VILLAGE OF KEY BISCAYNE

Office of the Village Manager

Village Council
Robert L. Vernon, *Mayor*
Jorge E. Mendia, *Vice Mayor*
Michael Davey
Enrique Garcia
Steve Liedman
Thomas Thornton
Patricia Weinman

Village Manager
Jacqueline R. Menendez

DT: May 14, 2007

TO: Honorable Mayor and Village Council

FR: Jacqueline R. Menendez, Village Manager

RE: Interlocal Agreement: County Transit System Surtax

RECOMMENDATION

It is recommended that the Village Council approve the attached resolution which amends our agreement with the County with regard to the Transit System Surtax.

EXPLANATION

The attached resolution amends our agreement with the County with regard to the Transit System Surtax. The County is now asking each municipality to approve the attached resolution. The changes to our current agreement are summarized below:

1. The term of the Agreement is five (5) years.
2. Quarterly reports are provided to the County and due 10 days after the end of each quarter.
3. The date to receive documents from municipalities is moved from June 1 to November 1. This date was preferred due to the end of fiscal year on September 30.
4. Certified financial reports and audits are required.
5. Projects must include signage which states the surtax funding.
6. Surtax funded projects are to treat all residents equally and provide access.
7. Administrative costs are capped at 5% of surtax proceeds.
8. Delegates the authority to hold funds to the County manager or his/her designee.
9. The use of Surtax money for lobbying is prohibited.

88 West McIntyre Street • Suite 210 • Key Biscayne, Florida 33149 • (305) 365-5500 • Fax (305) 365-8936
MISSION STATEMENT: "TO PROVIDE A SAFE, QUALITY COMMUNITY ENVIRONMENT FOR ALL ISLANDERS THROUGH RESPONSIBLE GOVERNMENT."
www.keybiscayne.fl.gov

RESOLUTION NO. 2007-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE FOR DISTRIBUTION , USE AND REPORTING OF CHARTER COUNTY TRANSIT SYSTEM SURTAX PROCEEDS LEVIED BY MIAMI-DADE COUNTY; AUTHORIZING EXECUTION AND IMPLEMENTATION OF THE AGREEMENT; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the "Village") and Miami-Dade County (the "County") have previously entered into an agreement concerning the Transit System Surtax (the "Initial Agreement"); and

WHEREAS, the County has requested that the Initial Agreement be modified and superseded by the new form of Interlocal Agreement for Distribution, Use and Reporting of Charter County Transit System Surtax Proceeds Levied by Miami-Dade County (the "Interlocal Agreement") in substantially the form which is attached hereto; and

WHEREAS, Village Council finds that approval of the Interlocal Agreement is in the best interest of the Village.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** That the recitals stated above are hereby adopted and confirmed.

Section 2. **Agreement Approved.** That the Interlocal Amendment. between Miami-Dade County and Village of Key Biscayne concerning the Transit System Surtax is hereby approved, and the Village Manager is hereby authorized to execute the Interlocal Agreement on behalf of the Village, in substantially the form attached hereto, once approved as to form and legal sufficiency by the Village Attorney.

Section 3. **Implementation.** That the Village Manager is hereby authorized to take all action necessary to cause the implementation of the Interlocal Agreement and this Resolution.

Section 4. **Effective Date.** That this Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this _____ day of June, 2007.

_____
MAYOR ROBERT L. VERNON

ATTEST:

_____
CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
VILLAGE ATTORNEY

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INTERLOCAL AGREEMENT FOR DISTRIBUTION, USE AND REPORTING OF CHARTER COUNTY TRANSIT SYSTEM SURTAX PROCEEDS LEVIED BY MIAMI-DADE COUNTY

This Interlocal Agreement ("Agreement") entered into this ___ day of _____ 2007, by and between Miami-Dade County, a political subdivision of the State of Florida ("County"), and _____, a municipal corporation located within the geographic boundaries of Miami-Dade County, Florida ("City").

WHEREAS, County adopted Ordinance No. 02-116 levying and imposing a one half of one percent Charter County Transit System Surtax ("Surtax") pursuant to the authority of Sec. 212.055(1) Fla.Stats. (2002); and

WHEREAS, in 2003, County and City entered into an Interlocal Agreement delineating each party's obligations; and

WHEREAS, the County and City wish to modify that agreement; and

WHEREAS, this Agreement supersedes all previous agreements; and

WHEREAS, twenty (20) percent of surtax proceeds shall be distributed annually to those Cities existing as of November 5, 2002, ("eligible cities") that meet certain conditions including:

The City continues to provide the same level of general fund support for transportation that was in its FY 2001-2002 budget in subsequent fiscal years;

Any surtax proceeds received shall be applied to supplement, not replace a City's general fund support for transportation;

WHEREAS, Miami-Dade County Ordinance 02-116 requires that the City, on an annual basis, apply at least twenty (20) percent of any surtax proceeds received to transit uses in the nature of circulator buses, bus shelters, bus pullout bays or other transit-related infrastructure. Any City that cannot apply the twenty (20) percent portion of surtax proceeds it receives as provided in the preceding sentence, may contract with the County for the County to apply such proceeds on a County project that enhances traffic mobility within that City and immediately adjacent areas.

