MEMORANDUM

Amended
Agenda Item No. 14(A)(2)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: May 17, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving fourth amendment to the contract for sale and purchase (“contract”) between Miami-Dade County, as seller, and Miami-Dade Steel, LLC, a Delaware limited liability company, as buyer, for 123.03 acres of vacant County-owned land identified by Folio No. 30-7901-000-0095 and a portion of Folio No. 30-7901-000-0120 and located directly north of the Homestead Air Reserve Base in unincorporated Miami-Dade County to extend certain of buyer’s deadlines and revise height of smokestack; authorizing the County Mayor to execute the fourth amendment to the contract and to exercise all provisions contained therein

Resolution No. R-497-22

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Kionne L. McGhee.

Geri Bonzon-Keenan
County Attorney

GBK/uw

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(Revised)

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Please note any items checked.

_______ **"3-Day Rule" for committees applicable if raised**

_______ **6 weeks required between first reading and public hearing**

_______ **4 weeks notification to municipal officials required prior to public hearing**

_______ **Decreases revenues or increases expenditures without balancing budget**

_______ **Budget required**

_______ **Statement of fiscal impact required**

_______ **Statement of social equity required**

_______ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

___✓___ **No committee review**

_______ **Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve**

_______ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved ______________________ Mayor

Veto __________

Override __________

Amended
Agenda Item No. 14(A)(2)
5-17-22

RESOLUTION NO. **R-497-22**

RESOLUTION APPROVING FOURTH AMENDMENT TO THE CONTRACT FOR SALE AND PURCHASE ("CONTRACT") BETWEEN MIAMI-DADE COUNTY, AS SELLER, AND MIAMI-DADE STEEL, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS BUYER, FOR 123.03 ACRES OF VACANT COUNTY-OWNED LAND IDENTIFIED BY FOLIO NO. 30-7901-000-0095 AND A PORTION OF FOLIO NO. 30-7901-000-0120 AND LOCATED DIRECTLY NORTH OF THE HOMESTEAD AIR RESERVE BASE IN UNINCORPORATED MIAMI-DADE COUNTY TO EXTEND CERTAIN OF BUYER'S DEADLINES AND REVISE HEIGHT OF SMOKESTACK; AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE THE FOURTH AMENDMENT TO THE CONTRACT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN

WHEREAS, On July 13, 2004, the Board approved Resolution No. R-909-04 which authorized the County to execute an Economic Development Conveyance Agreement ("EDC agreement") with the Secretary of the Air Force on behalf of the United States of America (the "Air Force") to accomplish the transfer of 601 acres of former Homestead Air Reserve Base property ("EDC premises") to Miami-Dade County at no cost, for the purpose of promoting economic development through job creation and new business development in the immediate area of the former Homestead Air Reserve Base; and

WHEREAS, as a result of the EDC agreement, the EDC premises were conveyed to the County by multiple deeds, which included various rights, obligations and restrictions and, since then, the County sought to convey the EDC Premises intended for economic development to industries that will create permanent jobs, attract new businesses, and promote economic development in the Homestead area of Miami-Dade County; and

WHEREAS, on May 22, 2019, pursuant to Resolution No. R-526-19, the Board approved a purchase and sale contract (the "PSA contract") with Miami Dade Steel, LLC ("ESteel"), a Delaware limited liability company, for the sale of 123.03 acres of vacant, County-owned land identified by Folio. No. 30-7901-000-0095 and a portion of Folio No. 30-7901-000-0120 and located directly north of the Homestead Air Reserve Base in unincorporated Miami-Dade County (the "property") for $16,814,100.00 to be used for the development and operation of a micro steel mill; and

WHEREAS, the PSA contract set forth numerous conditions precedent that would need to take place prior to the closing of the sale of the property and set forth an 18-month period during which time the Buyer was to obtain all financing commitments and undertake certain due diligence activities, including but not limited to, testing the land, performing environmental studies, and applying for permits; and

WHEREAS, on May 5, 2020, and following ESteel's request, this Board approved Resolution No. R-454-20 to approve the first amendment to the PSA contract to grant an extension of six months to the 18-month due diligence period in the contract and to the 12-month period in the contract to satisfy the financing condition due to the interruption of business activities and the current turmoil of financial markets caused by the coronavirus disease 2019 pandemic; and

WHEREAS, October 22, 2020, pursuant to Resolution No. R-1102-20, the Board approved a second amendment to the PSA contract to grant ESteel an extension of time until May 1, 2021 to satisfy the financing condition in the PSA contract that requires it to secure financial commitment letters, satisfactory to the County, which, when coupled with the firm equity commitments obtained by Buyer, total an amount not less than $224,000,000.00 to be used to construct the micro steel mill project; and

WHEREAS, on April 5, 2021, ESteel requested extensions of time to various contractual deadlines in order to comply with the terms of the PSA contract; and

