

Memorandum



Date: January 17, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Agenda Item No. 8(N)(4)

Resolution No. R-26-23

Subject: Award of Project Stipend Agreements in Association with RFP No. 01432, Rapid Mass Transit Solution for the North Corridor, as Designated Purchases, and Authorizing the Use of Charter County Transportation Surtax Funds for Such Purpose

Executive Summary

The purpose of this item is to gain approval from the Board of County Commissioners (Board) to award stipend agreements to the proposers who participated in the public-private partnership solicitation for a Rapid Mass Transit Solution for the North Corridor of the SMART Program, RFP No. 01432, as designated purchases. The stipend amounts will be up to \$8 million in total, \$2 million for each of the four short-listed proposers, via the People's Transportation Plan (PTP) funds, and the agreements will facilitate the acquisition of the work product, including intellectual property, prepared by the short-listed proposers during the procurement process.

The concepts, innovations, aesthetics and technical alternatives developed by the proposers will aid in the future development of the project and lead to schedule and cost savings. This action fulfills the intent of Resolution No. R-1139-22, adopted by the Board on November 15, 2022, directing the County Mayor or County Mayor's designee to terminate the public-private partnership procurement for the development of the North Corridor and to present an item for consideration proposing a stipend to reimburse the proposers for their work product.

Recommendation

This item recommends the Board's approval of the attached Stipend Agreement to four short-listed proposers in an amount not to exceed \$2,000,000 per agreement for work product associated with responses to the public-private partnership procurement for a Rapid Mass Transit Solution for the North Corridor, RFP No. 01432.

Approval of a designated purchase is requested, pursuant to Section 2-8.1(b)(3) of the Miami-Dade County Code, by a two-thirds vote of the Board members present, to authorize award of the contracts to purchase the work product of the short-listed proposers. This item is presented as a designated purchase as competition for these services is not practicable at this time because the work product is proprietary to each short-listed proposer. However, the short-listed proposers were evaluated and recommended by the Selection Committee to advance from the first to the second phase of the competitive procurement process as described below. There were no adverse findings relating to contractor responsibility for any of the short-listed proposers.

It is further recommended that Resolution No. R-130-06, which prohibits placing an item seeking approval of a contract on a County Commission agenda until the underlying contract has been completely negotiated and executed by all non-County parties, be waived as doing so is in the best interests of the County.

Background

In June 2020, the County issued a competitive solicitation to obtain proposals from qualified firms for a Rapid Mass Transit Solution on the North Corridor of the County's SMART Program. The project would provide an elevated fixed guideway transit system along the North Corridor, extending from NW 215th Street and connecting to either the Northside Metrorail Station or Martin Luther King, Jr. Metrorail Station via NW 27th Avenue. The awarded firm would have entered into an interim agreement to later design, permit, construct/build, finance, manage, operate, and maintain a Rapid Mass Transit Solution on the North Corridor under a project agreement. Under this process, the project was projected to be completed in 2033, approximately, thus forgoing federal funding currently available for transit infrastructure investments.

The solicitation was divided into two phases. In Phase 1, the County solicited and evaluated proposals with the intent of shortlisting up to four proposers determined to be the most highly qualified to successfully deliver the project. There were a total of four proposals received and the scores were high enough to warrant inviting all four to participate in the Alternative Technical Concept process and to prepare a Phase 2 proposal for their respective solutions. The Alternative Technical Concept process was completed, and the Phase 2 solicitation was prepared. However, prior to the publication of the Phase 2 solicitation, the Board adopted Resolution No. R-1139-22, directing the County Mayor or Mayor's designee to (1) terminate the procurement process and accelerate the implementation of the North Corridor and (2) present an item to the Board proposing a stipend reimbursing the proposers for their work product, including any technical, financial or aesthetic concepts. Accordingly, the procurement process concluded and the attached stipend agreement to reimburse proposers was developed for the Board's consideration.

Scope

The scope of this item is countywide in nature as the Metrorail is an asset of countywide significance. However, the North Corridor portion of the Metrorail will be located in County Commission District 1, represented by Chairman Oliver Gilbert; County Commission District 2, represented by Commissioner Marleine Bastien; and County Commission District 3, represented by Commissioner Keon Hardemon.

