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

Memorandum

MIAMI-DADE COUNTY

Date: September 3, 2014

Agenda Item No. 8(J)(1)

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Joint Participation Agreement between Miami-Dade County and the Florida Department of Transportation

Resolution No. R-757-14

Recommendation

It is recommended that the Board of County Commissioners adopt the accompanying resolution approving the form and authorizing the execution of a Joint Participation Agreement (JPA) between Miami-Dade County (County) and the Florida Department of Transportation (FDOT) whereby FDOT agrees to reimburse the County for a portion of the County's cash contribution under the Master Agreement for the Port of Miami Tunnel and Access Improvement Project" (Master Agreement) through an annual appropriation by the State of Florida (State) of its State Comprehensive Enhanced Transportation System Tax ("SCETS").

Scope

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

Fiscal Impact/Funding Source

FDOT will pay the County, through an annual appropriation of SCETS, the amount of $8 million in the State's fiscal year 2018 and $17 million annually in each of the State's fiscal years 2019 through 2042.

Track Record/Monitor

The Seaport Department staff members responsible for monitoring the Agreement are Juan Kuryla, Port Director, and Kevin Lynskey, Deputy Port Director.

Background

In July 2007, the Board of County Commissioners passed Resolution No. R-889-07 which committed the County to the terms and conditions of the Master Agreement. The primary purpose of the Master Agreement was to set forth the funding and right-of-way obligations of Miami-Dade County, the City of Miami, and FDOT. In exchange for the County's cash contributions for the Port Tunnel, FDOT agreed to dedicate a future stream of SCETS as a reimbursement to the County to offset a portion of the County's financial contribution. On May 9, 2014, the Port of Miami transmitted a payment to the FDOT of $172.45 million on behalf of the County in accordance with the terms of the Master Agreement. In recognition of this payment, FDOT has presented the County with the JPA. Pursuant to the JPA, FDOT agrees to pay the County from annually appropriated SCETS the amount of $8 million in the State's Fiscal Year 2018 and $17 million annually in each of the State's fiscal years 2018 through 2042.

The Port Tunnel is scheduled to achieve substantial completion in June 2014 and final acceptance 90 days later. The Port Tunnel is approximately $138 million below the full project budget of $915 million. The $915 million figure included $200 million in reserves, divided into a geotechnical reserve of $150 million and a general reserve of $50 million. In the event these reserves were used, FDOT and the County share equal financial responsibility. To date, only the geotechnical reserve has been used in the amount of $59 million of which the County has previously paid its share of $29.5 million. By final acceptance, it is anticipated (though not guaranteed) that the Tunnel will require less than $3 million in additional costs that would be paid from the reserves. The County's only remaining financial obligation to FDOT for the Tunnel is 50% of these additional reserve costs.

In terms of overall cash contributions to the Tunnel project, the County transmitted $100 million in General Obligation Bond money in December of 2009, while PortMiami transmitted $29.5 million in January 2013 from a letter of credit the County posted for its share of the geotechnical contingency reserve and $172.5 million in May of 2014 from the proceeds of the County's Seaport Revenue Bonds, Series 2014 (the "Bonds"). This final amount was due by May 9 under the Master Agreement because the Tunnel had achieved substantial completion. Since the County elected not to pay its full contribution at the start of construction, the last payment of $172.5 million includes accrued interest of $15.1 million as well as hard project costs of $157.4 million. It was determined that it would have less of an impact on the financial condition of the PortMiami to pay accrued interest to the State rather than paying interest on bonds issued to make such payment upfront. .

The County factored into its debt service when it issued the Bonds, the receipt of the SCETS commencing in 2018. The debt service is structured to increase in anticipation of the receipt of the SCETS. It should be noted that, although FDOT has programmed the SCETS funds in the amounts described above through 2042 for Miami-Dade County, this JPA does not guarantee funding. The payment of the SCETS is subject to an annual appropriation as demonstrated in the following language: "As long as the Miami-Dade Metropolitan Planning Organization continues to prioritize the POMT project and the SCETS funds to reimburse the COUNTY are appropriated by the Legislature each year, the DEPARTMENT agrees to reimburse the COUNTY...." If the SCETS are not paid to the County in any Fiscal Year, it is anticipated that port revenues will be sufficient to make the debt service payments on the Bonds.

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 Agree and to exercise any cancellation or renewal provisions.

