Memorandum

MIAMI-DADE COUNTY

(Public Hearing 7-21-09)

Date: June 30, 2009

Agenda Item No. 5(F)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Ordinance Authorizing the Issuance of Additional Transit Surtax Bonds and Amending the Master Ordinance for the Issuance of Build America Bonds

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Recommendation

It is recommended that the Board of County Commissioners enact the accompanying Ordinance (Supplemental Ordinance) approving the issuance of additional Miami-Dade County, Florida Transit System Surtax Revenue Bonds (Transit Surtax Bonds) pursuant to Ordinance No. 05-48 enacted by the Board on March 1, 2005 (Master Ordinance) in an amount not to exceed $500,000,000 and amending the Master Ordinance to allow for the issuance of Build America Bonds (BABs). The terms, maturities, interest rates and other details of each series of Transit Surtax Bonds will be presented to the Board for authorization and approval by subsequent series resolutions.

Scope

The proceeds of bonds issued under this Supplemental Ordinance will be used to pay for the Miami-Dade Transit (MDT) and Public Works Department (PWD) capital improvement programs (CIP). The individual projects of the CIP will be listed in subsequent series resolutions to be presented to the Board for approval. The impact of the Supplemental Ordinance is countywide.

Fiscal Impact/Funding Source

The Transit Surtax Bonds authorized by this Supplemental Ordinance will be paid with surtax revenues contingent upon Board adoption of subsequent series resolutions. The incremental annual debt service resulting from the bonds authorized by this Supplemental Ordinance is forecasted at $36.325 million, based on a 30-year financing at six percent. The Supplemental Ordinance is needed to meet current and forecasted funding of the MDT and PWD CIP.

Background

On July 9, 2002, the Board enacted Ordinance No. 02-116 (Transit System Surtax Ordinance) amending Article 29 of the Miami-Dade County Code pursuant to Section 212.055(1), Florida Statutes. The Transit System Surtax Ordinance levied and imposed a one half of one percent (0.5%) discretionary sales surtax on all transactions occurring in the County which are subject to the State of Florida tax imposed on sales, use, rentals, admissions and other transactions identified by Chapter 212, Florida Statutes. The Transit System Surtax Ordinance provided for this Transit System Surtax to be used for transportation and transit projects specified in Section 212.055(1)(d), Florida Statutes and include operation, maintenance and financing of those projects. Collectively, those projects are referred to as the Transit System Surtax Projects.

Additionally, the Transit System Surtax Ordinance established certain exemptions from the Transit System Surtax and also requires that 20 percent of the surtax proceeds be set aside annually for cities located within the County. Pursuant to the Transit System Surtax Ordinance, the cities that qualify to share in the Transit System Surtax are those cities located in Miami-Dade County, and existing as of November 5, 2002. The authorization to levy and collect the Transit System Surtax pursuant to the new

Code provisions was subject to voter approval and on November 5, 2002, a majority of the County's electorate approved the Transit System Surtax to be used for Transit System Surtax Projects.

The Transit System Surtax Ordinance provides for the Transit System Surtax to be collected by the State of Florida and disbursed to the County, net of the State's administrative costs. The Net Transit System Surtax Proceeds are to be deposited in a separate special fund (Trust Fund) and held by the Finance Director. The County is required to transfer all Pledged Transit System Revenues (Net Transit System Surtax Proceeds minus the Cities' distribution) immediately upon receipt in the Trust Fund to a Transit System Sales Surtax Revenue Fund. Pledged Transit System Revenues are to be used for payment of debt service on the Transit Surtax Bonds and other obligations related to any outstanding Transit Surtax Bonds.

On March 1, 2005, the Board enacted the Master Ordinance authorizing the issuance of not to exceed $500 million of Transit Surtax Bonds. Pursuant to the Master Ordinance, the County issued its first series of Transit Surtax Bonds, Series 2006 in an amount of $186,435,000 on April 27, 2006. A second series of Transit Surtax Bonds, Series 2008 were issued on June 24, 2008 in the aggregate principal amount of $274,565,000. The total amount of Transit Surtax Bonds issued to date is $461,000,000, of which a total of $455.19 million is currently outstanding.

This Supplemental Ordinance allows for an issuance of additional Transit Surtax Bonds in an amount not to exceed $500 million. Such amount would supplement the amount authorized and not issued ($39 million) pursuant to the Master Ordinance – resulting in an aggregate amount of Transit Surtax Bonds authorized and not issued of $539 million. The terms, maturities, interest rates and other details of each series of Transit Surtax Bonds will be presented to the Board for approval by subsequent series resolutions.