Fiscal Impact/Funding Source

The fiscal impact for the one-time purchase is up to \$8,000,000. The stipends are to be funded by the People's Transportation Plan (PTP) Bond Program from Program No. 672670, Project No. 3002320, Planning and PD&E for the North Corridor from Volume 2 of the Fiscal Year 2022-23 Adopted Budget and Multi-Year Capital Plan and PTP Capital Reserve Fund. DTPW will request a budget amendment to add funding for FY 2022-23 if additional expenditure is required and will include increased budget expenditure authority for subsequent fiscal years.

Department	Allocation	Funding Source	Contract Manager
Transportation and Public Works	\$8,000,000	PTP	Maria Perdomo
Total:	\$8,000,000	PTP	

This item is placed for Board review pursuant to Miami-Dade County Code Section 29-124(f)(ii). Since this is a transit-related procurement, to be funded by the People's Transportation Plan, with a value of more than \$1 million. Therefore, the Board may only consider this item if the Citizens' Independent Transportation Trust (CITT) has forwarded a recommendation to the Board. If CITT has not forwarded

a recommendation and 45 days have not elapsed since the issuance of this recommendation, a withdrawal of this item will be requested.

Track Record/Monitor

Maria Perdomo, P.E., DTPW Work Program Manager, is responsible for monitoring this process.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to offer a stipend agreement, in substantially the form attached, to each of the four short-listed proposers in response to RFP No. 01432 for an amount up to \$2,000,000 each. For each proposer that accepts the stipend agreement, the County Mayor or County Mayor's designee will have the authority to execute such contract and to exercise all provisions of the stipend agreement.

Vendor Recommended for Project Stipend

Vendor	Principal Address	*Local Address	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Miami-Dade Mobility Partners, LLC	One Alhambra Plaza, Suite 1200 Coral Gables, FL	Same	N/A ** %	Nuria Haltiwanger
Miami North Transit Partners, LLC	2 S. Biscayne Boulevard, Suite 2700 Miami, FL	Same	15 19 %	Thierry Deau
North Corridor Transit Partners, LLC	9600 Great Hills Trail, Suite 250E Houston, TX	N/A	N/A ** %	Lou Serafini, Jr.
Plenary Infrastructure North Corridor, LLC	100 N. Tampa Street, Suite 2840 Tampa, FL	N/A	N/A ** %	Stuart Marks

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor's employees who reside in Miami-Dade County as compared to the vendor's total workforce.

** This entity is a special purpose entity created for the purpose of fulfilling the proposer's responsibilities under the project and therefore has no existing employees.

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Strategic Procurement Department's Procurement Guidelines to determine contractor responsibility, including verifying corporate status and that there are no performance or compliance issues through various vendor responsibility lists and a keyword internet search. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to contractor responsibility.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies.
- The Small Business Enterprise measures and Local Preference do not apply.

- The Living Wage Ordinance does not apply as the services to be procured are not covered services under the Ordinance.
- The Responsible Wages and Benefits Ordinance does not apply as the services are not covered under the Ordinance.

A handwritten signature in blue ink, appearing to read 'Jimmy Morales', with a stylized, cursive script.

Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: January 17, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(N)(4)

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 _____

Agenda Item No. 8(N)(4)
1-17-23

RESOLUTION NO. R-26-23

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; APPROVING THE NORTH CORRIDOR PROJECT STIPEND AGREEMENT TO THE FOUR SHORT-LISTED PROPOSERS UNDER RFP NO. 01432 IN AN AMOUNT NOT TO EXCEED \$2,000,000.00 PER AGREEMENT; WAIVING RESOLUTION NO. R-130-06, WHICH PROHIBITS PLACING AN ITEM SEEKING APPROVAL OF A CONTRACT ON A COUNTY COMMISSION AGENDA UNTIL THE UNDERLYING CONTRACT HAS BEEN COMPLETELY NEGOTIATED AND EXECUTED BY ALL NON-COUNTY PARTIES, AS DOING SO IS IN THE BEST INTERESTS OF THE COUNTY; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENTS AND EXERCISE ALL PROVISIONS THEREIN; AND AUTHORIZING THE USE OF CHARTER COUNTY TRANSIT SYSTEM SURTAX FUNDS FOR SUCH PURPOSE WHICH WAS INCLUDED IN THE ORIGINAL EXHIBIT 1 TO THE PEOPLE'S TRANSPORTATION PLAN OR WAS OTHERWISE ADDED TO THE FIVE-YEAR IMPLEMENTATION PLAN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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

Section 1. The Board finds it is in the best interest of Miami-Dade County to approve a designated purchase, pursuant to section 2-8.1(b)(3) of the County Code, by a two-thirds vote of the Board members present.

