

## MEMORANDUM

Agenda Item No. 11(A)(6)

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**TO:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners

**DATE:** October 19, 2021

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Resolution approving an  
Interlocal Agreement between  
the City of Aventura and Miami-  
Dade County to provide Miami-  
Dade County \$4,000,000.00 for  
the development of the East Side  
Pedestrian Bridge; authorizing  
and directing the County Mayor  
to execute the Interlocal  
Agreement and to exercise all  
provisions contained therein

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Resolution No. R-999-21

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The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



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Geri Bonzon-Keenan  
County Attorney

GBK/uw



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners

**DATE:** October 19, 2021

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

**SUBJECT:** Agenda Item No. 11(A)(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
- ☐ Statement of social equity 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 present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ 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. 11(A)(6)  
10-19-21

RESOLUTION NO. \_\_\_\_\_ R-999-21

RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF AVENTURA AND MIAMI-DADE COUNTY TO PROVIDE MIAMI-DADE COUNTY \$4,000,000.00 FOR THE DEVELOPMENT OF THE EAST SIDE PEDESTRIAN BRIDGE; AUTHORIZING AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO EXECUTE THE INTERLOCAL AGREEMENT AND TO EXERCISE ALL PROVISIONS CONTAINED THEREIN

**WHEREAS**, on October 11, 2019, this Board adopted Resolution No. R-1115-19 which approved a Land Acquisition and Development Agreement between Miami-Dade County and Brightline (hereinafter the “Land Acquisition and Development Agreement”) wherein Miami-Dade County and Brightline agreed, under certain terms and conditions, that the County will provide funding to Brightline for Brightline to procure the design and construction of a passenger rail station and pedestrian bridge generally along the Northeast Corridor of the Strategic Miami Area Rapid Transit (SMART) Plan, at or around NE 197th Street (the “Project”); and

**WHEREAS**, specifically and pursuant to the terms and conditions of the Land Acquisition and Development Agreement, Brightline will procure and design an elevated pedestrian bridge over Harriet Tubman Highway and Biscayne Boulevard providing access to Brightline’s planned passenger rail station platform; and

**WHEREAS**, the elevated bridge will consist of a segment from the platform to Brightline’s planned passenger rail station (the “West Side Pedestrian Bridge”), and may consist of a second segment (the “East Side Pedestrian Bridge”) providing pedestrian access from the platform across Biscayne Boulevard at or near NE 197th Street to either an outparcel of the Aventura Mall or to the adjacent right-of-way; and

**WHEREAS**, Miami-Dade County and the City of Aventura wish to facilitate the Project which provides transportation improvements and alternatives for the residents of Miami-Dade County; and

**WHEREAS**, the Aventura City Commission adopted Resolution No. 2016-69 on November 17, 2016, which approved an agreement between the City, Aventura Mall (“AMV”), TB Carpenter Parcel, LLC (“TB Carpenter”), and Seritage SRC Finance, LLC (“Seritage”) (the “Tripartite Transportation Contribution Agreement”), wherein AMV and Seritage committed to contribute funds to the City of Aventura in an amount of \$2,000,000.00 each, totaling \$4,000,000.00, to fund a major transportation improvement; and

**WHEREAS**, the City of Aventura wishes to contribute the funds contemplated by the Tripartite Transportation Contribution Agreement to Miami-Dade County for the development of the East Side Pedestrian Bridge,

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

**Section 1.** Approves the Interlocal Agreement between the City of Aventura and Miami-Dade County, in substantially the form attached hereto and made a part hereof, to provide Miami-Dade County \$4,000,000.00 for the development of the East Side Pedestrian Bridge.

**Section 2.** Authorizes and directs the County Mayor or County Mayor’s designee to execute the Interlocal Agreement, exercise all provisions contained therein, and take all actions necessary to effectuate same.

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

|                                       |            |                                   |
|---------------------------------------|------------|-----------------------------------|
| Jose "Pepe" Diaz, Chairman            | <b>aye</b> |                                   |
| Oliver G. Gilbert, III, Vice-Chairman | <b>aye</b> |                                   |
| Sen. René García                      | <b>aye</b> | Keon Hardemon <b>aye</b>          |
| Sally A. Heyman                       | <b>aye</b> | Danielle Cohen Higgins <b>aye</b> |
| Eileen Higgins                        | <b>aye</b> | Joe A. Martinez <b>aye</b>        |
| Kionne L. McGhee                      | <b>aye</b> | Jean Monestime <b>aye</b>         |
| Raquel A. Regalado                    | <b>aye</b> | Rebeca Sosa <b>aye</b>            |
| Sen. Javier D. Souto                  | <b>aye</b> |                                   |

