



**OFFICE OF THE COMMISSION AUDITOR
MIAMI-DADE BOARD OF COUNTY COMMISSIONERS**

**COMMISSION AUDITOR'S
INFORMATIONAL RESEARCH**

BOARD OF COUNTY COMMISSIONERS MEETING

October 20, 2020

9:30 A.M.

Virtual Meeting

Yinka Majekodunmi, CPA
Commission Auditor

Office of the Commission Auditor (OCA)
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Miami, FL 33128
(305) 375-2524

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Research Notes**

**Item No. 8C1
File No. 201984**

Researcher: JFP Reviewer: PGE

RESOLUTION APPROVING FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT (PSA) BETWEEN MIAMI-DADE COUNTY AND ZYCOVICH INC. FOR THE DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES OF THE WESTCHESTER CULTURAL ARTS CENTER PROJECT NO. A-13-CUA-01 GOB ESP, WHICH WILL INCREASE THE TOTAL AMOUNT PAYABLE BY \$250,000.00, TO BE FUNDED WITH BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM FUNDS, AND EXTEND THE TERM BY 882 CALENDAR DAYS FOR ADDITIONAL PROFESSIONAL SERVICES NECESSITATED BY THE PROJECT; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE FIRST AMENDMENT TO THE PSA, TO EXERCISE ANY AND ALL RIGHTS CONTAINED THEREIN, AND TO ENFORCE ALL TERMS AND CONDITIONS THEREOF

ISSUE/REQUESTED ACTION

Whether the Board should approve the first amendment to the 2015 Professional Services Agreement (PSA) with Zycovich Inc. for design and construction administration services for the Westchester Cultural Arts Center, extending the contract term by 882 calendar days and increasing the contract value by \$250,000, for a modified contract value of \$1,130,000.

PROCEDURAL HISTORY

Prime Sponsor: None

Department/Requester: Department of Cultural Affairs

This item has no procedural history.

ANALYSIS

The purpose of this item is to amend the Westchester Cultural Arts Center design and construction administration services PSA, allowing for additional time to align the PSA contract term with that of the project's delayed construction contract, and an increased contract amount to sustain professional services through the new PSA termination date—December 8, 2022. Pursuant to the PSA's scope of work, the awarded architectural firm, Zyscovich Inc., designed a new 11,867 square foot multi-purpose facility west of the main entrance to Tropical Park (7900 SW 40 Street) in District 10, represented by Commissioner Javier D. Souto, providing architectural, engineering, and specialty consultant services for the project (Project No. A13-CUA-01).

The original PSA, executed July 10, 2015, was for a term of three years and valued at \$880,000, inclusive of a fixed lump sum basic services fee of \$777,215, \$77,722 for additional services, and \$25,063 for reimbursable services. The agreement authorized the County Mayor to extend the PSA for two additional one-year periods, which were deemed necessary to complete the scope of the services due to the delay in awarding the construction contract for the project. Given that the Administration has exhausted its allowable extensions under the PSA, the proposed amendment is being brought forth to extend the contract term by an additional 882 calendar days and increase the contact value by \$250,000 (28%) as detailed below.

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Table 1

| Phase No. | Services | Original PSA | Amendment 1 | Total |
|-----------|--|------------------|------------------|--------------------|
| 1A | Program Verification and Master Planning | \$38,861 | - | \$38,861 |
| 1B | Schematic Design Documents | \$116,582 | - | \$116,582 |
| 2 | Design Development | \$116,582 | - | \$116,582 |
| 3A | 50% Complete Contract Documents | \$116,582 | - | \$116,582 |
| 3B | 90% Complete Contract Documents | \$155,433 | - | \$155,433 |
| 3C | 100% Complete Contract Documents | \$38,861 | - | \$38,861 |
| 3D | Bid Contract Documents | \$23,316 | - | \$23,316 |
| 4 | Bidding and Award of Contract | \$15,544 | - | \$15,544 |
| 5 | Construction Administration Services | \$155,454 | - | \$155,454 |
| | Sub-total | \$777,215 | - | \$777,215 |
| 6 | Additional Services | \$77,722 | \$220,000 | \$297,722 |
| 7 | Reimbursable Services | \$25,063 | \$30,000 | \$55,063 |
| | Sub-total | \$102,785 | \$250,000 | \$352,785 |
| | Total | \$880,000 | \$250,000 | \$1,130,000 |

Construction of the facility, originally slated for completion by December 2018, remains underway due to a delay in awarding the construction contract resulting from all bids initially received being over the County's budget for the project. The County has since increased Building Better Communities General Obligations Bond Program (BBC-GOB) funds allocated to the project through a significant modification adopted on February 19, 2020. Resolution No. R-185-20 reallocated \$2.8 million from BBC-GOB Project No. 292 – Miami-Dade County Auditorium to the Westchester Cultural Arts Center project (BBC-GOB Project No. 286), bringing the budget for design and construction of the facility to \$10.8 million, thus allowing the County to proceed with awarding the construction contract to TGSV Enterprises at a contract value of \$7,310,707 for a term of 365 calendar days, with an additional 37 calendar days as contingency. The Notice to Proceed date for construction was March 31, 2020, and groundbreaking took place on June 26, 2020. The department stated that while substantial completion of construction of the facility is scheduled for mid-year 2021, there is a subsequent punch list period, commissioning period, and warranty period. Thus, the present request is to extend the PSA by 882 calendar days to December 8, 2022 so that Zyscovich, Inc. may remain engaged throughout the entire process.

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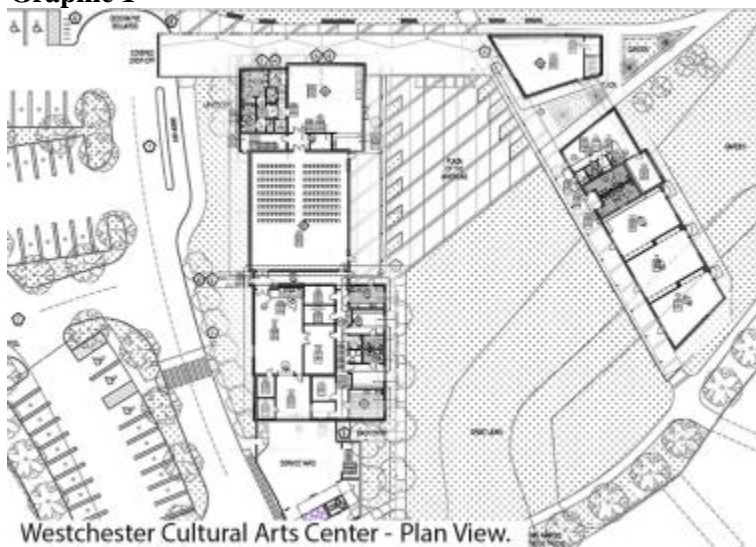
The PSA amendment adds to the scope of services additional professional services necessitated by the project, including but not limited to: special inspections as required by the Authority Having Jurisdiction over the project; scheduling consultant; additional design services to address the site conditions immediately to the east of the building structure to convert the area to an east park; additional construction administration services; and for selection of the furniture, fixtures and equipment, inclusive of theater specialized equipment for this project.

Once completed, the Westchester Cultural Arts Center will provide cultural programming and instruction focusing on Hispanic arts and culture in the following main spaces:

- Studio theater (200 seats) designed as a flexible space to accommodate a wide range of performing arts and community activities, along with a complement of front-of-house and back-of-house support spaces;
- Dance/rehearsal studio space serving as a dance classroom and support space for the main studio theater;
- Lobby space that will also serve as an art gallery for rotating exhibitions;
- Classroom spaces to teach performing, visual, and culinary arts with a conference center/computer lab for larger gatherings and group instruction; and
- Office and storage spaces to accommodate staff, teachers, and storage of materials and equipment.

The images below depict the plan and rendering for the Westchester Cultural Arts Center.

Graphic 1



Graphic 2



Resolution No. R-1001-15 requires County contracts with small business measures to meet at least 85 percent of the small business goals applicable to the portion(s) of the contract work performed to date before a change order or contract amendment is considered for Board approval. A 28% SBE-A/E contract measure is reflected in the original PSA with Zyscovich, Inc. The firm has four subconsultants as listed in the PSA: DDA Engineers, P.A. (Structural Engineering), Gartek Engineering Corporation (M/E/P Engineering), Milian, Swain & Associates, Inc. (Civil Engineering & Engineering Construction Management) and Chen & Associates Consulting Engineers (Landscape Architecture). Gartek Engineering Corporation and Milian, Swain & Associates are currently certified SBE-A&E firms and account for 22.85% of the 28% SBE-A/E goal at the time of award. Chen & Associates Consulting Engineers was also a certified SBE at the time of award and is being counted towards the SBE-A/E goal. In the executed PSA, the total value of the contracts with the three SBE subconsultants at the time amount to 25.45%, 2.55% below the requisite 28% SBE-A/E contract measure. However, the County's Business Management Workforce System reflects subconsultant contract amounts that differ from those listed in the executed PSA, showing that 31% of the contract value was allocated to subconsultant contracts, and that the 28% SBE-A/E goal has already been reached through payments to these SBE subconsultants.

Pursuant to Resolution No. R-421-16, OCA conducted a performance record verification for the awarded firm in the Capital Improvements Information System (CIIS) on October 14, 2020. Zyscovich, Inc. has four evaluations with an average evaluation rating of 3.8 out of a possible 4.0.

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OCA's further due diligence on Zyscovich, Inc. and its four subconsultants is detailed below. All four subconsultants have local addresses.

Table 2

| Awarded Firm | Corporate Registration | Tax Collector's Office | Florida DBPR | Litigation (Westlaw) |
|---------------------|--|---|--|---|
| Zyscovich, Inc. | Florida Profit Corporation Active Principal Address: 100 N. Biscayne Boulevard 27th Floor Miami, FL 33132 Filed: October 30, 1986 | Business Address: 100 Biscayne Blvd. 26th Floor Miami, FL 33132 Status: Paid and Current | License Types: Architect; Architect Business Information | <i>Hillel Community Day School, Inc. vs. Zyscovich, Inc. et al</i> (Case No. 2019-005386-CA-01). Filed on February 19, 2019 in the 11 th Judicial Circuit, Miami-Dade County. Allegations (Breach of Contract and Professional Negligence): Defendant defectively designed the project, resulting in water intrusion into the building. Case Status: Open. |

Table 3

| Awarded Firm's Subconsultants | Contract Value at Time of Award (% of Overall Contract Value) | Corporate Registration | Tax Collector's Office | Florida DBPR | Litigation (Westlaw) |
|--------------------------------------|--|--|--|-------------------------|---|
| DDA Engineers, P.A. | \$58,350 (6.6%) | Florida Profit Corporation Active Principal Address: 4930 SW 74th Ct. Miami, FL 33155 Filed: August 9, 1989 | Business Address: 4930 SW 74th Ct. Miami, FL 33155 Status: Paid and Current | License Types: Registry | <i>Toscano Condominium Association, Inc. v. DDA Engineers, P.A. et al</i> (Case No. 2018-002851-CA-01). Filed on January 30, 2018 in the 11 th Judicial Circuit, Miami-Dade County. Allegation: Defendant committed professional malpractice by failing to exercise a reasonable degree of skill and care to verify that the construction complied with governmental |

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| | | | | | |
|--|-------------------|--|--|-------------------------|---|
| | | | | | approved plan, causing damages to plaintiff. Case Status: Open; Calendar Call scheduled for December 2, 2020. |
| Gartek Engineering Corporation (SBE) | \$124,000 (14.1%) | Florida Profit Corporation Active Principal Address: 7210 SW 39th Terrace Miami, FL 33155 Filed: October 16, 1980 | Business Address: 7210 SW 39th Terrace Miami, FL 33155 Status: Paid and Current | License Types: Registry | No relevant cases. |
| Milian Swain & Associates, Inc. (SBE) | \$77,000 (8.75%) | Florida Profit Corporation Active Principal Address: 2025 SW 32nd Ave. Miami, FL 33145 Filed: January 11, 1989 | Business Address: 2025 SW 32nd Ave., Suite 110 Miami, FL 33145 Status: Paid and Current | | No relevant cases. |
| Chen & Associates Consulting Engineers | \$23,000 (2.6%) | Florida Profit Corporation Active Principal Address: 500 West Cypress Creek Road, | Business Addresses: 1444 Biscayne Blvd. 204 Miami, FL 33132 | | No relevant cases. |

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| | | | | | |
|--|--|---|-----------------------------|--|--|
| | | Suite 630 Fort Lauderdale, FL 33309 Filed: November 7, 1986 | Status: Paid and Current | | |
|--|--|---|-----------------------------|--|--|

DEPARTMENTAL INPUT

OCA posed the following question to the department. The response is denoted below in italics.

- Based on review of the parallel construction contract item, it appears that construction will be completed some time in 2021 based on the award in February 2020 and the Notice to Proceed date of March 2020, and the term of the contract being 365 days with 37 days as contingency. Can you please confirm when construction of the Westchester Cultural Arts Center will be complete? *Yes construction for the building substantial completion is scheduled for mid - 2021, we then have a punch list period, commissioning period, and warranty period in which the Architect stays on board with the project.*

ADDITIONAL INFORMATION

BBC-GOB Program funding for the Westchester Cultural Arts Center was approved by voters in 2004 resulting in \$4 million in BBC-GOB funds being allocated for a site at Tamiami Park. A referendum regarding the facility's change in location went before voters for approval during an August 26, 2008 special election, approval of which permitted the County to proceed with construction of the arts center at Tropical Park despite Article VII's restriction of the establishment of non-park uses on park sites. Subsequent Board action increased the project's allocation over the years to \$10.8 million (see Resolution No. 589-10 and Resolution No. R-185-20).

Westchester Cultural Arts Center – Miami-Dade County Department of Cultural Affairs

<https://miamidadearts.org/westchester-cultural-arts-center>

APPLICABLE LEGISLATION/POLICY

Section 287.055 of the Florida Statutes sets forth the Consultants' Competitive Negotiation Act, governing the processes for the acquisition of professional architectural, engineering, landscape architectural or surveying and mapping services.

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0200-0299/0287/0287.html

Section 2-10.4 of the County Code governs the County's acquisition of professional architectural, engineering, landscape or land surveying mapping services.

https://library.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-10.4ACPRARENLAARLASUMASE

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Section 2-10.4.01 of the County Code sets forth the County's Small Business Enterprise Architecture and Engineering Program.

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-10.4.01SMBUENARENPR

Section 2-8.1 of the County Code requires that the award recommendation memorandum presented to the Board identify each dedicated allowance, contingency allowance and additional services allowance including the specific purpose for each and the dollar amount that shall be available for each and the corresponding percentage of each dedicated allowance, contingency allowance and additional services allowance in relation to the actual contract price.

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

Section 2-8.3 of the County Code (County Mayor's Recommendation) states that whenever a competitive process is utilized for selection of a contractor, vendor, consultant, tenant or concessionaire, the County Mayor shall review the responses to the solicitation and recommend to the County Commission award or other appropriate action. Such recommendation shall be in writing and shall be filed with the Clerk of the Board, with copies mailed to all participants in the competitive process, no later than 10 days prior to any Commission meeting at which such recommendation is scheduled to be presented. Such recommendation shall be accompanied by a memorandum from the County Mayor that clearly identifies any and all delegations of Board authority contained in the body of the proposed contract.

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.3MARE

Implementing Order No. 3-32 sets forth procedures for the County's small business enterprise architecture and engineering program.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-32.pdf>

Implementing Order No. 8-8 sets forth the Sustainable Buildings Program, requiring the County to incorporate sustainable development building measures into the design, construction, renovation and maintenance of County-owned, County-financed and County-operated buildings.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO8-8.pdf>

Administrative Order No. 3-26 requires certain agreements for professional architectural and engineering services to include value analysis.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/AO3-26.pdf>

Administrative Order No. 3-42 sets forth procedures for the evaluation and suspension of contractors and consultants.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/AO3-42.pdf>

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Administrative Order No. 3-39 establishes the County's policies and procedures for user departments for the construction of capital improvements, acquisition of professional services, construction contracting, change orders and reporting.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/AO3-39.pdf>

Resolution No. 185-20, adopted February 19, 2020, approved a significant modification of Building Better Communities General Obligation Bond Program Project No. 292 – Miami-Dade County Auditorium to reduce its allocation by \$2.8 million and increase the allocation for Bond Program Project No. 286 – Construction of the Westchester Community Arts Center by the \$2.8 million of surplus funds from Project No. 292.

<http://intra/gia/matter.asp?matter=200271&file=true&yearFolder=Y2020>

Resolution No. 589-10, adopted June 3, 2010, approved a significant modification of Building Better Communities General Obligation Bond Program Projects No. 292 – Miami-Dade County Auditorium and Bond Program Project No. 286 – Construction of the Westchester Community Arts Center, reallocating \$4 million from Project No. 292 to Project No. 286.