Section 2. The Board approves the North Corridor Project Stipend Agreement to the four short-listed proposers under RFP No. 01432 in an amount not to exceed \$2,000,000.00 per agreement to compensate proposers not selected for award and secure the intellectual property contained within their work product, including any innovations or improvements to be made to the project. Furthermore, the Board waives Resolution No. R-130-06, which prohibits placing an item seeking approval of a contract on a County Commission agenda until the underlying contract has been completely negotiated and executed by all non-County parties, as doing so is in the best interests of the County.

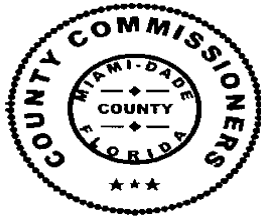
Section 3. The Board authorizes the County Mayor or County Mayor's designee to execute the Project Stipend Agreements and exercise all provisions therein.

Section 4. The Board authorizes the use of Charter County Transportation System surtax funding for this purpose which was included in the original Exhibit 1 to the People's Transportation Plan or was otherwise added to the Five-Year Implementation Plan.

The foregoing resolution was offered by Commissioner **Oliver Gilbert III**, who moved its adoption. The motion was seconded by Commissioner **Eileen Higgins** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman			
Anthony Rodríguez, Vice Chairman			
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	nay
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	absent	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 17th day of January, 2023. 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

LUIS G. MONTALDO, CLERK AD INTERIM

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in dark ink, appearing to read "B. Libhaber", is written over a horizontal line.

Bruce Libhaber

North Corridor Project Stipend Agreement
Contract No. RFP-01432-Stipend

THIS CONTRACT made and entered into as of this _____ day of _____, 20__ by and between _____ a corporation organized and existing under the laws of the State of _____, having its principal office at _____ (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"). County and Contractor are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the County issued Request for Proposals (RFP) No. 01432 (the "RFP" or "Solicitation") for the Rapid Mass Transit Solution for the North Corridor (the "Project"); and

WHEREAS, the Contractor submitted a Proposal in response to Phase 1 of the RFP and was selected as one of four Short-Listed Proposers by the County to participate in Phase 2 of the RFP; and

WHEREAS, on November 15, 2022, the Board of County Commissioners ("Board") adopted a motion directing the County Mayor or County Mayor's designee to terminate the Solicitation and present an item to the Board for review and consideration proposing a stipend to reimburse proposers for their Work Product; and

WHEREAS, once the Solicitation was terminated, the Department of Transportation and Public Works held discussions with each Short-Listed Proposer in order to determine the proposed stipend amount and this Contract is the resulting agreement with the Contractor for its Work Product; and

WHEREAS, the County desires to procure the Contractor's Work Product, including any technical, financial or aesthetic concepts associated with the North Corridor procurement in accordance with the provisions of this Contract; and

WHEREAS, on _____, the Board of County Commissioners adopted Resolution R-_____ approving the form of this Contract,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

1. Recitals and Definitions

- a. The foregoing recitals are true and correct and are incorporated herein by this reference to form a part of this Contract.
- b. Capitalized terms not defined in this Contract have the meanings defined in the RFP.
- c. "Work Product" as used herein shall mean all materials, data, property, technical, aesthetic, operational or financial concepts and any alternative technical concepts, presentations, ideas, innovations, technology, techniques, methods, processes, unique uses of commercial items, design concepts, solutions, construction means and methods, project execution approach, drawings, reports, plans and specifications, CADD files, all attachments, and information that constitutes intellectual property, conceived, created, or developed by Contractor in connection with the RFP.

- d. "Stipend" shall mean the payment made to a Short Listed Proposer that submits its Work Product to the County per the terms of this Contract.

