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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: October 2, 2012

Agenda Item No. 8(L)(6)

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

From: Carlos A. Gimenez
Mayor

Resolution No. R-793-12

Subject: Joint Participation Agreement Between Miami-Dade County and the City of Miami to Provide the County with Funding in an Amount up to $600,000 for the Construction of Road Improvements Along SW 17 Avenue from US-1 to Flagler Street and Authorizing the Use of Charter County Transportation Surtax Funds

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This item was amended at the September 12, 2012 Infrastructure and Land Use Committee to add language authorizing the use of Charter County Transportation Surtax Funds. The title of the Mayor's Memo and Resolution, and the second page of the Resolution have been modified to reflect this change.

RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing execution of a Joint Participation Agreement (JPA) between Miami-Dade County (County) and the City of Miami (City) to provide the County with funding in an amount up to $600,000 for the construction of road improvements along SW 17 Avenue from US-1 to Flagler Street (Project). The eventual construction of the Project will require County funding which will be provided through the Charter County Transportation Surtax. This item is being submitted to the Citizens' Independent Transportation Trust (CITT) for preliminary consideration. This Agreement will not be executed or become effective, until such time as a construction contract award for the Project is approved by the BCC and the CITT.

SCOPE

The Project to be constructed is within the City of Miami, in Commission District 5.

FISCAL IMPACT/FUNDING SOURCE

The City will provide the County with funding in an amount up to $600,000 for the construction of the Project which is equal to half of the Project's current cost estimate of $1,200,000. The County's matching share will be provided by funding allocated from Commission District 5's yearly People's Transportation Plan allocation. The funding index code for this Project is CPEPTP605RWN.

TRACK RECORD/MONITOR

The Project will be assigned to Mr. Bassam Moubayed, CFM, Chief, Construction Division, Miami-Dade County Public Works and Waste Management Department (PWWM), who will oversee construction inspections conducted by PWWM staff.

BACKGROUND

A request was made by the Miami Shenandoah Neighborhood Association for improvements along the SW 17 Avenue corridor, which is a County maintained roadway and vital to the movement of traffic in the area. The approved design is a result of a joint effort between the County and the City and includes milling, resurfacing, pavement markings, and raised medians at selected painted islands.

The County will prepare construction plans, construct the Project, and receive City funds on a reimbursable basis. The City Commission approved this JPA on June 28, 2012 under Resolution No. R-12-0238. The Project is tentatively scheduled to begin construction in March 2013.

Alina T. Hudak
County Manager/Deputy Mayor

MEMORANDUM
(Revised)

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

DATE: October 2, 2012

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

SUBJECT: Agenda Item No. 8(L)(6)

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(L)(6)

10-2-12

RESOLUTION NO. R-793-12

RESOLUTION APPROVING EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI TO PROVIDE THE COUNTY WITH FUNDING IN AN AMOUNT UP TO $600,000 FOR THE CONSTRUCTION OF ROAD IMPROVEMENTS ALONG SW 17 AVENUE, FROM US-1 TO FLAGLER STREET; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS THEREIN; AND AUTHORIZING THE USE OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS

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

WHEREAS, both the City of Miami and Miami-Dade County wish to facilitate the construction of road improvements along SW 17 Avenue, from US-1 to Flagler Street,

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 to provide the County with funding in an amount up to $600,000 for the construction of road improvements along SW 17 Avenue, from US-1 to Flagler Street, which will additionally require County funding in an equal amount, to be provided through the Charter County Transportation Surtax, in substantially the form attached hereto and made a part hereof; and authorizing the County Mayor or County Mayor's

designee to execute same for and on behalf of Miami-Dade County and to exercise the provisions contained therein; >>and authorizing the use of Charter County Transportation Surtax Funds.<<[1] This resolution shall become effective only upon the approval of the construction contract for the Project by separate resolution of the Board and the Citizens' Independent Transportation Trust.

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

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

[1] Committee amendments are indicated as follows: words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< constitute the amendment proposed.

