Memorandum

MIAMI-DADE COUNTY

Date: April 6, 2010

Agenda Item No. 8(P)(1)(D)

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

From: George M. Burgess
County Manager

Subject: Joint Participation Agreement (JPA) between Miami-Dade County and the City of North Miami to Provide People's Transportation Plan (PTP) Funding up to a Maximum Amount of $215,000 for the Construction of a Pedestrian Path Along the South Side of NE 151 Street from the David Lawrence Jr. K-8 Center School to the Entrance of the Biscayne Landings Development and Authorizing the Use of Charter County Transit System Surtax Funds

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RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing the execution of a Joint Participation Agreement (JPA) between Miami-Dade County (County) and the City of North Miami (City), for the construction of a pedestrian path along the south side of NE 151 Street on property owned by both Miami-Dade County and the City of North Miami from David Lawrence Jr. K-8 Center School to the entrance of the Biscayne Landings Development. The JPA provides funding through the Charter County Transit System Sales Surtax (the Surtax); therefore, approval by the BCC and the Citizens' Independent Transportation Trust (CITT) is required.

SCOPE

This project is located within the City of North Miami, in Commission District 4.

FISCAL IMPACT/FUNDING SOURCE

The County agrees to provide funds up to a maximum amount of $215,000 for eligible costs incurred by the City for the construction of the project. Specific funding will be allocated from Commission District 4's yearly PTP allocation.

DELEGATION OF AUTHORITY

No additional authority is being requested within the body of this contract.

TRACK RECORD/MONITOR

The County will utilize the resources of the City to contract and construct the project on a reimbursable basis. Disbursement of County funds to the City shall be based upon City invoices with certified copies of paid contractor invoices. The project will be assigned to Mr. Bassam Moubayed, CFM, Chief, Construction Division, Miami-Dade County Public Works Department (PWD), who will oversee inspections conducted by PWD staff before release of funds is recommended.

As part of this JPA, the City agrees to comply with applicable County regulations including, but not limited to, the Community Small Business Enterprise (CSBE) Program, Community Business Enterprise (CBE) Program, the Community Workforce Program (CWP), and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143).

The work covered under this JPA has been reviewed by the County's Review Committee (RC). The RC has recommended a No Measure for CSBE participation in the construction of the project.

BACKGROUND

State School QQ-1; (David Lawrence Jr. K-8 Center), was constructed with sidewalks that stopped at the School's west property line. However, since the School opened, children have been observed walking along the side of and on NE 151 Street to reach Miami-Dade Transit (MDT) bus stops located on Biscayne Boulevard. This new pedestrian path is the missing link to connect the School's existing sidewalks west to the sidewalks and path that starts at the Biscayne Landings Development and continues to US-1.

On June 2, 2009, the BCC approved Resolution No. R-731-09, which supported the negotiation of an agreement with the City for construction of a pedestrian path on the south side of NE 151 Street, from the School to the entrance of the Biscayne Landings Development. The City has worked with District Commissioner Sally Heyman to identify funding for project costs, up to a maximum of amount of $215,000.

On November 10, 2009, the North Miami City Council adopted Resolution No. R-2009-158 approving this JPA. The project is substantially completed. Funds have not been disbursed to the City for any work performed to date.

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: April 6, 2010

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

SUBJECT: Agenda Item No. 8(P)(1)(D)

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**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) 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(P)(1)(D)
4-6-10

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF NORTH MIAMI TO PROVIDE PEOPLE'S TRANSPORTATION PLAN (PTP) FUNDING UP TO A MAXIMUM AMOUNT OF $215,000 FOR THE CONSTRUCTION OF A PEDESTRIAN PATH ALONG THE SOUTH SIDE OF NE 151 STREET FROM THE DAVID LAWRENCE JR. K-8 CENTER SCHOOL TO THE ENTRANCE OF THE BISCAYNE LANDINGS DEVELOPMENT; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS THEREIN; AND AUTHORIZING THE USE OF CHARTER COUNTY TRANSIT SYSTEM SURTAX FUNDS

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

WHEREAS, both the City of North Miami and Miami-Dade County wish to facilitate the construction of a pedestrian path along the south side of NE 151 Street from the David Lawrence Jr. K-8 Center School to the entrance of the Biscayne Landings Development,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves this Joint Participation Agreement between Miami-Dade County and the City of North Miami, providing funding up to a maximum amount of $215,000 to the City for eligible expenses incurred in this construction, in substantially the form attached hereto and made a part hereof; and authorizing the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise the provisions contained therein.