As part of the American Recovery and Reinvestment Act (ARRA), Build America Bonds (BABs) were authorized. Under the BABs, state and local governments are authorized to issue taxable bonds and receive a federal subsidy of either 35 or 45 percent of the interest cost of the BABs. The federal subsidies will be provided in the form of either tax credits provided to bondholders or direct payments to the issuer.

While interim rules have been released, final Internal Revenue Service (IRS) rules for BABs are still being developed. Current IRS guidelines for BABs require that a bond issue must qualify as a tax-exempt bond issue in order to use BABs, and that the issuer must make an irrevocable election to issue the bonds as BABs. In addition, the IRS rules for BABs require the County to covenant to comply with certain IRS Code requirements in order to continue to receive the direct payments from the federal government.

The County's ability to ensure compliance with the IRS rules will be one of the factors in determining whether to issue a portion of the Transit Surtax Bonds in the form of BABs. Failure to comply with the IRS rules regarding BABs is likely to result in the loss of the federal subsidy of 35 percent of the interest cost for the bonds. If it is deemed to be in the best financial interest of the County, then we will issue BABs. In order to issue BABs, it is necessary to amend: (A) certain provisions of the Master Ordinance, pursuant to Section 801, to (i) provide for the issuance of BABs, (ii) include Federal Direct Payments (as such term is defined in the Supplemental Ordinance) received by the County in the definition of Pledged Revenues, and (iii) provide for the deposit of Federal Direct Payments to the credit of the Revenue Fund; and (B) amend certain provisions of the Master Ordinance pursuant to Section 802, upon approval of not less than 51 percent in aggregate principal amount outstanding of the bonds then

outstanding, to provide that in computing the principal and interest requirements, interest shall be computed net of the Federal Direct Payments for the issuance of additional bonds.

To date, only a small number of BAB transactions have gone to market. Given some of the unresolved questions surrounding the use of BABs, it is not certain that the County will move forward with this type of financing. Board authorization for the use of BABs is being sought to enhance the *County's flexibility* and potentially reduce the financing costs of the Transit Surtax Bonds. The terms, maturities, interest rates and other details of each series of Transit Surtax Bonds will be presented to the Board for approval by subsequent series resolutions.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: July 21, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 5(F)

Please note any items checked.

_____ "4-Day Rule" ("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

_____ Bid waiver requiring County Mayor's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

✓ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 5(F)
7-21-09

ORDINANCE NO. _____

ORDINANCE AUTHORIZING ISSUANCE OF NOT TO EXCEED $500,000,000 MIAMI-DADE COUNTY, FLORIDA TRANSIT SYSTEM SALES SURTAX REVENUE BONDS, PURSUANT TO SECTION 208 OF ORDINANCE NO. 05-48, FOR PAYING COSTS OF CERTAIN TRANSPORTATION AND TRANSIT PROJECTS; PROVIDING THAT DETAILS, TERMS AND OTHER MATTERS RELATING TO BONDS BE DETERMINED IN SUBSEQUENT RESOLUTIONS; AMENDING CERTAIN PROVISIONS OF SAID ORDINANCE NO. 05-48, INCLUDING, BUT NOT LIMITED TO, PROVISIONS RELATING TO ISSUANCE OF BUILD AMERICA BONDS, RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS AND OTHER SIMILAR BONDS AND TREATMENT OF FEDERAL DIRECT PAYMENTS; AND PROVIDING SEVERABILITY AND EFFECTIVE DATE

WHEREAS, Miami-Dade County, Florida (the "County"), pursuant to Ordinance No. 05-48 enacted by the Board of County Commissioners of Miami-Dade County, Florida (the "Board") on March 1, 2005 (the "Original Ordinance" and as amended by this ordinance, the "Master Ordinance"), is authorized to issue Bonds, from time to time, to finance or refinance Transit System Sales Surtax Projects (as such terms are defined in the Original Ordinance); and

WHEREAS, capitalized terms used in this ordinance (the "2009 Ordinance") which are not defined shall have the meanings assigned to such terms in the Original Ordinance unless otherwise expressly provided or the context otherwise clearly requires; and

WHEREAS, Section 201 of the Original Ordinance initially authorizes the County to issue, from time to time, Bonds in an aggregate principal amount not to exceed $500,000,000 for the purpose of paying all or any part of the Costs of Projects, all as may be specified or provided for in the Series Resolution relating to the issuance of each such Series of Bonds; and

WHEREAS, on April 27, 2006, the County issued the first Series of Bonds under the authorization of Section 201 of the Original Ordinance and a Series Resolution in the aggregate principal amount of $186,435,000, of which $180,625,000 are currently Outstanding; and

WHEREAS, on June 24, 2008, the County issued a second Series of Bonds as Additional Bonds under the authorization of Sections 201 and 208 of the Original Ordinance and a Series Resolution in the aggregate principal amount of $274,565,000, all of which are currently Outstanding; and