Jack Osterholt, Deputy Mayor

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: September 3, 2014

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

SUBJECT: Agenda Item No. 8(J)(1)

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 Mayor'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(J)(1)
9-3-14

RESOLUTION NO. R-757-14

RESOLUTION APPROVING JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FLORIDA DEPARTMENT OF TRANSPORTATION REGARDING PAYMENT OF STATE COMPREHENSIVE ENHANCED TRANSPORTATION SYSTEM TAX FUNDS TO COUNTY TO PAY DEBT SERVICE ON SEAPORT REVENUE BONDS ISSUED TO FUND PORTION OF COUNTY'S CONTRIBUTION TO PORTMIAMI TUNNEL PROJECT

WHEREAS, in July of 2007 this Board approved Resolution R-889-07 approving a Master Agreement for the Port of Miami Tunnel and Access Improvement Project (the "Master Agreement") among the Florida Department of Transportation, Miami-Dade County (the "County"), and the City of Miami regarding the funding of a Port Tunnel between Watson Island and Dodge Island which set forth the parties financial obligations; and

WHEREAS, as an inducement for the County to enter into the Master Agreement, FDOT agreed to reimburse the County for a portion of the County's contribution from an annual appropriation of State Comprehensive Enhanced Transportation System tax funds in the amount of $8,000,000.00 for the State's fiscal year 2018 and $17,000,000.00 annually for each of the State's fiscal years from 2019 through 2042; and

WHEREAS, the County issued Seaport Revenue Bonds, Series 2014 (the "2014 Bonds") to fund $172,450,000.00 of the cost of the PortMiami Tunnel which is substantially all of the County's remaining financial obligation pursuant to the Master Agreement; and

WHEREAS, the debt service on the 2014 Bonds was structured to take into consideration the start of the State Comprehensive Enhanced Transportation System payments in 2018; and

WHEREAS, this Board wishes to approve a Joint Participation Agreement with Florida Department of Transportation regarding the payment of the State Comprehensive Enhanced Transportation System tax funds to the County in substantially the form attached to this Resolution as Exhibit A for the purposes outlined in the accompanying memorandum, a copy of which is incorporated in this Resolution by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Joint Participation Agreement in substantially the form attached as Exhibit A is approved and the Mayor or his designee is authorized to execute and deliver it on behalf of the County.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of September, 2014. 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.

Gerald T. Heffernan

Exhibit A

Joint Participation Agreement

Financial Management No.:	Fund: Function: 215	FLAIR Approp:
Agency:		FLAIR Obj.:
Contract No:	Contract Amount: $	Org. Code:
		Vendor No.:

JOINT PARTICIPATION AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND MIAMI-DADE COUNTY

This Joint Participation Agreement ("Agreement") is entered into this _____ day of _____, 2014, between the State of Florida, Department of Transportation, an agency of the State of Florida ("DEPARTMENT"), and Miami-Dade County, a political subdivision of the State of Florida ("COUNTY"). The DEPARTMENT and the COUNTY are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

WITNESSETH:

A. The DEPARTMENT has been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes.

B. The DEPARTMENT is presently constructing, in accordance with its Five Year Work Program, the project described as the Port of Miami Tunnel and Access Improvement Project, said Project being known as FM #251156-4-A8-01 ("POMT").

C. The Parties and the City of Miami have entered into a Master Agreement for the Port of Miami Tunnel and Access Improvement Project ("MASTER AGREEMENT").

D. The POMT is on the State Highway System, is not revenue producing and is contained in the adopted Five Year Work Program.

E. The implementation of the Project is in the interest of both the DEPARTMENT and the COUNTY.

F. The COUNTY has and will contribute cash to the POMT as provided in the MASTER AGREEMENT.

G. As provided by and subject to the terms of this Agreement, the DEPARTMENT agrees to reimburse the COUNTY for portions of the COUNTY's obligations under the MASTER AGREEMENT by use of funds that may be available from the State Comprehensive Enhanced Transportation System Tax ("SECTS").

NOW, THEREFORE, the Parties agree as follows:

1. **TERM**

The term of this Agreement shall begin upon the date of signature of the last Party to sign and continue until the last payment is made by the DEPARTMENT or this Agreement is terminated as provided in paragraph 5.

