Memorandum

MIAMI-DADE COUNTY

Date: October 19, 2010

Agenda Item No. 4(F)

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

From: George M. Burgess
County Manager

Subject: Amendment to Ordinance No. 02-116 Charter County Transportation System Sales Surtax

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Recommendation
It is recommended that the Board adopt the attached amendment to Ordinance No. 02-116, making the County code consistent with statutory provisions pertaining to charter counties that have entered into interlocal agreements for distribution of Charter County Transportation System Sales Surtax (Surtax) proceeds to municipalities and eliminating the municipal maintenance of effort requirement. It is further recommended that the Board approve the attached interlocal agreement, and authorize the Mayor or designee to execute said agreement, to be used for distribution of future Surtax proceeds and effectuating the "Hold Harmless" revenue model outlined in the July 19, 2010 memorandum regarding People's Transportation Plan Municipal Revenue Sharing.

Scope
This item has a countywide impact, affecting both municipalities and unincorporated Miami-Dade County.

Fiscal Impact
The fiscal impact of this proposal to the County is up to $17.5 million over a 5 year period and will be funded from the Surtax.

Track Record/Monitor
Interlocal agreements with municipalities for Surtax funding are monitored by Charles Scurr, Executive Director, Office of the Citizens' Independent Transportation Trust and his staff.

Background
House Bill 1205 was signed into law on June 10, 2009 and provides that, "Any charter county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed." The County currently has 31 such interlocal agreements whereby 20 percent of the Surtax proceeds are distributed annually to those cities in existence as of November 5, 2002. These interlocals will expire in 2012. Since 2002, three municipalities -Miami Gardens, Doral and Cutler Bay- have been created within the County and together account for an approximate $5 million pro rata claim on Surtax funds.

The County Attorney's Office (CAO) has reviewed the State Statute, the written legislative intent, and the staff analyses that accompanied House Bill 1205 as it traveled through the legislative process. The counsel received by the administration was that the law contemplates funding the newly incorporated municipalities from the same 20 percent municipal share currently divided among the cities existing prior to November 5, 2002.

As noted in my July 19, 2010 memorandum, earlier this year I considered preparing Board legislation to effectuate this interpretation. However, the adverse fiscal impact to existing cities (each municipality would have seen an approximate 13.5 percent reduction in their share of PTP revenue) along with the

desire to work as partners in a mutually agreeable resolution led to my request to meet with representatives of all 34 impacted municipalities on March 18, 2010. While even at that meeting, certain municipalities were adamant that the new cities be funded entirely from the County's 80 percent share, it was agreed that creative solutions would be sought to satisfy the new cities' claim for Surtax funding without imposing an unreasonable burden on either the County or existing cities.

After a series of meetings this spring and considerable discussion, one option emerged that will require some difficult decisions for both this Board and the existing cities, but is the only compromise that does not unduly jeopardize either our regional transit system or the revenue streams of existing cities during these difficult economic times. The "Hold-Harmless" Plan funds new cities with the growth in Surtax revenue that is expected in the coming years as the economy recovers. If that growth is not sufficient in the early years to fully fund the new municipalities, the difference would come entirely out of the County's share. After that point, the current 80-20 split would be retained at the new, higher funding level.

Hence, the attached ordinance amendment deletes the provision that:

> "Newly incorporated municipalities shall have the right to negotiate with the County for a pro rata share of the sales surtax, taking into consideration the neighborhood and municipal projects identified in Exhibit 1, as amended, within the boundaries of the new municipalities. The preceding sentence shall not affect the 20 percent share provided herein for municipalities existing on November 5, 2002."

For consistency with the current statute, this language is replaced with:

> "Notwithstanding any other provision to the contrary, in accordance with Fl. Stat. 212.055, as amended, interlocal agreements for distribution of surtax proceeds shall be revised no less than every five (5) years in order to include any municipalities that have been created since the prior interlocal agreements were executed. Surtax proceeds shall be distributed to municipalities subsequent to execution of an interlocal agreement with Miami-Dade County."