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

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of April, 2010. This resolution shall become effective as follows: (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission reaffirms its award by two-thirds (2/3) vote of the commission's membership and such reaffirmation becomes final.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

JOINT PARTICIPATION AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND THE CITY OF NORTH MIAMI
PEDESTRIAN PATH ALONG THE SOUTH SIDE OF NE 151 STREET FROM THE DAVID LAWRENCE JR. K-8 CENTER SCHOOL TO THE ENTRANCE OF THE BISCAYNE LANDINGS DEVELOPMENT

This AGREEMENT, made and entered into this _____ day of _____, 2010, by and between the CITY OF NORTH MIAMI, FLORIDA, a municipal corporation of the STATE OF FLORIDA, hereinafter referred to as the "City", and MIAMI-DADE COUNTY, a political subdivision of the STATE OF FLORIDA, hereinafter referred to as the "County".

WITNESSETH

WHEREAS, the City of North Miami, Florida, and Miami-Dade County Florida agree to enter into a Joint Participation Agreement pursuant to Section 163.01, Florida Statutes, that allows local governments to make the most efficient use of their powers to enable them to cooperate with other localities on the basis of mutual advantage; and

WHEREAS, both parties herein wish to facilitate the construction of a pedestrian path project in MIAMI-DADE COUNTY, hereinafter referred to as the "Project" described as follows:

The construction of a pedestrian path on the south side of NE 151 Street on property owned by both Miami-Dade County and the City of North Miami from the David Lawrence Jr. K-8 Center School to the entrance of the Biscayne Landings development; and

WHEREAS, the County wishes to utilize the resources of the City to contract and construct the Project, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties agree:

RESPONSIBILITIES OF CITY:

1.1. **Permits and Approvals**: The City shall obtain all necessary permits, and utility adjustments; and coordinate the review of construction documents by utilities and permitting agencies. The City shall make all necessary adjustments as required for approval and/or permitting by those agencies. The City shall obtain all necessary permits, and utility adjustments for the Project in accordance with applicable state, federal and local laws and ordinances. The City shall not pay for any permits required by the Miami-Dade County Public Works Department.

1.2. **Right-of-Way**: The City shall acquire at its sole expense, any right-of-way that is required to complete the construction of the Project.

1.3. **Public Information and Involvement**: The City will implement a Public Involvement Plan (PIP) during the construction of the Project to provide information to property owners, tenants, and area residents, including but not limited to: public meetings, project documentation and flyers, business signs, directional parking signs, and schedules for major work to be performed in the area. Appropriate investigation of the project stakeholders will be used to develop the goals and objectives to implement the PIP. The City shall submit a copy of the PIP to the County Public Works Director for review and concurrence prior to the Notice to Proceed for construction.

1.4. **Accounting**: The City shall at all times maintain separate accounting for the costs of the Project so those costs may be independently verified and audited by the County, at the request and cost of the County. The City agrees to permit the County auditors to inspect the books, records and accounts of the Project for three (3) years after completion of the Project. These records shall be made available to the County for inspection within five (5) business days upon written receipt of a written request from the County.

1.5. **Construction**: The City shall procure the services of a licensed contractor holding an engineering contractor's license to construct the Project. The City may award the contract through any available lawful means which, in the City's discretion, affords the most competitive price for construction of the Project and which may include, but is not limited to, bid solicitation, request for proposals, the award of a change order on existing City contract(s), or the extension of unit-prices provided in connection with prior competitive bid awards. Notwithstanding any provision to the contrary, the City shall comply with all applicable County contract compliance and oversight measures relating to the expenditure of County funds, in accordance with Section 6 of this Agreement. Prior to the advertisement to solicit a licensed contractor to construct the Project, the City will contact the County's Public Works Contracts and Specifications Section to ensure this compliance.

The construction contract shall also contain a requirement that the contractor(s) provide a payment and performance bond at least in the amount

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and form required by state law naming the County and City as joint obligees or joint contracting public entities.

Subsequent to the evaluation of bids or proposals by the City and the City's determination of the most advantageous bid or proposal, the City shall provide said evaluation to the County Public Works Director for review and approval. Final commitment of County funds for the Project shall occur upon approval of the contract award recommendation by the County Public Works Director. The County agrees that the selection, retention and discharge of such contractor shall be the responsibility of the City.

1.6. **Claims and Change Orders**: The City shall notify the County Public Works Director in writing when claims or change orders arise. The City shall also invite the County to participate in negotiations of these claims and change orders. The County shall review and make a determination or approval of all change orders or supplemental agreements, permits, modifications of plans, or other requests for approvals submitted by the City.

1.7. **Construction Administration and Inspection**: The City shall exercise all responsibilities of the owner under the construction contract, including construction administration and inspections. The City may delegate this function to an authorized agent or Construction Engineering Inspection consultant. The County's inspector shall have an oversight role in the routine daily inspections. In the case of a disagreement over the interpretation of the plans, the County Public Works Director, or their representative, shall have final authority subsequent to an independent final inspection by the County.

