - Wiring Harness with Connectors
 - b) Subject to the terms and conditions specified herein, Max-Viz also agrees to sell to the Customer, which agrees to purchase the following equipment for N5417J.
 - EVS-1000 Exterior Mount
 - Interior Monitor Mount
 - Wiring Harness with Connectors

- 1.2 Within two (2) weeks after receipt of deposit, Max-Viz will ship the System for N911LZ at a time and location acceptable to Customer. Max-Viz will provide on-site installation and provide all necessary assistance such as engineering drawings from a DER (if required) to obtain an FAA certification (STC).
- 1.3 Within thirty (30) days of contract acceptance, Max-Viz shall provide a second installation kit for N5471J. The installation kit shall consist of the items mentioned in paragraph 1.1.b above.

2. PURCHASE PRICE; PAYMENT

- 2.1 The total purchase price for the items and deliverables listed in paragraph 1, is Eighty Thousand dollars (\$80,000.00), excluding taxes, and payable as follows:
 - (a) A down payment of \$40,000 shall be paid by Customer to Max-Viz upon execution of this Purchase Agreement. Such down payment shall be applied against the total purchase price.
 - (b) A second payment of \$20,000 shall be payable upon completion of the installation on N911LZ .
 - (c) A final payment of \$20,000 shall be payable upon issuance of an STC by the FAA for N911LZ.

3. TRANSFER OF TITLE

All hardware shall be shipped to Customer FOB origin and Title to the System will pass to Customer upon payment of the balance of the purchase price by Customer to Max-Viz.

4. LIMITED WARRANTY AND RELATED MATTERS

- 4.1 Max-Viz warrants that the System, as installed on N911LZ 1 will perform in accordance with the Specification and will be free from defects in workmanship and materials during the period of two (2) years (the "Warranty Period") from the date of completion of installation of the System.
- 4.2 Max-Viz's warranty is offered on a Return-to-Factory basis. Max-Viz shall promptly, at its expense, (a) repair or, at its option, replace each product or component that fails to function in accordance with the Specification for the System, as described in Exhibit 1, during the Warranty Period due to a defect in workmanship or materials, and (b) re-deliver the product or component provided that (i) Customer shall promptly notify Max-Viz of any such failure in writing no later than one (1) week after the expiration of the Warranty Period; and (ii) on request by Max-Viz, Customer returns the defective product in accordance with Max-Viz's return materials authorization procedures at Customer's risk and expense. Costs incurred for the removal of equipment from the Primary or Secondary Aircraft, including travel and living costs, fault isolation, inbound shipment and item reinstallation are not covered by this warranty.
- 4.3 The Warranty Period for a repaired or replaced product or component is three (3) months from shipment date which expires either at the end of such three (3) month period or at the expiration of the original Warranty Period for the System, whichever is later.
- 4.4 Max-Viz shall have no liability to repair or replace a product or component if:
 - (a) it is not properly maintained, or
 - (b) it is operated under abnormal operating conditions, or
 - (c) it is improperly used or used for purposes for which it is not intended in accordance with the Max-Viz's Installation and Maintenance Manuals, or
 - (d) if the Max-Viz identity code(s) on the product has been altered, defaced or removed.
- 4.5 If a reported failure to function is not due to a defect in the product and no fault is found, then Customer shall pay Max-Viz a three (3) hour handling and evaluation charge at Max-Viz's s standard charges for such

services then in effect. The current rates are set forth in Exhibit 2 attached hereto and subject to change without notice.

5. AIRCRAFT PHOTOGRAPHS AND PUBLICITY

Customer shall permit Max-Viz to obtain interior and exterior photographs detailing the System on both aircraft and to announce to the aviation industry the installation of the System on both Aircraft.

6. INTELLECTUAL AND INDUSTRIAL PROPERTY MATTERS AND INDEMNITY

6.1 Max-Viz shall, at Max-Viz's expense, except as otherwise provided below, defend or settle, at its option, any claim made or any suit or proceeding brought against a customer based upon an allegation that any Max-Viz product furnished hereunder infringes a United States patent, trademark, copyright, industrial design or chip protection right, if notified promptly in writing and if given information, reasonable assistance and sole authority to defend or settle the same. Max-Viz shall pay all direct damages and costs finally awarded therein against Customer. Customer shall have no authority to settle any action on behalf of Max-Viz, and Customer shall incur no cost or expenses for the account of Max-Viz.