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of October, 2012. 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

By: Christopher Agrippa
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
SW 17 AVENUE FROM US-1 TO FLAGLER STREET

This AGREEMENT, made and entered into this _ day of ____, 2012, 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 construction of a road improvement project in MIAMI-DADE COUNTY, hereinafter referred to as the "Project" described as follows:

Milling, resurfacing, pavement markings, and raised medians at select painted islands along SW 17 Avenue from US-1 to Flagler Street; and

WHEREAS, the City wishes to utilize the resources of the County to construct and administer 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. Funding Amount, Reimbursement of Protect Costs: The Project is currently estimated to cost $1,200,000 (this amount includes a ten percent (10%) contingency). The City agrees to provide funding in the amount of 50% of the cost of the Project, up to a maximum amount of $600,000 for eligible costs, as defined herein, incurred by the County for the construction of the Project. The City shall disburse to the County funds for the Project in the manner set forth in Section 4. 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 and formalized in an executed amendment to this Agreement.

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

Funding Amount	Funding Source	City Fiscal Year of Commitment
$600,000	B-30760	2011-2012

1.3. Project Cost Adjustments: The amount contributed by the City 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 City funds required as stated in Section 1.1, 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.

2. RESPONSIBILITIES OF COUNTY

2.1. Permits and Approvals: The County shall obtain all necessary permits, and utility adjustments, and coordinate the review of construction documents by utilities and permitting agencies for the Project. The County shall make all necessary adjustments as required for approval and/or permitting by those agencies for the Project. The County shall obtain all necessary permits, and shall perform all utility adjustments for the Project in accordance with applicable state, federal, and local laws and ordinances.

2.2. Publicity: By the acceptance of these funds, the County agrees that the Project elements funded by this Agreement shall recognize and adequately reference the City as a funding source. The County shall ensure that all publicity, public relations, advertisements and signs recognizes and references the City 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 City logo is permissible for the publicity purposes stated herein. The County shall submit sample or mock up of such publicity or materials to the City for review and approval. The County shall ensure that all media representatives, when inquiring about the activities funded by this Agreement, are informed that the City is a funding source.

2.3. Accounting: The County shall at all times maintain separate accounting for the costs of the Project so those costs may be independently verified and audited by

the City, at the request and cost of the City. The County agrees to permit the City 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 City for inspection within five (5) business days upon written receipt of a written request from the City.

2.4. Construction: The County shall procure the services of a licensed contractor holding an engineering contractor's license to construct the Project. The County may award the contract through any available lawful means which, in the County's discretion, affords the most competitive price for construction of the Project and which may include, but is not limited to, bid solicitation, request for proposals, the award of a change order on existing County contract(s), or the extension of unit-prices provided in connection with prior competitive bid awards. Notwithstanding any provision to the contrary, the County shall comply with all applicable County contract compliance and oversight measures.

The construction contract shall also contain a requirement that the contractor(s) provide a payment and performance bond at least in the amount and form required by state law naming the City and the County as joint obligees or joint contracting public entities. The construction contract shall contain a contingency amount to address unforeseen conditions and other required changes which shall not exceed ten percent (10%) of the base amount of the contract, unless otherwise approved by designated representatives of the County and City. The commitment for the expenditures of any contingency funds shall not be made by the County without the prior written approval of the

City's Capital Improvements Program Director. The City shall respond in writing, within thirty (30) business days of receiving written requests from the County to approve the commitment of contingency funds.

The City agrees that the selection, retention and discharge of such contractor shall be the responsibility of the County.

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

2.6. **Construction Administration and Inspection:** The County shall exercise all responsibilities of the owner under the construction contract, including construction administration and inspections. The County may delegate this function to an authorized agent or Construction Engineering Inspection (CEI) consultant. The City's Inspector shall have an oversight role in the routine daily Inspections for the Project. In the case of a disagreement, the County's Public Works and Waste Management Director, or their representative, shall have final authority. The City's designated representative and the County's designated representative shall jointly perform the inspection of the Project which immediately precedes substantial completion. The County shall certify upon completion that the Project has been constructed pursuant to the design plans, specifications and approved change orders.