2. Term

This Contract shall become effective on the date indicated on the first page of this agreement (the "Effective Date"), which in no event shall occur prior to 10-days following the Board's adoption of a resolution approving the form of this Contract, and unless otherwise earlier terminated in accordance with the terms herein, shall continue in full force and effect until the Contractor has delivered to County the Work Product described in this Contract and County has paid to Contractor the lump sum amount described in Section 5.

3. Eligibility for Stipend

If the Board approves this Contract, then a Stipend may be provided as compensation to the Contractor for their Work Product in accordance with the terms herein. To be eligible for a Stipend, the Contractor must have met the following conditions:

- a. Contractor shall be a registered vendor with the County – Strategic Procurement Department, prior to entry into this Contract and for the duration of this Contract.
- b. Contractor shall be required to sign and submit this Contract which transfers the Work Product, including the intellectual property, from the Contractor to the County.
- c. Contractor has satisfied the applicable terms and conditions set forth in this Contract.

4. Delivery of Work Product

- a. Within thirty (30) days of the Effective Date of this Contract, Contractor shall deliver to County its Work Product as defined herein. If the Contractor does not deliver its entire Work Product within this period, the Contractor shall be in default of the Contract and the County may terminate the Contract. Notwithstanding, the County may, in its sole discretion, allow the Contractor to cure the default to the County's reasonable satisfaction within a ten (10) day period. The County may grant this cure period without waiver of any of the County's rights hereunder.
- b. Contractor shall submit its Work Product in an editable, native electronic format, including but not necessarily limited to, CADD files. In the event of Contractor's delivery of non-editable file formats such as PDF, JPEG, TIFF, etc., Contractor shall not be deemed to be in compliance with the terms of this Contract and County shall have no obligation to pay the Stipend under section 5 herein until such time of Contractor's compliance with this part.
- c. Contractor shall provide County an invoice at the time of delivery of its Work Product including an inventory of all Work Products delivered. The invoice shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor.

5. Stipend and Method of Payment

- a. Within 45 days of Contractor's delivery of its Work Product and invoice to County, County shall pay the Contractor a lump sum amount of _____ Dollars (\$) for the Work Product in accordance with this Contract.

- b. It is the policy of Miami-Dade County that payment for all purchases by County agencies shall be made in a timely manner and that interest payments be made on late payments. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County, the time at which payment shall be due from the County shall be forty-five (45) calendar days from receipt of a proper invoice. All payments due from the County, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County.

In accordance with Miami-Dade County Implementing Order No. 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

The invoice shall be submitted electronically or in hard copy format by the Contractor to the County as follows:

Miami-Dade County

Attention: _____

6. Title to and Use of Work Product

- a. Upon the County's completion of payment required under section 6 of this Contract, Contractor's Work Product shall become the property of the County without restriction or limitation on its use.
- b. The County may share the Work Product with any vendor awarded a contract related to the Project, including such vendor's subcontractors, and may incorporate any innovations, improvements or other concepts from the Work Product into the Project.
- c. The Contractor hereby represents and warrants that the Work Product furnished hereunder does not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third-party proprietary rights.
- d. To the extent any Work Product delivered by Contractor under this Contract incorporates intellectual property owned by third-parties (including the Contractor's Team Members or subcontractors), the Contractor represents and warrants that it has the right to grant the County an irrevocable, non-exclusive, perpetual, royalty-free license to use such intellectual property. The Contractor hereby assigns such license to the County effective upon the Contractor's acceptance of payment hereunder. The foregoing shall not be deemed a requirement for the Contractor to provide off-the-shelf software to the County.

7. Indemnification

The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third-party proprietary rights in the performance of the Work. The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights,

by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work Product, or the County's continued use of the Work Product furnished hereunder.

Contractor shall defend, indemnify, and hold County and County's officers, employees, agents, instrumentalities, contractors and subcontractors, harmless from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including attorneys' fees and costs), resulting from allegations of infringement of any patents, copyrights, trade secrets, or other intellectual property rights covering the Work Product, or any portion thereof, delivered by Contractor pursuant to this Contract. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

Without limiting Contractor's obligations under this part, the County may, at its expense, elect to participate in the defense to any claims and to engage counsel of its choice for such purpose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

Notwithstanding any provision of this Contract or anything implied by applicable law to the contrary, Contractor's obligations to defend, indemnify, and hold harmless under this section shall continue beyond expiration of the Term of this Contract and shall survive any earlier termination thereof.