6.2 If a product becomes, or in Max-Viz's opinion is likely to become, the subject of a claim of infringement, Max-Viz shall have the sole option, at its expense, to procure for Customer the right to continue using the product, to replace the product with a non-infringing product, to modify the product so it becomes non-infringing, or to refund up to the purchase price of the product upon its return.

6.3 Max-Viz shall have no liability for any infringement resulting from (a) compliance with any designs, specifications or instructions furnished by Customer, (b) Customer modifications not specified in relevant Max-Viz publications, (c) use in a manner not reasonably foreseeable, or (d) use with products not supplied by Max-Viz.

6.4 The remedies of Customer set out above are in lieu of, and not in addition to, any other remedy available at law or in equity in respect of the products or the use or operation thereof.

6.5 Except as otherwise expressly set out herein, nothing in this Agreement or in the furnishing of any information, product or service by Max-Viz to Customer is intended to grant or otherwise transfer, either expressly or by implication, estoppel, or otherwise grant to Customer any right, license or interest of any kind to, or in, any information or any intellectual or industrial property right in such information that comes to the attention of Customer in connection with the product, or otherwise, including but not limited to, through the inspection of the product. Customer shall not take any action inconsistent with Max-Viz's intellectual or industrial property rights in its products. Customer shall not "reverse engineer" Max-Viz's products or any part thereof.

7. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

7.1 The parties agree that:

a) the warranties, obligations and liabilities of Max-Viz and the remedies of Customer set forth in Section 4 with respect to the System are exclusive and are in substitution for, and Customer hereby waives, releases and renounces, all other warranties, obligations and liabilities of Max-Viz and any assignee of Max-Viz, and rights, claims and remedies of Customer against Max-Viz, express or implied, arising by law or otherwise, with respect to any nonconformance or defect in any Max-Viz product, including, but not limited to, and Max-Viz hereby disclaims, (i) any implied warranty of merchantability or fitness; (ii) any implied warranty arising from course of performance, course of dealing or usage and trade; and (iii) any obligation, liability, right, claim or remedy in tort, whether or not arising from the negligence of Max-Viz, actual or imputed.

b) the remedies of repair or replacement are the only remedies of Customer

c) Max-Viz shall not be liable for any obligation, liability, right, claim or remedy for loss of or damage to any Eurocopter BO105 or EC145 helicopters in which its products are installed, for loss of use, revenue or profit with respect to any such Eurocopter BO105 or EC145 helicopters, or for any other direct, incidental or consequential damages.

7.2 Max-Viz's total liability to Customer arising out of or in connection with Customer's use of the System or the results of the service provided by Max-Viz in connection with installation of the System, shall not exceed the total amount paid by Customer to Max-Viz under this Agreement. Max-Viz shall not be liable in any event for any indirect or consequential loss, costs or damages, for any economic loss, including but not limited to, loss of revenue or profit incurred by Customer as a result of or in connection with the System or any component thereof.

7.3 Customer further acknowledges and agrees that Max-Viz shall not be liable for any unauthorized deviations from the instructions and information provided in accordance with the approved STC for the System as installed on the Primary Aircraft.

8. FORCE MAJEURE

Neither Customer nor Max-Viz shall be liable for its failure to perform any of its obligations during any period in which performance is delayed by fire, natural catastrophe, war, warlike acts, embargo, civil unrest, labor unrest (including strikes) or any other cause beyond the reasonable control of such party, including, but not limited to failure of the United States Government to issue an export permit, provided that the affected party shall promptly notify the other party of such delay and shall take commercially reasonable steps to minimize its effects.

