Memorandum

MIAMI-DADE COUNTY

Date: October 3, 2023

Agenda Item No. 8(A)(3)

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

From: Daniella Levine Cava
Mayor

Daniella Levine Cava

Resolution No. R-836-23

Subject: Recommendation to Reject Proposals Received in Connection with RFP No. MDAD-07-06 and Approve a Designated Purchase Pursuant to Section 5.03(D) of the Home Rule Charter and Section 2.8-1 of the Code of Miami-Dade County

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Executive Summary

In June 2007, the Miami-Dade Aviation Department (MDAD or Aviation Department) advertised RFP No. MDAD-07-06 seeking proposals from qualified investors to finance, construct, renovate, manage and/or operate development projects at both Miami International Airport (MIA), and at Miami Executive Airport (TMB). In response to the solicitation, two responsible, responsive firms submitted proposals for the development of parcels of land at MIA. MDIA Associates, LLC (MDIA) submitted proposals for Areas 3, 4 and 5, and Hines Limited Partnership (Hines) submitted a proposal for Area 4. The County's Competitive Selection Committee ranked MDIA as the highest ranked firm and in March 2008 the negotiations began.

The negotiation process was delayed numerous times, but most notably in 2008, when the global financial crisis caused the U.S. economy to slump and the real estate market in South Florida to collapse. Additionally, there were a series of local zoning issues that contributed to the delay as well as a Federal Aviation Administration (FAA) policy change that reduced the size of the original development sites, which prompted MDIA to delete the sites from its development plans.

In July 2020, an agenda item rejecting the proposals received in response to RFP. No. MDAD-07-06 was placed on the Tourism and Ports Committee (TAP) agenda. However, the item was "deferred to no date certain" at the request of the former Administration. The deferral provided MDIA with the opportunity to develop Area 4 on a reduced development site. The decision to defer was based on the fact that MDIA had invested, in good faith, approximately $700,000 on materials (such as: site plans and designs, appraisal reports, aerial exhibits, feasibility analyses, legal analyses for the zoning process, and work products) to advance the proposed development projects during the negotiation process.

Soon after the onset of the COVID-19 pandemic, the demand for air cargo at MIA skyrocketed for three continuous years, from 2020 - 2022. In response to the surge in demand, it was determined by County officials that an air cargo expansion strategy that augments MIA's cargo capacity in the short term would be given priority as the airport's existing facilities are nearing capacity in addition to the fact that MDAD's Capital Improvement Plan only provides for incremental cargo capacity expansion over the next 25 years. This shift in priorities modified the County's need for public private investment considering the limited available real estate within MIA's footprint. As such, the County concluded that Areas 4 and 5 are needed to accommodate MIA's present-day cargo expansion program, and that Area 3 would be designated for a new fumigation facility for use by the Seaport Department (Seaport) and MDAD.

For the reasons mentioned above, the attached “Closure Agreement” which is discussed in detail in the Background Section of this memorandum has been placed on today’s agenda for Board consideration and approval. Essentially, it rejects all proposals received in connection with RFP No. MDAD-07-06; resolves all commitments, responsibilities, obligations, and potential liabilities for both the County and MDIA with respect to the procurement and the negotiations related to RFP No. MDAD 07-06 as well as the development of Areas 3, 4 and 5; provides for a designated purchase in the amount of $555,850.32 for the materials produced by MDIA throughout the lengthy and irregular negotiation time period. The materials will be used by the County to develop Areas 4 and 5 to accommodate its air cargo expansion plans, and to design and construct a fumigation facility in Area 3 that will be used by MDAD and the Seaport.

Recommendation
It is recommended that the Board approve the attached resolution approving the attached “Closure Agreement”, which among other things, (i) rejects all proposals received by the County in connection with a solicitation entitled: “Request for Proposals for Public Private Investor Projects - RFP No. MDAD-07-06” submitted by MDIA for Areas 3, 4 and 5 as well as the proposal submitted by Hines for Area 4; and (ii) waives the County’s competitive bidding requirements in Section 5.03(d) of the Miami-Dade Home Rule Charter and Section 2-8.1 of the Code of Miami-Dade County Code, by a two-thirds vote of the Board members present.

It is not practicable to purchase the materials produced by MDIA via the County’s competitive process, as the materials being purchased are unique and therefore can only be purchased from MDIA. As such, it is in the best interest of the County to waive the competitive bidding process and approve a designated purchase in the amount of $555,850.32.