WHEREAS, on July 20, 2021, this Board approved Resolution No. R-778-21 which approved the third amendment to the PSA contract to: (1) extend the deadline for ESteel to provide the County with evidence that it has obtained no less than $224,000,000.00 to develop and build a micro steel mill to May 1, 2022; (2) extend the deadline for ESteel to complete all of its due diligence by an additional twelve 12 months until May 22, 2022; and (3) make the $840,705.00 deposit provided by ESteel refundable only under certain modified conditions; and

WHEREAS, on March 11, 2022, ESteel requested additional amendments to the PSA contract, including: (1) a 90-day extension of time to complete all of its due diligence or until August 22, 2022; (2) a 90-day extension of time to provide the County with financial commitment letters and firm equity commitments to evidence that ESteel has at least $224,000,000.00 secured funds to be used to develop and build the micro steel mill on the property; and (3) a revision to the maximum height of its proposed exhaust stack to increase it to 135 feet from the current limitation of 70 feet; and

WHEREAS, the County's administration has reviewed the request submitted by ESteel and the terms and conditions of the fourth amendment to the PSA contract and has confirmed that the administration has no objections to this Board's approval of the fourth amendment to the PSA contract; and

WHEREAS, the PSA contract provides that, as consideration for this Board's approval of the fourth amendment and the granting of additional time extensions to ESteel to meet its obligations under the PSA contract, ESteel shall seek no further amendments of or extensions of time to the deadlines set forth in the PSA contract prior to the closing of the property; and

WHEREAS, good cause exists to add this item on to the final agenda for this meeting of the Board because the financial commitment and due diligence deadlines in the PSA have either passed or are approaching, and thus, the amendment to the PSA is time sensitive,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recitals to this resolution are incorporated herein and are approved.

Section 2. This Board hereby approves the fourth amendment to the PSA contract for the property in substantially the form attached hereto and authorizes the County Mayor or Mayor's designee to execute the fourth amendment to the PSA contract and to exercise all provisions contained in said amendment.

The Prime Sponsor of the foregoing resolution is Commissioner Kionne L. McGhee. It was offered by Commissioner **Jean Monestime**, who moved its adoption. The motion was seconded by Commissioner **Sen. Rene Garcia** and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman **absent**
Oliver G. Gilbert, III, Vice-Chairman **aye**

Sen. René García	**aye**	Keon Hardemon	**aye**
Sally A. Heyman	**absent**	Danielle Cohen Higgins	**absent**
Eileen Higgins	**aye**	Joe A. Martinez	**aye**
Kionne L. McGhee	**aye**	Jean Monestime	**aye**
Raquel A. Regalado	**aye**	Rebeca Sosa	**absent**
Sen. Javier D. Souto	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of May, 2022. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Basia Pruna
By:________________________
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MRP

Monica Rizo Perez
Debra Herman

FOURTH AMENDMENT

TO CONTRACT FOR SALE AND PURCHASE

This Fourth Amendment to the Contract for Sale and Purchase ("**Fourth Amendment**") is entered into and made effective on this ____ day of ____________, 2022, by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter "**County**" or "Seller"), and MIAMI-DADE STEEL, LLC, a Delaware limited liability company (hereinafter "**Buyer**" and jointly with the County referred to herein as the "**Parties**").

WHEREAS, pursuant to Resolution No. R-526-19, on May 22, 2019, the Parties entered into a Contract for Sale and Purchase (the "**Contract**") for the County to sell and the Buyer to purchase the approximately 123.03 acres of real property that is more particularly described in the Survey and legal description attached as Exhibit "A" of the Contract (the "**Property**") for the purpose of constructing and operating a steel micro mill; and

WHEREAS, on May 5, 2020, the Board of County Commissioners approved Resolution No. R-454-20 which approved the First Amendment to the Contract to grant a six-month extension of time to certain contractual deadlines in the Contract; and

WHEREAS, on October 22, 2020, the Board of County Commissioners approved Resolution No. R-1102-20 which approved the Second Amendment to the Contract to grant Buyer an extension to the deadline to submit the Financing Contingency by an additional six-months or until May 1, 2021; and

WHEREAS, on July 20, 2021, the Board of County Commissioners approved Resolution No. R-778-21 which approved the Third Amendment to the Contract in order to extend certain deadlines and modified various terms of the Contract; and

OH

WHEREAS, the Parties are desirous of amending the Contract in order to provide additional time for Buyer to complete its due diligence and comply with the Financing Condition and to acknowledge modification of the size of the smokestack,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Fourth Amendment, including but not limited to the covenants set forth in section 3 below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Buyer agree as follows:

WITNESSETH

1. Recitals. Buyer and County agree that all of the foregoing recitals are true and correct, and incorporated by this reference in this Fourth Amendment.

2. Valid Amendment. Buyer and the County agree that this Fourth Amendment amends the Contract in accordance with Section 17 thereof.