The companion action required to effectuate the "Hold-Harmless" Plan for Fiscal Year 2010-11 is approval of the attached interlocal agreement, which outlines in Article 3 the specific terms for municipal revenue sharing and includes Miami Gardens, Doral, and Cutler Bay. However, execution by all municipalities in Miami-Dade County, both old and new, is required since we cannot unilaterally impose revised terms for the existing interlocals which do not expire until 2012. While it is my desire to effectuate the Hold-Harmless Plan for the coming fiscal year, the revenue sharing model does not work without the consent of all of the existing municipalities. In the event that agreement cannot be reached with all cities, both old and new, the revenue sharing model as outlined in the statute would not take effect until 2012.

As discussed in my July 19, 2010 memorandum, the "Hold-Harmless" plan allows new municipalities to be funded immediately and avoids potentially costly and lengthy legal proceedings. Existing municipalities, while forgoing short term Surtax growth, would not experience funding reductions that would aggravate budget gaps. And while the County would experience a fiscal impact as high as $17.5 million over a projected 5 year period, this impact would be limited to a finite amount and time, which should prevent any potentially negative effects on existing bond agreements or on the sale of future debt.

While several cities have expressed opposition to this idea in recent weeks, I continue to believe that this is a fair compromise, particularly in the context of the larger budget situations for both the County and municipalities. As a further incentive to cities, the attached ordinance proposes elimination of the municipal maintenance of effort, which for some municipalities has become increasingly onerous.

While this does not add new dollars to their ledgers, it allows cities to reprogram existing non-Surtax funding for other needed services. This flexibility will assist a number of cities by freeing up scarce general fund dollars.

I would be remiss if I did not remind the Board that any option that forces a perpetual absorption of new municipalities' funding entirely out of the County's share would have sizeable impacts to our regional system. While we have explored methods to establish better coordination of municipal expenditures on transportation in order to augment the reach of the Countywide transportation network, these efforts alone cannot generate sufficient savings to fund the pro rata share for the new cities. The current economic conditions have impacted a variety of revenue sources for the County, including Surtax collections, which have declined 12 percent over the past two years. To compensate for the loss of this revenue stream, we have made significant adjustments to our County's Transit system in recent years including the reduction of less utilized bus routes reducing expenses by $20 million, the development of a modified trunk and feeder transportation system (adopted by the Board on November 4, 2009) versus the prior tailored route configuration, reducing expenses by $15 million, reductions in administrative and overhead costs to include 255 positions and associated line items resulting in a $22.5 million reduction in expense, and adjustments to our capital expansion plans in order to accommodate more affordable and incremental expansion along our major corridors. These and other reductions within the Miami-Dade Transit (MDT) Department have resulted in over $57.5 million in perpetual annualized savings achieved in the last two fiscal years alone.

Despite these efforts to contain ongoing capital and operating costs, the Pro Formas presented to this Board continue to show unmet future funding needs for MDT. All Pro Forma projections to date have counted on MDT's receipt of the full existing 80 percent share of Surtax dollars to support the County's Transit system. As highlighted in prior reports to the Board, MDT operates under multiple pressures that will continue over the next few decades including continuing increases in operational costs as well as the need to fund the debt service of a capital program that includes replacing our aged Metrorail and Metromover car fleet, expanding the Metrorail system from the Earlington Heights Station to the Miami International Airport, and supporting other necessary safety and modernization upgrades for existing infrastructure. Any additional pressures placed on the County's existing 80 percent share would impact the revenue available to fund debt service on future bond issuances related to these critical projects. You may recall that at the time of the approval of the last PTP bond issuance, the Board agreed that any payments to new cities would be made on a subordinate basis to the debt obligation entered into as a part of that bond issuance in order to mitigate the risk to MDT on any changes in their revenue stream.

