

**AMENDMENT NO. 2 TO THE DESIGN/BUILD/OPERATE/MAINTAIN AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA
AND
TRANSCORE ITS, LLC**

This Amendment No. 2 (the "Amendment") to the Design/Build/Operate/Maintain Agreement dated April 16, 2019 (the "Agreement"), is entered into this ____ day of _____, 2024, by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the "City"), and TransCore ITS, LLC, a State of Florida limited liability company (the "Design/Build/Operate/Maintain Firm" or "DBOM Firm") and hereby amends the Agreement as follows:

RECITALS

WHEREAS, on October 18, 2017, the Mayor and City Commission adopted Resolution No. 2017-30064, accepting the recommendation of the City Manager to award an agreement, pursuant to Request for Proposals No. 2016-199-KB for Design, Build, Operate, and Maintain Services for an Intelligent Transportation System (ITS) and Smart Parking system (SPS), to the DBOM Firm, as the top-ranked proposer, which Agreement was executed by the parties on April 16, 2019; and

WHEREAS, on September 14, 2022, the City Commission adopted Resolution No. 2022-32297, authorizing the City to execute Amendment No. 1 to the Agreement, (1) extending the contract time for two (2) additional years for a total of 10 years (until April 2029); (2) expanding the scope of work to include (i) temporary maintenance of Miami-Dade County traffic signals during construction of the Project, in the amount of \$150,000.00; (ii) installation of a Bluetooth sensor as a stand-alone device on a dedicated pole on the Venetian Causeway, in the amount of \$56,278.55, for a total sum of \$206,278.55; and (iii) reducing the scope of work in the amount of \$369,795.38; (3) approving a \$600,000.00 contingency to cover the cost of any required change orders in connection with the design and construction of Phases 1 and 2 of the Project, thereby increasing the initial Contract Price for design and construction of Phases 1 and 2 of the Project from \$12,468,178.00 to \$12,904,661.17, including the \$600,000.00 contingency for Phases 1 through 2, utilizing previously approved funding for this Project; and (4) adding temporary traffic monitoring and management services, on an as-needed basis during construction of the Project, subject to funding availability, and provided that the cost of these services does not exceed the City Manager's purchasing authority under the City Code; and

WHEREAS, on November 16, 2022, the City Commission adopted Resolution No. 2022-32408, amending Resolution No. 2022-32297 which approved Amendment No. 1 to the Agreement, said amendment modifying Item No. 4 of the Resolution to authorize the City Manager to approve expenditures for temporary traffic monitoring and management services in an amount not-to-exceed \$500,000.00 per year (the Agreement and Amendment No. 1 shall be collectively referred to as the "Agreement"); and

WHEREAS, as per the design criteria documents, the Project is divided into six (6) phases, strategically sequenced based on the deployment schedule of devices along the City's major thoroughfares:

- Phase 1: MacArthur Causeway, Alton Road (from 5 Street to Julia Tuttle Causeway), Julia Tuttle Causeway, 17 Street (from Alton Road to Washington Avenue), and Dade Boulevard (from Alton Road to Washington Avenue);
- Phase 2: 5 Street, 41 Street, and Washington Avenue;
- Phase 3: Collins Avenue (23 Street to 44 Street), Indian Creek Drive/Collins Avenue (44 Street to 87 Terrace), Alton Road (from Julia Tuttle Causeway to 63 Street), and 63 Street (from Alton Road to Collins Avenue);
- Phase 4: Collins Avenue (from 5 Street to 23 Street) and Indian Creek Drive (from 26 Street to 44 Street);
- Phase 5: Harding Avenue/Abbott Avenue; and
- Phase 6: Meridian Avenue and West Avenue; and

WHEREAS, Phases 1 and 2 of the Project are currently in the construction phase and expected to commence operation as devices are installed and come on-line throughout 2024 and the full operation of Phases 1 and 2 of the Project is expected to occur within the next 12 months; and

