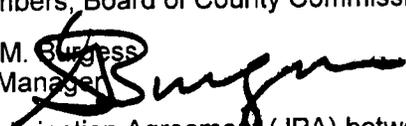


Memorandum



Date: November 4, 2010

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 Miami to Provide Funding in the Amount of \$450,000 for the Design of Roadway Improvements Along South Bayshore Drive, from Darwin Street to Mercy Way and Authorizing the Use of Charter County Transportation Surtax Funds

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

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the execution of a Joint Participation Agreement (JPA) between Miami-Dade County and the City of Miami (City) for the design of a road improvement project along South Bayshore Drive, from Darwin Street to Mercy Way, to provide reshaped swales, repaved bicycle path, continuous drainage, raised roadway profile along the Kennedy Park area, and a possible pump station adjacent to Kennedy Park and the Coral Reef Yacht Club. The JPA provides funding through the Charter County Transportation Surtax (the Surtax); therefore, approval by the Board and the Citizens' Independent Transportation Trust (CITT) is required.

SCOPE

The project will provide improvements to a major arterial corridor in Commission District 7 located within the City of Miami. Its implementation will benefit residents and the many visitors to the Coconut Grove area.

FISCAL IMPACT/FUNDING SOURCE

The County's contribution to the project is \$450,000 (with the inclusion of a 10% contingency), which is the estimated cost for the Design work. The County's funding will be provided by the Surtax. This is a site-specific project listed in the People's Transportation Plan (PTP) Ordinance under Board Requested Major Roadway and Neighborhood Improvement Projects in Commission District 7. Construction of the project is only partially funded at this time. When the remainder of the construction funding becomes available is dependent on future revenues, most likely from Road Impact Fee (RIF) District 2. Having these plans ready will expedite the project so that construction can proceed as soon as this occurs.

TRACK RECORD/MONITOR

The County will utilize the resources of the City to design the project on a reimbursable basis. Disbursement of County funds to the City shall be based upon City submissions with certified copies of paid consultant invoices. The project will be assigned to Mr. Miguel Riera, P.E., Section Head, Highway Division Plans Review Section, Miami-Dade County Public Works Department (PWD), for the review of design submissions.

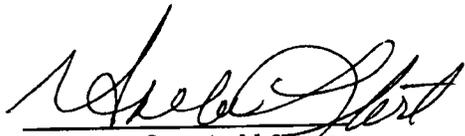
The work covered under this JPA has been analyzed by the County's Review Committee (RC). The RC has recommended a First Tier Set-Aside for Community Business Enterprise (CBE) participation.

Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners
Page 2

BACKGROUND

South Bayshore Drive is a vital County-maintained corridor within the City of Miami. This project originally was listed in the PTP Ordinance to provide resurfacing and median improvements along South Bayshore Drive, from McFarlane Road to Aviation Avenue. In 2005, the City requested that the County re-scope the original PTP project for full reconstruction to include raising the roadway profile along the Kennedy Park area, reshaping the swales and repaving the bicycle path. The new scope also included a continuous drainage system along South Bayshore Drive, from Darwin Street to Mercy Way, and a possible pump station adjacent to Kennedy Park and the Coral Reef Yacht Club. Additionally, the bicycle path along the corridor, an important outdoor facility, was found to be in poor condition and recommended for reconstruction. On March 6, 2007, the Board approved Resolution No. R-246-07, approving a PTP Amendment to modify the scope for the PTP project along South Bayshore Drive, from McFarlane Road to Aviation Avenue, and change the limits of the project to South Bayshore Drive, from Darwin Street to Mercy Way. The funds originally allocated for the project were reallocated for the design of the full reconstruction and drainage work along the new limits.

The City has agreed to assume responsibility for the design plans and be compensated on a reimbursable basis. The City will implement a Public Involvement Plan (PIP) to provide information to property owners, tenants, and area residents. The design for this project is tentatively scheduled to commence in February 2011, and is anticipated to be completed by the end of March 2012. A separate JPA will be initiated to fund the construction phase of the project once funds become available.