2.7. Maintenance: The County shall be solely responsible for maintenance upon construction completion of the Project.

3. ELIGIBLE COSTS: The parties agree that only the below identified costs that may be incurred by the County that are directly related to the Project are eligible for reimbursement, provided adequate documentation accompanies the reimbursement request in the form of approved invoices, verified payment requests, documented journal entries, and/or check vouchers. For purposes of this Agreement, eligible costs are further defined as those pertaining to the construction of Project elements that are the standard items normally provided for by the County in County roadway projects, and not the enhancement of standard items, or the incorporation of items which are in addition to those standard items. The City shall not be assumed to be liable to provide reimbursement for the construction of such items that do not conform to this section of the Agreement.

4. SCHEDULE AND MANNER OF REIMBURSEMENTS: Disbursement of City funds to the County shall be based upon County invoices with certified copies of paid Contractor billings attached and shall not include any other charges. The 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. CITIZENS' INDEPENDENT TRANSPORTATION TRUST APPROVAL: Unless waived by action of the County, this Agreement shall only become effective upon approval by the Citizens' Independent Transportation Trust (CITT) and the Board of County Commissioners. In the event the Agreement is not approved, the Agreement shall be null and void and be of no force or effect.

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

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 Section 768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement by the City, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the County for its sole negligence or breach of contract.

To the extent authorized by Florida law, the County hereby agrees to indemnify, defend, save and hold harmless the City to the extent of all the limitations included in Section 768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement

by the County, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the City for its sole negligence or breach of contract.

In the event of breach or non-performance by the persons selected by the County to perform the work, the County shall, upon written request by the City, assign to the City any and all of its rights under the affected contract for purposes of the City's prosecution of claims, actions or causes of action resulting from such breach or non-performance unless the County pursues such claims, actions or causes of action through arbitration, administrative proceeding or lawsuit. The County agrees to cooperate fully with the City in the prosecution of any such claim or action. 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.

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 County, 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: Kathleen Woods-Richardson
Director, Public Works and Waste Management Department
Miami-Dade County
111 NW First Street, Suite 1640
Miami, Florida 33128
(305) 375-2960

To the City:

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

Attention: Albert Sosa, P.E.
Director, Capital Improvements Program
City of Miami
444 SW Second Avenue, 8th Floor
Miami, Florida 33130
(305) 416-1224

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:

BY:_____
Priscilla A. Thompson, CMC
City Clerk

7/20/12

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

BY:_____
Johnny Martinez, P.E.
City Manager

(Affix City Seal)

Approved by City Attorney
as to legal form and correctness

Julie O. Bru
City Attorney

Approved as to Insurance Requirements:

_____
Calvin Ellis, Director
Risk Management Department

Memorandum

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

From: Charles Scurr, Executive Director

Date: September 19, 2012

Re: **CITT AGENDA ITEM 5C:**
RESOLUTION BY THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST (CITT) RECOMMENDING THAT THE BOARD OF COUNTY COMMISSIONERS (BCC), APPROVE THE EXECUTION OF A JOINT PARTICIPATION AGREEMENT (JPA) BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI TO PROVIDE THE COUNTY WITH FUNDING IN AN AMOUNT UP TO **$600,000.00** FOR THE CONSTRUCTION OF ROAD IMPROVEMENTS ALONG SW 17 AVENUE, FROM US 1 TO FLAGLER STREET; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS THEREIN AND AUTHORIZING THE USE OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS **(PWWM – BCC Legislative File No. 121743)**

On September 19, 2012, the CITT voted (9-0) to forward a favorable recommendation to the Board of County Commissioners (BCC) for the approval of the above referenced item, CITT Resolution No. 12-072. The vote was as follows:

Hon. Linda Zilber, Chairperson – Aye
Paul J. Schwiep, Esq., 1st Vice Chairperson – Absent
Hon. Anna E. Ward, Ph.D., 2nd Vice Chairperson – Aye

Christopher Benjamin, Esq. – Absent
Glenn J. Downing, CFP® – Aye
Alfred J. Holzman – Absent
Miles E. Moss, P.E. – Aye
Marilyn Smith – Aye
Joseph Curbelo – Aye
Peter L. Forrest – Aye
Prakash Kumar – Aye
Hon. James A. Reeder – Aye

cc: Alina Hudak, Deputy Mayor/County Manager
Bruce Libhaber, Assistant County Attorney
Alexander Bokor, Assistant County Attorney