The Chairperson thereupon declared this resolution duly passed and adopted this 19<sup>th</sup> day of October, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

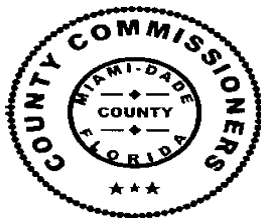
MIAMI-DADE COUNTY, FLORIDA

BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

**Melissa Adames**

By: \_\_\_\_\_  
Deputy Clerk



Approved by County Attorney as  
to form and legal sufficiency.

Annery Pulgar Alfonso

**INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF AVENTURA  
AND MIAMI-DADE COUNTY**

This AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2021, by and between the CITY OF AVENTURA, 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". City and County collectively referred to herein as "Parties."

**WITNESSETH**

**WHEREAS**, Brightline Trains Florida LLC (f/k/a Virgin Trains USA LLC) ("Brightline") has constructed and is operating a privately-owned passenger railway system with passenger train stations in Downtown Miami, Fort Lauderdale and West Palm Beach, generally along the Northeast Corridor of the Strategic Miami Area Rapid Transit (SMART) Plan; and

**WHEREAS**, on October 11, 2019, the Board of County Commissioners adopted Resolution No. R-1115-19 which approved a Land Acquisition and Development Agreement between the County and Brightline (hereinafter the "Land Acquisition and Development Agreement") wherein the County and Brightline agreed, under certain terms and conditions, that the County will provide the funding to Brightline for Brightline to procure the design and construction of a passenger rail station and pedestrian bridge consisting of two segments as more particularly defined below, the "West Side Bridge" and the "East Side Bridge", and other transit improvements, to be located generally along the Northeast Corridor, at or around NE 197th Street (the "Project"); and

**WHEREAS**, pursuant to sections 3 and 5 of the Land Acquisition and Development Agreement, Brightline is responsible for the design and construction of the East Side Bridge, including the selection, oversight, and management of all contractors and consultants necessary to design and construct the bridge; and

**WHEREAS**, subject to the condition precedent set forth in section 5 of the Land Acquisition and Development Agreement, and pursuant to the process set forth in sections 3(g) and 5(e), at the appropriate time, Brightline shall provide the County with the conceptual drawings, as well as the complete design and construction drawings (collectively the “drawings”) of the East Side Bridge for County comment and approval; and

**WHEREAS**, pursuant to the terms of the Land Acquisition and Development Agreement, the County is required to act reasonably in making comments and granting or denying approvals, and Brightline is required to make all revisions to the drawings that are required to confirm the drawings to the terms of the agreement including the Layout Plan, and applicable law; and

**WHEREAS**, pursuant to the Land Acquisition and Development Agreement, Brightline shall make reasonable efforts to incorporate any other comments made by the County, but is not required to implement any comments that would materially increase the costs of construction, operation, or maintenance of the East Side Bridge; and

**WHEREAS**, both Parties herein wish to facilitate said transportation improvements and provide transportation alternatives for the residents of Miami-Dade County; and

**WHEREAS**, pursuant to Resolution No. 2016-69, approved by the Aventura City Commission on November 17, 2016, the City, Aventura Mall Venture hereinafter referred

to as “AMV”, TB Carpenter Parcel, LLC hereinafter referred to as “TB Carpenter”, and Seritage SRC Finance, LLC hereinafter referred to as “Seritage”, entered into an agreement (the “Tripartite Transportation Contribution Agreement”) wherein AMV and Seritage irrevocably committed to contribute funds to the City in an amount of TWO MILLION DOLLARS (\$2,000,000) each, totaling FOUR MILLION DOLLARS (\$4,000,000.00), to fund a major transportation improvement, which pursuant to this Agreement consists of a pedestrian bridge from the Aventura Mall to a proposed passenger rail station; and

**WHEREAS**, the Project consists of the major transportation improvement, namely the pedestrian bridge, that was the subject of the Tripartite Transportation Contribution Agreement; and

**WHEREAS**, pursuant to the terms of the Tripartite Transportation Contribution Agreement, the funding commitments of AMV and Seritage must be secured by a surety bonds, escrow deposits or Letter of Credit; and

**WHEREAS**, AMV and Seritage must maintain legally sufficient guarantees in place throughout the term of the Tripartite Transportation Contribution Agreement; and