WHEREAS, the Board has determined at this time that it is in the best interests of the County and its citizens to authorize the issuance, from time to time, of not to exceed $500,000,000 aggregate principal amount of Miami-Dade County, Florida Transit System Sales Surtax Revenue Bonds, as Additional Bonds under the provisions of the Master Ordinance, for the purpose of paying all or any part of the Costs of Projects (for purposes of this 2009 Ordinance, the "Additional Bonds"); and

WHEREAS, in connection with the issuance of Bonds, the Board deems it in the best financial interest of the County to have the flexibility of issuing BABs (as such term is defined in this 2009 Ordinance); and

WHEREAS, in connection with BABs, in accordance with Section 801 of the Original Ordinance, it is necessary to amend the Original Ordinance to (i) provide for the issuance of BABs, (ii) include Federal Direct Payments (as such term is defined in this 2009 Ordinance) received by the County in the definition of Pledged Revenues, and (iii) provide for the deposit of Federal Direct Payments to the credit of the Revenue Fund; and

WHEREAS, in connection with BABs, in accordance with Section 802 of the Original Ordinance, it is necessary to amend the Original Ordinance, upon obtaining the consent and

approval of the Holders of not less than fifty-one percent (51%) in aggregate principal amount of Bonds then outstanding, to provide that in computing Principal and Interest Requirements, interest shall be computed net of Federal Direct Payments scheduled to be received by the County; and

WHEREAS, the Board desires to accomplish the purposes outlined in the accompanying memorandum (the "County Manager's Memorandum"), a copy of which is incorporated in this 2009 Ordinance by reference ,

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

SECTION 1. Recitals and Authority.

(a) Recitals. The recitals contained in the foregoing "WHEREAS" clauses are incorporated as part of this 2009 Ordinance.

(b) Authority. This 2009 Ordinance is enacted pursuant to the Constitution and laws of the State, including, but not limited to, the Miami-Dade County Home Rule Amendment and Charter, as amended, Chapters 125 and 166, Florida Statutes, as amended, the Transit System Sales Surtax Act, the Code of Miami-Dade County, Florida, as amended, including the Transit System Sales Surtax Ordinance, and all other applicable laws (collectively, the "Act").

SECTION 2. Authorization to Issue Additional Bonds. The Board authorizes the issuance, from time to time, of not to exceed $500,000,000 aggregate principal amount of Miami-Dade County, Florida Transit System Sales Surtax Revenue Bonds, as Additional Bonds pursuant to Section 208 of the Master Ordinance and the authority of the Act, for the purpose of paying all or any part of the Costs of Projects, all as may be specified or provided for in the Series Resolution relating to the issuance of each Series of Additional Bonds.

The Additional Bonds shall be special and limited obligations of the County, payable solely from and secured by a prior lien upon and a pledge of the Pledged Revenues as more specifically provided in the Master Ordinance. The Additional Bonds shall not be deemed to constitute a debt of the County, the State or any other political subdivision of the State or a pledge of the faith and credit of the County, the State or any other political subdivision of the State but the Additional Bonds shall be payable solely from the Pledged Revenues. The enactment of the Original Ordinance, the enactment of this 2009 Ordinance, the adoption of each Series Resolution relating to the issuance of each Series of Additional Bonds and the issuance of the Additional Bonds shall not directly or indirectly or contingently obligate the County, the State or any other political subdivision of the State to levy or to pledge any form of ad valorem taxation whatsoever, nor shall the Additional Bonds constitute a charge, lien or encumbrance, legal or equitable, upon any property of the County, the State or any other political subdivision of the State. No Holder shall have the right to require or compel the exercise of the ad valorem taxing power of the County, the State or any other political subdivision of the State for payment of the Additional Bonds or be entitled to payment of such amount from any other funds of the County, except from the Pledged Revenues in the manner provided in the Master Ordinance.

SECTION 3. Details, Terms and Other Matters Relating to Additional Bonds. In accordance with the Master Ordinance, all details, terms and other matters relating to the Additional Bonds shall be determined in the manner specified in the Series Resolution relating to each Series of Additional Bonds.

SECTION 4. Amendments to Original Ordinance Not Requiring Bondholders' Consent. In accordance with the provisions of Section 801 of the Original Ordinance, the Original Ordinance is amended as set forth in this Section 4.

(a) A definition of "BABs" is added in Section 102 immediately following the definition of "Annual Budget" to read as follows:

"BABs" means Bonds issued as Build America Bonds, Recovery Zone Economic Development Bonds or such other bonds with respect to which Federal Direct Payments are payable.