WHEREAS, pursuant to the Agreement, the work associated with Phases 3 through 6 of the Project is subject to funding appropriation by the City Commission. The estimated cost for design, permitting and construction of Phases 3 through 6 is \$7,502,842.60, inclusive of a 10% contingency, thereby increasing the total contract amount for design and construction of Phases 1 through 6 from \$12,904,661.17 to \$20,407,503.77; and

WHEREAS, the current partial GMP of \$25,000,000 is the total amount established in the Agreement which the City will pay for the full and complete performance (i.e. design, construction, operation, and maintenance) of Phases 1 and 2 of the Project, as required by Contract Documents, for the duration of the Agreement (April 2029); and

WHEREAS, as part of the permitting phase, DTPW has requested that the DBOM Firm assume responsibility of the maintenance of the affected traffic signals during the construction phase of the ITS project, at an estimated cost of not-to-exceed \$150,000.00; and

WHEREAS, given the funding appropriation required for the design, permitting, and construction of Phases 3 through 6 of \$7,502,842.60, and the costs associated with the operation and maintenance of the Project for the duration of the Agreement (April 2029) in the approximate amount of \$10,722,978.34, the GMP needs to be increased to \$31,130,482.11 (\$12,904,661.17 + \$7,502,842.60 + \$10,722,978.34) to cover the costs for design, permitting, construction, operation and maintenance for Phases 1 through 6; and

WHEREAS, the cost for operation and maintenance of Phases 1 through 6 in the approximate amount of \$10,722,978.34 has been estimated based on the original operation and maintenance costs set forth in Appendix "H", which includes a 3% escalation cost every year since the Effective Date of this Agreement; and

WHEREAS, on June 26, 2024 the Mayor and City Commission adopted Resolution No. 2024-XXXXX, approving Amendment No. 2 to the Agreement; said Amendment (1) appropriating funding for Phases 3 through 6 of the Project, in the amount of \$7,502,842.60, inclusive of a 10% contingency, thereby increasing the total contract amount for design and construction of Phases 1 through 6 from \$12,904,661.17 to \$20,407,503.77; and (2) increasing the Guaranteed Maximum

Price ("GMP") for design, construction, operation and maintenance of the project during Phases 1 through 6 from \$25,000,000 to \$31,130,482.11.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the DBOM Firm hereby agree to amend the Agreement as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

The Agreement is hereby modified (deleted items ~~struck through~~ and inserted items underlined) as follows:

(a) Section 7.1 of Article 7, entitled "Contract Price" is hereby deleted in its entirety and replaced with the following:

7.1 "Contract Price". In full consideration of the complete performance of the Work and all other obligations of the DBOM Firm under the Contract Documents and subject to the issuance of Notices to Proceed for Phases 1 through 6 as provided in Section 6.1, City agrees to pay the DBOM Firm the total GMP amount of Thirty-One Million One Hundred Thirty Thousand Four Hundred Eight-Two and 11/100 (\$31,130,482.11) Dollars for phases 1 through 6 of the Project.

(b) Appendix G to the Agreement is deleted in its entirety and replaced with the attached Second Amended Appendix G.

(c) Appendix H to the Agreement is deleted in its entirety and replaced with the attached Second Amended Appendix H.

(d) A new paragraph is hereby added to Section 5.1, as follows:

In connection with the performance of the Work, the DBOM Firm shall comply with City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment (including independent contractors), housing, public accommodations, public services, and in connection with its membership or policies because of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, hair texture and/or hairstyle, domestic partner status, labor organization membership, familial situation, and political affiliation.

(e) A new Section 22.26 (DBOM Firm's Compliance with Florida Public Records Law), as follows:

22.26 DBOM Firm's Compliance with Florida Public Records Law.

a. The DBOM Firm shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.