<http://intra/gia/matter.asp?matter=101016&file=true&yearFolder=Y2010>

Resolution No. R-578-17, adopted June 6, 2017, approved the plan for the Westchester Cultural Arts Center, located in Tropical Park at 7900 SW 40 Street, in compliance with Section 33-303 of the County Code.

<http://www.miamidade.gov/govaction/matter.asp?matter=171257&file=true&fileAnalysis=false&yearFolder=Y2017>

[7](#)

Resolution No. R-1001-15, adopted November 3, 2015, requires County contracts with small business measures to meet at least 85 percent of the small business goals applicable to the portion(s) of the contract work performed to date before a change order or contract amendment is considered for Board approval.

<http://intra/gia/matter.asp?matter=151746&file=true&yearFolder=Y2015>

Resolution No. R-187-12, adopted February 21, 2012, directs the County Mayor to include due diligence information in memoranda recommending certain contract awards.

<http://intra/gia/matter.asp?matter=120287&file=true&yearFolder=Y2012>

Resolution No. R-578-17, adopted June 6, 2017, approved the plan for the Westchester Cultural Arts Center, located in Tropical Park at 7900 SW 40 Street, in compliance with Section 33-303 of the County Code.

<http://www.miamidade.gov/govaction/matter.asp?matter=171257&file=true&fileAnalysis=false&yearFolder=Y2017>

[7](#)

Ordinance 14-79, adopted September 23, 2014, sets forth the requirement that in all agenda items related to planning, design and construction of county infrastructure a statement be included that the impact of sea level rise has been considered.

<http://www.miamidade.gov/govaction/matter.asp?matter=141211&file=true&fileAnalysis=false&yearFolder=Y2014>

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**Item No. 8H1
File No. 201818**

Researcher: TA Reviewer: PGE

RESOLUTION APPROVING PURSUANT TO SECTION 125.045, FLORIDA STATUTES, DEVELOPMENT LEASE AGREEMENT (“AGREEMENT”) BETWEEN COUNTY AND MIAMI WILDS, LLC (“MIAMI WILDS”) FOR LEASE OF APPROXIMATELY 27.5 ACRES OF COUNTY LAND LOCATED ADJACENT TO ZOO MIAMI AT 12400 SW 152 STREET FOR AN INITIAL TERM OF 40 YEARS, WITH TWO 20-YEAR RENEWAL TERMS, FOR THE DEVELOPMENT AND OPERATION OF THE ZOO MIAMI ENTERTAINMENT AREA TO INCLUDE A WATER PARK, RETAIL AREA, AND HOTEL, AND TO ALLOW THE DEVELOPMENT AND OPERATION OF PARKING FOR JOINT USE BY ZOO MIAMI AND MIAMI WILDS, SUBJECT TO CONDITIONS PRECEDENT, IN EXCHANGE FOR ESTIMATED RENTS AND PARKING REVENUES TO THE COUNTY OVER THE INITIAL 40-YEAR TERM IN THE AMOUNT OF \$120,700,000.00; AUTHORIZING DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(B)(3) OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT TO SELECT MIAMI WILDS AS THE DEVELOPER AND OPERATOR OF PARKING DEVELOPMENT; WAIVING SECTION 2-10.4.2 OF THE COUNTY CODE REQUIRING TWO M.A.I. APPRAISALS AND RESOLUTION NO. R-407-19 REQUIRING FOUR WEEKS ADVANCE WRITTEN NOTICE PRIOR TO BOARD CONSIDERATION; APPROVING A COVENANT OF USE AND A RELEASE OF COVENANT OF PURPOSE, USE, AND OWNERSHIP WITH THE UNITED STATES DEPARTMENT ECONOMIC DEVELOPMENT ADMINISTRATION AND AMENDMENT NO. 1 TO THE RELEASE AND TRANSFER OF TERMS, CONDITIONS, COVENANTS AND RESTRICTIONS WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE; AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO EXECUTE AGREEMENT, COVENANT, RELEASE, AND AMENDMENT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN AND TO TAKE ALL ACTIONS TO EFFECTUATE SAME

ISSUE/REQUESTED ACTION

Whether the Board should approve a development lease agreement with Miami Wilds, LLC (Miami Wilds) for the lease of approximately 27.5 acres of County land adjacent to Zoo Miami, known as the Zoo Miami Entertainment Area, for an initial term of 40 years, with two, 20-year renewal terms, for the development and operation of a water park, retail area and hotel in exchange for estimated rents and parking revenues to the County over the initial term in the amount of \$120,700,000.

PROCEDURAL HISTORY

Prime Sponsor: Commissioner Dennis C. Moss, District 9

Department/Requester: Parks, Recreation and Open Spaces (PROS)

This is a substitute item to Legistar No. 201441. The substitute differs from the original as follows:

- The number of automobiles that Miami Wilds shall develop parking for is reduced from 3,761 to 2,099.
- The area to be developed and used for parking is modified and reflected in the mayoral memo, the lease agreement and its exhibits, and the included map (Attachment E in the agenda item)
- The identity and the roles of the company managers and investor groups were clarified in the mayoral memo.

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The substitute item was heard at the Parks, Recreation and Cultural Affairs (PRCA) Committee meeting of September 11, 2020 and forwarded to the Board with a favorable recommendation.

ANALYSIS

The purpose of this item is to approve a development lease agreement with Miami Wilds for the lease of approximately 27.5 acres of vacant, undeveloped County land adjacent to Zoo Miami located at 12400 SW 152nd Street, known as the Zoo Miami Entertainment Area (ZMEA), for an initial term of 40 years, with two, 20-year renewal terms, for the development and operation of a water park, retail area and hotel within the existing parking lot and outside of any natural areas. The lease also grants Miami Wilds exclusive rights within a one-year period to negotiate a lease for an additional 39 acres of land adjacent to Zoo Miami to develop a four-star resort hotel, which would be subject to future Board approval. The agreement further requires Miami Wilds to make improvements to the parking facilities and manage, operate, and maintain the parking for Zoo Miami and the ZMEA. The same 40-acre parking lot will be for both patrons, and the new parking fee is expected to be the same for both amenities.

A waiver of the County Code requirements for two Member Appraisal Institute (M.A.I.) real estate appraisals for leases valued over \$5 million is being recommended because two appraisals were obtained previously, and the Property Appraisers appraised value for 2019 has been used to confirm that the rental rates are consistent with its valuation. The requirement for four weeks advance notice to the public prior to consideration by the Board or a committee of the Board for a lease of land without competitive bidding is also being recommended to be waived. As the project has been under public consideration since 2006, the public notice was not considered necessary by the Administration.

Approval of this item applies to the development lease agreement only; any regulatory approvals of the site plan will still be required, including undergoing the County's environmental reviews by the County's Regulatory and Economic Resources Department and working with the U.S. Fish and Wildlife Service (USFWS) to conduct any other reviews that are deemed necessary. To address environmental concerns with the original project proposal, the scope was significantly reduced from 136 to 27.5 acres and will only be built on an existing parking lot (it will not be built on green space or Pine Rocklands, comprising about 600 acres that is preserved and protected around the Zoo). The substitute item further revised the site plan by removing sections in the northeast and southeast areas to address remaining environmental concerns, in consultation with USFWS. At the PRCA Committee on September 11, 2020, PROS Director Maria Nardi addressed concerns related to endangered species:

- Florida Bonneted Bat – They will set nighttime lighting and sound limits to limit disturbance to bats foraging. The parking lot will be maintained to support bat foraging. PROS will also help guide selection of native plants and landscaping in the project and choose species that attract what bats prey on to increase their feeding success.
- Miami Tiger Beetle – A 50-foot buffer will separate the parking area from any natural areas. In coordination with USFW, they will continue to survey for beetles.
- Florida Leaf Wing Butterfly – There will be no development anywhere near where their habitat has been identified.

In addition, the project will be LEED Silver plus certified and aim to surpass minimum environmental standards.

The selection of Miami Wilds as the developer and operator of Zoo Miami and ZMEA parking is in the form of a designated purchase, pursuant to Section 2-8.1(b)(3) of the County Code, as the mayoral item states that competition is not practicable due to the associated development lease agreement and it is in the best interest of the County to do so. The waivers above and the designated purchase will require a 2/3 vote of members present for this item to be adopted.

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In addition, this item approves and authorizes a covenant and release of a property interest by the U.S. Department of Commerce Economic Development Administration (EDA) in relation to a previously awarded EDA grant, and Amendment No. 1 to the release and transfer terms of 67 acres of deed restricted lands with the U.S. Department of Interior’s National Park Service to release the restrictions from the ZMEA and re-impose such restrictions on other land surrounding Zoo Miami.

The economic impact of this agreement is summarized as follows in Table 1 below:

Table 1

| Economic Impact | Value or Quantity | Term |
|---|---|--|
| Rent revenue – Water Park (16 to 20 acres) | \$37,300,000 | Initial 40-year term |
| Rent revenue – Retail Development Area (RDA) (3 to 4.5 acres) | \$8,400,000 | Initial 40-year term |
| Rent revenue – Phase 1 Family Hotel (4 to 5 acres) | \$13,800,000 | Initial 40-year term |
| Zoo Miami Parking revenue | \$61,200,000 | Initial 40-year term |
| Capital investment by Developer – Water Park | \$43,000,000 | Initial 40-year term |
| Capital investment by Developer – Retail Development Area | \$4,000,000 | Initial 40-year term |
| Capital investment by Developer – Family Hotel | \$52,000,000 | Initial 40-year term |
| Jobs – By substantial completion of the Water Park, RDA, and Phase 1 Family Hotel | 304 new, full-time or full-time equivalent jobs making an average of \$35,620 or the then-current County Living Wage. | Within eight years of the commencement date of the Lease and maintain jobs for five years |
| Jobs – By substantial completion of the Phase 2 Family Hotel | 99 new, full-time or full-time equivalent jobs making an average of \$35,620 or the then-current County Living Wage. | Within eleven years of the commencement date of the Lease and maintain jobs for five years |

Revenue to the County of \$120 million is projected over the initial 40-year term (or \$3 million annually); 50% will go towards capital improvements for the Zoo and 10% towards environmental restoration initiatives in the area (\$60 million and \$6 million, respectively). The project will also enhance and benefit Miami-Dade County as a whole, such as spur economic development and attract new businesses, expand tourism, and create new jobs in the area. The developer has further committed to creating a skilled jobs’ training program and to make good faith efforts to hire the

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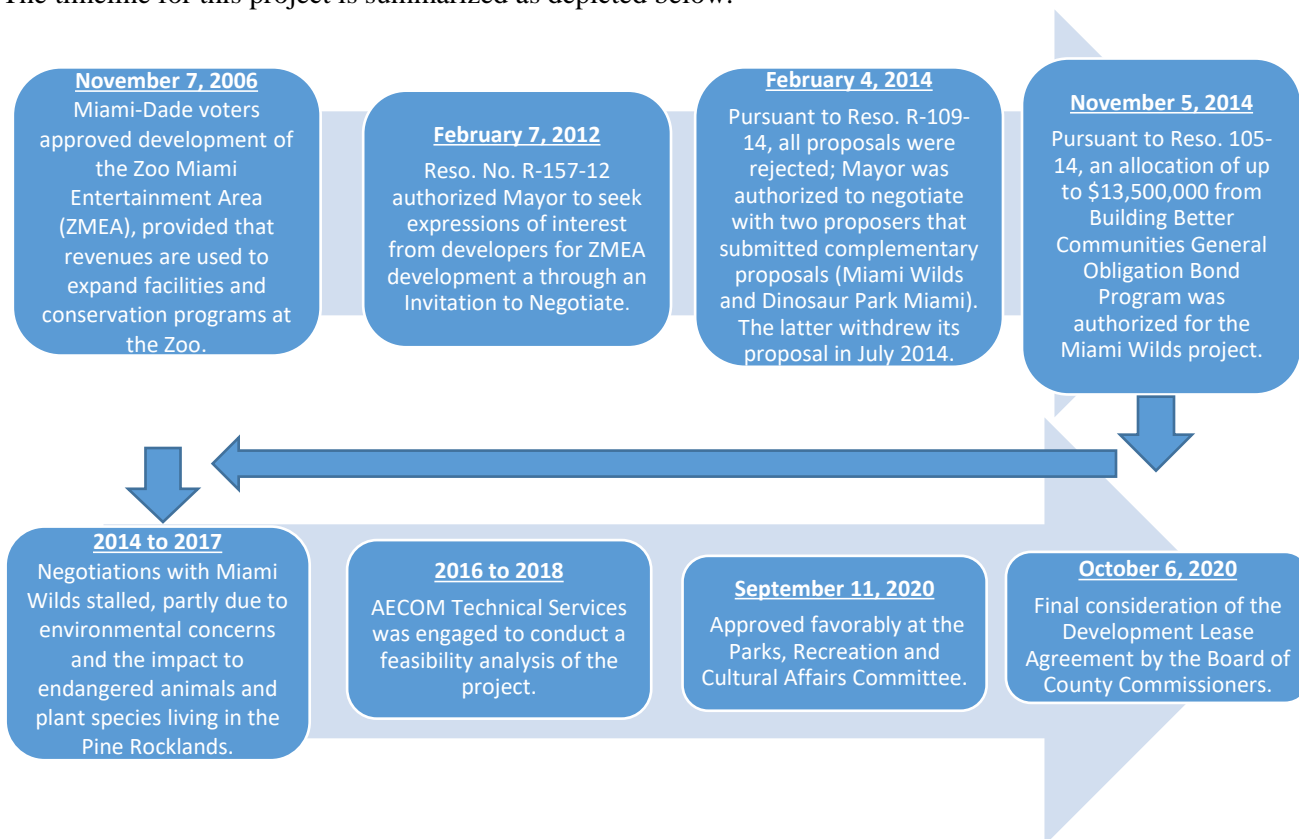
Researcher: TA Reviewer: PGE

program’s graduates and to recruit Miami-Dade County residents for ZMEA jobs. The County’s Employ Miami-Dade Program and Residents First Training and Employment Program apply to this project.

Pursuant to Resolution No. R-1015-14, this project has been allocated a Building Better Communities General Obligation Bond allocation of up to \$13,500,000 for public infrastructure costs for the ZMEA. It is anticipated that this would cover a portion of the cost to construct the parking areas, which will be the responsibility of the developer. The grant agreement will be brought to the Board for approval at a later date.

All professional services and construction work are subject to the County’s Small Business Enterprise (SBE) Program requirements. In addition, any applicable Living Wage provisions may apply to parking lot operations. Small Business Development (SBD) will assign any small business goals, wage and workforce requirements as project details are submitted by Miami Wilds. Per SBD, based on the current parking lot of the Zoo being located in the South Enterprise Zone Designated Target Area (DTA), the Community Workforce Program would also apply.

The timeline for this project is summarized as depicted below:



On September 8, 2020, OCA initiated a due diligence review of Miami Wilds LLC, its managers, the project’s investor/developer groups (*italicized*), and ProParks Attractions Group, LLC (manager of the water park and retail); the findings are shown below in Table 2.

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Table 2

| Firm | Corporate Registration | Tax Office | Collector's | Westlaw |
|---|---|---------------------|-------------|---|
| Miami Wilds, LLC (Managers: Paul M. Lambert, Bernard Zyscovich, and Michael Diaz, Jr.) | Florida Limited Liability Company (FEIN 46-3087150) Active Principal address: 100 Biscayne Blvd Suite 2510 Miami, FL 33132 Date Filed: July 1, 2013 | No account on file. | | <i>Meyer v. Zyscovich, Inc.</i> (Case No. 1:18-CV-21063). Filed March 20, 2018 in the 11 th Judicial Court, Miami-Dade County. <u>Allegation:</u> Defendant discriminatorily terminated plaintiff's employment on the account of her age. <u>Case status:</u> Closed - Voluntarily dismissed by the Plaintiff on July 9, 2018. |
| <i>BBC 100, LLC</i> | Foreign Limited Liability Company (No FEIN) Active Principal address: 100 SE 2 nd Street Suite 3400 Miami, FL 33131 Date Filed: April 2, 2018 | No account on file. | | No litigation found |
| <i>Wildz, LLC</i> | Florida Limited Liability Company (FEIN 47-2932750) Active Principal address: 100 N. Biscayne Blvd. 27th Floor Miami, FL 33132 Date Filed: December 16, 2014 | No account on file. | | No litigation found |

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| | | | |
|---|---|----------------------------|----------------------------|
| <p><i>Lifestyle Accelerator Fund, LLC</i></p> | <p>Florida Limited Liability Company (FEIN 47-3790239)</p> <p>Active</p> <p>Principal address: 100 Biscayne Blvd Suite 2510 Miami, FL 33132</p> <p>Date Filed: December 9, 2014</p> | <p>No account on file.</p> | <p>No litigation found</p> |
| <p><i>Family Playground Limited Liability Company</i></p> | <p>Florida Limited Liability Company (FEIN – None)</p> <p>Active</p> <p>Principal address: 11200 S.W. 136 Street Miami, FL 33176</p> <p>Date Filed: April 2, 2020</p> | <p>No account on file.</p> | <p>No litigation found</p> |
| <p>ProParks Attractions Group, LLC</p> | <p>Florida Limited Liability Company (FEIN – None)</p> <p>Active</p> <p>Principal address: 420 S. Orange Avenue, Suite 270 Orlando, FL 32801</p> <p>Date Filed: March 6, 2020</p> | <p>No account on file.</p> | <p>No litigation found</p> |

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DEPARTMENTAL INPUT

OCA asked PROS the below questions on September 24, 2020; the department's responses are *italicized*.