The City's designated representative and the County's designated representative shall jointly perform the inspection of the Project which immediately precedes substantial completion. The City shall certify upon completion that the Project has been constructed pursuant to the design plans, specifications and approved change orders. Final payment to the City and obligation of maintenance responsibility to the parties shall be subject to the final acceptance of the Project by the County Public Works Director or designee.

1.8. **Maintenance**: The County will be responsible for improvements within the County's right-of-way. The City will be responsible for improvements outside the County's right-of-way.

2. **RESPONSIBILITIES OF COUNTY**:

2.1. **Funding Amount, Reimbursement of Project Costs**: The County agrees to provide funds up to a maximum amount of $ 215,000 for eligible costs, as defined herein, incurred by the City for the construction of the Project. The County shall disburse to the City funds for the Project in the manner set forth in this Section.

2.2. **County Payments of Project Costs**: The County funds provided for eligible costs as defined herein, incurred for the construction of the Project are specified below:

Funding Amount	Funding Source	County Fiscal Year of Commitment
$ 215,000 (Maximum)	Transit Surtax Funds (Construction)	2008-2009

This amount represents the County's maximum participation in the Project. The City shall be responsible for completing the Project as set forth in the Agreement. Any costs in excess of this amount and the additional amount shall be borne solely by the City.

3. **ELIGIBLE COSTS**: The parties agree that only the below identified costs that may be incurred by the City that are directly related to the Project are eligible for reimbursement, provided adequate documentation accompanies the reimbursement request in the form of approved invoices, verified payment requests, documented journal entries, and/or check vouchers. For purposes of this Agreement, eligible costs are further defined as those pertaining to the construction of Project elements that are the standard items normally provided for by the County in County pedestrian path construction projects, and not the enhancement of standard items, or the incorporation of items which are in addition to those standard items. The County shall not be assumed to be liable to provide reimbursement for the construction or maintenance of such items that do not conform to this section of the Agreement. If enhancements to standard items are constructed in this Project, the City may request County reimbursement only to a maximum amount corresponding to that which would be expended in providing the normal standard version of that item for a project of the same scope. The parties further agree that eligible costs will not include fees for construction management, construction inspections, and project management.

4. **SCHEDULE AND MANNER OF REIMBURSEMENTS**: Upon execution, the City shall furnish the County with a copy of the estimated budget for the Project, and will

similarly furnish the County with any and all revisions thereto. At the time of contract award for this Project, the City shall submit the Estimated Quarterly Construction Payout Schedule for the Project to the County Public Works Director. Quarterly disbursement of County funds to the City shall be based upon City invoices with certified copies of paid contractor estimates attached and shall not include any other charges. The quarterly submittal for invoice shall also include a certified copy of payment to Sub-Contracted firms.

5. **COMPLIANCE WITH LAWS**: The parties shall comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all applicable laws relating to the Project. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

6. **BUSINESS PROGRAM COMPLIANCE AND OVERSIGHT**: Whenever County funds are used, the City agrees to comply with applicable County regulations including but not limited to the Community Small Business Enterprise (CSBE) Program, Community Business Enterprise (CBE) Program, the Community Workforce Program (CWP), and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143). Specifically, the City agrees to abide by the applicable contract measure recommendation(s) established by the Department of Business Development Project Worksheet for the participation of specified business entities and/or trades, and for CWP requirements, as administered by the County's Department of Small Business Development (SBD). SBD shall have the right to

oversee and perform compliance monitoring, including but not limited to, the right to audit and to require reports and documentation related to the Code.

7. **CITIZENS' INDEPENDENT TRANSPORTATION TRUST APPROVAL**: Unless waived by action of the County, this Agreement shall only become effective upon approval by the Board of County Commissioners and the Citizens' Independent Transportation Trust (CITT) or, if not approved by the CITT, by the Board of County Commissioners reaffirmance of the award by 2/3 vote of its membership, all pursuant to the applicable ordinance. In the event the Agreement is not approved, the Agreement shall be null and void and be of no force or effect.

8. **PEOPLE'S TRANSPORTATION PLAN PROJECT SIGNAGE**: The County shall furnish and install a Project sign in each direction of traffic indicating that this Project is being funded by the People's Transportation Plan, in coordination with the City, in proximity to the start/end of the Project limits. Should Maintenance of Traffic (MOT) signage be required as part of the work, the Project sign shall be placed an appropriate distance before the MOT signage range. The Project signs shall remain in place for the duration of the work or as directed by the Project engineer.

9. **INDEMNIFICATION**: To the extent authorized by Florida law, the City hereby agrees to indemnify, defend, save and hold harmless the County to the extent of all the limitations included with Section §768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement by the City, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the County for its sole negligence or breach of contract.