Scope
MIA is located primarily within District 6, which is represented by Commissioner Kevin M. Cabrera; however, the impact of this agenda item is countywide, as MIA is a regional asset.

Delegation of Authority
This item authorizes the County Mayor or County Mayor’s designee to execute the “Closure Agreement” and to exercise all of the provisions contained therein.

Fiscal Impact/Funding Source
There is no fiscal impact to the County for the rejection of the proposals received for Areas 3, 4 and 5 by MDIA and Hines. However, there is a fiscal impact to the County for the proposed designated purchase in the amount of $555,850.32. The funding source is Aviation Revenues.

Department	Allocation	Funding Source	Contract Manager
Aviation	$555,850.32	FY 23 Operating Budget	Sylvia Novela

Track Record/Monitor
MDAD's Division Director of Contracts Administration, Sylvia Novela, will monitor the implementation of the "Closure Agreement".

Background
In June 2007, the Board adopted Resolution No. R-650-07 authorizing the County Mayor or County Mayor's designee to advertise a Request for Proposals for RFP No. MDAD-07-06 for the Aviation Department for public private investor projects at MIA and TMB. In response to the solicitation issued, two responsive firms were ranked by the County's Competitive Selection Committee (CSC), MDIA and Hines. MDIA, the highest ranked firm, submitted proposals for Areas 3, 4, and 5 at MIA and Hines, the second ranked firm, submitted a proposal for Area 4 at MIA.

In March 2008, the CSC's recommendation to negotiate with MDIA was approved and negotiations began. A series of complex issues required extensive negotiations such as: (i) zoning changes and land values, (ii) market values (rent), (iii) limitations on increases in land rent adjustments, (iv) additional rent payments for improvements after passage of the amortization period, and (v) transfer fees, if the lease interest is transferred or sold.

Shortly after the negotiations began, the South Florida real estate economy collapsed along with the general economy nationwide. Even after the economy showed signs of improvement in 2012 and bank loans to construction projects were again becoming available, the negotiations with MDIA were delayed by a series of zoning issues that took time to resolve in order to allow development at MIA. Due to the complexity of the zoning issues at hand, MDIA opted to exclude Area 5 from its development plans. Subsequently, due to an FAA policy change in 2012 that further restricts development within runway protection zones, MDAD and MDIA agreed to delete Area 4 from MDIA's development plans because of its proximity to Runway 27. Following the exclusion of Area 4, the development site in Area 3 was reduced as it was determined that a portion of Area 3 is located inside Runway 27's runway protection zone. Consequently, MDIA also omitted the reduced development site in Area 3 from its development plans. Since that time, Seaport advised the Aviation Department of its need for a fumigation facility to continue growth of its cargo operations. Seaport had received a large grant from the Federal Government to build a new facility. After careful evaluation of the reduced development site in Area 3 as a potential site for the fumigation facility, it was determined by MDAD and the Seaport that it would be the best location for the facility, and it could also serve some of the needs that MIA has for fumigation of perishable goods.

As mentioned previously, in July 2020, because of the circumstances described above, an agenda item rejecting the proposals received from MDIA and Hines was placed on the TAP agenda for approval. However, the agenda item was "deferred to no date certain" at the committee meeting at the request of the previous Administration. This was done in response to MDIA's proposition to develop Area 4 on the reduced development site. The reduction would provide MDIA with approximately 8 acres of vacant land to develop instead of 12 acres. It should be noted that MDIA and the County had been negotiating in good faith since April 2008 with respect to the terms and conditions of the potential lease agreements for Areas 3, 4 and 5. Throughout that time period, in an effort to expedite the development projects, MDIA contracted professional firms to develop the materials needed for the development projects for the proposed sites and spent approximately a total of $700,000. MDIA engaged those professional firms knowing that the County is not obligated to pay for any of the services rendered by the firms as a development lease agreement for Areas 3, 4 and 5 has not yet been approved by the Board of County Commissioners. For those reasons, MDIA was afforded an opportunity to develop Area 4 on the reduced development site.