1. What solutions have been proposed to alleviate traffic concerns, which exist currently in the area?

PROS Response: *Miami Wilds is projected to generate less than 1/3 of the traffic approved through the 2010 CDMP. The project will be designed to not create congestion since the majority of the guests will arrive after morning rush hour and leave in the afternoon and evening. Peak visitor days will be on holidays and weekends when other traffic is at its lowest. The project will be required to invest in off-site traffic improvements as dictated by the County to mitigate any impact and enhance traffic flow along SW 152nd street.*

2. The parking spaces were reduced from 4,206 in the original item to 2,099 in the substitute. Will that impact the ability for patrons to park in the future, or was excess capacity accounted for in the original number of spaces?

PROS Response: *Excess capacity was contemplated in the original number of parking spaces; however, the department is currently working to expand the parking to provide for additional spaces to the north of the primary parking area for the development.*

3. For the required jobs that will pay \$35K on average, will the Living Wage apply to all jobs, or only those that the Living Wage currently applies to? What is the then-current Living Wage expected to be in the fifth year following substantial completion of the park for Phase 1 and for Phase 2?

PROS Response: *The Miami Wilds project is not subject to the living wage with the exception of the parking area employees where it does apply. However, the lease is structured in a way so that the average wage for the required jobs and the associated penalty are never below the living wage. Following the countywide historical trend for the increase in the living wage over the last five years, the then current living wage would be somewhere between \$27,534 to \$38,333, and dependent upon health insurance being paid or not.*

4. What is the \$1.53 million in annual Zoo parking revenue based on (# of visitors, parking rate, CPI adjustment, operating expenses, etc.)?

PROS Response: *The estimated annual parking revenue was based on approximately 1 million visitors with approximately 70% arriving by vehicle $700,000/3 \text{ per car} = 233,333 \times \$9 = \$2.1 \text{ million} \times 50\% \text{ net revenue after projected cost of operations} = \1.05 million . After adjusting for inflation, over the 40 year base term of the contract yielded an average of \$1.53 million annually.*

5. At the PRCA Committee meeting, Director Nardi stated that 10% of revenues would be dedicated towards environmental initiatives, which equated to about \$6 million. How was that calculated? (10% of \$120 million would be \$12 million, so is it 10% of only the Zoo parking revenues of \$61.2 million?)

PROS Response: *As noted in the item, the development lease agreement states that 50% of the revenues will be utilized for capital improvements at the Zoo. The \$6 million was calculated based on 10% of the remaining*

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50% of the projected \$120 million revenue (50% of \$120 million = \$60 million; 10% of \$60 million = \$6 million)

6. What is the projected admission fee for Miami Wilds? Will parking rates be the same for Zoo Miami and Miami Wilds patrons?

PROS Response: The Zoo and Miami Wilds will collaborate on establishing all joint special admission packages such as annual passes. The lease agreement provides Miami Wilds with the right to establish the admission fees, and while they have not yet been set, they will be comparable to similar attractions with discounts provided to children, seniors, groups, and annual pass guests, as is typical in the attractions industry. Parking rates will be the same for Miami Wilds and the Zoo.

7. What sustainable building and operating practices are planned or required, besides the reuse of water, lighting, and LEED Certification for buildings?

PROS Response: Interpretive educational features will provide local residents and visitors with a unique opportunity to learn about surrounding ecosystem while enjoying leisure activities. The 27.5 acre Miami Wilds project is being developed outside protected natural areas. Other eco-sensitive aspects of Miami Wilds include the following:

- Miami Wilds will be designed to LEED Silver plus standards*
- The waterpark will have advanced water recapture systems including rainwater filtering with net loss of water through evaporation*
- Project and parking areas to be designed with dark sky and wildlife friendly lighting consistent with Miami-Dade code and Association of Zoos and Aquariums (AZA) guidelines*
- Miami Wilds will use bird friendly window design and glass in building construction*
- Native plants and plant material will be used in landscaping*
- The interpretive pedestrian spine connecting the zoo, waterpark, railroad museum, and military museum will be built around elements which highlight the natural South Dade environment and Everglades*
- Theming of the facilities are being developed to celebrate the surrounding natural areas and Everglades*
- All construction staff will be required to go through training to avoid natural areas and disturbance of the surrounding natural environment*

8. What other County-owned properties are within a five mile radius of ZMEA that has the capacity to serve a minimum of 2000 people at the same time and could be used for a water theme park, water attraction, theme park, or amusement park? Does this restriction include the Zoo from providing any of these amenities?

PROS Response: After researching all county owned properties within a 5 mile radius, no properties were found to have met the criteria above with equivalent developable area, and that were free of any restrictions, to include natural or historical designations prohibiting this type of development. The same is applicable to the Zoo as it's equivalent developable areas are designated as natural protected areas.

9. In the past, there were plans for a water park near the Hard Rock Stadium. Is that project still being considered?

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PROS Response: *The Parks department has not been involved or engaged in any plans for a water park development near Hard Rock Stadium. If the inquiry is in reference to plans for a waterpark originating from the Dolphins ownership, it is our understanding that the plans are not moving forward and that the project is no longer being considered.*

10. The mayoral memo references a feasibility analysis done by AECOM Technical Services, Inc. in 2016 and updated in 2018. How much was this consultant paid and who paid for their services? In light of the current economic conditions, has the analysis been more recently updated?

PROS Response: *For the period between 2014 and 2019, AECOM was paid approximately \$200,000 for the services related to the Zoo Miami Entertainment Area, and such services were paid from the PROS budgeted funds for professional services. The negotiated terms and conditions of the lease agreement were finalized several months prior to the occurrence of the pandemic and the ensuing economic challenges, therefore the analysis has not been recently updated. It is noted that the agenda item contains a contingent financing commitment obtained and secured from the Miami Wilds lender post pandemic. Prior to issuing contingent letters of commitment, lenders analyze a variety of risk factors including changing economic conditions.*

ADDITIONAL INFORMATION:

On October 9, 2020, Bat Conservation International (BCI) released a 2019 report regarding the significance of land alongside Zoo Miami for survival of the Florida bonneted bat. Based on recordings of bat calls using acoustic detectors across ten sites in Miami-Dade County, it was found that the large open area used as parking at Zoo Miami showed the greatest activity of all ten sites. BCI concluded that the Zoo Miami grounds, including the parking area, should be considered as critical habitat for this species.

<https://www.batcon.org/press/new-report-shows-miami-wilds-development-on-environmentally-sensitive-lands/>

In November 2019, Pro Parks Management Company and Innovative Attraction Management announced their merger as ProParks Attractions Group, an owner and operator of entertainment assets with a focus on water parks and family entertainment centers. The company also offers development and management consulting services both domestically and internationally. It currently owns and operates Camelot Park, Funtastics Family Fun Park, Hawaiian Falls Waterparks, and MountAsia Family Fun Center. Their clients include Atlantis Paradise Island, Bahamas; Four Seasons; Legoland; Royal Caribbean International; Carnival; Cowabunga Bay Water Park; and the YMCA.

<http://amusementtoday.com/2019/11/pro-parks-management-company-and-innovative-attraction-management-join-teams-to-form-the-proparks-attractions-group/>

<https://www.proparksmanagement.com/portfolio-and-clients.php>

According to a white paper by Gabelli Funds, the COVID-19 pandemic has posed a lot of challenges to the theme park industry and, in the current operating environment of reduced capacity levels and social distancing, parks are not operating profitably; however, the long term outlook is optimistic.

<https://www.gabelli.com/funds/insights/d1b88971-ee39-4e9d-ab84-a6126e97fac4>

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APPLICABLE LEGISLATION/POLICY

Florida Statutes 125.045, governs County economic development powers

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0125/Sections/0125.045.html

Section 2-8.1 of the Miami-Dade County Code (Contracts and Purchases Generally) applies to all contracts for public improvements and purchases of all supplies, materials and services other than professional services and (1) requires formal sealed bids for purchases over \$250,000.00; (2) describes the circumstances under which non-competitive purchases may be approved; (3) establishes requirements for legacy purchases, designated purchases, and single vehicle leases; and (4) provides that procurement procedures shall be established by Implementing Order (I.O.) and approved by the Board.

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

Section 2-10.4.2 of the Miami-Dade County Code, Appraisers required for purchases, sale and leases

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-10.4.2APREPUSALE

Section 2-1701 of the Miami-Dade County Code, establishes the provisions of the Community Workforce Program for the County.

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTCXIICOWOPR_S2-1701COWOPR

Resolution No. R-820-06, adopted on July 6, 2006, called for a special election in conjunction with the countywide election in Miami-Dade County on Tuesday, November 7, 2006, of whether the County shall be able to contract to develop an entertainment district, to include a water park, a family entertainment center, related retail concessions, and a hotel on Metro Zoo property outside of the animal attractions in order to support expanding facilities and education and conservation programs at Metro Zoo.

<http://www.miamidade.gov/govaction/legistarfiles/Matters/Y2006/061795.pdf>

Resolution No. R-157-12, adopted on February 7, 2012, authorizing Mayor or Mayor's designee to seek expressions of interest from developers for development of Zoo Miami Entertainment Area through an Invitation to Negotiate; authorizing the Mayor or Mayor's Designee to negotiate with those offering the greatest financial return and economic benefit to the County; and present such agreements to the Board for approval.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2011/112630min.pdf>

Resolution No. R-187-12, adopted on February 21, 2012, directs the Mayor to include due diligence information in memoranda recommending certain contract awards.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2012/120287min.pdf>

Resolution R-109-14, adopted on February 4, 2014, rejecting all bids received for the Invitation to Negotiate – Zoo Miami Entertainment Area project; waiving bid protest procedures; directing the Mayor or Mayor's designee to enter into negotiations with the two proposers that submitted complementary proposals.

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<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2014/141000min.pdf>

Resolution No. R-105-14, adopted on November 5, 2014, approving allocation of up to \$13,500,000 from Building Better Communities General Obligation Bond Program Project No. 124 Economic Development Fund to Miami Wilds, LLC to fund Miami Wilds project.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2014/142316min.pdf>

Resolution R-407-19, adopted on April 9, 2019, directed the Mayor or Mayor's designee to provide written notification to the public prior to the non-competitive sale or lease of County-owned property for certain purposes

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2019/190474min.pdf>

Resolution No. R-828-19, adopted on July 23, 2019, established a policy of Miami-Dade County for disclosure of past and present discrimination lawsuits in solicitation submissions.

<http://www.miamidade.gov/govaction/matter.asp?matter=190936&file=true&fileAnalysis=false&yearFolder=Y2019>

Implementing Order 3-22, establishes procedures related to the Small Business Enterprise Construction Program.

<https://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-22.pdf>

Implementing Order 3-32, establishes procedures related to the Small Business Enterprise Architecture and Engineering Program.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-32.pdf>

Implementing Order 3-61, establishes procedures related to the Residents First Training and Employment Program.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-61.pdf>

Implementing Order 3-63, establishes procedures related to the Employ Miami-Dade Program.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-63.pdf>

Implementing Order 3-24 establishes procedures for Responsible Wages and Benefits for County Construction Projects

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-24.pdf>

WAIVED ITEMS

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**Item No. 14A2
File No. 201677**

Researcher: MF Reviewer: PGE

RESOLUTION APPROVING THE BROWNFIELDS DELEGATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE STATE OF FLORIDA; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE BROWNFIELDS DELEGATION AGREEMENT AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN; APPROVING THE MODEL BROWNFIELD SITE REHABILITATION AGREEMENT, THE MODEL BROWNFIELD SITE REHABILITATION AGREEMENT AMENDMENT, AND THE MODEL BROWNFIELD SITE REHABILITATION AGREEMENT ASSIGNMENT AND ASSUMPTION; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE MODEL BROWNFIELDS AGREEMENTS AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN

ISSUE/REQUESTED ACTION

Whether the Board should authorize the approval of the Brownfields Delegation Agreement between the County and the State of Florida for the Model Brownfields Site Rehabilitation Agreement (BSRA) and Amendment as well as the BSRA Assignment and Assumption.

PROCEDURAL HISTORY

Sponsor: Infrastructure and Capital Improvements Committee

Department/Requester: Department of Regulatory and Economic Resources (RER)

This item was heard at the Infrastructure and Capital Improvements Committee meeting of October 14, 2020 and forwarded to the BCC with a favorable recommendation; the item was also waived to the October 20, 2020 Board meeting.

ANALYSIS

The purpose of this item is for the Board to approve the Brownfields Delegation Agreement between the County and the State of Florida for the Model Brownfields Site Rehabilitation (BSRA) Agreement, thereby replacing the existing agreement approved by the Board in September 2010 and pursuant to Resolution No. 942-10. Approval of this item will effectuate a 10-year agreement for the period encompassing October 22, 2020 through October 22, 2030. Additionally, the agreement would allow the County to execute the BSRA and corresponding documentation for those qualified redevelopers that intend to decontaminate sites within designated Brownfield areas. More specifically, this item approves a Model BSRA Agreement and Amendment as well as a Model BSRA Assignment and Assumption in order to revise and assign the BSRA per guidelines established by the Florida Department of Environmental Protection (FDEP). In the County, Brownfield areas are located in unincorporated areas within the Urban Development Boundary of the Enterprise Zones, Enterprise Communities and Empowerment Zones.¹

The purpose of the Brownfields program is to incentivize property owners to redevelop sites where hazardous substances such as pollutants or contaminants may exist.² Aside from protecting human health and the environment, local jurisdictions promote the voluntary cleanup and the development and redevelopment of Brownfield areas as a way to increase economic and employment opportunities, thereby leading to an increase in that area's tax base and a reduction in

¹Department of Regulatory and Economic Resources, Brownfields Program, <https://www.miamidade.gov/business/brownfields.asp>

²U.S. Environmental Protection Agency, Overview of EPA's Brownfields Programs, <https://www.epa.gov/brownfields/overview-epas-brownfields-program>

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suburban sprawl. In return for developing on a Brownfield site, tax incentives, loan guarantees, sales tax credit on building materials and site assessment assistance are provided.

Consistent with Florida Statutes Section 376.80(9), FDEP supports for the agency to broker delegation agreements with local pollution control programs in order to manage Brownfield Programs as a means to incorporate this with ongoing revitalization efforts to enable redevelopment of Brownfield sites or areas. In Miami-Dade, the Department of Regulatory and Economic Resources (RER) Division of Environmental Resource Management (DERM) serves as the approved local pollution control program and can accept the designation. As such, approval of this item ratifies the continuing RER-DERM pollution control program designation.

In July 1999, the Board adopted Ordinance No. 99-85 and Resolution No. R-767-99, designating Brownfield areas as a way to spur economic and regulatory incentives to redevelop and revitalize contaminated sites throughout the unincorporated areas of the County. The Florida Legislature enacted the Brownfield Development Act in 1997 as a way to reduce public health and environmental dangers on existing commercial and industrial properties that are abandoned as a result of such hazards for such things as ground-water contamination.³

In December 1999, pursuant to Resolution No. R-1355-99, the Board authorized the County to execute BSRAs with eligible property owners or individuals interested in revitalizing contaminated properties in designated Brownfield areas. Said agreement spanned 10 years from October 2010 through October 2020 (under Resolution No. 942-10). The existing agreement under this item expires October 22, 2020.

Although the mayoral memo cites this item as having no fiscal impact, administration of the Brownfields Program requires staffing by RER-DERM. Additional information pertaining to this is found under the “Departmental Input” section of this research note.