Since the County would be losing approximately $17.5 million in the Hold Harmless option, adjustments would have to be made. Since this is a finite revenue loss, adjustments would be made that are finite as well in an effort to maintain service levels. An example of this type of an adjustment would be to reduce MDT's annual operating deficit payments to the cash balance. It would add time for MDT's cash balance to become positive but it would be a goal attained nonetheless while we preserve service. If as a matter of policy the Board elects to provide funding to new municipalities from the County's 80 percent share, such payments will not be finite and will be re-occurring in nature. Therefore, a re-occurring reduction would have to be made that will have a service impact on our Transit system, as well as depriving Unincorporated Municipal Services Area (UMSA) portions of our County from needed roadway improvements. It is estimated that there will be a service impact of approximately 1.6 million revenue miles in order to fund the approximate $5 million to the new municipalities. This would bring our transit system very close to the Pre-PTP levels of bus service. That could jeopardize recalling the Half Penny Surtax impacting both the municipalities and the County ability to fund transportation programs. Further incorporations would bring additional unknown fiscal impacts, to include our ability to pledge surtax revenues for bonding our capital program as more and more of MDT's share of PTP funds are diverted for municipal use.

I urge you to consider the "Hold-Harmless" Plan as an equitable compromise that tempers adverse impacts for all parties.

Assistant County Manager

INTERLOCAL AGREEMENT FOR DISTRIBUTION, USE AND REPORTING OF CHARTER COUNTY TRANSIT SYSTEM SURTAX PROCEEDS LEVIED BY MIAMI-DADE COUNTY

This Interlocal Agreement ("Agreement") entered into this ___ day of _____ 2012, by and between Miami-Dade County, a political subdivision of the State of Florida ("County"), and _____, a municipal corporation located within the geographic boundaries of Miami-Dade County, Florida ("City").

WHEREAS, County adopted Ordinance No. 02-116 levying and imposing a one half of one percent Charter County Transportation System Surtax ("Surtax") pursuant to the authority of Sec. 212.055(1) Fla.Stats. (2002); and

WHEREAS, in 2007, County and City entered into an Interlocal Agreement delineating each party's obligations; and

WHEREAS, the County and City wish to modify that agreement; and

WHEREAS, Sec. 212.055(1) Fla. Stats. was amended in 2009 to require the County to "revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed."

WHEREAS, this Agreement supersedes all previous agreements; and

WHEREAS, twenty (20) percent of surtax proceeds shall be distributed annually to those Cities in Miami-Dade County ("eligible cities") that meet certain conditions including applying at least twenty (20) percent of any surtax proceeds received to transit uses in the nature of circulator buses, bus shelters, bus pullout bays or other transit-related infrastructure. Any City that cannot apply the twenty (20) percent portion of surtax proceeds it receives as provided in the preceding sentence, may contract with the County for the County to apply such proceeds on a County project that enhances traffic mobility within that City and immediately adjacent areas.

WHEREAS, if the City cannot expend or dedicate such proceeds in accordance with either of the preceding sentences, then such proceeds shall either carry over and be added to the

overall portion of surtax proceeds to be distributed to the Cities in the ensuing year and shall be utilized solely for the transit uses;

WHEREAS, surtax proceeds distributed on a pro rata basis amongst eligible cities based on the ratio such City's population bears to the total population in all such Cities (as adjusted annually in accordance with the Estimates of Population prepared by the Bureau of Economic and Business Research of the University of Florida) that continue to meet the foregoing conditions; and

NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the County and the City agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "ADA" shall mean the Americans with Disabilities Act of 1990, as amended.

1.2 "Administrative costs" shall be defined as overhead expenses which are not readily attributable to any one particular project funded in whole or in part by the transit surtax funds.

1.3 "BCC" shall mean the Miami-Dade County Board of County Commissioners.

1.4 "CITT" shall mean the Citizens' Independent Transportation Trust.

1.5 "City" shall mean a municipal corporation located within the geographic boundaries of Miami-Dade County, Florida.

1.6 "Contractor" shall mean any entity, public or private, providing public transit services as described in this Agreement under contract to the City.

1.7 "County" shall mean Miami-Dade County, Florida.

1.8 "FDOR" shall mean the Florida Department of Revenue.