Assistant County Manager



MEMORANDUM
(Revised)

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

DATE: November 4, 2010

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

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

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)(B)
11-4-10

RESOLUTION NO. _____

RESOLUTION APPROVING EXECUTION OF A JOINT PARTICIPATION AGREEMENT (JPA) BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI TO PROVIDE FUNDING IN THE AMOUNT OF \$450,000 FOR THE DESIGN OF ROADWAY IMPROVEMENTS ALONG SOUTH BAYSHORE DRIVE, FROM DARWIN STREET TO MERCY WAY; AUTHORIZING THE USE OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS THEREIN

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 Miami and Miami-Dade County wish to facilitate the design of roadway improvements along South Bayshore Drive, from Darwin Street to Mercy Way,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Joint Participation Agreement between Miami-Dade County and the City of Miami, providing for County reimbursement to the City of Miami for eligible expenses incurred in the design of these improvements, in substantially the form attached hereto and made a part hereof; authorizing the use of Charter County Transportation Surtax Funds, 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
Dorrian D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of November, 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.

Hugo Benitez



**JOINT PARTICIPATION AGREEMENT
BETWEEN THE CITY OF MIAMI AND MIAMI-DADE COUNTY
SOUTH BAYSHORE DRIVE FROM DARWIN STREET
TO MERCY WAY**

This AGREEMENT, made and entered into this _____ day of _____, 2010, by and between the CITY OF 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, both parties herein wish to facilitate the design of a road improvement project in MIAMI-DADE COUNTY, hereinafter referred to as the "Project" described as follows:

The design of roadway improvements along South Bayshore Drive from Darwin Street to Mercy Way with reshaped swales, repaved bicycle path, continuous drainage, raised roadway profile along the Kennedy Park area, and a possible pump station adjacent to Kennedy Park and the Coral Reef Yacht Club; and

WHEREAS, the County wishes to utilize the resources of the City to design 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:

1. RESPONSIBILITIES OF CITY:

1.1. Design: The City will secure engineering design and consulting services from qualified firms, pursuant to §287.055, of the Florida Statutes, to develop the construction plans, technical specifications, special provisions, pay items and cost estimates for the Project in accordance with standard Florida Department of Transportation, County, and/or City, as applicable, design criteria, to the satisfaction of the County's Public Works Director or their designee. The County agrees that the selection, retention and discharge of the design consultant shall be the responsibility of the City in accordance with applicable laws and City procedures. 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 design services from qualified firms, the City will contact the County's Public Works Contracts and Specifications Section to ensure this compliance.

1.2. Permits and Approvals: The City shall obtain a preliminary approval (dry-run) of 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 perform a satisfactory dry-run of all necessary permits, and shall perform all 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.

Since South Bayshore Drive, from Aviation Avenue to Halissee Street, and the adjoining portion of South Miami Avenue from Halissee Street to Simpson Park at SE 15 Road, is designated as a State Historic Highway, these approvals must include a written consent from the State of Florida Division of Archives, History and Records Management of the Department of State and a Public Hearing before the City Commission prior to the commencement of work.

1.3. Bicycle/Pedestrian Advisory Committee: The City shall coordinate this Project with the City and County Bicycle/Pedestrian Advisory Committees (BPAC) during all phases of design.

1.4. Right-of-Way: The City shall determine at its sole expense, any right-of-way that is required to complete the construction of the Project, and advise the County.

1.5. Public Information and Involvement: The City will implement a Public Involvement Plan (PIP) during the design 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.

Projects that exceed \$1,000,000 in construction costs shall comply with the

process and guidelines for the preparation and implementation of PIPs as established by Implementing Order 10-13.

- 1.6. Publicity:** By the acceptance of these funds, the City agrees that the Project elements funded by this Agreement shall recognize and adequately reference the County as a funding source. The City shall ensure that all publicity, public relations, advertisements and signs recognizes and references the County for the support of all contracted activities. This is to include, but is not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions, and stationery. The use of the official County logo is permissible for the publicity purposes stated herein. The City shall submit sample or mock up of such publicity or materials to the County for review and approval. The City shall ensure that all media representatives, when inquiring about the activities funded by this Agreement, are informed that the County is its funding source.
- 1.7. 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.
- 1.8. Additional Work:** The City shall notify the County Public Works Director in writing before additional work is authorized beyond the allocated amount. The

City shall also invite the County to participate in negotiations of any additional work. The County shall review and make a determination or approval of all additional work or supplemental agreements, permits, modifications of plans, or other requests for approvals submitted by the City.