Under this item, the scope of the Delegation for program activities delegated to the County provide for the following:

- The responsibility to confirm that sites entering the Florida Brownfields Redevelopment Program meet all program eligibility requirements provided in Florida Statutes Section 376.82, prior to execution of a BSRA
- The authority to administer Florida Administrative Code Sections 376.80-376.83 and Florida Administrative Code Chapters 62-780 and 62-777 on behalf of the Department relating to the Brownfields Redevelopment Act within MDC
- The authority to negotiate, execute, and ensure compliance of Brownfield Site Rehabilitation Agreements for Brownfield sites within a designated area, consistent with the substantive requirements of the most current Model BSRA as maintained by the Department
- The authority to review and approve, approve with modifications and/or comments, or disapprove all technical documents submitted pursuant to the Brownfields Redevelopment Act and Florida Administrative Code Chapters 62-780 and 62-777 within Miami-Dade County including authority to issue Final Orders under the provisions of Florida Administrative Code Chapter 62-780.

³Florida Department of Environmental Protection, Brownfields Program, <https://floridadep.gov/waste/waste-cleanup/content/brownfields-program>

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- The authority to administer Florida Statutes Section 376.81 for sites covered under the executed Memorandum of Agreement between the Florida Department of Environmental Protection and the United States Environmental Protection Agency Region 4; The parties acknowledge that separate delegations made by the Department and MDC shall continue in full and are unaffected by this Agreement.

Per RER-DERM’s Brownfields Annual Report 2020, there are presently 76 Brownfield areas in the County, of which 42 were designated in 1999 during the time enterprise zones, empowerment zones and other economically distressed areas were designated as Brownfields.⁴ The Report also identifies 48 active BSRA sites in the County; of those, three were previously executed via FDEP (in lieu of RER-DERM).

OCA also consulted FDEP’s Geographic Information System (GIS) GeoViewer website (which tracks all Brownfield areas and sites across the state’s 67 counties and their corresponding jurisdictions) to access information pertaining unincorporated Miami-Dade County.⁵ Table 1 provides a snapshot of Brownfield-designated areas and approximate acreages, as per the information listed in GeoViewer. Note: the figures listed below are rough estimates limited to the available data presented in the GeoViewer database.

Table 1

| Miami-Dade County Brownfields | |
|--------------------------------------|----------------------------|
| Area | Approximate Acreage |
| Florida City Unincorporated | 419 |
| Redlands/Leisure City Area | 2,140 |
| Homestead Wal-Mart | 5.84 |
| South Dade Area | 5,113 |
| Mirabella Brownfield Area | 10 |
| Perrine Area | 2,702 |
| Lingren | 90 |
| Richmond Heights Area | 641 |
| Kendall West | 271 |
| 7090 Coral Way | 19 |
| Westchester | 489 |
| Coral Terrace | 317 |
| 8400 Coral Way | 10 |
| Glenvar Heights | 57 |
| South Miami Area | 20 |
| Sweetwater C Area | 782 |
| Fountainbleau | 41 |
| Sweetwater D | 995 |
| Central Miami Area | 4,111 |
| Miami Industrial | 51 |

⁴RER-DERM, Miami-Dade County Brownfields Report 2020, https://floridadep.gov/sites/default/files/MDC-2020_Annual_Brownfield_Report.pdf

⁵Florida Department of Environmental Protection, Brownfields GIS GEO Viewer, <https://ca.dep.state.fl.us/mapdirect/?focus=brnfllds>

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| Miami-Dade County Brownfields | |
|--|----------------------------|
| Area | Approximate Acreage |
| Miami-Dade Regional Soccer Park BF Redevelopment Area | 47 |
| Model City/Brownsville Area | 9,800 |
| Golden Glades A | 165 |
| Dade-Opa-Locka Area | 2,688 |
| Carol City Area | 3,996 |
| Golden Glades C | 62 |
| Opa-Locka Area | 1,423 |
| Westview | 0.77 |
| Golden Glades B | 30 |
| Eastern Shore A | 5 |
| Eastern Shore B | 143 |
| Ojus | 522 |
| Golden Glades G | 216 |
| Golden Glades D | 41 |
| Golden Glades F | 4.8 |
| Eastern Shore C | 95 |
| Golden Glades E | 197 |
| Biscayne Park | 232 |

ADDITIONAL INFORMATION

The U.S. Environmental Protection Agency (EPA) projects there are more than 450,000 Brownfield sites across the United States.⁶ A literature review of the impact of Brownfields by the University of Chicago shows there is value in undertaking remediation efforts of Brownfields, as these efforts may lead to increase in property values by an average of 5% to 11.5%.⁷ OCA surveyed metro areas throughout the state that administer Brownfield programs. Table 2 below depicts some jurisdictions and their respective Brownfield programs.

Table 2

| Jurisdiction | Brownfields Program Status |
|-----------------------------|---|
| Broward County | As of May 1, 2020, there are 41 Brownfields-designated areas, totaling approximately 6,896 acres (10.9 square miles) ⁸ |
| Hillsborough County (Tampa) | As of 2020, there are 67 Brownfields-designated sites, totaling approximately 906 acres ⁹ |

⁶U.S. Environmental Protection Agency, Overview of EPA's Brownfields Programs, <https://www.epa.gov/brownfields/overview-epas-brownfields-program>

⁷Kevin Haninger, Lala Ma, and Christopher Timmins, *The Value of Brownfield Remediation*, UNIVERSITY OF CHICAGO, <https://www.journals.uchicago.edu/doi/pdfplus/10.1086/689743>

⁸Broward County, Brownfields, <https://www.broward.org/Environment/Brownfields/Pages/Default.aspx>

⁹Email correspondence from Hillsborough County received October 8, 2020.

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| Jurisdiction | Brownfields Program Status |
|----------------------|---|
| City of Orlando | As of 2020, there are 12 Brownfield sites ¹⁰ |
| City of Jacksonville | As of 2020, there are 143 Brownfield sites with an approximate acreage of 2,093 ¹¹ |
| Duval County | As of 2020, there are 41 Brownfields-designated sites ¹² |

Illustrations 1 shows an example of a Brownfield sit pre and post remediation and rehabilitation of the land and soil in the respective area.

Illustration 1



Source: City of Tallahassee¹³

¹⁰City of Orlando, Brownfields Program, <https://www.orlando.gov/Our-Government/Records-and-Documents/Plans-Studies/Brownfields-Program>

¹¹Email correspondence from City of Jacksonville received October 12, 2020.

¹²Duval County, Brownfields Program, <https://floridadep.gov/waste/waste-cleanup/content/duval-county-brownfield-areas-and-sites>

¹³City of Tallahassee, Brownfields Program, <https://www.talgov.com/sustainability/brownfields.aspx>

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DEPARTMENTAL INPUT

OCA sent the following inquiry to RER on October 13, 2020; the Department replied on October 15, 2020 and the responses are provided below in Italics.

1. What is the interplay between this program and Opportunity Zones?

RER Response: *A qualified opportunity zone (QOZ) is an economically distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. While there is no direct interplay between the Florida Brownfields Program and Opportunity Zones, the IRS QOZ regulation includes several provisions to support Qualified Opportunity Fund (QOF) investment in brownfields assessment, cleanup and redevelopment, such as:*

- *QOF investment in a brownfield or in a property that was involuntarily transferred to local government can satisfy the IRS requirement for commencing an “original use.” (see 85 FR 1910-11). According to the regulations, all real property composing a brownfield site, including land and structures located thereon, will be treated as satisfying the IRS’s requirement for commencing an “original use” on the site. This means the brownfield does not have to meet the strict time constraints of the IRS’s “substantial improvement” test. To qualify as “original use,” the QOF or OZ business investment in the brownfield site must ensure that the site meets basic safety standards for human health and the environment.*
- *Expenses for site assessment and remediation qualify as eligible costs that demonstrate “substantial improvement” at an OZ property if the costs add to the basis of a property improved during the 30-month improvement period. (see 85 FR 1913-14).*
- *Permitting delays caused by the government that would otherwise cause the QOF to fail the IRS requirement to deploy QOF capital within 31 months will be tolled for a duration equal to the permitting delay. This includes delays associated with brownfields regulatory approvals if awaiting these approvals precludes any further action to complete the project. (see 85 FR 1925-26).*

2. Is the Brownfields program considered successful? If so, how is success measured?

RER: Response: *As stated in the Florida Department of Environmental Protection’s (FDEP) 2020 Florida Brownfields Report:*

- *Since 1997 (inception of the Brownfields Program), 15,418 confirmed net new direct jobs can be attributed to the program.*
- *Thirteen brownfield sites completed cleanup in 2019 and 10 brownfield sites have completed cleanup in the first six months of 2020.*
- *On average, since 1997, approximately seven brownfield sites complete cleanup each calendar year. As of June 30, 2020, 156 brownfield sites have completed cleanup since the inception of the program.*
- *There are 509 designated Brownfield Areas statewide and as of June 30, 2020, there are 387 executed Brownfield Site Rehabilitation Agreements (BSRAs).*
- *DEP received 149 Voluntary Cleanup Tax Credit (VCTC) applications for 2019 calendar year expenses, and the approved tax credits totaled \$12.5 million. Of this total, \$12.2 million - approximately 97% - was allocated for tax credits for 138 brownfield sites.*

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- *In calendar year 2019, 1,389 projected new direct jobs, 4,332 projected new indirect jobs and more than \$527.2 million in projected new capital investment were attributable to the program.*

Therefore, yes, the Brownfields program is considered successful. Success is measured in net new jobs created, new capital investment, cleanups completed and financial incentives for cleanup realized through tax credits disbursed to developers to offset the cost of site rehabilitation. Additionally, the health benefits to the residents of the area derived from contaminated site cleanup are multiple and not readily quantified.

3. How many sites are developed per year?

RER Response: Approximately seven brownfield sites complete cleanup each calendar year statewide. Thus far in 2020, two brownfield sites have completed cleanup in Miami-Dade County.

4. Which developers are participants?

RER Response: Persons Responsible for Brownfield Site Rehabilitation (developers and/or property owners) include, but are not limited to the following: Fair Oaks, LLC, Miami Development 2122 Trustee, Inc., Grouper Park, LLC, Paradise Gardens Green Reuse, LLC, Dreamers, LLC (Pinnacle Housing), Miami River Marina, LLC, Biscayne Development Partners, LLC, Liberty City Holdings, LLC, Procacci 1400, LLC, NMB Development, LLC, Opa-Locka CDC, the City of North Miami, CP Logistics Westview, LLC, Centerra Associates, Ltd., Liberty NW 79th Street, Civic Towers, LLLP, Coral Bay Cove, LLC, Rumasa Corporation, City of Miami Beach, Care Outlook, LLC, Florida International Medical Center, LLC, Miami River Project, LLC, etc.

5. Kindly provide the staffing requirements to administer the Brownfields Program (provide the number of staff and their annual salaries for those positions that manage or are assigned to the County's Brownfields program).

RER Response: Currently there is one staff (a Senior Manager) assigned as Brownfields Coordinator managing the Miami-Dade County Brownfields Program and approximately 10% of her total time is spent on Brownfields Program Administration. Her annual salary is \$95,680. Additional Environmental Monitoring and Restoration Division staff (rotated as needed, none assigned to the County's Brownfields program) also review technical reports for brownfield sites; however, given that brownfield sites makes up approximately 2.4% of the total number of contaminated sites in the County, total review time by additional staff is considered de minimis.

6. Does said staffing for Brownfields constitute a fiscal impact to the County?

RER Response: The financial commitment for Brownfields Program administration is approximately 0.1 full-time equivalent staff, funded by technical review fees for non-petroleum site cleanups within the Department of Regulatory and Economic Resources, Division of Environmental Resources Management (RER-DERM) annual budget. Brownfields rehabilitation promotes economic development and investment in contaminated sites and the economic benefits to the County warrant the continued funding of this low-cost program.

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7. What is the total amount of annual fees collected from Brownfields?

RER Response: *In 2019, \$30,110.67 was collected in Environmental Monitoring and Restoration Division report and plan review fees for Brownfield Sites.*

8. What percentage of the fees offset the salaries of staff who oversee the Brownfields Program? Kindly explain.

RER Response: *100% of the fees offset the salaries of staff who oversee the Brownfields Program.*

APPLICABLE LEGISLATION/POLICY

2018 Build Act, Division N of Consolidated Appropriations Act, 2018 provides guidelines for the Brownfields Utilization, Investment, and Local Development Act of 2018, known as the Build Act.

<https://www.epa.gov/sites/production/files/2018-04/documents/omnibus3.22.18.brownfields.pdf>

Florida Administrative Code Chapter 62-780 provides provisions for contaminated site cleanup criteria.

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=62-780>

Florida Statute Section 376.80(9) regulates the Brownfield Program Administration Process. This section provides for the following: If the person responsible for brownfield site rehabilitation fails to comply with the brownfield site rehabilitation agreement, the department shall allow 90 days for the person responsible for brownfield site rehabilitation to return to compliance with the provision at issue or to negotiate a modification to the brownfield site rehabilitation agreement with the department for good cause shown. If an imminent hazard exists, the 90-day grace period shall not apply. If the project is not returned to compliance with the brownfield site rehabilitation agreement and a modification cannot be negotiated, the immunity provisions of s. 376.82 are revoked.

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0376/Sections/0376.80.html

Florida Statute Section 403.182 regulates local pollution control programs. (1) Each county and municipality or any combination thereof may establish and administer a local pollution control program if it complies with this act. Local pollution control programs in existence on the effective date of this act shall not be ousted of jurisdiction if such local program complies with this act. All local pollution control programs, whether established before or after the effective date of this act, must: (a) Be approved by the department as adequate to meet the requirements of this act and any applicable rules and regulations pursuant thereto. (b) Provide by ordinance, regulation, or local law for requirements compatible with, or stricter or more extensive than those imposed by this act and regulations issued thereunder. (c) Provide for the enforcement of such requirements by appropriate administrative and judicial process. (d) Provide for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program. (2) The department shall have the exclusive authority and power to require and issue permits; provided, however, that the department may delegate its power and authority to local pollution control organizations if the department finds it necessary or desirable to do so. (3) If the department finds that the location, character or extent of particular concentrations of population, contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air and water quality without an areawide pollution control program, the department may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

<https://www.flsenate.gov/Laws/Statutes/2019/0403.182>

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Ordinance No. 99-85, adopted July 13, 1999, designated Brownfield areas in unincorporated Miami-Dade County for the purpose of environmental rehabilitation and economic development; providing and adopting a map designating the Brownfield areas.

<http://intra/gia/matter.asp?matter=991512&file=false&yearFolder=Y1999>

Resolution No. 942-10, adopted September 21, 2010, approved the Brownfields Delegation Agreement between the County and the State of Florida; authorizing the mayor or designee to execute the Brownfields Delegation Agreement for and on behalf of the County and to exercise the modification and termination provisions contained therein; approving the revised Model Brownfield Site Rehabilitation agreement and attached instructions; and authorizing the mayor or designee to execute Brownfield Site Rehabilitation agreements for and on behalf of the County.

<http://intra/gia/matter.asp?matter=101586&file=true&yearFolder=Y2010>

Resolution No. R-767-99, adopted July 13, 1999, designated Brownfield areas in unincorporated Miami-Dade County for the purpose of environmental rehabilitation and economic development; providing and adopting a map designating the Brownfield areas.

<http://intra/gia/matter.asp?matter=991544&file=false&yearFolder=Y1999>

Resolution No. R-1355-99, adopted December 16, 1999, approved the Brownfields Delegation Agreement between the County and the State of Florida; authorizing the County Manager to execute the Brownfields Delegation Agreement for and on behalf of the County and to exercise the modification and termination provisions contained therein; approving the Model Brownfields Site Rehabilitation Agreement and attached instructions.

<http://intra/gia/matter.asp?matter=993158&file=false&yearFolder=Y1999>

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RESOLUTION APPROVING AWARD OF CONTRACT NO. RFP-01395 TO INTERNATIONAL BUSINESS MACHINES CORPORATION FOR PURCHASE OF MIDRANGE SERVER SOLUTION FOR THE INFORMATION TECHNOLOGY DEPARTMENT IN A TOTAL AMOUNT NOT TO EXCEED \$2,975,761.00 FOR THE FIVE-YEAR TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

ISSUE/REQUESTED ACTION

Whether the Board should authorize a contract award for *RFP No. 01395* to International Business Machines Corporation (IBM) for the purchase of a midrange server solution in an amount of up to \$2,975,761 for a five-year term for the Miami-Dade Department of Information Technology (ITD).

PROCEDURAL HISTORY

Prime Sponsor: None

Department/Requester: Internal Services Department (ISD)

This item was heard at the Health Care and County Operations Committee meeting of October 16, 2020 and forwarded to the BCC with a favorable recommendation. The item was also waived to the October 20, 2020 Board meeting.