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1.9 “Eligible Cities” shall mean cities located within Miami-Dade County.

1.10 "Fares" shall mean individual transportation fees paid by public transit passengers in accordance with a schedule of fares adopted by County Ordinance.

1.11 “Mayor” shall mean Miami-Dade County Mayor

1.12 "MDT" shall mean Miami-Dade Transit and authorized representatives thereof.

1.13 "OCITT" shall mean the Office of The Citizens' Independent Transportation Trust and authorized representatives thereof.

1.14 “Project” shall be defined as transportation and transit projects including operation and maintenance thereof, funded in whole or in part by surtax proceeds.

1.15 “Program” shall be defined as transportation and transit projects including operation and maintenance thereof, funded in whole or in part by surtax proceeds.

1.16 ”Surtax Proceeds” shall mean the funds collected and received by the FDOR from the imposition of the Charter County Transportation System Sales Surtax, less the FDOR’s cost of administration.

1.17 "The Trust" shall include the Citizens' Independent Transportation Trust, and authorized representatives thereof.

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ARTICLE 2
TERMS

2.1 TERMS OF AGREEMENT

This agreement shall become effective as follows: upon adoption by the Commission of Council of the City of _____, or City of _____'s Manager, if accompanied by documentation evidencing the City Manager's authority to sign agreement and approval by the County in accordance with Section 29-124 of the Code of Miami-Dade County. This agreement shall remain in force for five (5) years thereafter.

2.2 TERMINATION

This Agreement may be terminated for cause by either party upon no less than thirty (30) days written notice to the other party. Said notice shall be delivered by verified facsimile transmission or certified mail, return receipt requested. The noticed party shall have the opportunity to cure any stated cause for termination within the notice period, in which case the terminating party may cancel the termination notice using the same means by which the notice of termination was delivered.

2.3 The County, through the County Mayor or Mayor's designee, may suspend or terminate the dispersing of surtax proceeds to the City if there is a breach of this Interlocal Agreement until such breach is cured.

2.4 The County, through the County Mayor or Mayor's designee, reserves the right to cancel unilaterally this Agreement for refusal by the City to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received in conjunction with this Agreement.

ARTICLE 3
DISBURSEMENT OF FUNDS TO MIAMI GARDENS, DORAL, AND CUTLER BAY

3.1 In the event of flat or positive growth in surtax revenue from County's Fiscal Year 2009-2010 to subsequent fiscal year(s): Cities in existence as of November 5, 2002 shall be funded at the same funding level as was provided in County Fiscal Year 2009-2010. Miami Gardens, Doral, and Cutler Bay shall receive their respective proportionate shares of surtax revenue from the growth in surtax revenue from County's Fiscal Year 2009-2010 to subsequent fiscal year(s). In the event that growth in surtax revenue in a subsequent fiscal year does not generate sufficient revenue to pay the respective proportionate shares of surtax revenue for Miami Gardens, Doral, and Cutler Bay, the difference shall come from County. If however in any subsequent County Fiscal Year, there is sufficient growth in surtax revenue (a) to ensure the same revenue for those Cities in existence as of November 5, 2002 as was provided in County Fiscal Year 2009-2010, and (b) to provide the proportionate shares of surtax revenue to Miami Gardens, Doral, and Cutler Bay, then County's obligation to fund any shortage or difference shall forever cease and all Cities shall share any growth in the twenty percent municipal share of surtax revenue on a pro rata basis .

3.2 In the event of negative growth in surtax revenue from County's Fiscal Year 2009-2010 to any subsequent fiscal year: The County shall fund the respective proportionate shares of Miami Gardens, Doral, and Cutler Bay out of County funds only on the condition that in any fiscal year subsequent to County Fiscal Year 2009-2010, there has not yet been sufficient growth in surtax revenue (a) to ensure the same revenue for those Cities in existence as of November 5, 2002 as was provided in County Fiscal Year 2009-2010, and (b) to provide the proportionate shares of surtax revenue to Miami Gardens, Doral, and Cutler Bay. The County shall not be obligated to make up any difference between surtax revenue distributed to Cities (whether incorporated before or after November 5, 2002) in County Fiscal Year 2009-2010 and any subsequent fiscal year other than as described in Article 3 herein.