8. Inspector General Reviews

a. Independent Private Sector Inspector General (IG) Requirements

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Contract for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Contract. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

b. Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of random audits shall be incorporated into the contract price of all contracts and shall be one quarter (1/4) of one (1) percent of the contract price, except as otherwise provided in Section 2-1076 of the Code of Miami-Dade County.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing

project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

9. User Access Program

Pursuant to Section 2-8.10 of the Code of Miami-Dade County, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%), unless the contract is funded with any funding source, including federal, which prohibits or restricts the application of the credit to the County. The Contractor providing goods or services under this Contract shall invoice the Contract price and shall accept as payment thereof the Contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Contractor participation in this invoice reduction portion of the UAP is mandatory.

10. Federal, State and Local Compliance Requirements

As applicable, Contractor shall comply, subject to applicable professional standards, with the provisions of all applicable federal, state and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Contract, including, but not limited to:

- a. Equal Employment Opportunity clause provided under 41 C.F.R. Part 60-1.3 in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended.
- b. The Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Contract Act (33 U.S.C. §§ 1251-1387), as amended.
- c. The Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by the Department of Labor regulations (29 C.F.R. Part 5).
- d. The Copeland "Anti-Kickback" Act (40 U.S.C. § 3145) as supplemented by Department of Labor regulations (29 C.F.R. Part 2).
- e. Section 2-11.1 of the Code of Miami-Dade County, "Conflict of Interest and Code of Ethics".
- f. Section 10-38 of the Code of Miami-Dade County, "Debarment of Contractors from County Work".
- g. Section 11A-60 - 11A-67 of the Code of Miami-Dade County, "Domestic Leave".
- h. Section 21-255 of the Code of Miami-Dade County, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.
- i. The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)).

- j. Section 448.07 of the Florida Statutes "Wage Rate Discrimination Based on Sex Prohibited".
- k. Chapter 11A of the Code of Miami-Dade County (§ 11A-1 *et seq.*) "Discrimination".
- l. Chapter 22 of the Code of Miami-Dade County (§ 22-1 *et seq.*) "Wage Theft".
- m. Chapter 8A, Article XIX, of the Code of Miami-Dade County (§ 8A-400 *et seq.*) "Business Regulations".
- n. Any other laws prohibiting wage rate discrimination based on sex.
- o. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).
- p. Executive Order 12549 "Debarment and Suspension", which stipulates that no contract(s) are "to be awarded at any tier or to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs".
- q. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and regulations issued pursuant thereto (24 C.F.R. Part 146).

Pursuant to Resolution No. R-1072-17, by entering into this Contract, the Contractor is certifying that the Contractor is in compliance with, and will continue to comply with, the provisions of items "e" through "k" above.

11. Nondiscrimination

During the performance of this Contract, Contractor agrees to not discriminate unlawfully against any employee or applicant for employment on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and on housing related contracts the source of income, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

12. Public Records and Contracts for Services

The Contractor shall comply with the Public Records Laws, including by not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by the County in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Contractor upon termination of the Contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of this Contract and shall be enforced in accordance with the terms and conditions of the Contract.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING

TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1st STREET, SUITE 1300, MIAMI, FLORIDA 33128.

13. Verification of Employment Eligibility (E-Verify)

By entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095 of the Florida Statutes, titled "Verification of Employment Eligibility". This includes but is not limited to utilization of the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of all newly hired employees by the Contractor effective January 1, 2021 and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply may lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination and the Contractor may be liable for any additional costs incurred by the County resulting from the termination of the Contract. If this Contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

14. Venue and Choice of Law

This Contract and all matters relating to this Contract (whether in contract, statute, tort, or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to its conflict of laws principles. The Parties to this Contract agree that any action or proceeding arising out of or related in any way to this Contract shall be brought solely in a court of competent jurisdiction in Miami-Dade County, Florida, and each Party hereto submits to the jurisdiction of such courts and waives any objection to the venue and jurisdiction of such courts.