2. RESPONSIBILITIES OF COUNTY:

2.1. Funding Amount, Reimbursement of Project Costs: The County agrees to provide funds up to \$450,000 (this amount includes 10% contingency) for eligible costs, as defined herein, incurred by the City for the design of the Project. The County shall disburse to the City funds for the Project in the manner set forth in this Section. The County shall incur no liability for any costs in excess of said funding amount unless there has been a duly authorized increase approved by the Board of County Commissioners and the Citizen's Independent Transportation Trust (CITT).

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

<u>Funding Amount</u>	<u>Funding Source</u>	<u>County Fiscal Year of Commitment</u>
\$ 450,000	Transit Surtax Funds (Design)	2009-2010

2.3. Project Cost Adjustments: The amount contributed by the County is based on the current estimated costs of the Project. The parties recognize that adjustments to the above-referenced costs may be required in the future and that at the option of the parties, amendments may be entered into to revise the funds available for the Project. Provided that there is no increase in the amount

of County funds required as stated in Section 2.1, amendments may be executed by the City Manager and the County Mayor or County Mayor's designee without the need for approval by the City Commission and County Commission. Otherwise, further funding commitments shall be subject to the approvals of the parties' respective governing boards.

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 design of Project elements that are the standard items normally provided for by the County in County roadway 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 design of such items that do not conform to this section of the Agreement. The parties further agree that eligible costs will not include fees for 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 revisions thereto. At the time of contract award for this Project, the City shall submit the Estimated Quarterly 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

consultant billings 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. **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 §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 §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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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: Johnny Martinez, P.E.
Assistant City Manager/Chief of Infrastructure
City of Miami
444 SW Second Avenue
Miami, Florida 33130
(305) 416-1025

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

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

BY: _____
Deputy Clerk

BY: _____
County Mayor or County Mayor's Designee

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

ATTEST: CITY OF MIAMI, a municipal
corporation of the State of Florida

BY: Priscilla A. Thompson
Priscilla A. Thompson, CMC
City Clerk 8-26-10

BY: Carlos A. Migoya
Carlos A. Migoya
City Manager

(Affix City Seal)

Approved by City Attorney
as to form and legal sufficiency

Julie O. Bitt
Julie O. Bitt
City Attorney

Approved as to Insurance Requirements:

Gary Reshefsky
Gary Reshefsky, Interim Director
Risk Management Department



City of Miami

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

Text File Report

File ID: 10-00778	Type: Resolution	Status: Passed
Enactment #: R-10-0336		Enactment Date: 7/29/10
Version: 1	Introduced: 6/16/10	Controlling Body: Office of the City Clerk

A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), AUTHORIZING THE CITY MANAGER TO EXECUTE A JOINT PARTICIPATION AGREEMENT WITH MIAMI-DADE COUNTY ("COUNTY"), IN SUBSTANTIALLY THE ATTACHED FORM, FOR THE SOUTH BAYSHORE DRIVE ROADWAY AND DRAINAGE IMPROVEMENTS PROJECT, B-30646 ("PROJECT"), PROVIDING FOR THE ACCEPTANCE OF FUNDS IN THE AMOUNT OF \$450,000 FROM THE COUNTY FOR THE DESIGN OF THE PROJECT.

WHEREAS, the City of Miami ("City") and Miami-Dade County ("County") wish to facilitate the design of a road improvement project located within the municipal limits of the City; and

WHEREAS, the scope of the project consists of roadway improvements along South Bayshore Drive from Darwin Street to Mercy Way, Miami, Florida, with reshaped swales, a repaved bicycle path, continuous drainage, raised roadway profile along the Kennedy Park area, and a possible pump station adjacent to Kennedy Park and the Coral Reef Yacht Club ("Project"); and

WHEREAS, the City will be responsible for the design, construction, management and administration of the Project; and

WHEREAS, the attached Joint Participation Agreement ("JPA") provides that the County agrees to contribute funds in the amount of \$450,000 towards the design of the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The City Manager is authorized {1} to execute a JPA with the County, in substantially the attached form, for the Project, which provides for the acceptance of funds in the amount of \$450,000 from the County, for the design of the Project.

Section 3. This Resolution shall become effective immediately upon its adoption and signature of the Mayor. {2}