Not long after MDAD staff restarted the negotiation process with MDIA, it became clear that it was no longer in the best interest of the County to enter into a development lease agreement for Area 4. This realization came shortly after the onset of the COVID-19 pandemic when MIA began to experience its highest growth rates ever for air freight. From 2020-2022, the demand for air cargo at MIA grew at a rate beyond MDAD's current Capital Improvement Plan, which calls for incremental cargo capacity expansion only over the long term. In calendar year 2020, the demand for air cargo at MIA grew by 2.53 percent, in year 2021 demand grew by 18.01 percent, and in year 2022 the demand was approximately the same compared to year 2021. Considering that the demand for cargo is projected to continue to increase at MIA, the limited availability of land within MIA's footprint, and the fact that multiple on-airport site cargo facilities have reached the limit of their useful life, it is critical that the County invest in air cargo solutions that meet the projected demand for cargo in the short and long term, that is, if MIA is to retain its strong standing among leading global cargo airports over the next 20 years. As such, Areas 4 and 5 at MIA have become indispensable as these parcels of land are needed to accommodate MIA's cargo expansion plans, and as stated previously, Area 3 has been designated to house the new fumigation facility.

Because the County concluded that the development of Areas 3, 4 and 5 could have a negative impact on MIA's future growth and income, it was determined that the best course of action was to place the attached "Closure Agreement" on today's agenda for Board consideration and approval. Among other things, the "Closure Agreement" does the following:

- Rejects all proposals received in connection with RFP No. MDAD-06-07.
- Resolves all commitments, responsibilities, obligations, and potential liabilities between MDIA and the County with respect to RFP No. MDAD-06-07 and/or negotiations or development of Areas 3, 4 and 5.
- Provides for the County's purchase of the materials produced by MDIA for the development of Areas 3, 4 and 5 in the total amount of $555,850.32.
- Provides for the County to pay the sum of $555,850.32 within 45 days of the effective date of the "Closure Agreement", and for MDIA to convey the materials noted in Exhibit A of the "Closure Agreement" to the County within 30 days. Upon payment of the County to MDIA for the materials, all rights, titles, and interests in the work products conveyed to the County shall vest in the County.

It is important to note that the County and MDIA entered into negotiations to set the purchase price for the materials described in Exhibit A of the attached "Closure Agreement". These materials can be used by the County not only when Areas 4 and 5 are developed to expand MIA's air cargo facilities but also for the development of the Seaport's new vital fumigation facility in Area 3. With the expected increases in cargo shipments, especially of perishables, the rapid development of a new fumigation and cold storage facility will be an asset for the County to compete in the worldwide market for shipping by sea and air.

Conclusion

MDIA and the County negotiated in good faith for almost 14 years with respect to the terms and conditions of the potential lease agreements for Areas 3, 4 and 5. During this time period, in order to accelerate the proposed development projects, MDIA hired consultants to prepare the materials needed for the proposed development sites which totaled to approximately $700,000 in expenses. Ae mentioned earlier, MDIA employed the consultants with the understanding that MDIA was liable for the expenses until a development lease agreement was completed and approved by the Board. The 2008 financial crisis that triggered a worldwide economic slump in combination with FAA's policy changes in 2012 and a variety of complex zoning problems set back the negotiation process between MDIA and the County numerous times. Given the constraints and difficulties of the issues, MDIA in agreement with the County continued to shrink its development portfolio until no land was available to develop, however, MDIA remained with $700,000 in expenditures.

The terms and conditions of the attached "Closure Agreement" have been negotiated in good faith, they end all commitments, responsibilities, obligations, and potential liabilities associated with the procurement and award of RFP MDAD-07-06 for both parties. Additionally, the designated purchase of the materials produced by MDIA included in the "Closure Agreement" benefits the County as the materials can be used by the County when Areas 3, 4, and 5 are developed for use by the County.

Because of the extraordinary circumstances that delayed the negotiation process between MDIA and the County and the obstacles that hindered MDIA's development of Areas 3, 4 and 5, it is recommended that the Board approve the attached "Closure Agreement" in order to turn the page and close all actions taken by the County and by MDIA with respect to RFP-MDAD-07-06.