9. NOTICES

All notices or demands given hereunder or required by law will be given in writing, will refer to this Agreement, will be sent to the applicable address or facsimile number given below, and will be effective (i) upon the date of receipt if delivered by hand or by recognized overnight courier; (ii) upon dispatch if delivered by facsimile transmission with confirmation; or (iii) three (3) days after deposit in the United States mail. Either party may change its address or facsimile number by giving the other party written notice of such change, referencing the change as a modification to this Section of this Agreement.

If to Max-Viz: Max-Viz, Inc.
Attention: Manager, Customer Service
16165 SW 72nd Street
Portland, OR 97224
Phone: 503-968-3036 x119
Fax: 503-968-7615

With a Copy To: Max-Viz, Inc.
Attn: Contracts Department
16165 SW 72nd Street
Portland, OR 97224
Phone: 503-968-3036 x120
Fax: 503-968-7615

If to Customer: Lee County Emergency Medical Services
Attn: Rick O'Neal
14752 Six Mile Cypress Pkwy
Fort Meyers, FL 33902-0398
Phone: (239) 229-2056
Fax: (239) 335-1638

10. MISCELLANEOUS

10.1 This Agreement sets forth the entire agreement and obligation of each party in respect of the subject matter hereof. This Agreement supersedes all prior or collateral representations, undertakings and agreements, oral or written, concerning such subject matter, including, but not limited to, any provision set out in Customer's order.

10.2 No provision of this Agreement may be changed, nor may performance of any obligation hereunder be waived unless such change or waiver is set forth in a written document signed by an authorized representative of each of the parties.

10.3 This Agreement shall inure to the benefit of and be binding on the parties' respective permitted successors and assigns.

10.4 This agreement shall remain in effect for 1 year from the Effective Date.

10.5 The terms and conditions of this Agreement are severable. The invalidity or unenforceability of any provision will not affect the validity or enforceability of any of the other provisions.

10.6 This Agreement will be governed by and interpreted in accordance with the internal laws of the State of Oregon applicable to contracts entered into in such state, by residents thereof, and to be performed entirely within such state.

10.7 The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or the System.

10.8 Exportation of the System may be subject to various government regulations such as the International Traffic in Arms Regulations (ITAR) specified by the Office of Defense Contracts. It is the responsibility of Customer to complete all necessary documents and secure all certificates necessary to comply with these regulations.

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the Effective Date.

Max-Viz, Inc.

Lee County Board of County Commissioners

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit 1

Product Description and Specifications

The EVS-1000 sensor uses long-wave infrared (LWIR) technology, which penetrates fog, haze and smoke. It also provides enhanced visibility at night and in precipitation. The System produces TV-like images of runways, taxiways, traffic, obstacles and terrain to give the crew increased situational awareness in most reduced visibility conditions. The EVS-1000 automatically adjusts brightness and contrast and uses advanced optimization technology to further enhance the images under all viewing conditions.

The EVS-1000 utilizes "uncooled" detector technology, making it compact and lightweight. The unit is fully EMI/RFI protected and power conditioned. The compact size of the EVS-1000 system offers a flexible range of options for installation. The image produced by the System can be displayed on any video capable head-down display.

Sensor Technology	Uncooled Solid State — Does Not Require Mechanical Cryogenic Cooler
Size Sensor Head Power Module	2.8" (71mm) Diameter X 6.8" (172.7mm) L 3.75" (95.3mm) W X 5.0" (127mm) H X 2.5" (57.2mm) D
Weight Sensor Head* Power Module*	2.5 Pounds (1.13kg) *Does not include cable and brackets 2.5 Pounds (1.13kg) *Does not include cable and brackets
Power	28 Volts DC, 5 Amps nominal
Resolution	320 X 240 Pixels, 2 Dimensional Staring Array
Field of View (FOV) Head-Down Display (HDD)	53° X 40° Typical, Special FOVs Upon Request
Reliability	>15,000 Hours
Operating Temperature	-55° to +70° C
Environmental Qualifications	Unit Tested To Requirements of DO-160D

Exhibit 2

EVS-1000

Non-Warranty Service Support & Repair Pricing Sheet

(Prices subject to change without notice)

Shipping & Handling charge **\$30.00 per order**

Items returned for repair not covered by **\$65.00 per hour**

Warranty