2. **SERVICES AND PERFORMANCES**

The COUNTY shall contribute cash to be used on the Project as provided in the MASTER AGREEMENT. Additionally, COUNTY agrees to prioritize its review, evaluation, processing or issuing of any approvals and authorizations within its jurisdiction for POMT.

3. **REIMBURSEMENT**

A. As long as the Miami-Dade Metropolitan Planning Organization continues to prioritize the POMT project and the SCETS funds to reimburse the COUNTY are appropriated by the Legislature each year, the DEPARTMENT agrees to reimburse the COUNTY in the amount of $8 million for fiscal year 2018, and $17 million each year for fiscal years 2019 through 2042. Said amounts are to be paid by the DEPARTMENT to the COUNTY as follows: one-half of the SCETS funds on December 1 and one-half of the SCETS funds on June 1 of each fiscal year.

B. The DEPARTMENT shall have the right to retain all or a portion of any payment due the COUNTY under this Agreement in an amount sufficient to satisfy any liability of the COUNTY owed to the DEPARTMENT.

C. The provisions of Section 339.135(6)(a), Florida Statutes, are incorporated in this Agreement as follows:

The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only

for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of $25,000.00 and which have a term for a period of more than one (1) year.

D. Invoices shall be submitted by the COUNTY in detail sufficient for a proper pre-audit and post-audit thereof.

E. Entities providing goods and services to FDOT should be aware of the following time frames. Upon receipt, FDOT has 20 days to inspect and approve the goods and services. FDOT has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

F. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the COUNTY. Interest penalties of less than one (1) dollar shall not be enforced unless the COUNTY requests payment. Invoices which have to be returned to the COUNTY because of preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.

G. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.

H. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five (5) years after final payment Agreement is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred shall include the COUNTY's general accounting records and the project records, together with supporting documents and records of the COUNTY and all subconsultants performing work on the project, and all other records of the COUNTY and subconsultants considered necessary by the DEPARTMENT for a proper audit of project costs.

I. It is specifically agreed between the Parties that it is not intended by any of the

provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary here under, or to authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

4. COMPLIANCE WITH LAWS

A. The COUNTY shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY in conjunction with this Agreement. Failure by the COUNTY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

B. No funds received pursuant to this Agreement may be expended for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

C. The COUNTY and the DEPARTMENT agree that the COUNTY, its employees, and subconsultants are not agents of the DEPARTMENT as a result of this Agreement.

5. TERMINATION AND DEFAULT

A. This Agreement may be terminated by the DEPARTMENT in whole or in part at any time the interest of the DEPARTMENT requires such termination. The DEPARTMENT'S performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature. In the event the required funds are not appropriated in a fiscal year to the DEPARTMENT, the DEPARTMENT has no obligation to pay the required funds to the County for that fiscal year.

B. If the DEPARTMENT terminates this Agreement, the DEPARTMENT shall notify the COUNTY of such termination, with instructions to the effective date of termination.

6. MISCELLANEOUS

A. In no event shall the making by the DEPARTMENT of any payment to the COUNTY constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist, on the part of the COUNTY, and the making of such payment by the DEPARTMENT while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

B. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision of this Agreement found to be unlawful or unenforceable

IN WITNESS WHEREOF, the COUNTY has executed this Agreement this _____ day of _____, 2014, and the DEPARTMENT has executed this Agreement this ___ day of _____, 2014.

MIAMI-DADE COUNTY
By: BOARD OF COUNTY COMMISSIONERS

By: _____

Name: _____

Title: _____

As approved by the Board on:

_____

Attest:

_____

Legal Review:

_____
County Attorney

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Legal Review:

_____

Financial provisions approved by the Office of Comptroller:

_____

shall be severable and shall not affect the validity of the remaining provisions to the extent provided by Florida severability law.

C. This Agreement embodies the whole agreement of the Parties. With respect to the subject matter hereof, there are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous correspondence, communications, representations, or agreements, either verbal or written, between the Parties with respect to the subject matter hereof.

D. All notices required pursuant to the terms hereof shall be sent by First Class United States Mail. Unless prior written notification of an alternate address for notices is sent, all notices shall be sent to the following addresses:

DEPARTMENT

COUNTY

E. This Agreement shall not be changed or modified except by written agreement signed by the Parties.

F. This Agreement may be executed in duplicate originals, each of which shall be deemed an original, but all of which together shall constitute the Agreement.

The remainder of this page intentionally left blank.