ARTICLE 4
ACCOMPLISHMENT OF PROJECTS

Submission of Proceedings, Contracts and Other Documents: The City shall submit to the CITT and/or OCITT such data, reports, records, contracts and other documents relating to the program as the CITT or OCITT may request. On a quarterly basis, the City shall provide to the OCITT a report regarding the implementation of the projects funded in whole or in part by surtax proceeds. This information is due to the OCITT no more than ten (10) working days after the quarter end.

ARTICLE 5
ACCOUNTING RECORDS

5.1 Establishment and Maintenance of Accounting Records: The City shall maintain for projects or programs, in conformity with requirements of "Principles for State and Local Governments," separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the "program account". Documentation of the program account shall be made available to the CITT upon request any time during the period of the Agreement.

5.2 By November 1 of each year, City shall, in order to be eligible to receive a portion of the Municipal Share for the ensuing year, certify to County that it is using the current year's portion of the Municipal Share received in accordance with this Agreement. Such certification shall include a certified copy of City's budget for the current fiscal year, together with a list of the projects (including ongoing or completed projects that the City is paying debt service on borrowed funds) on which the current year's portion of the Municipal Share received is being expended. If City fails to meet the certification requirements, after being given a reasonable opportunity to correct any deficiencies, the amount equal to the pro rata portion of the Municipal Share City is to receive in the ensuing year shall not be distributed to City and shall be distributed among the remaining eligible cities.

5.3 Funds Received or Made Available for Projects: The City shall appropriately record in the program account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all payments received by it from the County pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the program, which County payments and other funds are herein collectively referred to as "program funds". The City shall require depositories of program funds to secure continuously and fully all program funds in excess of the amounts insured under Federal plans, or under State plans which have been approved for the deposit of program funds by the County, by the deposit or setting aside of collateral of the types and in the manner as prescribed by State law for the security of public funds, or as approved by the County.

5.4 Documentation of Program Costs: All costs incurred by the program, including any approved services contributed by the City or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

ARTICLE 6
AUDIT AND INSPECTION

6.1 Audit Reports: By November 1 of each year a certified report with a disclosure of surtax proceeds expended in accordance with State law, Section 29.121-29.124 of the Code of Miami-Dade County (2010) which may be amended from time to time, and this Agreement followed by an independent audit report six (6) months after the fiscal year end. The City agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the CITT and OCITT, including but not limited to site visits and limited scope audits. The City further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the CITT or the Audit and Management Services Department of Miami-Dade County, the Office of the Commission Auditor, the Miami-Dade County Office of the Inspector General or an agent of the County. The City shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of three (3) years from the date the audit report is issued, and shall allow the CITT and OCITT access to such records and working papers upon request.

6.2 Other Requirements: If an audit discloses any significant audit findings relating to any award, including material noncompliance with individual project compliance requirements or reportable conditions in internal controls of the City, the City shall submit as part of the audit package to the CITT a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary. The City shall take timely and appropriate corrective action to any audit findings, recommendations, and corrective action plans.

6.3 The City shall permit and require its contractors to permit the County and the CITT's authorized representative to inspect all work, materials, payrolls, records, and to audit the books, records and accounts pertaining to the financing and development of the program.

ARTICLE 7
RESTRICTIONS, PROHIBITIONS, CONTROLS, AND LABOR PROVISIONS

7.1 Equal Employment Opportunity: In connection with the carrying out of any project, the City shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex, sexual orientation or national origin. The City will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, sexual orientation or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

7.2 Grantees, recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of CITT assisted contracts.

7.3 The City shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the project/program, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement, or similar work, the City shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the County setting forth the provisions of the nondiscrimination clause.

7.4 Title VI - Civil Rights Act of 1964: Execution of this Interlocal Agreement constitutes a certification that the City will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the City pursuant thereto.