**WHEREAS**, on February 1, 2018, the City, AMV, Seritage, and TB Carpenter entered into the First Amendment to the Tripartite Transportation Contribution Agreement (the “First Amendment”); and

**WHEREAS**, the First Amendment provides in part that AMV may also secure its funding commitment with a corporate guaranty given by Shopping Center Management, a Florida general partnership, or any other type of security, approved in writing by the City Manager and City Attorney; and

**WHEREAS**, the First Amendment additionally provides in part that Seritage may also secure its funding commitment with any other type of security, approved in writing by the City Manager and City Attorney; and

**WHEREAS**, the First Amendment provides that in the event construction work or the implementation of the transportation improvement project that is the subject of the Tripartite Transportation Contribution Agreement has not commenced by January 1, 2025, AMV's and Seritage's funding commitment as required by the Tripartite Transportation Contribution Agreement shall be terminated and the City shall release AMV and Seritage of any and all such funding obligations, except as otherwise provided in the Tripartite Transportation Contribution Agreement; and

**WHEREAS**, there have been no additional amendments to the Tripartite Transportation Contribution Agreement, and any future amendments that impact AMV's and Seritage's obligations with respect to the funding commitment towards the Project shall be subject to County consent,

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

1. **RECITALS:** The recitals are true and correct and are incorporated herein by this reference to form a part of this Agreement.

2. **DEFINITIONS:**

- a. **"Board"** shall mean Miami-Dade County's Board of County Commissioners.
- b. **"Bridge"** shall mean an elevated pedestrian bridge over Harriet Tubman Highway and Biscayne Boulevard from the east side of Biscayne Boulevard to the Land and providing access to the Platform. The Bridge shall consist of a segment from

the Platform to Virgin Train’s planned passenger rail station to be located on the Land (the “West Side Bridge”), and may consist of a second segment (the “East Side Bridge”) providing pedestrian access from the Platform across Biscayne Boulevard at or near NE 197th Street to either an outparcel of the Aventura Mall or to the adjacent right-of-way.

- c. “East Side Bridge” shall have the meaning set forth in the definition of “Bridge.”
- d. “Effective Date” shall mean the date written on the first page of this Agreement, and shall be the date that this Agreement is fully executed by all Parties including execution by the County Mayor or County Mayor’s designee; such execution shall not occur until Board approval of this Agreement, which approval shall not be effective until the earlier of (i) the date the Mayor of Miami-Dade County indicates approval of such Board action, or (ii) the lapse of ten (10) days without the Mayor’s veto. In the event that the County Mayor vetoes the Board approval, the Board approval shall not be effective in the absence of an override of the County Mayor’s veto that shall be at the next regularly scheduled meeting of the Board after the veto occurs.
- e. “Land” shall mean two parcels of real property comprising approximately 3 acres of vacated, unimproved land (as of the date of this agreement) located at 19700 Harriet Tubman Highway and 19825 NE 26 Avenue, Unincorporated Miami-Dade County and with the following folio numbers: 30-2203-000-0070 and 30-2203-000-0075.
- f. “Platform” shall mean the structure to be built by Brightline on land in the Florida East Coast Railway corridor adjacent to Virgin Train’s tracks which will be used

by the Brightline as a queuing area in order to board and disembark passengers from its trains for its planned passenger rail service.

- g. “West Side Bridge” shall have the meaning set forth in the definition of “Bridge.”

**3. RESPONSIBILITIES OF CITY:**

- a. **Funding Contribution:** The City agrees that it will disburse to the County funding, as provided by AMV and Seritage, in the amount of FOUR MILLION DOLLARS (\$4,000,000.00) for the development of the East Side Bridge (the "Bridge Funds"). The disbursement of the Bridge Funds by the City to the County shall occur as follows:

3.a.1. Provided that the City has received such funds from AMV and Seritage, the City shall disburse ONE MILLION DOLLARS (\$1,000,000.00) of the Bridge Funds to the County no later than thirty (30) calendar days after the Parties have executed this Agreement. Provided that the City has received such funds from AMV and Seritage, the City shall disburse the balance of the Bridge Funds, THREE MILLION DOLLARS (\$3,000,000.00) to the County, no later than thirty (30) calendar days after the execution by Brightline, the County, or another third-party developer of a contract for the construction of the East Side Bridge.