ANALYSIS

The purpose of this item is for the Board to approve a contract with IBM for a *Midrange Server Solution* which will include maintenance support services in an amount of up to \$2,975,761 for a five-year term for ITD. The Midrange platform was originally scoped for the Clerk of the Courts in 1995 and the Water and Sewer Department in 2003 and the vendor was IBM. Midrange Servers were intended to be used by small and medium-sized businesses that did not require the massive computing power of a mainframe.¹ On the other hand a mainframe is a large server intended for storing massive amounts of data and processing.² The mainframe and midrange server require hardware for storage and processing data. Cloud computing popularly known as the "Cloud" is a method of processing and maintaining data on remote servers. Both Midrange Servers and Mainframe Servers are viewed as more secure options by the industry.³ Moreover, the Cloud allows access to it from multiple locations with a stable internet connection. The Mainframe and Midrange Server do not rely on an internet connection because these servers tend to be in close proximity to the end users.⁴

Purchase of the first pSeries servers was competitively awarded in 2003 under the IT Hardware Contract No. 250-000-03-1. In 2016, the County established Legacy Contract No. L9130 for IBM Hardware, Software, Maintenance, Support, and Services. The awardee of the current legacy contract was IBM and is presently in its third option to renew and is scheduled to expire October 31, 2020. A fourth option to renew is still available and could potentially be executed on November 1, 2020. The main distinction between the current legacy contract and the proposed contract award (RFP No. 01395) is that

¹ Christopher Tozzi & Precisely Editor, MAINFRAME VS. MIDRANGE SERVER: WHAT'S THE DIFFERENCE, ANYWAY? PRECISELY (2020), <https://www.precisely.com/blog/mainframe/mainframes-vs-midrange-servers-whats-the-difference-anyway> (last visited Oct 15, 2020).

² Id.

³ Id.

⁴ Sophia Sharda, *How Are Mainframes Still Better Than Cloud?*, 17 IOSR JOURNAL OF COMPUTER ENGINEERING (IOSR-JCE) 14–14 (2015), <https://iosrjournals.org/iosr-jce/papers/Vol17-issue1/Version-1/C017111415.pdf>.

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the legacy contract will focus on the purchase of software, maintenance, support, professional services and cloud solutions and the proposed contract will focus on the purchase of hardware and related maintenance support services for the midrange servers. The Midrange Servers required by the County include hardware and software maintenance and migration services from the current servers running in the current Midrange complexes to the new acquired hardware.

In 2018, the draft scope of work for this solicitation was provided to several industry leading firms to provide feedback to the County and assist in determining if there was interest in the scope provided. Four vendors expressed an interest in the draft scope provided by responding to a Future Solicitation. Due to the interest shown by the vendors, RFP-01395 was issued on November 27, 2019 under full and open competition. Despite staff efforts to promote competition, only one response was received, and one “No Bid”. Email notifications were sent to the firms that had expressed an interest in the draft scope during the market research, but did not submit a response, to inquire about their decision to not submit a response to the RFP. One response was received indicating that their company did not manufacture the required server.

Below is a timeline of the historical contracts for similar services that have been awarded by the County by Contract No: See Table 1.

Table 1 – Timeline inclusive of the proposed contract and options to renew.

| Contract Type | Contract Title | Effective Date | Expiration | Value |
|-----------------------------|--|-----------------------|-------------------|---------------|
| Contract No. 250-040-99-1 | Computers: Client Server Systems | 09/28/1998 | 09/30/2002 | \$ 41,343,377 |
| Contract No. 250-000-03-1 | Information Technology Hardware | 11/02/2002 | 07/31/2008 | \$204,781,778 |
| Contract No. 250-000-03-1-E | Information Technology Hardware | 11/02/2002 | 07/31/2008 | \$ 4,025,000 |
| L9130-5/21 | IBM Hardware, Software, Maintenance, Support, And Services | 08/01/2016 | 10/31/2017 | \$ 12,277,500 |
| L9130-5/21-1 | IBM Hardware, Software, Maintenance, Support, And Services | 11/01/2017 | 10/31/2018 | \$ 6,600,000 |
| L9130-5/21-2 | IBM Hardware, Software, Maintenance, Support, And Services | 11/01/2018 | 10/31/2019 | \$ 6,600,000 |

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| Contract Type | Contract Title | Effective Date | Expiration | Value |
|---------------------------------------|--|-----------------------------------|-------------------------------|---------------|
| L9130-5/21-3 | IBM Hardware, Software, Maintenance, Support, And Services | 11/01/2019 | 10/31/2020 | \$ 6,600,000 |
| L9130-5/21-4 (has not been activated) | IBM Hardware, Software, Maintenance, Support, And Services | 11/01/2020 | 10/31/2021 | \$ 6,600,000 |
| | | | | \$288,827,655 |
| Contract Type | | Anticipated Effective Date | Anticipated Expiration | Value |
| RFP No. 01395 (Proposed Contract) | Midrange Server Solution | 11/01/2020 | 10/31/2025 | \$ 2,975,761 |
| | | | | \$ 2,975,761 |
| | | | | \$291,803,416 |

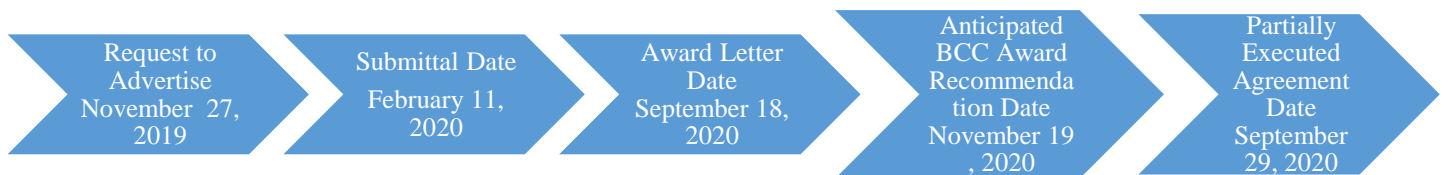
The Fiscal impact concerning this item is a total dollar amount of \$2,975,761 with no options to renew. Table – 2 depicts the price schedule for the proposed RFP.

Table 2 – Price Schedule

| Category | Price |
|-----------------|---------------------|
| Hardware | \$ 1,551,426 |
| Software | \$ 598,794 |
| Maintenance | \$ 306,156 |
| Professional | \$ 516,254 |
| Total | \$ 2,969,631 |

*Information taken from Appendix B of the agreement

A request for proposals was advertised on November 27, 2019 to obtain proposals from qualified firms capable of meeting the demands of service. The solicitation was advertised via BidSync and was viewed by 68 potential vendors of which 3 downloaded the solicitation documents. The Bids were submitted and opened on February 11, 2020. Two proposers responded to the solicitation of which one of the two proposers was a “No Bid” and the other was IBM. Below is a procurement timeline underscoring the major milestones of RFP- No. 01395.



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The scope for some of the main services is listed below:

IBM will be responsible for:

- Power 9 Migration Services and Spectrum Scale Installation.
- Discontinuance of Services consisting of the discontinuance of planning/management services, hardware services and mover services.
- Cisco Product Procurement and Related IBM Services consisting of the installation of network modules, SFP/XFP, and redundant power supply (up to four components), loading of designated IOS and application of customer provided configuration file.
- Technical Training for IBM Advanced Interactive Executive (AIX) and Spectrum Scale Products
- IBM License Metric Tool (ILMT) Deployment Services, IBM will provide server sizing and capacity planning documents to Miami-Dade County for provisioning of a Windows virtual machine.

The Office of the Commission Auditor (OCA) conducted a due diligence review on October 8, 2020 of International Business Machines Corporation; see Table -3.

Table 3 – Due diligence review

| Awarded Vendor | Corporate Filing | Tax Collector | Westlaw |
|---|---|--|---|
| International Business Machines Corporation | Foreign Profit Corporation Principal Address: New Orchard Road, Armonk, NY 10504 Date Filed: 02/12/1934 | One Account Owner address: 8000 Regency Parkway Ste. 110, Austin, TX 78759 Paid/Current | Case Name: Kinney et al v. International Business Machines Corporation; Case No. 1:20-CV-00969; Court – U.S. District Court, Western District of Texas (Austin); Filed On – 09/18/2020; Allegation – Defendant discriminated against plaintiffs based on their age by giving them baseless negative performance reviews to justify their termination; Status- Ongoing (Summons Issued) Case Name: Van Meeuwen v. International Business Machines Corporation: Case No. 2:20CV04853; Court – U.S. District Court, Southern District of Ohio (Columbus); Filed on-09/16/2020; Allegation – Defendant discriminated the plaintiff based on the age by failing to prevent discrimination, provide reasonable accommodation and termination of plaintiff under the discrimination and other violations; Status-Ongoing (Notice of Appearance) Case Name: Zehnbauer v. International Business Machines Corporation et al; Case No. 7:20-CV-07542; Court – U.S. District Court, Southern District of New York (White Plains); Filed on-09/14/2020; Allegation-Defendants unlawfully terminated plaintiff's employment based on her disability and in retaliation for engaging in protected activity with respect to her disability and |

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the disability of an individual with whom she was associated; Status – Ongoing (Request for Issuance of Summons)

Case Name: VanDeWeghe v. International Business Machines Corporation; Case No. 3:20-CV-01289; Court – U.S. District Court, District of Connecticut (New Haven); Filed on – 09/01/2020; Allegation – Defendant unlawfully discriminated against and wrongfully terminated plaintiff employee on account of her age; Status – Ongoing (Electronic Summons issued)

Case Name: Cahey et al v. International Business Machines Corporation; Case No. 1:20-CV-03620; Court – U.S. District Court, Northern District of Georgia (Atlanta); Filed on – 09/01/2020; Allegation – Defendant intentionally and willfully failed and refused to timely pay plaintiff the full and complete amount of commissions she earned from the deals she closed; Status – Ongoing (Complaint Amended)

Case Name: Chiakpo v. IBM Corporation; Case No. 1:20-CV-11624; Court – U.S. District Court, District of Massachusetts (Boston); Filed on – 08/31/2020; Allegation – Defendant discriminated against plaintiff based on his race, national origin, and age by terminating his employment; Status – Ongoing (Notice of Appearance)

Case Name: Gobin v. IBM Corporation et al; Case No. 1:20-CV-05430; Court – U.S. District Court, Southern District of New York (Foley Square) Filed on – 07/10/2020; Allegation - Defendant discriminated against plaintiff by terminating his employment based on his age; Status – Ongoing (Last action was a consent for electronic service by the plaintiff)

Case Name: Hayes et al v. IBM et al; Case No. 2:20-CV-00395; Court – U.S. District Court, District of Utah (Central); Filed on – 06/22/2020; Allegation – Defendants violated the ERISA by failing to provide coverage for plaintiff's treatment

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| | | | |
|--|--|--|---|
| | | | <p>who was diagnosed with toxemia and labored for three days; Status – Ongoing (Order to Propose Schedule)</p> <p>Case Name: Degnan v. International Business Machines Corporation; Case No. 2:20-CV-02055; Court – U.S. District Court, Eastern District of Pennsylvania (Philadelphia); Filed on – 04/29/2020; Allegation – Defendant wrongfully terminated plaintiff's employment on the basis of her gender and pregnancy and in retaliation for requesting maternity leave; Status – Ongoing (pending settlement conference)</p> <p>Case Name: Sheppard II et al v. International Business Machines et al; Case No. 1:20-CV-00959; Court – U.S. District Court, Northern District of Georgia (Atlanta); Filed on – 03/02/2020; Allegation – Defendants discriminated against plaintiff, constructively discharged him from employment and denied him compensation, based on his race and in retaliation for his attempt to use leave under the Medical Leave Act to provide care to his family; Status – Ongoing (last action Reply brief entered)</p> |
|--|--|--|---|

OCA conducted a search of the Business Management Workforce System (BMWS) on October 8, 2020. The contract's Commodity Code is 96728 (Computer Software Manufacturing Services) and 20400 (Computer Hardware and Peripherals for Microcomputers). Eleven SBE-G&S certified firms were identified: Note that this listing does not indicate that the certified firms can perform the project's requirements.

- Amiritech Group LLC
- The Combined Group Corp. Miami, FL
- 4 Best Business Corp.,
dba 4 Bbcorp
- Grupo Inpower, LLC,
dba Inpower
- Informaservices.Org, Incorporated
- Jador International Corporation
- Laser Products, Inc.
- M.E. Global Supplies Inc
- Network & Communication Services, Inc.
- Southern Data Systems, Inc.,
dba Nettogo
- United Brake & Clutch, LLC

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DEPARTMENTAL INPUT

OCA sent the following inquiries to ISD on October 16, 2020; as of publication of this research note, no responses had been provided.

1. Are Contract No.(s) 250-040-99-1, L9130-5/21 and RFP No. 00754 for the same services? If not what are the main differences between them?
2. What contract was in place for these services between 2008 and 2016?
3. Why are two contracts with the same vendor needed for performance of related services?
4. Is the current County infrastructure proprietary as IBM has provided this and related services to the County for over 25 years?
5. Why is the County pursuing midrange servers instead of opting for complete Cloud storage and data processing?
6. What is the interplay between this contract and the ERP solution that is underway (INFORMS)?

APPLICABLE LEGISLATION/POLICY

Section 2-8.1 of the County Code (Contracts and Purchases Generally) applies to all contracts for public improvements and purchases of all supplies, materials and services other than professional services and (1) requires formal sealed bids for purchases over \$250,000; (2) describes the circumstances under which non-competitive purchases may be approved; (3) establishes requirements for legacy purchases, designated purchases, and single vehicle leases; and (4) provides that procurement procedures shall be established by I.O. and approved by the Board.

https://library.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

Section 2-8.1(b)(3) of the County Code prescribes that formal sealed bids for purchase of goods or services shall not be required where such formal sealed bids would not be practicable.

https://library.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

Resolution No. R-187-12, adopted February 21, 2012, directs the County Mayor to include due diligence information in memoranda recommending certain contract awards.

<http://intra/gia/legistarfiles/MinMatters/Y2012/120287min.pdf>

Resolution No. R-140-15, adopted February 3, 2015, directs the Mayor to conduct a full review of the scope, prior to the re-procurement of replacement contracts for goods or services to ensure such contracts reflect the current needs of the County, to include information in recommendations to the Board, and to consult with the Small Business Development Division regarding solicitation contract language.

<http://www.miamidade.gov/govaction/matter.asp?matter=150090&file=true&fileAnalysis=false&yearFolder=Y2015>

Resolution No. R-1011-15, adopted November 3, 2015, directs the Mayor to require that vendors provide addresses of all local branch offices and headquarters and the number and percentage of local residents such vendors employ, and directs the Mayor to include such information in the memorandum to Board pertaining to vendor being recommended for contract award.

<http://intra/gia/matter.asp?matter=152271&file=true&yearFolder=Y2015>

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Resolution No. R- 718-17, adopted July 6, 2017, Directs the Mayor to commence planning for re-procurement no later than 18 months PRIOR to the expiration of contracts and Lists of Prequalified Vendors for the purchase of goods and/or services; and directs the Mayor or their designee, on a quarterly basis to identify in writing to the Office of Commission Auditor those contracts and prequalified vendor lists that are set to expire no later than 18 months prior to expiration.

<http://intra/gia/matter.asp?matter=171632&file=true&yearFolder=Y2017>

Implementing Order No. 3-38 sets forth the County's processes and procedures for the purchase of goods and services. The I.O. outlines: the roles and responsibilities of the Internal Services Department; the methods of purchasing goods and services; the authority to award and modify contracts; and the requirements for access contracts, emergency purchases, bid waivers, confirmation purchases and sole sources.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-38.pdf>

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**Item No. 14A6
File No. 201986**

Researcher: TA Reviewer: PGE

RESOLUTION AUTHORIZING DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(B)(3) OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; AUTHORIZING AWARD OF CONTRACT NO. BW-10100 FOR THE PURCHASE OF HOTEL MANAGEMENT TO DRIFTWOOD HOSPITALITY MANAGEMENT II, LLC IN AN AMOUNT OF 3.5 PERCENT OF GROSS REVENUES NET OF TAXES OR \$15,000.00, WHICHEVER IS GREATER, ON A MONTHLY BASIS, NOT TO EXCEED \$2,100,000.00 IN MANAGEMENT FEES FOR THE INITIAL FOUR-YEAR TERM AND ONE-YEAR OPTION TO RENEW AND ALL OPERATIONAL COSTS FOR THE MIAMI-DADE AVIATION DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY RENEWAL, CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

ISSUE/REQUESTED ACTION

Whether the Board should approve, by a two-thirds vote of the members present, a designated purchase for management and operation of Miami International Airport (MIA) Hotel to Driftwood Hospitality Management II, LLC, under *Contract No. BW-10100*, in an amount of 3.5% of gross revenues net of taxes or \$15,000, whichever is greater, on a monthly basis and not to exceed \$2,100,000 in management fees for the initial four-year term and one-year option to renew and all operational costs for the Miami-Dade Aviation Department (MDAD).