7.5 The Americans with Disabilities Act of 1990 (ADA): Execution of this Interlocal Agreement constitutes a certification that the City will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et. seq.), the regulations of the Federal government issued thereunder, and the assurance by the City pursuant thereto.

7.6 Prohibited Interests: Neither the City nor any of its contractors or its subcontractors shall enter into any contract, subcontract, or arrangement in connection with projects or any property included or planned to be included in the projects, in which any member, officer, or employee of the City during his tenure or for two years thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the City, the City

with prior approval of the BCC and the CITT, may waive the prohibition contained in this subsection: Provided, that any such present member, officer or employee shall not participate in any action by the City relating to such contract, subcontract, or arrangement. The City shall insert in all contracts entered into in connection with projects or any property included or planned to be included in any project, and shall require its contractors to insert in each of its subcontracts, the following provision: "No member, officer, or employee of the City during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof." The provisions of this subsection shall not be applicable to any agreement between the City and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a Governmental City.

7.7 Interest of Members of, or Delegates to, Congress: No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 Environmental Pollution: Execution of this Interlocal Agreement constitutes a certification by the City that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The City will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the CITT for any loss incurred in connection therewith.

8.2 Not Obligated to Third Parties: The County, the BCC Members, the CITT Members and all of the County's officers, agents, and employees shall not be obligated or liable hereunder to any party other than the City.

8.3 When Rights and Remedies Not Waived: In no event shall the making by the County of any payment to the City constitute or be construed as a waiver by the County of any breach of covenant or any default which may then exist, on the part of the City, and the making of such payment by the County while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the County with respect to such breach or default.

8.4 How Agreement Is Affected by Provisions Being Held Invalid: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.

8.5 State or Territorial Law: Nothing in the Agreement shall require the City to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State law: Provided, that if any of the provisions of the Agreement violate any applicable State law, the City will at once notify the OCITT in writing in order that appropriate changes and modifications may be made by the County and the City to the end that the City may proceed as soon as possible with projects.

8.6 Use and Maintenance of Project Facilities and Equipment: The City agrees that project facilities and equipment will be used by the City to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles. The City further agrees to maintain the project facilities and equipment in good working order for the useful life of said facilities or equipment.

8.7 Signage: For any project funded in whole or in part by surtax proceeds, The City shall post in a conspicuous location at the job site, structure or vehicle, a sign indicating that surtax proceeds are being used for this project.

8.8 Residency Requirement: For any project funded in whole or in part by surtax proceeds, the City may not provide any preferential access accommodations or pricing based on residency.

8.9 Administrative Expenses: Consistent with Miami-Dade County Ordinance 06-138 the City shall not expend more than five (5) percent of its municipal share of surtax proceeds on administrative expenses, exclusive of project management and oversight for projects funded by the surtax.

8.10 Contractual Indemnity: To the extent provided by law, the City shall indemnify, defend, and hold harmless the County, the BCC Members, the CITT Members and all of the County's officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the City, its agents, or employees, during the performance of the Agreement, except that neither the City, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the County or any of its officers, agents, or employees during the performance of the Agreement.

8.11 When the County receives a notice of claim for damages that may have been caused by the City in the performance of services required under this Agreement, the County will immediately forward the claim to the City. The County's failure to promptly notify the City of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the City.

8.12 The County Manager or his designee shall have the authority to distribute and/or withhold surtax funds.

ARTICLE 9
AGREEMENT FORMAT

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

ARTICLE 10
EXECUTION OF AGREEMENT

This Agreement may be simultaneously executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

ARTICLE 11
RESTRICTIONS ON LOBBYING

11.1 Federal: The City agrees that no surtax proceeds have been paid or will be paid by or on behalf of the City, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federal appropriated funds have been paid by the City to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Interlocal Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The City shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