3.a.2. The Parties acknowledge that the above-mentioned contract(s) which triggers the City’s disbursement of the Bridge Funds may be a contract for the Bridge, so long as it includes the East Side Bridge segment, or a contract solely for the East Side Bridge. In the event that Brightline’s obligations to develop the East Side Bridge and the County’s obligation to fund the

construction of the East Side Bridge terminate pursuant to Section 6(c) of Land Acquisition and Development Agreement, then this Agreement shall terminate as well and the Bridge Funds shall be returned to the City.

3.a.3. The City shall incur no liability for any costs in excess of said funding amount as described above, unless there has been a duly authorized increase which is expressly approved by duly adopted Resolution of the City Commission.

**b. Obligation to Pursue Rights:** The City shall diligently pursue all its rights under the Tripartite Transportation Contribution Agreement, including but not limited to enforcing the requirement in that agreement that AMV and Seritage must secure its respective funding commitment by a surety bond, escrow deposit or Letter of Credit or other form of security as described above at all times throughout the term of the Tripartite Contribution Agreement. In the event that the City does not successfully enforce its rights under the Tripartite Transportation Contribution Agreement concerning the funding commitment, and upon the County's request, the City shall assign its rights under that agreement to the County so that the County may directly seek such funds from AMV and Seritage. The City shall not amend the Tripartite Transportation Contribution Agreement with respect to AMV's and/or Seritage's obligations regarding the AMV's and Seritage's respective commitments to contribute funds to the City in an amount of TWO MILLION DOLLARS (\$2,000,000) each, totaling FOUR MILLION DOLLARS (\$4,000,000.00), to fund the Project without the County first consenting to such amendment.

- c. **Right-of-Way and Permitting:** The City shall assist the County, and/or any contractor or third-party developer, in obtaining access to any right-of-way that is within the City's boundaries and is required to complete the construction of the Bridge, inclusive of the East Side Bridge segment. The City shall also assist the County, and/or any contractor or third-party developer, in any permitting or plan review necessary to construct the Bridge within the City boundaries. Notwithstanding the foregoing, to the extent any part of the East Side Bridge or Project extend into the City's jurisdiction, nothing herein shall be construed as a limitation on the City's building and permitting authority as may applicable pursuant to pertinent laws and regulations.

4. **OPPORTUNITY FOR COMMENT ON CONCEPTUAL DRAWINGS:**

Provided that it does not cause a disruption or delay in the development of the Project, and provided that the City has begun disbursing the County the Bridge Funds in accordance with Section 3a above, upon the County receipt of the conceptual drawings for the East Side Bridge, the County shall provide said conceptual drawings to the City. The City shall have ten (10) days to provide any comments it may have, provided that the City shall at all times act reasonably in the making of comments. The County shall review the City's comments and shall at its sole discretion incorporate any City comments that the County deems appropriate and reasonable. Any comments which would result in the increase of the costs of construction, operation or maintenance of the East Side Bridge or the Project are not reasonable and will not be incorporated. This process between the County and the City shall repeat itself with 30% complete design and construction drawings and 90% design

plans. The City's failure to provide comments within the timeframe set out herein shall be deemed as though the City has no comments. For the avoidance of doubt: i) except for the review and comment provisions provided for in this section, this Agreement does not provide the City with the right to review or approve any design plans or construction drawings for the East Side Bridge or the Project, ii) the City waives any and all claims against the County based upon this section, and iii) the City agrees that failure of the County to provide any such plans to the City shall not cause a default of this Agreement.

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. **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.

7. **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. Each Party will bear its own attorney's fees.
8. **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. The City Manager shall act for City hereunder.

9. **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. The Parties acknowledge that if there are any inconsistencies between the Land Acquisition and Development Agreement and this Agreement and/or any other third-party agreement, including any agreement between the City and Brightline, the terms of the Land Acquisition and Development Agreement control.
10. **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.

**INTENTIONALLY LEFT BLANK**

**11. 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: Department of Transportation and Public Works  
c/o Director  
Miami-Dade County  
701 NW 1 Court, Suite 1700  
Miami, Florida 33136  
(786) 469-5406

**To the City:**

Attention: City Manager  
Aventura City Government Center  
19200 W. Country Club Drive  
Aventura, FL 33180  
(305) 466-8910

**Intentionally Left Blank**

**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:

\_\_\_\_\_  
Assistant County Attorney

ATTEST:

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

BY: \_\_\_\_\_  
Ellisa L. Horvath, MMC, City Clerk

BY: \_\_\_\_\_  
Ronald J. Wasson, City Manager



Approved by City Attorney as to legal form and correctness:

\_\_\_\_\_  
City Attorney