3. Effect of Amendment. Buyer and County agree that all of the terms and conditions in the Contract remain in full force and in effect, except for such terms and conditions that are expressly amended by this Fourth Amendment. The Buyer and County further acknowledge and agree that, by approving and executing this Fourth Amendment, neither Party waives any rights or claims it has under the Contract and the approval of this Fourth Amendment shall not be deemed to be waiver of the Parties' rights thereunder nor shall it estop either Party from enforcing their rights and the other parties' obligations under the Contract. The Parties acknowledge and agree that in exchange and as consideration for the County's approval and agreement to this Fourth Amendment, Buyer shall not seek from the County nor request its approval of any further amendments or revisions to the Contract, including the Declaration of Restrictions, prior to the Closing of the Contract.

GH

4. Defined Terms. Buyer and County agree that, unless specifically defined herein, all of the capitalized terms used but not defined in this Fourth Amendment shall have the respective meanings set forth in the Contract.

5. The Due Diligence Period defined in Section 3 of the Contract is hereby amended to extend the Due Diligence Period by ninety (90) days such that the first sentence in Section 3 of the Contract shall now read as follows:

> 3. INSPECTIONS/ HAZARDOUS MATERIALS/ACCESS: The SELLER does hereby grant and provide to BUYER, and its officers, employees, licensees, agents and vendors non-exclusive permission to enter onto the Property during a thirty-nine (39) month due diligence period commencing with the Effective Date (the "**Due Diligence Period**") for the sole and limited purpose of assessing the physical and environmental condition of the Property and performing its due diligence including, but not limited to, environmental investigation(s), surveying, and geotechnical testing (the "**Due Diligence Work**").

The remainder of Section 3 of the Contract remains unchanged.

6. The following unfulfilled Condition Precedent to Closing in Section 4(a) is hereby amended to extend said unfulfilled Condition Precedent by three (3) months such that Section 4(a)(iv) shall now read as follows:

> Section 4(a)(iv): On or before August 1, 2022 the BUYER shall secure financial commitment letters, satisfactory to the reasonable approval of the Seller, which, when coupled with the firm equity commitments obtained by BUYER, total an amount not less than Two Hundred and Twenty Four

Million Dollars ($224,000,000.00) (the "**Financing Condition**"), which funds shall be used to develop and build the Project on the Property in accordance with the Declaration of Restrictions attached hereto as **Exhibit "C"** (the "**Declaration**"); and

7. Section 4(a)(vi) of the Contract is amended to revise the height of the proposed exhaust stack to 135 feet; provided, however, that this amendment with respect to the height of the proposed exhaust stack shall only be effective if the appropriate zoning approvals or variances for development of the Property are approved to permit a structure of 135 feet.

The remainder of Section 4(a) of the Contract remains unchanged.

8. The effective date of this Fourth Amendment shall be the date set forth on the first page hereof.

9. This Fourth Amendment may be executed in counterparts, each of which shall be deemed an original and all of which together constitute one and the same instrument. Facsimile or electronically transmitted signatures shall be deemed for all purposes to be originals.

10. This Fourth Amendment shall constitute a part of the Contract and references to the Contract hereafter shall automatically include a reference to this Fourth Amendment. In all other respects, the Contract remains in full force and effect in accordance with the terms and conditions specified therein. In the event of any conflict between this Fourth Amendment and the Contract, the Fourth Amendment shall supersede same.

GD

IN WITNESS WHEREOF, Buyer and the County have duly executed this Fourth Amendment, with the intent for it to be legally binding, as of the day and year first written above.

ATTEST:

By: ________________
Clerk

COUNTY:

MIAMI-DADE COUNTY

By: ______________________
Mayor

DATE: __________________
Approved as to form
and legal sufficiency.

By: _______________

The foregoing was accepted and approved on the _________ day of _________, 2022, by Resolution No.______________ of the Board of County Commissioners of Dade County, Florida.

Witnesses:

Print name: John L. Herrera

Print name: Daniel Granados

BUYER:

MIAMI-DADE STEEL LLC
A Delaware limited liability company

By:
Name: GUSTAVO A LOPEZ
Title: CEO

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before, an officer duly authorized to administer and take acknowledgements, personally appeared Gustavo Adolfo Lopez, personally known to me, or proven, by producing the follow identification: Driver License to be the ________________ of Miami-Dade Steel, LLC, an existing Limited Liability Company under the laws of the State of Delaware, and whose name the foregoing instrument is executed and said officer severally acknowledged before me that he executed said instrument acting under the authority duly vested by said corporation and its Corporate Seal is affixed hereto.

WITNESS my hand and official Seal at ____________, in the County and the State aforesaid, on this, the 27 day of April, 2022.

NOTARY PUBLIC STATE OF FLORIDA
My Commission Expires:

[NOTARIAL SEAL]

GELIEN PEREZ
Notary Public - State of Florida
Commission # GG 950969
My Comm. Expires Mar 29, 2024
Bonded through National Notary Assn.