- b. The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- c. Pursuant to Section 119.0701 of the Florida Statutes, if the DBOM Firm meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the DBOM Firm shall:
- i. Keep and maintain public records required by the City to perform the service;
 - ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the DBOM Firm does not transfer the records to the City;
 - iv. Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the DBOM Firm or keep and maintain public records required by the City to perform the service. If the DBOM Firm transfers all public records to the City upon completion of the Agreement, the DBOM Firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the DBOM Firm keeps and maintains public records upon completion of the Agreement, the DBOM Firm shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- d. Request for Records; Noncompliance.
- i. A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the DBOM Firm of the request, and the DBOM Firm must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
 - ii. DBOM Firm's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
 - iii. A DBOM Firm who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.
- e. Civil Action.
- i. If a civil action is filed against a DBOM Firm to compel production of public records relating to the City's contract for services, the court shall assess and award against the DBOM Firm the reasonable costs of enforcement, including reasonable attorneys' fees, if:
 1. The court determines that the DBOM Firm unlawfully refused to comply with the public records request within a reasonable time; and
 2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the DBOM Firm has not complied with the request, to the City and to the DBOM Firm.

- ii. A notice complies with subparagraph (i)(2) if it is sent to the City's custodian of public records and to the DBOM Firm at the DBOM Firm's address listed on its contract with the City or to the DBOM Firm's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- iii. A DBOM Firm who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

f. **IF THE DBOM FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DBOM FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411

(f) A new Section 22.27 (Inspector General Audit Rights) is hereby incorporated into the Agreement as follows:

22.27 Inspector General Audit Rights.

- a. Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- b. The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. 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, bid specifications, (bid/proposal) submittals, activities of the DBOM Firm, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

- c. Upon ten (10) days written notice to the DBOM Firm, the DBOM Firm shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the DBOM Firm its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- d. The Inspector General shall have the right to inspect and copy all documents and records in the DBOM Firm's possession, custody or control which in the Inspector General'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 from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change 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.
- e. The DBOM Firm shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
- i. If this Agreement is completely or partially terminated, the DBOM Firm shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
- ii. The DBOM Firm shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- f. The provisions in this section shall apply to the DBOM Firm, its officers, agents, employees, subcontractors and suppliers. The DBOM Firm shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the DBOM Firm in connection with the performance of this Agreement.
- g. Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the DBOM Firm or third parties.

(g) A new section 22.28 (E-Verify) is hereby added to the Agreement:

22.28 E-Verify.

- a. The DBOM Firm shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, the DBOM Firm shall register with

and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, the DBOM Firm shall expressly require any subcontractor performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. If the DBOM Firm enters into a contract with an approved subcontractor, the subcontractor must provide the DBOM Firm with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The DBOM Firm shall maintain a copy of such affidavit for the duration of the Agreement or such other extended period as may be required under this Agreement.

b. Termination Rights.

- i. If the City has a good faith belief that the DBOM Firm has knowingly violated Section 448.09(1), Florida Statutes, the City shall terminate this Agreement with the DBOM Firm for cause, and the City shall thereafter have or owe no further obligation or liability to the DBOM Firm.
- ii. If the City has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection 22.28(a), but the DBOM Firm otherwise complied with such subsection, the City will promptly notify the DBOM Firm and order the DBOM Firm to immediately terminate the contract with the subcontractor. DBOM Firm's failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate the DBOM Firm's Agreement for cause.
- iii. A contract terminated under the foregoing Subsection (b)(i) or (b)(ii) is not in breach of contract and may not be considered as such.
- iv. The City or the DBOM Firm or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (b)(i) or (b)(ii) no later than 20 calendar days after the date on which the contract was terminated.
- v. If the City terminates the Agreement with the DBOM Firm under the foregoing Subsection (b)(i), the DBOM Firm may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
- vi. The DBOM Firm is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 22.28.

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered below.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
Rafael E. Granado, City Clerk

Rickelle Williams, Interim City Manager

Date

FOR DBOM FIRM/CONTRACTOR:

TRANSCORE ITS, LLC

ATTEST:

By: _____
Title

Title

Print Name

Print Name

Date