PROCEDURAL HISTORY

Prime Sponsor: None

Department/Requester: Internal Services Department

This item was approved with a favorable recommendation at the TAPS Committee on October 15, 2020.

ANALYSIS

The purpose of this item is to approve a designated purchase, under *Contract No. BW-10100*, for the management and operation of the MIA Hotel located on the second level of Terminal E, as the existing operator, MCR Investors, LLC, has elected to terminate its contract for convenience. The hotel consists of 259 rooms, a conference center, and auditorium rooms. The previous contract was awarded to MCR Investors, LLC (MCR) via a Request for Qualifications, RFQ-MDAD-16-03, in March 2018 for a five-year term, with one three-year option to renew¹ (Resolution No. R-202-18). The RFQ solicited companies to manage, operate, and maintain the MIA Hotel and related amenities in a first-class manner, 365 days of the year. Article 19.04 of the management agreement provided that the hotel operator may terminate for convenience at its sole discretion upon 180 days written notice, without cause, if deemed to be in its best interest.

Because MCR has terminated the current agreement for convenience, a new hotel operator is required to provide continuity of services. MDAD and the Internal Services Department negotiated with the second ranked firm at the time, Driftwood Hospitality Management II, LLC (Driftwood), and is recommending award to Driftwood as a designated purchase, which requires a two-thirds vote of members present, on the basis that competition was not

¹ The mayoral memo dated October 15, 2020 (Legistar No. 201986) states that the contract was for a seven-year term, with *three, one-year* options to renew.

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practicable due to the existing contract terminating as of December 1, 2020. ISD confirmed that the lower ranked firms were contacted, but only the second ranked firm was approached for negotiations.

Table 1 contains the ranking by the Evaluation/Selection Committee of the five firms submitting qualification statements in response to the RFQ in May 2017.

Table 1

| Firm | Total Technical Points | Ranking |
|--|------------------------|---------|
| MCR Investors, LLC | 4625 | 1 |
| Driftwood Hospitality Hotel Management II, LLC | 4477 | 2 |
| Crescent Hotel Management Services, LLC | 3857 | 3 |
| Hostmark Hospitality Group | 3754 | 4 |
| Yotel Management Company Limited | 2301 | 5 |

Only MCR Investors, LLC (MCR) and Driftwood appear to have a local presence. MCR has a 2020 Miami-Dade County Local Business Tax (LBT) receipt, evidencing a Miami-Dade office at MIA. The other four firms do not have an LBT account, although Driftwood is being billed for an LBT under a different ownership name: GFII DVI CARDEL FLGLER CTYARD (Courtyard Miami West/FL Turnpike, 11580 NW 105th St., Miami, FL 33178). In addition, an affiliate of Driftwood is based in Coral Gables.

On October 9, 2020, OCA requested from ISD the proposed management agreement with Driftwood, as it was not attached to the mayoral award recommendation. It was provided by ISD; a copy is available upon request (167 pages). OCA also requested the actual revenue and net income history for the previous management agreement; however, the first year (2018) was only a partial year, 2019 was close to the projection (net revenue of approximately \$5 million), and 2020 was not a typical year due to the pandemic. As in the previous agreement, MDAD continues to pay full reimbursement for all hotel operational costs, and the operator may terminate for convenience with 180 days notice.

Table 2 summarizes the compensation terms under the previous and proposed agreements.

Table 2

| Hotel Operator | Base Management Fee ² | Incentive Management Fee |
|----------------------------------|---|---|
| MCR Investors, LLC (previous) | 2.5% of sales (net of taxes), payable monthly | 2.2% of net operating income, as an incentive for superior performance, payable monthly |

² Because the proposed management agreement has not been provided by ISD, it is not clear if “sales” in the previous agreement is defined the same as “Gross Revenues” in the proposed agreement, or if an Incentive Management fee may still also be paid.

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| | | |
|---|--|-----|
| Driftwood Hospitality Management II, LLC (proposed) | 3.5% of Gross Revenues (net of taxes) or \$15,000, whichever is greater, on a monthly basis. | n/a |
|---|--|-----|

Table 3 depicts the comparative fiscal impact of the previous and proposed agreements.

Table 3

| Hotel Operator | Estimated Annual Gross Revenues | Estimated Annual Management Fee to be Paid to Hotel Operator | Estimated Annual Net Return to MDAD (net of operating expenses) |
|---|---------------------------------|--|---|
| MCR Investors, LLC (previous) | \$14.5 M | \$362,500 (estimate based on 2.5% of \$14.5 M) | \$5.5 M |
| Driftwood Hospitality Management II, LLC (proposed) | \$12 M | \$420,000 | \$4.9 M |

The change to the compensation terms and estimated fiscal impact for the new agreement takes into account the current state of the hospitality and travel industry as impacted by the COVID-19 pandemic. Assuming these projections bear out, the loss of hotel revenues to MIA compared to the previous agreement is \$3,000,000 for the maximum contract term (five years). It is not specified in the mayoral memo whether the new compensation structure is for the duration of the agreement or only until the economy is expected to rebound.

At the time of the March 2018 management agreement, the 8th floor of the hotel was under design consideration for a business center and fitness center. It is not clear if the 8th floor renovation ever proceeded; however, these facilities are not included in the proposed management agreement.

OCA performed a search pertaining to the Commodity Code 97160 (Property Management Services) in the Business Management Workforce System (BMWS) on October 9, 2020 and found no SBEs certified with this code. This contract, as the previous one, has a voluntary Airport Concession Disadvantaged Business Enterprise (ACDBE) Goal. Driftwood is utilizing Gilly Vending, Inc. at less than 1%. The voluntary ACDBE Goal under the previous contract was met by AWA Security, Inc. at 2% and Gilly Vending, Inc. at less than 1%. As with the previous agreement, Living Wages and Responsible Wages apply to the proposed agreement.

OCA initiated a due diligence review of the recommended vendor and its subcontractor on October 9, 2020; findings are summarized below in Table 4.

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Table 4

| Awarded Firm(s) | Corporate Registration | Tax Collector's Office | Florida DBPR | Westlaw |
|--|--|--|---------------------|--------------------|
| Driftwood Hospitality Hotel Management II, LLC | Foreign Limited Liability Company Active Principal Address: 11770 US Highway One, Ste. 202 North Palm Beach, FL 33408 Filed: February 1, 2010 | No account on file. ³ | No account on file. | No relevant cases. |
| Gilly Vending, Inc. (subcontractor – certified ACDBE) | Florida Profit Corporation Active Principal Address: 90 NW 166 th St Miami, FL 33169 Filed: May 30, 1990 | Business Address: 990 NW 166 St Miami Gardens, FL 33169 Account active; pending balance of \$1,892, \$942.15, and \$49.50 for various locations | No account on file. | No relevant cases. |

Pursuant to Resolution No. R-130-06, adopted on January 24, 2006, items shall not be placed on a County Commission or committee agenda until the underlying contract is completely negotiated, in final form, and executed by all non-County parties and *attached to the agenda item* (emphasis added). It should be noted that, while the subject agreement has been executed by Driftwood, it is not attached to the agenda item.

³ Driftwood Acquisitions and Development, which is affiliated with Driftwood, has an LBT receipt for a location at 255 Alhambra Circle, Ste 750, Coral Gables, FL 33134.

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DEPARTMENTAL INPUT

OCA asked ISD the following questions on October 9, 2020; the responses are *italicized*.

1. The original award agenda item to MCR was 189 pages and included the management agreement and exhibits, while the subject item is just the award recommendation. Will the management agreement be supplemented to this item? Please provide a copy of the agreement.

ISD Response: *Agreement attached.*

2. Were at least the third and fourth ranked firms contacted to determine if either of them had any interest in the contract, before a decision was made to negotiate with only the second ranked firm?

ISD Response: *All ranked firms were contacted under RFQ No. MDAD-16-03 (Driftwood Hospitality Hotel Management II, LLC, Crescent Hotel Management Services LLC, Hostmark Hospitality Group and Yotel management Company Limited; all firms except Yotel [who never responded] expressed interest). The second highest ranked Proposer under the original RFQ was approached for negotiations.*

3. Has MDAD encountered performance issues with MCR; if so, please summarize the nature of those issues. When did the incumbent firm terminate for convenience and what was or will be the termination date? If the contract is already terminated, who is responsible for managing the hotel in the interim?

ISD Response: *MCR's letter dated 5/29/2020 voluntarily terminated the Agreement effective 12/1/2020. Performance issues are primarily due to lack of reporting compliance in accordance with requirements of the Agreement:*

- *4.04 Monthly Financial Statement (submissions are incomplete)*
- *4.06 Annual Audit ('17/18 & '18/'19 outstanding)*
- *4.09 Forms of Reports (MCR and External Auditor have confirmed nonconformity)*
- *5.01 Reimbursable Operating Expenses (numerous examples- unpaid foodservice bills)*
- *5.02 Imprest Operating Account (not reconciled timely)*
- *5.03 Imprest Payroll Account (not reconciled timely)*
- *5.15 Special Request for Payment- Management Compensation (requirement for monthly submission)*
- *6.01 Base Management Fee (not paid in accordance with sub-article 4.04) 9) 6.02 Incentive Management Fee (paid for superior performance)*

4. Is the revised compensation structure due to COVID-19 only for a limited period of time, or for the duration of the contract?

ISD Response: *The revised compensation structure is for the duration of the contract.*

5. Why was the original contract awarded for up to 10 years, and this contract is for a term up to five years?

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ISD Response: *The term is in line with the approximate time remaining in the initial term of the original contract awarded to MCR.*

6. What is the yearly gross revenues and net income to MDAD since the inception of the contract in March 2018, including revenues to date for 2020?

ISD Response: *2018 is a partial year (April to September 2018): \$3,370,583 Sales, \$1,454,008 Net Income; 2019 is \$12,365,562 Sales, \$5,054,008 Net Income; and 2020 October-August 2020 is \$7,474,114 Sales, \$2,073,467 Net Income (As a result of Covid19).*

ADDITIONAL INFORMATION

According to Driftwood's website and other sources, Driftwood is one of the largest hotel owner/operators nationwide. They currently manage over 70 hotels, comprised of over 13,000 rooms, 20 brands, and over 5,000 associates across the United States. Driftwood Acquisitions & Development, LP, an affiliate of Driftwood, is a privately held investment firm based in Coral Gables that acquires, develops, and manages hotel assets throughout the United States. They have completed the acquisition and development of over 100 hotels. Their combined portfolio is about \$3 billion.

<https://driftwoodhospitality.com/>
<https://www.dadlp.com/>

According to Airiodion Global Services (AGS), an entity that provides worldwide content, rankings, and independent reviews of top firms and practices across different industries and sectors, Driftwood is one of the top hotel management and consulting firms for 2020-2021. The listing is as follows:

- Aimbridge Hospitality
- AZUL Hospitality Group
- Charlestowne Hotels
- Chesapeake Hospitality
- Driftwood Hospitality Management
- HMG Hospitality
- HP Hotels
- PM Hotel Group
- RAR Hospitality

<https://www.airiodion.com/hotel-management-consultants/>

As referenced in the mayoral memo, Mr. Carlos J. Rodriguez, Sr., CEO of Driftwood Acquisitions and Development (and a principal of Driftwood Hospitality Management), received a public Letter of Reprimand for a Cone of Silence violation from the Commission on Ethics (COE) related to the original RFQ (http://ethics.miamidade.gov/library/closed-complaints/2017/c_17-28_rodriguez.pdf). Mr. Rodriguez acknowledged he made a mistake, and on December 14, 2017, the COE accepted his plea of No Contest.

The hotel industry has seen a gradual uptick in occupancy rates in recent months, but occupancy rates continue to be at historic lows. For Driftwood and other operators, COVID-19 and the country's growing economic uncertainty have drastically impacted revenues. Mr. Rodriguez was recently quoted as stating, "We are losing money hand over first. We lost millions of dollars. We are in a position to withstand it, but it's a painful hit." He was referenced in another article as stating he is anticipating a return to 2019 hotel occupancy figures approximately two years from now, in the first quarter of 2022. It was reported in a different article that he agrees there is likely to be a cessation of most hotel

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renovation projects in South Florida; he anticipates it will take at least another six to 12 months before the projects are picked up once again. Mr. Rodriguez did note, however, that he expects some of the larger hotel investment groups, like his own, to actually begin renovation projects because of the pandemic. With the low occupancy rates, hotel owners may not get a chance like this again to make changes to the property without shutting down large portions of the hotel. <https://therealdeal.com/2020/06/12/submerged-in-securities-many-cmbs-hospitality-loans-may-be-underwater-soon/>
<https://www.bizjournals.com/southflorida/news/2020/04/21/how-long-hotel-renovations-could-be-on-hold.html>
<https://www.forbes.com/sites/forbesrealestatecouncil/2020/04/28/when-will-the-hotel-market-rebound-capital-strategies-for-todays-distressed-assets/#28e7f37d5c5d>

APPLICABLE LEGISLATION/POLICY

Section 2-8.1 of the County Code (Contracts and Purchases Generally) applies to all contracts for public improvements and purchases of all supplies, materials and services other than professional services and (1) requires formal sealed bids for purchases over \$250,000; (2) describes the circumstances under which non-competitive purchases may be approved; (3) establishes requirements for legacy purchases, designated purchases, and single vehicle leases; and (4) provides that procurement procedures shall be established by I.O. and approved by the Board.

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

Section 2-8.1(b)(3) of the County Code prescribes that formal sealed bids for purchase of goods or services shall not be required where such formal sealed bids would not be practicable.

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE

Section 2-8.9 of the Code of Miami-Dade County (Living Wage Ordinance for County Service Contracts and County Employees) applies to Covered employees, meaning anyone employed by any Service Contractor, as further defined in this Chapter either full or part time, as an employee with or without benefits that is involved in providing service pursuant to the Service Contractor's contract with the County.

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.9LIWAORCOSECOEM

Resolution No. R-130-06, adopted on January 24, 2006, clarified that proposed agenda items seeking approval of a contract or conveyance and authority to execute same shall not be placed on any committee or commission agenda unless the underlying contract or conveyance is completely negotiated, in final form, and executed by all non-County parties.

<http://www.miamidade.gov/govaction/matter.asp?matter=060239&file=false&fileAnalysis=false&yearFolder=Y2006>

Resolution No. R-187-12, adopted on February 21, 2012, directed the County Mayor to include due diligence information in memoranda recommending certain contract awards.

<http://www.miamidade.gov/govaction/matter.asp?matter=120287&file=true&fileAnalysis=false&yearFolder=Y2012>

Resolution No. R-1011-15, adopted on November 13, 2015, requires that all vendors bidding on and/or entering into contracts with Miami-Dade County to provide addresses of all local branch offices and headquarters and the number and percentage of local residents employed; directing the Mayor to include such information in award recommendations to the Board.

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<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2015/152271min.pdf>

Resolution No. R-202-18, adopted on March 6, 2018, approved award of a Management Agreement to MCR Investors LLC for the operation of the MIA Hotel and Related Amenities at Miami International Airport for a term of seven years with a three-year option to review, and for payment of a base management fee of 2.5% of net sales and incentive management fee of 2.2% of net operating income.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2018/180448min.pdf>

Implementing Order 3-38 sets forth the County's policies and procedures for the procurement of goods and services. The I.O. references the obligations and responsibilities of the Internal Services Department; the authority to award; and the requirements for access contracts, emergency purchases, bid waivers, confirmation purchases and sole sources.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-38.pdf>

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Researcher: MF Reviewer: PGE

RESOLUTION AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO EXECUTE A STANDARD FORM SEAPORT LEASE AGREEMENT BETWEEN ELLER-ITO STEVEDORING COMPANY, LLC AND MIAMI-DADE COUNTY AS MODIFIED TO EXTEND LEASE TERM BEYOND FIVE YEARS AND AUTHORIZE PROVISION OF FUTURE GROUND RENT CREDITS NOT TO EXCEED \$261,896.74 IN CONSIDERATION FOR CERTAIN LEASEHOLD IMPROVEMENT COSTS PREVIOUSLY INCURRED BY TENANT; TO EXERCISE ALL RENEWAL, TERMINATION, AND OTHER RIGHTS CONFERRED THEREIN; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO PROVIDE A COPY OF THE LEASE AGREEMENT TO THE PROPERTY APPRAISER’S OFFICE WITHIN 30 DAYS OF THE AGREEMENT’S EXECUTION

ISSUE/REQUESTED ACTION

Whether the Board should approve executing a standard form open ground lease agreement between Eller-ITO Stevedoring Company, LLC and the County to extend the lease term beyond five years, authorizing a five year initial term plus five one-year optional renewal terms, including future rent credits not to exceed \$261,896.74, for PortMiami.