To the extent authorized by Florida law, the County hereby agrees to indemnify, defend, save and hold harmless the City to the extent of all the limitations included in Section §768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement by the County, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the City for its sole negligence or breach of contract.

In the event of breach or non-performance by the persons selected by the City to perform the work, the City shall, upon written request by the County, assign to the County any and all of its rights under the affected contract for purposes of the County's prosecution of claims, actions or causes of action resulting from such breach or non-performance unless the City pursues such claims, actions or causes of action through arbitration, administrative proceeding or lawsuit. The City agrees to cooperate fully with the County in the prosecution of any such claim or action. Any damage recovered by the County which is attributable to an expenditure by the City shall be returned to the City by the County, within sixty (60) business days of receipt.

10. **DISPUTE RESOLUTION, APPLICABLE LAW**: The parties shall resolve any disputes, controversies or claims between them arising out of this Agreement in accordance with the "Florida Governmental Conflict Resolution Act", Chapter 164, Florida Statutes, as amended. This Agreement shall be governed by the laws of the State of Florida. Venue in any proceedings shall be in Miami-Dade, Florida.

11. **ENTIRE AGREEMENT, AMENDMENTS**: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms contained herein shall be effective unless set forth in writing in accordance with this section. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties.

12. **JOINT PREPARATION**: The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties from the other.

13. **SEVERANCE**: In the event a portion of this Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions shall continue to be effective unless the City or County elect to terminate this Agreement. An election to

terminate this Agreement based upon this provision shall be made within seven (7) business days after the finding by the court becomes final.

14. **NOTICES**: Any and all notices required to be given under this agreement shall be sent by first class mail, addressed as follows:

To the County:

Attention: Esther L. Calas, P.E.
Director, Public Works Department
Miami-Dade County
111 NW First Street, Suite 1640
Miami, Florida 33128
(305) 375-2960

To the City:

Attention: Mark E. Collins
Interim City Manager, City of North Miami
776 NE 125 Street
North Miami, Florida 33161
(305) 893-6511

With a copy to:

V. Lynn Whitfield
City Attorney, City of North Miami
776 NE 125 Street
North Miami, Florida 33161

IN WITNESS WHEREOF, the parties hereto set their hands and official seals the day and year first above written.

ATTEST:

HARVEY RUVIN
CLERK OF THE BOARD

BY: _____
Deputy Clerk

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

BY: _____
County Mayor or County Mayor's Designee

Approved by County Attorney
as to form and legal sufficiency _____
County Attorney

ATTEST:

BY: _____
Alix Desulme
City Clerk

(Affix City Seal)

CITY OF NORTH MIAMI, a municipal
corporation of the State of Florida

BY: _____
Mark E. Collins
Interim City Manager

Approved by City Attorney
as to form and legal sufficiency _____
V. Lynn Whitfield
City Attorney

RESOLUTION NO. R-2009-158

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A JOINT PARTICIPATION AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI AND MIAMI-DADE COUNTY FOR THE PEDESTRIAN PATH ALONG THE SOUTH SIDE OF NE 151 STREET FROM THE DAVID LAWRENCE, JR. K-8 CENTER SCHOOL TO THE ENTRANCE OF THE BISCAYNE LANDING DEVELOPMENT; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, the City of North Miami, Florida ("City"), and Miami-Dade County, Florida ("County"), agree to enter into a Joint Participation Agreement, in substantially the attached form, pursuant to Section 163.01, Florida Statutes; and

WHEREAS, the City and County wish to facilitate the construction of a pedestrian path along the south side of NE 151 Street from the David Lawrence, Jr. K-8 Center School to the entrance of the Biscayne Landing development; and

WHEREAS, the Mayor and Council of the City of North Miami have determined that it is advisable and in the public interest to authorize the City Manager to execute the proposed Joint Participation Agreement for the aforementioned purposes.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authority of City Manager.** The City Manager is hereby authorized to execute a Joint Participation Agreement, in substantially the attached form, between the City of North Miami and Miami-Dade County for the pedestrian path along the south side of NE 151 Street from the David Lawrence, Jr. K-8 Center School to the entrance of the Biscayne Landing development.

Section 2. **Effective Date.** This Resolution shall be effective upon adoption.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 10 day of November, 2009.

ANDRE D. PIERRE
MAYOR

ATTEST:

ALIX DESULME
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

V. LYNN WHITFIELD
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Councilman Galvin

Seconded by: Councilman Blynn

Vote:

Mayor Andre D. Pierre	X (Yes)	(No)
Vice Mayor Marie Erlande Steril	X (Yes)	(No)
Councilperson Michael R. Blynn	X (Yes)	(No)
Councilperson Scott Galvin	X (Yes)	(No)
Councilperson Jean Rodrigue Marcellus	X (Yes)	(No)