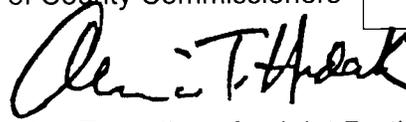


Date: May 17, 2011

Agenda Item No. 8(Q)(1)(A)

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Alina T. Hudak
County Manager



Resolution No. R-409-11

Subject: Resolution Authorizing the Execution of a Joint Participation Agreement between Miami-Dade County and City of Miami Relating to Obligations under a U.S. Department of Transportation Grant Program

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the accompanying resolution authorizing the execution of a Joint Participation Agreement (JPA) between Miami-Dade County (County) and the City of Miami (City) to conduct a study of rail crossings as required under the United States Department of Transportation National Infrastructure Investments Discretionary Grant Program Agreement (TIGER II Grant Agreement).

SCOPE

The Port of Miami is located within District 5 - Commissioner Bruno A. Barreiro. The impact of this item is Countywide, as the Port of Miami is a regional asset and generates employment for residents throughout all of Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

The JPA is one of several agreements necessary for the full implementation of the Port of Miami Intermodal and Rail Reconnection Project (Project) under the TIGER II Grant Agreement. The JPA will fund and authorize the City to conduct a Quiet Zone Study (Study) of 18 rail crossings for the purpose of making safety improvements and noise reductions. The Study is estimated to cost \$149,933.50 and is funded by the County (\$99,418.20 – SP420E-Study, funded from Port operating revenues) and the City (\$50,515.30).

TRACK RECORD/MONITOR

The Seaport Department staff members responsible for monitoring the contract(s) will be Kevin Lynskey, Assistant Director, Business Initiatives; and Dorian Valdes, Assistant Director, Capital Development.

BACKGROUND

The JPA is necessitated by the Project which will reconnect the Port of Miami to the national rail system in order to allow freight rail service subsequent to the completion of the Panama Canal Expansion in 2014. The Project consists of on-Port enhancements, such as a high-efficiency intermodal yard, as well as off-Port rail improvements, such as the replacement of 4.4 miles of track, multiple intersection upgrades, and the addition of a portion of track that will provide for a direct connection between the Port and FEC Rail Yard. These off-Port improvements will also prepare the right-of-way for future passenger rail.

Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners
Page No. 2

The Study will be used to petition the Department of Transportation's Federal Railroad Administration (FRA) for a Quiet Zone to be located between the Port of Miami (Port) and Northeast 71st Street (Little River) at the existing 18 active grade crossing systems (gates and flashers) in the FEC Corridor. This designation will increase safety and limit railroad generated noise by allowing railroad trains to be exempt from blowing their whistles at each railway crossing to enhance the livability and sustainability of local neighborhoods and businesses. However, train crews may still be permitted to sound their trains' horns within a Quiet Zone for emergency reasons. The process of establishing a Quiet Zone involves data collection of crossing information, assemblage of diagnostic filed reviews of the crossings, analysis/coordination with FRA processes, and public notifications.

The total cost of the Study is \$149,933.50, with the County and City contributing \$99,418.20 and \$50,515.30, respectively. FRA guidelines specify that only a public entity is permitted to sponsor a Quiet Zone study since the possibility of a conflict of interest may exist if the study were performed by a railroad seeking a self-exemption. The Florida Department of Transportation ("FDOT") and FEC have committed a total of \$9 million for the implementation of the results of the Study.

It is important to note that the amount contributed by the County and City is based on the current estimated costs of the Project. Both parties recognize that adjustments to the aforementioned 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. Such increases shall only occur upon approval by the Board of County Commissioners for the County's share and the City of Miami Commission for the City's share.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specific in the resolution which include the authority for the Mayor or designee to execute the Agreement.


Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: May 17, 2011

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

SUBJECT: Agenda Item No. 8(Q)(1)(A)

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(Q)(1)(A)
5-17-11

RESOLUTION NO. R-409-11

RESOLUTION APPROVING TERMS OF JOINT PARTICIPATION AGREEMENT BY AND BETWEEN MIAMI-DADE COUNTY AND CITY OF MIAMI RELATING TO QUIET ZONE STUDY AS SET FORTH IN UNITED STATES DEPARTMENT OF TRANSPORTATION TIGER II GRANT AGREEMENT; AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE JOINT PARTICIPATION AGREEMENT AND EXERCISE ANY CANCELLATION OR TERMINATION PROVISIONS CONTAINED THEREIN

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

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

Section 1. The foregoing recital is incorporated in this resolution and is approved.

Section 2. This Board hereby approves the terms of a Joint Participation Agreement by and between Miami-Dade County, Florida and the City of Miami, Florida in substantially the form attached hereto as Exhibit A and made a part hereof by this reference (the "JPA").