11.2 State: No funds received pursuant to this contract may be expended for lobbying the Legislature or a State agency.

11.3 County: No funds received pursuant to this contract may be expended for lobbying the County.

ARTICLE 12
MODIFICATIONS AND MISCELLANEOUS PROVISIONS

All notices and other communications required to be remitted pursuant to this Agreement to either party hereto shall be in writing and shall be delivered by verified facsimile transmission or certified mail, return receipt requested, to the parties at the address indicated below:

FOR MIAMI-DADE COUNTY:
OFFICE OF THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST
c/o Executive Director, OCITT
111 NW 1 Street, Suite 1010
Miami, FL 33128

Fax: (305) 375-4605

FOR _____ OF _____:

_____ of

Office of the _____ Manager

With Copies to:

12.1 COMPLETE AND BINDING AGREEMENT This writing embodies the full and complete agreement of the parties. No other terms, conditions or modifications shall be binding upon the parties unless in writing and signed by the parties.

12.2 GOVERNING LAW This Agreement shall be construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have made and executed this

Agreement on the respective dates under each signature:

ATTEST:

Harvey Ruvin, Clerk

By: _____
Deputy Clerk

Approved as to Form and Legal Sufficiency

By: _____
Assistant County Attorney

FOR THE COUNTY:

Miami-Dade County,
a political subdivision of the State of Florida

By its Board of County Commissioners

By: _____
County Mayor

Date Executed: _____

ATTEST:

FOR THE CITY:

_____,
a political subdivision of the State of Florida

By: _____
City Clerk

By: _____
Mayor or _____ Manager

Date Executed: _____

Approved as to Form and Legal Sufficiency

By: _____
City Attorney

MEMORANDUM
(Revised)

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

DATE: October 19, 2010

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

SUBJECT: Agenda Item No. 4(F)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

✓ **6 weeks required between first reading and second reading (per Ordinance No. 02-116)**

✓ **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)**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(F)
10-19-10

ORDINANCE NO. _____

ORDINANCE AMENDING CODE OF MIAMI-DADE COUNTY, FLORIDA, BY A TWO THIRDS VOTE (2/3) OF THE BOARD OF COUNTY COMMISSION MEMBERSHIP RELATING TO THE DISTRIBUTION OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS TO MUNICIPALITIES WITHIN MIAMI-DADE COUNTY; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

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

Section 1. Section 29-124 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

* * *

Sec. 29-124. Special fund created; uses of surtax proceeds; and role of Citizens' Independent Transportation Trust.

The surtax proceeds collected by the State and distributed hereunder shall be deposited in a special fund set aside from other County funds in the custody of the Finance Director of the County. Moneys in the special fund shall be expended for the transportation and transit projects (including operation and maintenance thereof) set forth in Exhibit 1 to this article (including those projects referenced in the ballot question presented to the electors to approve this levy), subject to any amendments thereto made in

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

accordance with the MPO process or made in accordance with the procedures specified in subsection (d) of this Section.

Expenditure of surtax proceeds shall be subject to the following limitations:

(a) Surtax proceeds shall be applied to expand the Golden Passport Program to all persons (regardless of income level who are over the age of 65 or are drawing Social Security benefits, and to provide fare-free public transportation service on Metromover, including extensions.

(b) Surtax proceeds may only be expended for the transportation and transit purposes specified in Section 212.055(1)(d)1—[[~~3~~]]>>4<< Fla. Stats. (2001).

(c) The County shall not expend more than five percent of the County's share of surtax proceeds on administrative costs, exclusive of project management and oversight for projects funded by the surtax.

(d) The County Commission shall not delete or materially change any County project contained in the list attached as Exhibit 1 to this article nor add any project to the list except in accordance with the procedures set forth in this subsection (d). A proposed deletion, material change or addition of a County project shall be initially reviewed by the Citizens' Independent Transportation Trust ("Trust"), which shall forward a recommendation thereon to the County Commission. The County Commission may either accept or reject the Trust's recommendation. If the County Commission rejects the recommendation, the matter shall be referred back to the Trust for its reconsideration and issuance of a reconsidered recommendation to the County Commission. The County Commission may approve, change or reject the Trust's reconsidered recommendation. A two-thirds vote of the Commission membership shall be required to take action other than as contained in the reconsidered recommendation of the Trust. The foregoing notwithstanding, the list of County projects