(b) A definition of "Build America Bonds" is added in Section 102 immediately following the definition of "Book Entry System" or "Book Entry Only System" to read as follows:

"Build America Bonds" means Build America Bonds (Direct Payment) authorized under Section 54AA of the Code, as further described in Internal Revenue Service Notice 2009-26.

(c) A definition of "Federal Direct Payments" is added in Section 102 immediately following the definition of "Depositary" to read as follows:

"Federal Direct Payments" means the direct payments from the United States Treasury with respect to BABs.

(d) The definition of "Pledged Revenues" in Section 102 is deleted in its entirety and replaced with the following:

"Pledged Revenues" means (a) the Pledged Transit System Sales Surtax Revenues, (b) Hedge Receipts, (c) Federal Direct Payments received by the County and (d) all moneys and investments (and interest earnings) on deposit to the credit of the Funds and Accounts, except for moneys and investments on deposit to the credit of any rebate fund or rebate account established pursuant to this Ordinance.

(e) Definitions of "Recovery Zone" and "Recovery Zone Economic Development Bonds" are added in Section 102 immediately following the definition of "Rebate Amount" to read as follows:

"Recovery Zone" means a Recovery Zone designated as such under Section 1400U-1(b) of the Code by the County in a subsequent ordinance or resolution.

"Recovery Zone Economic Development Bonds" means Recovery Zone Economic Development Bonds (Direct Payment) authorized under Section 1400U-2(b) of the Code, as further described in Internal Revenue Service Notice 2009-26.

(f) The second paragraph in Section 202 is deleted in its entirety and replaced with the following:

The County may issue all manner and sorts of Bonds, including, but not limited to Fixed Rate Bonds, Variable Rate Bonds (including index, inverse floater or other types of Variable Rate Bonds), Current Interest Bonds, Capital Appreciation Bonds, Convertible Capital Appreciation Bonds, Compounding Interest Bonds, Multimodal Bonds, Optional Tender Bonds, Serial Bonds, Term Bonds, BABs, taxable or tax-exempt bonds and any or combination of these.

(g) The second paragraph of Section 503 is amended to insert a new second sentence to read as follows:

In addition, the County shall deposit all Federal Direct Payments received in connection with BABs in the Revenue Fund.

(h) The last paragraph of Section 503 is deleted in its entirety and replaced with the following:

Notwithstanding the foregoing application of Pledged Transit System Sales Surtax Revenues and Federal Direct Payments, the County may by ordinance or resolution provide for the payment from Pledged Transit System Sales Surtax Revenues and Federal Direct Payments, as applicable, of First Lien Obligations not constituting Bonds and for the funding of any reserve accounts established with respect to such First Lien Obligations on a parity with the payment of Bonds issued under this Ordinance and the funding of the Reserve Account, respectively, as set forth above, and shall take such actions (including amending or supplementing the Ordinance) and execute and deliver such documents as may be necessary to secure such First Lien Obligations on a parity with the Bonds.

SECTION 5. Amendments to Original Ordinance Requiring Bondholders' Consent. In accordance with the provisions of Section 802 of the Original Ordinance, upon the County obtaining the consent and approval of the Holders of not less than fifty-one percent (51%) in aggregate principal amount of Bonds then outstanding, the definition of "Principal and Interest Requirements" in Section 102 of the Original Ordinance is amended by renumbering clauses (vii) and (viii) as clauses (viii) and (ix), respectively, and inserting a new clause (vii) to read as follows:

(vii) in the case of BABs, interest shall be computed net of Federal Direct Payments scheduled to be received by the County in connection with such BABs in each Fiscal Year.

SECTION 6. Original Ordinance in Force. Except as amended by this 2009 Ordinance, the Original Ordinance and all terms and provisions of the Original Ordinance are and shall remain in full force and effect.

SECTION 7. Further Acts. The officers and agents of the County are authorized and directed to take all actions and do all things required of them by the Master Ordinance and this 2009 Ordinance for the full, punctual and complete performance of all of the terms, covenants, provisions and agreements contained in the Master Ordinance and this 2009 Ordinance.

SECTION 8. Headings Not Part of Ordinance. Any headings preceding the Sections of this 2009 Ordinance shall be solely for convenience of reference and shall not constitute a part of this 2009 Ordinance, nor shall they affect its meaning, construction or effect.

SECTION 9. Severability. In case any one or more of the provisions of this 2009 Ordinance shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect the legality or enforceability of any other provision of this 2009 Ordinance.

SECTION 10. Effective Date. This 2009 Ordinance shall take effect ten (10) days after its enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as to form and legal sufficiency: APW

Prepared by: GBK

Geri Bonzon-Keenan

Bond Counsel: Squire, Sanders & Dempsey L.L.P.
Knox Seaton