PROCEDURAL HISTORY

**Prime Sponsor: Commission Vice-Chair Rebeca Sosa, District 6
Department/Requester: PortMiami**

This item was heard at the Tourism and the Ports Committee meeting of October 15, 2020 and forwarded to the BCC with a favorable recommendation; the item was also waived to the October 20, 2020 Board meeting.

ANALYSIS

The purpose of this item is for the Board to approve a lease agreement for future ground rent credits between the County and a long-time Seaport tenant, with a fiscal impact of \$261,896.74 for a five-year term. The lease agreement would allow Eller-ITO Stevedoring Company, LLC (“Eller-ITO”) to continue to perform stevedoring maintenance and repair functions at PortMiami – where the company has engaged in such work for the past 20 years. Up until December 2019, Eller-ITO had a two-year lease agreement consisting of approximately 1.6 acres of ground land at PortMiami, at which the company conducted its equipment maintenance and repair operations and had performed onsite improvements to the parcel. Stevedoring work generally consists of handling port cargo, including using machinery and gear, and involves loading and unloading ships at docks, as well as the transfer of cargo to and from storage areas such as trucks and barges.¹ Currently, PortMiami does not have a permanent facility for stevedoring maintenance and repair activities, although it is part of the Seaport’s long-range master planning duties.

Eller-ITO initially intended to renew and extend its lease term with PortMiami on the aforementioned 1.6-acre parcel, as the property was part of the Port’s capital improvement projects designated toward a new Cruise Terminal B – along with roadway infrastructure work – to make way for the MSC and Disney cruises terminals. As such, in trying to continue to conduct its work at PortMiami, Eller-ITO then decided to reposition its operations onto a 1.87-acre area on the Port of Miami Terminal Operating Company’s (POMTOC) Terminal Area.

¹ Study.com,
https://study.com/articles/Stevedore_Job_Description_and_Information_About_Becoming_a_Stevedore.html.

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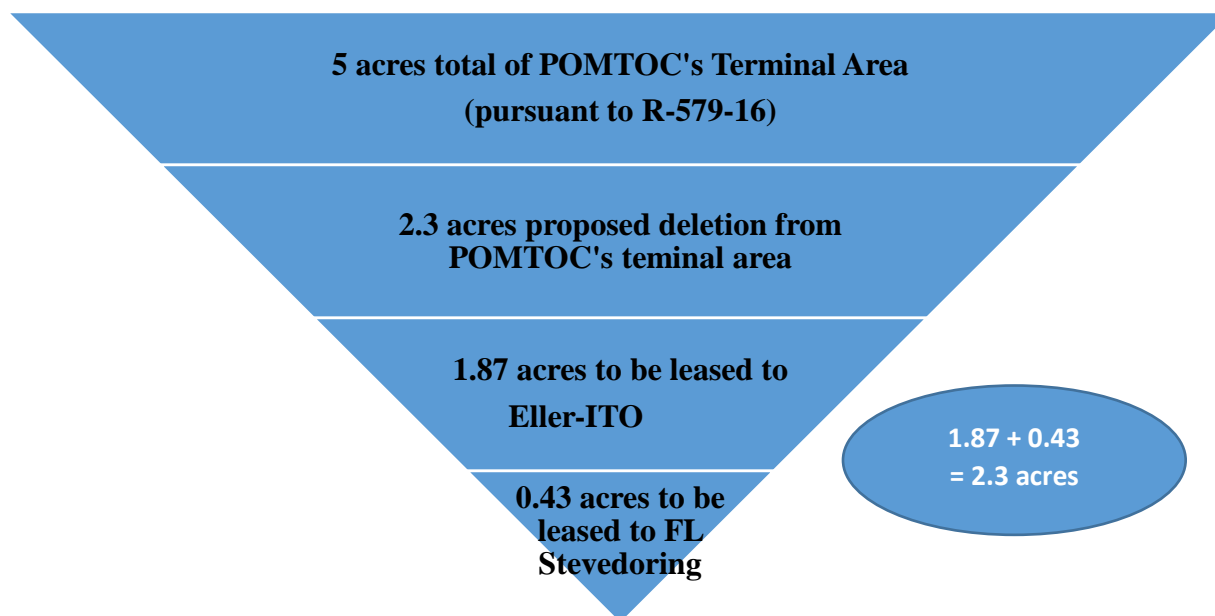
The fiscal impact of \$261,896.74 is a result of two key features pertaining to Eller-ITO's operations at PortMiami: 1) the allocation would serve for future ground rent credits toward the company's estimated \$537,000 lease for a five-year term; and 2) would partially compensate for some of the approximately \$487,000 in infrastructure upgrades the company completed on the previous Port site.

Seaport staff determined (after a review of invoices) that the subject amount of \$261,896.74 is related to direct essential infrastructure upgrades performed by Eller-ITO that benefited PortMiami's entire operation. Said improvements consisted of a permanent feeder, extending 850 feet beyond the 1.87-acre land, vital to power usage along associated meters, cables, and panels.

Approval of this item would serve as a modification to the POMTOC Agreement (known as the First Amendment), approved in July 2016 and pursuant to Resolution No. R-579-16, which provided for, among other things: a replacement to the terminal operating footprint; relocation of the existing access road; relocation of Chute Road; construction of drainage facilities; bringing parity of electrical surcharges and gantry crane escalators; and cleaning up contractual items.

Per the 2016 resolution, the Port carried out a maximum parcel adjustment of five acres to the Terminal Area in an effort to enhance operations at PortMiami. Under this item, the Board would allow the previously approved five acres to be reduced by 2.3 acres from POMTOC's terminal area and consent to a parcel reconfiguration for said space to be utilized by Eller-ITO in the maintenance and repair of heavy equipment. Figure 1 below shows the proposed acreage breakdown under this item.

Figure 1



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Per the mayoral memo, both Eller-ITO and Florida Stevedoring had to relocate their stevedoring operations to areas within POMTOC’s terminal; however, a formal lease agreement cannot be completed until the Board authorizes the removal of said parcels totaling 2.3 acres (as previously noted: 1.87 acres + 0.43 acres = 2.3 acres) from POMTOC’s amended and executed terminal operating agreement approved in December 2013 and pursuant to Resolution No. 1051-13.

As part of this item, stevedoring company Eller-ITO will enter into a lease agreement with the County for the purpose of conducting business activities related to operations with waterborne commerce and transportation. Annual rent for the lease will total \$149,687.96 with an initial five-year term and five one-year options to renew. For this item, rent will be credit at up to 50% per month, excepting state sales tax on full rental amounts that may otherwise be due, until the total amount of extended credits reaches a maximum amount not to exceed \$261,896.74 – the requested amount under this item. Table 1 below depicts the square footage, price rate, as well as the monthly and annual fees and requested partial rent credits for property located at 1976 Antarctica Way.

Table 1

| Lease Agreement between Eller-ITO and the County | | | |
|---|---------------------------|---|-------------------|
| Sq. Ft. | Sq. Ft. Price Rate | Monthly Fee | Annual Fee |
| 81,352.15 | \$1.84 | \$12,474 + \$13,284.81 (sales tax) | \$149,687.96 |
| | | 50% monthly credit = \$6,237 (excluding sales tax) for a period of nearly three years and 6 months | |
| | | \$6,237 * 42 months (3 yrs. 6 mos.) = \$261,954 | |

Note: The rental rate shown is exclusive of the following utility costs: electric, water and sewer, maintenance, and janitorial services. The Seaport does provide sweeper services as extra fees that are charged to the lessee at hourly rates.

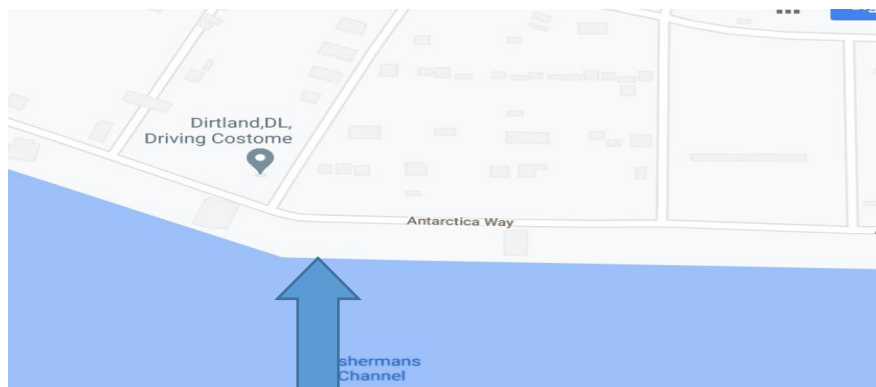
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Map 1 below shows the vicinity of the subject property to be leased located at 1976 Antarctica Way.

Map 1



OCA consulted the Occupational Safety and Health Administration’s (OSHA) website on October 7, 2020 to review the safety records of Eller-ITO Stevedoring Company, LLC. The search yielded a 2019 case involving two violations deemed “serious”; the case was closed and settled in March 2020.² According to the available information in the OSHA portal, the initial penalty incurred was for \$13,494, which ultimately was lowered and settled in the amount of \$8,096. OCA reached out to the OSHA Fort Lauderdale region office (upon referral from the U.S. Department of Labor in Washington, D.C.) on October 7, 2020 for additional information pertaining the context of said violations; however, no one was available.

OCA performed due diligence pertaining the subject company October 14, 2020; below are the findings.

Table 2

| Awarded Firm | Corporate Registration | Tax Collector’s Office | Florida DBPR | Westlaw |
|------------------------------------|--|--|---------------------|---|
| Eller-ITO Stevedoring Company, LLC | Foreign Limited Liability Company Active Principal Address: 1007 North America Way, #501 Miami, FL | Paid 2019; no listed information on 2020 Business Address: 1007 North America Way, #501 Miami, FL | No account on file | <i>Darcia Musgrove v. Belearia Caribbean LTD, Corp. et al.</i> Case No. 0:18-CV-62678 filed November 2, 2018 in the 17 th Judicial Court of Broward County; the case was later moved |

²OSHA, https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1432247.015

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| | | | | |
|--|-----------------------------|--|--|--|
| | <p>Filed: June 18, 1998</p> | | | <p>to the U.S. District Court, Southern District of Florida (Ft. Lauderdale). The [Case No. under the 17th Judicial District: CACE-18-022140]. Allegation: A wrongful death lawsuit alleging defendants failed to properly operate and maintain the door of terminal of their cruise ship in Port Everglades, Fort Lauderdale in a reasonably safe condition, resulting in the untimely death of plaintiff's decedent when she fell and suffered bodily injury. Case status: A settlement agreement was reached February 28, 2020, of which the monetary details are not provided in the settlement.</p> |
|--|-----------------------------|--|--|--|

ADDITIONAL INFORMATION

OCA performed an Internet search of Eller-ITO Stevedoring Company, LLC. According to its website, the company is considered the largest stevedore container handling equipment pool in South Florida, providing for the service to cruise, container, freight handling, and bulk/special cargo.

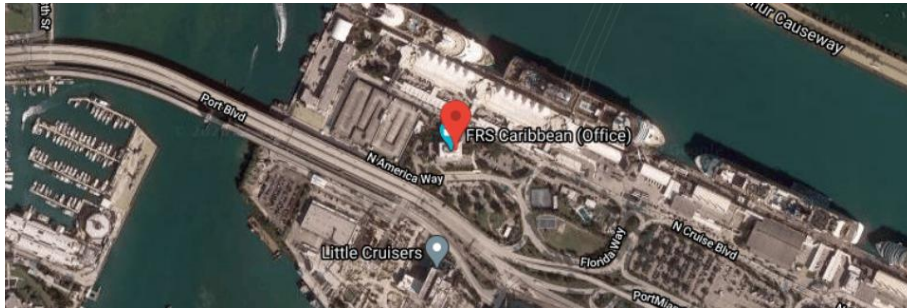
<http://www.ellerito.com/>

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Illustration 1 below shows the company's location at PortMiami.

Illustration 1



Source: Westlaw

Illustration 2 below shows the PortMiami cargo terminal.

Illustration 2



Source: PortMiami

Illustration 3 below shows an example of stevedoring work.

Illustration 3



Source: The Maritime Industry Knowledge Center

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DEPARTMENTAL INPUT

OCA sent the following inquiry to the Seaport on October 15, 2020; the Department replied on October 16, 2020 and the response is shown below in Italics.

- Will this relocation impact recent rail development plans involving PortMiami? Kindly explain.

Seaport Response: *The Eller-ITO open ground lease does not impact rail operations. The new lease location is within the POMTOC cargo yard, and outside of the rail intermodal yard.*

APPLICABLE LEGISLATION/POLICY

Section 2-8.3 of the Miami-Dade County Code (Manager's Recommendation) Whenever a competitive process is utilized for selection of a contractor, vendor, consultant, tenant or concessionaire, the County Manager shall review the responses to the solicitation and recommend to the County Commission award or other appropriate action. Such recommendation shall be in writing and shall be filed with the Clerk of the Board, with copies mailed to all participants in the competitive process, no later than ten (10) days prior to any Commission meeting at which such recommendation is scheduled to be presented. Such recommendation shall be accompanied by a memorandum from the County Manager that clearly identifies any and all delegations of Board authority contained in the body of the proposed contract. Those contracts covered by Section 2-8.2.7 for which no timely protest is filed, the County Manager's recommendation may be awarded by the County Manager in accordance with his recommendation. The Commission, by two-thirds vote of the members present, may waive the requirements of this section. The foregoing notwithstanding, the requirements of this section shall not apply to contracts or purchases which the County Manager has the delegated authority to award under Section 2-8.1(b) of this Code.

https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.3MARE

Resolution No. R-828-19, adopted July 23, 2019, establishes a policy of the County for disclosure of past and present discrimination lawsuits in solicitation submissions.

<http://www.miamidadegov.gov/action/legistarfiles/MinMatters/Y2019/190936min.pdf>

Resolution No. R-579-16, adopted July 6, 2016, approved and authorized the County Mayor or designee to execute Amendment No. 1 to the amended and restated Terminal Operating Agreement between the County and Port of Miami Terminal Operating Company, LC, providing for among other things, a replacement to the terminal operating footprint, relocation of the existing access road, relocation of Chute Road, construction of drainage facilities, bringing parity of electrical surcharges and Gantry Crane Escalators, and cleaning up contractual items for an estimated increase costs to the county of approximately \$1,700,000 and delegating authority to the Port Director to approve in writing future subleases of portions of the terminal area by operator to other on-port terminal operators or tenants, and subleases of portions of other port property by operator, provided, however, such subleases I) do not exceed two years in duration, II) do not involve more than five acres of Port land per sublease nor more than 10 acres, in aggregate, and III) are deemed necessary by the Port Director (in writing) to accommodate the construction and/or operating requirements of proposed new cruise Terminal "A."

<http://intra/gia/matter.asp?matter=161414&file=true&yearFolder=Y2016>

Resolution No. 1051-13, adopted December 17, 2013, authorized the County mayor or designee to execute 1) Amendment No. 2 to the Terminal Operating Agreement Between the County and Port of Miami Terminal Operating Company, LC;

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and 2) the restated terminal operating agreement between the County and Port of Miami Terminal Operating Company, LC.

<http://www.miamidade.gov/govaction/matter.asp?matter=132469&file=true&fileAnalysis=false&yearFolder=Y2013>

Resolution No. R-777-03, adopted July 8, 2003, authorize the county manager to execute standard form lease agreements not to exceed a term of five year for space at the Dante B. Fascell Port of Miami-Dade; and to exercise all rights conferred therein.