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Jimmy Morales
Chief Operations Officer

MEMORANDUM
(Revised)

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

DATE: October 3, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(A)(3)

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(A)(3)
10-3-23

RESOLUTION NO. R-836-23

RESOLUTION RECOMMENDING REJECTION OF ALL PROPOSALS RECEIVED IN RESPONSE TO RFP NO. MDAD-07-06, AND APPROVAL OF A DESIGNATED PURCHASE TO MDIA ASSOCIATES, LLC IN THE AMOUNT OF $555,850.32, FOR PURCHASE OF VARIOUS STUDIES AND OTHER MATERIALS PRODUCED BY MDIA ASSOCIATES LLC; WAIVING COMPETITIVE BIDDING PROCEDURES PURSUANT TO SECTION 5.03(D) OF THE HOME RULE CHARTER AND SECTION 2-8.1 OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE CLOSURE AND PURCHASE AGREEMENT BETWEEN THE COUNTY AND MDIA

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 that this Board:

Section 1. Rejects all proposals received in connection with RFP No. MDAD 07-06.

Section 2. Finds it in the best interest of Miami-Dade County to waive competitive bidding requirements of section 2-8.1 of the Code of Miami-Dade County, Florida, and section 5.03(D) of the Home Rule Charter by a two-thirds vote of the Board members present and approve a designated purchase between Miami-Dade County and MDIA Associates, LCC in the amount of $555,850.32 for the purchase of various materials related to various studies performed on behalf of, and zoning applications made on behalf of, MDIA related to the property, as listed on the attached Closure and Purchase Agreement; and authorizing the County Mayor or County Mayor's designee to execute the Closure and Purchase Agreement in substantially the form attached hereto, and to exercise the terms thereof.

The foregoing resolution was offered by Commissioner **Anthony Rodriguez**, who moved its adoption. The motion was seconded by Commissioner **Danielle Cohen Higgins** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman **aye**
Anthony Rodríguez, Vice Chairman **aye**

Marleine Bastien	**aye**	Juan Carlos Bermudez	**aye**
Kevin Marino Cabrera	**aye**	Sen. René García	**absent**
Roberto J. Gonzalez	**aye**	Keon Hardemon	**aye**
Danielle Cohen Higgins	**aye**	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 3rd day of October 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

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

David M. Murray

CLOSURE AGREEMENT

This Closure Agreement (Agreement) dated ______, 202X is entered into between Miami-Dade County and MDIA Associates, LLC (referred to herein as "MDIA").

WITNESSETH:

WHEREAS, On June 5, 2007, the Miami-Dade Aviation Department (MDAD) advertised RFP No. MDAD-07-06 seeking proposals from qualified investors to finance, construct, renovate, manage and/or operate development projects at Miami International Airport ("the Airport"); and

WHEREAS, MDIA submitted proposals for parcels in Areas 3, 4 and 5, and was the County's Competitive Selection Committee selected investor to negotiate a development lease or leases for such parcels; and

WHEREAS, negotiations were protracted, due to such issues as : 1) zoning changes and land values, 2) market values (rent), 3) limitations on increases in land rent adjustments, 4) additional rent payments for improvements after passage of the amortization period, and 5) transfer fees, if the lease interest is transferred or sold; and

WHEREAS, no development lease or leases can be approved or executed by the County without the express consent and approval of the Board of County Commissioners; and

WHEREAS, the parties negotiated in good faith for years regarding the terms and conditions of the prospective Development leases; and

WHEREAS, to expedite this project while negotiations were ongoing, MDIA engaged various design professionals to begin the provision of phasing plans, site studies, architectural drawings, and plans and specifications for the various structures; and

WHEREAS, MDIA took such action in good faith, despite knowing that the County had no contractual or other obligation to pay for such professional services; and

WHEREAS, the County has determined that development of the parcels by MDIA could impact the future growth and profitability of Miami International Airport; and

WHEREAS, both the County and MDIA wish to unwind and otherwise resolve all commitments and liabilities each may have with respect to the other with respect to MDAD 07-06; and

WHEREAS, Fla. Stat. 287.05712 allows governments and investors or developers engaged in public/private projects to enter into agreements providing for the purchase of and subsequent dissolution of development rights in public private projects;

NOW THEREFORE, in consideration of the mutual promises contained herein, the County and MDIA agree as follows:

1. Within thirty days of the effective date of this Agreement, MDIA shall convey to the County the work product listed on the attached Exhibit A (the Materials), including all appendices and exhibits thereto. The Materials shall be provided in their native format; in the event that MDIA has both electronic and also physical copies of the Materials, MDIA shall provide both an electronic and hard copy to the County. Upon payment to MDIA of the amount specified in Section 2 below, all rights, title, and interest as MDIA may hold in such Materials shall vest in the County without need for further action of either MDIA or the County. MDIA shall also convey to the County all intangible rights it has in the work product or intellectual property produced by the entities listed on Exhibit A (the Entities), to the extent MDIA has such rights pursuant to any contract MDIA entered into with the Entities.