(e) No surtax proceeds may be used to pay the costs of a contract awarded by action of the County Commission until such action has become final (either by expiration of ten days after such action without veto by the Mayor, or by Commission override of a veto) and either: i) the Trust has approved same; or, ii) in response to the Trust's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership. The bid documents for all County contracts funded in whole or in part with surtax proceeds shall provide that no award shall be effective and no contractual relationship shall arise with the County unless and until approved by the Trust or re-affirmed by the County Commission as provided in this subsection. The foregoing notwithstanding, awards of contracts for services in support of the administration of the Trust or in support of the Trust's oversight function shall not require County Commission or Trust approval, so long as the individual contract amount does not exceed one thousand dollars ($1,000).

(f) On a quarterly basis, the Executive Director of the CITT shall submit a written report to the Commission, the Mayor and the Manager of all expenditures made pursuant to Section 29-124 herein.

(g) Twenty percent of surtax proceeds shall be distributed annually to those cities [[~~existing as of November 5, 2002~~]] >>within Miami-Dade County<< that meet the following conditions:

[[(~~i~~)]] [[~~that continue to provide the same level of general fund support for transportation that is in their FY 2001-2002 budget in subsequent Fiscal Years. Any surtax proceeds received shall be applied to supplement, not replace a city's general fund support for transportation;~~]]

[[(~~ii~~)]]>>(i)<< That apply 20 percent of any surtax proceeds received to transit uses in the nature of circulator buses, bus shelters, bus pullout bays or other transit-related

infrastructure. Any city that cannot apply the 20 percent portion of surtax proceeds it receives as provided in the preceding sentence, may contract with the County for the County to apply such proceeds on a County project that enhances traffic mobility within that city and immediately adjacent areas. If the city cannot expend such proceeds in accordance with either of the preceding sentences, then such proceeds shall carry over and be added to the overall portion of surtax proceeds to be distributed to the cities in the ensuing year and shall be utilized solely for the transit uses enumerated in this subsection [[(~~ii~~)]]>>(i)<<; and

[[(~~iii~~)]]>>(ii)<< Surtax proceeds distributed amongst the [[~~existing~~]] cities shall be distributed on a pro rata basis based on the ratio such city's population bears to the total population in all such cities (as adjusted annually in accordance with the Estimates of Population prepared by the Bureau of Economic and Business Research of the University of Florida) annually to those cities that continue to meet the foregoing conditions. For purposes of the foregoing, whenever an annexation occurs in >>a<< [[~~an existing~~]] city, the number of persons residing in such annexed area at the time it is annexed shall be excluded from all calculations. Increases in population in areas annexed over and above the population in such area at the time of annexation which occur after annexation shall be included in subsequent years' calculations.

[[(~~iv~~)]]>>(iii)<< That do not expend more than 5% of its municipal share of surtax proceeds on administrative costs, exclusive of project management and oversight for projects funded by the surtax. Administrative costs shall be defined as overhead expenses which are not readily attributable to any one particular project

funded in whole or in part by transit surtax funds.

[[~~(h)~~ ~~Newly incorporated municipalities shall have the right to negotiate with the County for a pro rata share of the sales surtax, taking into consideration the neighborhood and municipal projects identified in Exhibit 1, as amended, within the boundaries of the new municipalities. The preceding sentence shall not affect the twenty (20) percent share provided herein for municipalities existing on November 5, 2002.~~]]

>>(h) Notwithstanding any other provision to the contrary, in accordance with Fl. Stat. 212.055, as amended, interlocal agreements for distribution of surtax proceeds shall be revised no less than every five (5) years in order to include any municipalities that have been created since the prior interlocal agreements were executed. Surtax proceeds shall be distributed to municipalities subsequent to execution of an interlocal agreement with Miami-Dade County.<<

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of 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:

Prepared by:

Bruce Libhaber