Section 3. This Board hereby authorizes the County Mayor or the County Mayor's designee to execute the JPA after review and approval for form and legal sufficiency by the County Attorney's Office. The County Mayor or the County Mayor's designee is authorized to exercise any and all cancellation or termination provisions contained therein.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Jose "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

	Joe A. Martinez, Chairman	absent
	Audrey M. Edmonson, Vice Chairwoman	aye
Bruno A. Barreiro	absent	Lynda Bell aye
Jose "Pepe" Diaz	aye	Sally A. Heyman aye
Barbara J. Jordan	aye	Jean Monestime aye
Dennis C. Moss	aye	Rebeca Sosa aye
Sen. Javier D. Souto	absent	

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of May, 2011. This resolution shall become effective 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.



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

HARVEY RUVIN, CLERK

DIANE COLLINS

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Gibil

Geri Bonzon-Keenan

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**JOINT PARTICIPATION AGREEMENT
BETWEEN THE CITY OF MIAMI AND MIAMI-DADE COUNTY
FLORIDA EAST COAST RAILWAY QUIET ZONE STUDY**

This AGREEMENT, made and entered into this _____ day of _____, 2011, 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 application to the Department of Transportation Federal Railroad Administration ("FRA") for a waiver to establish a new Quiet Zone in the Florida East Coast Railway ("FEC") corridor located within the City in MIAMI-DADE COUNTY, in order for railroad trains to be exempt from blowing their whistles at each crossing, hereinafter referred to as the "Project" described as follows:

The process of establishment of new Quiet Zones includes data collection of crossing information, assembling diagnostic filed reviews of the crossings, analysis/coordination with FRA processes and public notifications. An existing rail line runs directly to the Port of Miami ("POM") on the FEC owned right of way. A 4.4 mile segment of the existing rail corridor will be reconstructed to allow for both cargo and passenger rail lines in the future. The Project per this Agreement includes the identification of the upgrades needed to the existing eighteen active

grade crossing equipment (gates and flashers) from Northeast 71 Street (Little River) to the POM, so the City can petition the FRA for a new Quiet Zone.

WHEREAS, local communities such as the City can qualify for Quiet Zone status per the requirements outlined in the FRA Final Rule 49 CFR, Parts 222 and 229, as it pertains to Quiet Zone designation, subject to the terms and conditions of this Agreement,

WHEREAS, the County agrees to be a funding partner of the City in its effort to initiate and complete the Project,

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

1. RESPONSIBILITIES OF CITY:

1.1. **Management:** The City will secure consulting services from its existing Miscellaneous Civil Engineering Services Professional Services Agreement, pursuant to §287.055, of the Florida Statutes, to conduct the diagnostic review of the railroad crossings in accordance with FRA technical guidelines, prepare findings and recommendations of each Quiet Zone crossing and railroad signaling improvements in the study corridor, and submit the new Quiet Zone application to the FRA. The County agrees that the selection, retention and discharge of the engineering 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 compliances 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 POM/SBD to ensure this compliance.

1.2. **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 a funding source.

1.3. **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.

1.4. **Additional Work:** The City shall notify the POM 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 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 of \$99,418.20 for eligible costs from the total Project cost of \$149,933.50, as defined herein, incurred by the City for the initiation and completion of the Project. The City agrees to provide funds of \$50,515.30. 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. The City shall incur no liability for any costs in excess of said funding amount unless there has been a duly authorized increase approved by the City Commission.

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

<u>Funding Amount</u>	<u>Funding Source</u>	<u>County Fiscal Year of Commitment</u>
\$ 99,418.20	Port of Miami	2010-2011

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. To the extent permitted by law, if there is no increase in the amount of County or City 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 management and completion of Project elements that are the standard items normally provided for by the County in County 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 identification of such items that do not conform to this section of the Agreement.

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. 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, including administrative charges. The quarterly submittal for invoice shall also include a certified copy of payment to Sub-Contracted firms, if applicable.
5. **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 Business Enterprise Program. Specifically, the City agrees to abide by the applicable contract measure (recommendation(s)) established by the Department of Small Business Project Worksheet for the participation of specified business entities and/or trades as administered by the County's Department of Small Business (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 of Miami-Dade County, Florida.
6. **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.

7. **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.

Any damage recovered by the City which is attributable to an expenditure by the County, shall be returned to the County by the City, within sixty (60) business days of receipt.

8. **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.
9. **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.

10. 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.

11. 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.

12. 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: Bill Johnson,
Director
Port of Miami
1015 N. America Way
Miami, Florida 33132

To the City:

Attention: Johnny Martinez, P.E.
Deputy City Manager
City of Miami
444 SW Second Avenue, 10th Floor
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, CMC
City Clerk

BY: _____
Tony E. Crapp, Jr.
City Manager

(Affix City Seal)

Approved by City Attorney
as to form and legal sufficiency

Approved as to Insurance Requirements:

Julie O. Bru
City Attorney

Gary Reshefsky, Director
Risk Management Department