2. The County shall pay to MDIA. the sum of **FIVE HUNDRED FIFTY-FIVE THOUSAND EIGHT HUNDRED FIFTY** ($555,850) within forty-five (45) days of the effective date of this Agreement.

3. MDIA warrants and represents that there are no outstanding claims or payments related to the Materials, and that the Materials are the property of MDIAs.

4. The County acknowledges that it shall have no cause of action against MDIAs with respect to professional negligence arising out of the County's use of the Materials, and that MDIA shall not be responsible for any errors or omissions as found in the Materials.

5. The County and MDIA both expressly agree and acknowledge that their obligations to the other party with respect to MDAD 07-06 and/or negotiations or development of Parcels 3, 4, and 5 to the extent any such obligations exists at law or equity, are concluded as of the effective date of this Agreement.

6. MDIA does hereby release, acquit and forever discharge the County, including all of Miami-Dade County's past and present employees, agents, officers, commissioners, attorneys, officials, administrators, departments, and agencies (all of which are collectively referred to as "County Employees and Departments"), from any and all claims, actions, causes of action, demands, rights, damages, costs, claims for attorneys' fees, loss of service, expenses, and compensation whatsoever for which MDIAs now possesses, or which may hereafter accrue, arising out of or relating to MDAD 07-06, including but not limited to claims related to the procurement and or discussion of MDAD 07-06. Without limiting the preceding, MDIA agrees that this release specifically waives and releases all claims related to:

(i) all costs incurred by MDIA in pursuing the award of or in negotiating any leases under MDAD 07-06

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(ii) all costs incurred by MDIA related to the design, permitting, or planning of any improvements contemplated by MDAD 07-06,

(iii) the award, rejection, or abandonment by the County of any lease with MDIA with respect to the MDAD 7-06, and/or

(iv) any claims related to any delays in the award or rejection of any proposal received in connection with the MDAD 07-06 or arising out of or caused by the public discussion of same, including but not limited to costs, loss of opportunity, loss of business goodwill, damages to reputation, or any claim for indirect or consequential damages of any kind.

7. The County does hereby release, acquit and forever discharge MDIA, including all of MDIAs past and present employees, agents, officers, , attorneys, officials, and administrators, from any and all claims, actions, causes of action, demands, rights, damages, costs, claims for attorneys' fees, loss of service, expenses, and compensation whatsoever for which the County now possesses, or which may hereafter accrue, arising out of or relating to MDAD 07-06, including but not limited to claims related to the procurement and or discussion of MDAD 07-06.

8. The party executing this document on behalf of MDIA represents and warrants that he has full authority to sign for and bind all entities defined herein as MDIA.

9. This Agreement shall become effective 10 days after it is approved by the Board of County Commissioners.

Miami-Dade County through its
Aviation Department

Witnesses:

By: ______________________________

______________________________ Name: ______________________________

______________________________ Title: ______________________________

Printed Name:

Date: ______________________________

____

____

Printed Name:

APPROVED BY:

____
Miami-Dade County Mayor

Witnesses:

____

____
Printed Name:

____

____
Printed Name:

Approved for Form and Legal Sufficiency

____
(Assistant County Attorney)

MDIA Associates, LLC COURTELIS DEVCORP
By: NEWCASTLE DEVCORP INC GP, LLC
Name: ELIAS VASSILAROS
Title: EX. V.P.
Date: 12/19/2022

Witnesses:

REHANA NAZIR
Printed Name:

Maria Obregon
Printed Name:

Closure Agreement
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EXHIBIT A (THE MATERIALS)

Company Name	Description
Atec	Airport Traffic Study
Beame Architectural	Site Plan and Design
Bercow & Radell	Legal Analysis and Work Product
Blake Global	Appraisal Report
Blazejack & Company	Property Appraisal
Courtelis Company	Legal/Development Fees
Ford Engineers	Aerial Exhibits
Keith Martin Architect	Site Plan and Design
Richards & Associates	Legal Analysis and Work Product
Schwebke-Shiskin & Ass.	Feasibility Analysis
Strategic Access Group	Consulting