15. Non-Waiver

The failure of either Party to follow, enforce, abide by, or insist upon strict compliance with the terms of this Contract shall not constitute a waiver of nor diminish the enforceability of any provision herein.

16. Entire Agreement

This Contract shall constitute the entire agreement between the Parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both Parties.

This Contract may be modified, altered or amended only by a written amendment duly executed by both Parties hereto or their authorized representatives.

17. No Third-Party Beneficiary

This Contract is intended for the benefit of the Parties hereto and their respective permitted successors and assigns, and nothing herein shall be construed for the benefit of, intended or otherwise, nor may any provision hereof be enforced by, any third-party.

18. Assignment

The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, including its rights,

title, or interest in or to the same or any part thereof without the prior written consent of the County.

19. Independent Contractor

County and Contractor are and shall remain independent contractors. This Contract shall not create an agency, partnership, joint venture, or any other form of legal association, and neither Party may represent itself as an agent, partner, or joint venturer of the other, nor shall either Party have any power to assume any obligations or liabilities on behalf of the other.

20. Severability

If this Contract contains any provision found to be invalid, illegal, unenforceable, or unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Contract without affecting the binding force of this Contract as it shall remain after omitting such provision.

21. Joint Preparation

The Parties acknowledge that this Contract was jointly negotiated and drafted by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be construed more or less favorably as to any Party and shall not give rise to any presumptions or burdens of proof favoring or disfavoring either Party by virtue or authorship of this Contract.

22. Effect of Headings

The section and subsection headings contained herein are for convenience only and shall not affect the construction of the provisions hereof.

23. Counterparts

This Contract may be executed simultaneously or in counterparts, each of which together shall constitute one and the same Contract. For purposes of this Contract, a facsimile or PDF copy shall be deemed to be an original.

[Signatures appear on following page]

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Contract effective as of the Effective Date herein above set forth.

Contractor

Miami-Dade County

By: _____
Name: _____
Title: _____
Date: _____
Attest: _____
Corporate Secretary/Notary Public

By: _____
Name: Daniella Levine Cava
Title: Mayor
Date: _____
Attest: _____
Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form
and legal sufficiency

Assistant County Attorney



Memorandum



To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Javier A. Betancourt, Executive Director 

Date: December 22, 2022

Re: **CITT AGENDA ITEM 7D:**
RESOLUTION BY THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST (CITT) RECOMMENDING THE BOARD OF COUNTY COMMISSIONERS (BCC) AUTHORIZE DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(B)(3) OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; APPROVE THE NORTH CORRIDOR PROJECT STIPEND AGREEMENT TO THE FOUR SHORT-LISTED PROPOSERS UNDER RFP NO. 01432 IN AN AMOUNT NOT TO EXCEED \$2,000,000.00 PER AGREEMENT; AUTHORIZE THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENTS AND EXERCISE ALL PROVISIONS THEREIN; AND AUTHORIZE THE USE OF CHARTER COUNTY TRANSIT SYSTEM SURTAX FUNDS IN AN AMOUNT NOT TO EXCEED **\$8,000,000.00** FOR SUCH PURPOSE **(DTPW – BCC LEGISLATIVE FILE NO. 222883) SURTAX FUNDS ARE REQUESTED**

On December 21, 2022, the CITT voted (8-0) to forward a favorable recommendation to the Board of County Commissioners (BCC) for the approval of the above referenced item, CITT Resolution No. 22-045. The vote was as follows:

Oscar J. Braynon, Chairperson – Aye
Alfred J. Holzman, 1st Vice-Chairperson – Aye
Robert Wolfarth, 2nd Vice-Chairperson – Aye

Hon. Peggy Bell – Aye
Joseph Curbelo – Absent
Qjuezari Harvey – Aye
L. Elijah Stiers, Esq. – Absent
Ernest Thomas – Aye

Omar K. Bradford, Esq. – Aye
Meg Daly – Absent
Paul J. Schwiep, Esq. – Aye
Mary Street, Esq. – Absent

c: Jimmy Morales, Chief Operations Officer
Bruce Libhaber, Assistant County Attorney