<http://intra/gia/matter.asp?matter=031556&file=true&yearFolder=Y2003>

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Researcher: TA Reviewer: PGE

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE AMENDMENTS TO (1) PREFERENTIAL BERTHING RIGHTS AGREEMENTS AND CRUISE TERMINAL USAGE AGREEMENTS PROVIDING FOR A TWO-PHASE CORONAVIRUS DISEASE 2019 (COVID-19) RECOVERY PERIOD AND (2) THE GROUND LEASE WITH MIAMI CRUISE TERMINAL A, L.L.C. AND ITS PERMITTED ASSIGNEE (MCTA GROUND LEASE); PROVIDING THAT SUCH AMENDMENTS HAVE AN ESTIMATED FISCAL IMPACT OF \$68,500,000.00 FOR THE FIRST PHASE OF THE COVID-19 RECOVERY PERIOD, INCREASING AT THE RATE OF APPROXIMATELY \$7,000,000.00 PER MONTH UNTIL THE COMMENCEMENT OF THE SECOND PHASE OF THE COVID-19 RECOVERY PERIOD, AND THEN AT THE RATE OF APPROXIMATELY \$7,000,000.00 PER MONTH, SUBJECT TO REDUCTION BASED ON THE DURATION OF THE SECOND PHASE OF THE COVID-19 RECOVERY PERIOD AND PASSENGER VOLUMES; PROVIDING THAT ANY AMENDMENTS SHALL BE SUBJECT TO ANY PRIOR REVIEWS AND SATISFACTION OF ANY PRE-CONDITIONS REQUIRED UNDER THE SEAPORT BOND ORDINANCE, ORDINANCE NO. 88-66, AS AMENDED, AND OTHER SEAPORT-RELATED COUNTY DEBT FACILITIES AND SHALL PROVIDE FOR THE IMPLEMENTATION OF ANY REQUIREMENTS OR RECOMMENDATIONS OF THE CONSULTING ENGINEERS UNDER THE SEAPORT BOND ORDINANCE; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE A COPY OF ANY AMENDMENT TO THE MCTA GROUND LEASE TO THE PROPERTY APPRAISER'S OFFICE IN ACCORDANCE WITH RESOLUTION NO. R-791-14; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PERFORM ALL ACTS AND EXECUTE ANY DOCUMENTS AS MAY BE REQUIRED TO GIVE EFFECT TO THE INTENT OF THIS RESOLUTION AND ANY AMENDMENTS NEGOTIATED AND EXECUTED AS PROVIDED HEREIN; AND WAIVING THE REQUIREMENTS OF RESOLUTION NO. R-130-06

ISSUE/REQUESTED ACTION

Whether the Board should authorize the Mayor to negotiate and execute amendments to (1) preferential berthing rights and terminal usage agreements with cruise lines that have such agreements at PortMiami and (2) the ground lease with Miami Cruise Terminal A, LLC (MCTA), an affiliate of Royal Caribbean International, to address Fiscal Year 2019-20 obligations and to establish a COVID-19 Recovery Period.

PROCEDURAL HISTORY

**Prime Sponsor: Commissioner Rebeca Sosa, representing Commission District 6
Department/Requester: PortMiami**

This item was approved with a favorable recommendation at the TAPS Committee on October 15, 2020.

ANALYSIS

The purpose of this item is to authorize the Mayor or his/her designee to negotiate and execute the following:

- 1) Amendments to berthing rights agreements and cruise terminal usage agreements, providing for a two-phase COVID-19 Recovery Period; and
- 2) Amendments to the Ground Lease Agreement with Miami Cruise Terminal A, LLC (MCTA) and its permitted assignee Sumitomo Mitsui Banking Corporation Lease and Finance (SMBE-LF) with respect to Cruise Terminal A, providing for a two-phase COVID-19 Recovery Period.

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The amendments will be substantially in the form described in the mayoral memo, as the negotiated agreements are not attached as part of the item. To ensure the execution of the amended agreements can be expedited, this item also requests a waiver of Resolution No. R-130-06, which requires the completion of negotiations and execution by non-County parties prior to presentation to the Board. The amended agreements do not have to return to the Board for approval, but the amendments must satisfy any pre-conditions and covenants required under the Seaport Bond Ordinance and other Seaport-related County debt facilities. In addition, any such amendments must incorporate any requirements or recommendations of the Consulting Engineers under the Seaport Bond Ordinance.

PortMiami has proposed the concept of a “COVID-19 Recovery Period” to provide for a two-phase approach to supporting the cruise industry as they resume operations and return to normalized cruise passenger volumes. The proposed relief framework is summarized in Table 1 below:

Table 1.

| COVID-19 Recovery Period | Time Frame | Industry Support | Fiscal Impact |
|--------------------------|--|--|--|
| Phase 1 | March 13, 2020 through a period that ends the earlier of: <ul style="list-style-type: none"> • 60 days from the lifting of the No Sail Order in its current form (unless passenger cruise operations in U.S. waters for said line being sooner); or • July 1, 2021 | Waiver of lay berth and harbor fees for vessels with no passenger movement until September 30, 2020. Excusal from minimum annual guarantee obligations Not required to use their accumulated surplus credits to cover any shortfalls | \$55M revenue loss, including projected revenues from cruise associated activities such as parking and transportation fees, through the end of Fiscal Year 2019-2020 \$13.5M revenue loss for the balance of the Phase 1 Recovery period For every month the No Sail Order extends beyond September 30, 2020, the revenue loss increases by \$7M per month |
| Phase 2 | Commences immediately upon the conclusion of Phase 1 (no later than July 1, 2021) and lasts up to 24 months. | Excusal from minimum annual guarantee obligations, subject to certain conditions Not required to use their accumulated surplus credits to | \$7M revenue loss and \$1M in ancillary cruise-related revenues, in the event that no cruises sail during the entire Phase 2 Recovery Period. |

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|--|--|---|--|
| | | cover any shortfalls; nor shall any credits accrue Cruise lines will be required to pay dockage and wharfage fees Parking-based incentives will be waived | Assuming cruise lines resume sailing as soon as permitted, cruise lines will be required to compensate the County based on their actual usage of the Port. |
|--|--|---|--|

The mayoral memo details the offset of the above \$55 million fiscal impact of Phase 1. It is summarized as follows in Table 2 below:

Table 2.

| Action | Savings |
|---|---------------------|
| Hiring freeze and elimination of overtime | \$8,000,000 |
| Deferral of sponsorships, advertising, memberships, terminal activities and other marketing efforts | \$5,000,000 |
| Reduction in business travel, promotions, and other administrative expenses | \$5,000,000 |
| Sunsetting of cargo incentive program (elimination of rebates) | \$6,000,000 |
| Reduction in volume-based cruise incentives | \$4,000,000 |
| Savings on interest expenses on variable rate debt | \$7,000,000 |
| Budgeted surplus for Fiscal Year 2019-2020 | \$10,000,000 |
| Port's Unrestricted Reserve | \$10,000,000 |
| Total Savings | \$55,000,000 |

To offset the balance of revenue losses for Phase 1, approximately \$32 million in non-revenue generating capital improvement projects has been deferred, Additional savings measures in Fiscal Year 2020-2021 include negotiating scope reductions to existing capital improvement projects, reducing reliance on outside consultants, and developing new sources of revenue.

With respect to amendments to the MCTA operating agreement, the ground rent payment to the County for Cruise Terminal A (CT-A) will be pro-rated to reflect the Recovery Period time frames and requirements. The Mayor or his/her designee may also negotiate additional conditions for the benefit of the County as part of the amended lease.

The mayoral memo indicates that the Port remains financially strong heading into Fiscal Year 2020-2021 with \$114 million in unrestricted reserves and can meet all financial obligations without tapping the reserves until April 18, 2021, based on current published itineraries and assuming full occupancy. If cruise operations were to resume for an extended period of time, the unrestricted reserves would be sufficient to make the Port's cash requirements for operating expenses, including debt service through September 30, 2022, but the Port would likely miss its required debt service coverage ratios under Ordinance No. 88-66, as amended. The Government Finance Officers Association (GFOA) recommends, at a minimum, that general-purpose governments, regardless of size, maintain unrestricted budgetary fund balance in their general fund of no less than two months of regular general fund operating revenues or regular

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general fund operating expenditures.¹ While the PortMiami budget is proprietary, this may be a prudent threshold to strive to maintain given the uncertainty for when the industry will rebound.

DEPARTMENTAL INPUT

OCA asked PortMiami the following questions on October 15, 2020; the department's responses are *italicized*.

- 1) What are all the cruise lines that the Port will be amending agreements with?

PortMiami Response: *Carnival Corp., Disney Cruise Line, MSC Cruises, Norwegian Cruise Line, Royal Caribbean Cruises Ltd, Virgin Voyages*

- 2) Since the No Sail Order was extended on September 30, 2020 to October 31, 2020 (after this item was prepared), are there any further indications that the order will be extended again and, if not, which cruise lines are or are expected to be booking sailings prior to the end of 2020?

PortMiami Response: *Cruise lines are waiting for the CDC's No Sail Order to expire on October 31st. If no further extension to the order is imposed, cruise ships could sail as soon as December 2020.*

- 3) Are you aware of other Ports providing or who will provide similar COVID-19 relief measures or a transitional recovery plan?

PortMiami Response: *We are aware requests have been made by cruise lines to other ports, but not of these details or outcome.*

ADDITIONAL INFORMATION

Cruising in the United States has been halted since the U.S. Centers for Disease Control and Prevention (CDC) issued a "No Sail" order in mid-March 2020. The order has been extended several times, prohibiting cruise ships from sailing in U.S. waters, while limited operations have resumed in Europe. The CDC originally sought to extend the ban for U.S. based cruise ships through February 2021, but instead has extended the ban until October 31, 2020. The Cruise Lines International Association (CLIA), the world's largest cruise industry association, has agreed to a voluntary suspension of U.S. cruise operations through October 31, 2020. The CLIA members include: Carnival, Crystal, Disney, MSC, Norwegian, Oceania, Princess, Regent, Royal Caribbean, and Virgin Cruises. Assuming no further extensions of the No Sail Order, the first phase of the Recovery Period would conclude on December 30, 2020.² According to Port Canaveral Chief Executive Officer John Murray, even if the no-sail order ends Oct. 31, cruising is not realistically expected to resume until mid- to late-November, "at the absolute earliest."³

In its recent justification for extending the No Sail Order until October 31, 2020, the CDC has said it is not confident that changes the cruise industry has implemented in Europe to curb the spread of COVID-19 on cruise ships are working adequately. The CDC noted that recent passenger voyages in foreign countries continue to have outbreaks, despite

¹ <https://www.gfoa.org/materials/fund-balance-guidelines-for-the-general-fund>

² The mayoral memo specifies that the end of the first phase of the Recovery Period would be November 29, 2020, when the No Sail Order was to end on September 30, 2020. The No Sail Order was extended to October 31, 2020 on September 30, 2020.

³ <https://www.floridatoday.com/story/news/local/2020/10/01/cdc-extends-no-sail-order-cruise-lines-questions-efforts-europe/5877231002/>

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cruise ship operators having extensive health and safety protocols to prevent COVID-19 transmission on board and spread to communities where passengers disembark. In mid-September, the Healthy Sail Panel, which includes representatives from Royal Caribbean and Norwegian Cruises, submitted a report to the CDC with 74 recommendations to prevent the introduction and mitigate the spread of COVID-19 on cruise ships, including testing, face coverings and temperature checks (<https://www.royalcaribbean.com/content/dam/royal/resources/pdf/healthy-sail-panel-full-recommendations.pdf>). Each cruise company would develop its own protocol details once the CDC ultimately decides appropriate guidelines when cruising resumes. On October 9, 2020, Vice President Mike Pence joined cruise industry executives and the CDC director on a call to discuss COVID-19 and how the industry plans to approach the restart of operations. The industry's proposal to resume sailing will be presented to the White House Task Force, which will then provide a recommendation to President Donald Trump for next steps.

<https://www.floridatoday.com/story/news/local/2020/10/01/cdc-extends-no-sail-order-cruise-lines-questions-efforts-europe/5877231002/>

<https://www.usatoday.com/story/travel/cruises/2020/09/21/norwegian-royal-caribbean-cruise-panel-suggests-covid-19-rules/5839739002/>

<https://www.usatoday.com/story/travel/cruises/2020/10/10/pence-cruise-line-ceos-talk-resumption-sailing-us/5952097002/>

OCA contacted Broward County's Port Everglades on October 9, 2020 to inquire about any COVID-19 relief offered to its cruise lines and spoke with Glenn Wiltshire, Deputy Director. Mr. Wiltshire advised that the Board of County Commissioners' policy has been to not grant assistance in the form of fee waivers, despite cruise lines making requests for relief and even referring to what is being done at PortMiami. He noted that Port Everglades is different from PortMiami in that more of their berths are used for cargo ships and it did not make financial sense for them to allow cruise ships to dock there and not pay fees. In fact, since March 2020, the cruise lines have generally still paid their lay-in fees, although Port Everglades has granted deferrals of payment. Their tariff structure is like a bundled rate, which includes dockage, wharfage, line handler, fees so they are not suspending minimum annual guarantees; however, he acknowledged that they are considering alternatives to assist their partners as they resume operations. He also shared that Royal Caribbean, Celebrity, Home America, Princess, and Carnival is anticipated to have bookings by the end of the year, but Carnival would only sail at least initially out of PortMiami and Port Canaveral.

OCA also contacted Brevard County's Port Canaveral via phone and e-mail on October 9, 2020 and spoke with Diane Luensmann, Vice President of Government & Strategic Communications on October 15, 2020. She advised that Port Canaveral has not and has no plans to provide COVID-19 relief. Tariffs have been in effect and there have been very few cruise ships that have berthed there. Since March 2020, there have been mainly a few vessels received for repatriation, taking of fuel shipments, or repairs, etc. She confirmed that Port Canaveral has been drastically impacted by the shutdown in cruise operations. Port Canaveral's revised budget for fiscal year ending September 30, 2020 showed that the port will have an estimated loss of \$17.44 million (cruise-related operations account for 77.6% of the port's revenue in the original budget). As of July 2020, Port Canaveral had already cut 115 positions through layoffs, unpaid furloughs, and leaving vacant positions unfilled; representing about 43% of the port's pre-coronavirus staff level of 268 (153 employees remain on the payroll). She explained that their budget is zero-based, and they have eliminated all discretionary spending and put capital and other projects on hold. The only major exception is Cruise Terminal H for Disney, as the funding is restricted and financing is already in place. She further stated that Port Canaveral is an independent political subdivision with no County Commission backing. While they have the authority to levy ad valorem taxes, they have not done since 1986 and have no desire to do so at this time. Therefore, they are unable to offer any concessions or relief, as their main source of revenues is from cruise lines and the balance is from cargo and real estate.

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<https://www.floridatoday.com/story/news/local/2020/08/04/port-canaveral-seeks-federal-funding-recover-covid-19-cruise-halt/5569578002/>
<https://www.clickorlando.com/news/local/2020/07/31/port-canaveral-cuts-115-jobs-through-layoffs-furloughs-attrition/>

APPLICABLE LEGISLATION/POLICY

Ordinance No. 88-66, adopted on July 5, 1988, authorized the issuance of (i) \$44,950,000 in Florida Seaport Revenue Refunding Bonds, Series 1995, (ii) \$29,270,000 in Florida Seaport Revenue Bonds, Series 1996, and (iii) \$111,375,000 in Florida Seaport General Obligation Refunding Bonds, Series 2011C.

Reference: <http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2013/131179min.pdf>

Resolution No. R-130-06, adopted on January 24, 2006, clarified that proposed agenda items seeking approval of a contract or conveyance and authority to execute same shall not be placed on any committee or commission agenda unless the underlying contract or conveyance is completely negotiated, in final form, and executed by all non-County parties.

<http://www.miamidade.gov/govaction/matter.asp?matter=060239&file=false&fileAnalysis=false&yearFolder=Y2006>

Resolution No. R-791-14, adopted on September 3, 2014, directed the Mayor to provide the Miami-Dade County Property Appraiser a copy of all leases and operating agreements involving County-owned property.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2014/141723min.pdf>

Resolution No. R-732-20, adopted on July 21, 2020, authorized the Mayor to negotiate and execute a Track and Intermodal Container Transfer Facility Usage and Maintenance Agreement between the Florida East Coast Railway, L.L.C. ("FECR") and Miami-Dade County, providing FECR use of certain on-Port rail lines and on-Port intermodal container transfer facility, for an initial term of three years with three additional one-year renewal options upon mutual assent, in consideration of FECR's commitment to, among other things, pay the County a minimum of \$1,200,000.00 in annual on-Port rail and ICTF user fees (subject to a 3% annual escalator), provide on-Port-rail infrastructure and ICFT inspection and certain maintenance services, and release over \$468,000.00 in previously asserted FECR rail maintenance, refurbishment, and marketing cost claims against the County.

<http://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2020/201375min.pdf>

CONTRIBUTORS

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The Office of the Commission Auditor, Miami-Dade Board of County Commissioners

The Office of the Commission Auditor (OCA) was established in September 2002 by Ordinance 03-2 to provide support and professional analysis of the policy, service, budgetary and operational issues before the Miami-Dade Board of County Commissioners. The Commission Auditor's duties include reporting to the Board of County Commissioners on the fiscal operations of County departments, as well as whether the fiscal and legislative policy directions of the Commission are being efficiently and effectively implemented

These research notes, prepared in collaboration with the Miami Dade County departments as subject matter experts, is substantially less detailed in scope than an audit in accordance with the Generally Accepted Auditing Standards (GAAS). The OCA plans and performs the review to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on its objectives; accordingly, the OCA does not express an opinion on the data gathered by the subject matter expert(s).