WHEREAS, if the City cannot expend such proceeds in accordance with either of the preceding sentences, then such proceeds shall either carry over and be added to the

overall portion of surtax proceeds to be distributed to the Cities in the ensuing year and shall be utilized solely for the transit uses;

WHEREAS, surtax proceeds shall be distributed on a pro rata basis amongst eligible cities based on the ratio such City's population bears to the total population in all such Cities (as adjusted annually in accordance with the Estimates of Population prepared by the Bureau of Economic and Business Research of the University of Florida) that continue to meet the foregoing conditions; and

NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the County and the City agree as follows:

ARTICLE 1

DEFINITIONS

1.1 "ADA" shall mean the Americans with Disabilities Act of 1990, as amended.

1.2 "Administrative costs" shall be defined as overhead expenses which are not readily attributable to any one particular project funded in whole or in part by the transit surtax funds.

1.3 "BCC" shall mean the Miami-Dade County Board of County Commissioners.

1.4 "CITT" shall mean the Citizens' Independent Transportation Trust.

1.5 "City" shall mean a municipal corporation located within the geographic boundaries of Miami-Dade County, Florida.

1.6 "Contractor" shall mean any entity, public or private, providing public transit services as described in this Agreement under contract to the City.

1.7 "County" shall mean Miami-Dade County, Florida.

1.8 "FDOR" shall mean the Florida Department of Revenue.

1.9 “Eligible Cities” shall mean cities in existence as of November 5, 2002.

1.10 "Fares" shall mean individual transportation fees paid by public transit passengers in accordance with a schedule of fares adopted by County Ordinance.

1.11 “Mayor” shall mean Miami-Dade County Executive Mayor.

1.12 "MDT" shall mean Miami-Dade Transit and authorized representatives thereof.

1.13 "OCITT" shall mean the Office of The Citizens’ Independent Transportation Trust and authorized representatives thereof.

1.14 “Project” shall be defined as transportation and transit projects including operation and maintenance thereof, funded in whole or in part by surtax proceeds.

1.15 “Program” shall be defined as transportation and transit projects including operation and maintenance thereof, funded in whole or in part by surtax proceeds.

1.16 ”Surtax Proceeds” shall mean the funds collected and received by the FDOR from the imposition of the Charter County Transit System Sales Surtax, less the FDOR’s cost of administration.

1.17 "The Trust" shall include the Citizens' Independent Transportation Trust, and authorized representatives thereof.

ARTICLE 2
TERMS

2.1 TERMS OF AGREEMENT

This agreement shall become effective as follows: (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by the Board of County Commissioners, and (2) either i) the Citizens' Independent Transportation Trust (CITT) has approved same, or ii) in response to the CITT's disapproval, the County Commission re-affirms by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final; and approval by the Commission or Council of the _____ of _____ or _____ Manager, if accompanied with documentation evidencing the City Manager's authority to sign agreement; and the execution by the County Manager. This agreement shall remain in force for five (5) years thereafter.

2.2 TERMINATION

This Agreement may be terminated for cause by either party upon no less than thirty (30) days written notice to the other party. Said notice shall be delivered by verified facsimile transmission or certified mail, return receipt requested. The noticed party shall have the opportunity to cure any stated cause for termination within the notice period, in which case the terminating party may cancel the termination notice using the same means by which the notice of termination was delivered.

2.3 The County may suspend or terminate the dispersing of surtax proceeds to the City if there is a breach of this Interlocal Agreement until such breach is cured.

2.4 The County reserves the right to cancel unilaterally this Agreement for refusal by the City to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received in conjunction with this Agreement.

ARTICLE 3
ACCOMPLISHMENT OF PROJECTS

Submission of Proceedings, Contracts and Other Documents: The City shall submit to the CITT and/or OCITT such data, reports, records, contracts and other documents relating to the program as the CITT or OCITT may request. On a quarterly basis, the City shall provide to the OCITT a report regarding the implementation of the projects funded in whole or in part by surtax proceeds. This information is due to the OCITT no more than ten (10) working days after the quarter end.

ARTICLE 4
ACCOUNTING RECORDS

4.1 Establishment and Maintenance of Accounting Records: The City shall maintain for projects or programs, in conformity with requirements of "Principles for State and Local Governments," separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the "program account". Documentation of the program account shall be made available to the CITT upon request any time during the period of the Agreement.

4.2 By November 1 of each year, City shall, in order to be eligible to receive a portion of the Municipal Share for the ensuing year, certify to County that: i) for the current fiscal year it is providing at least the same level of general fund support for transportation that City provided in City's FY 2001-2002 budget; and ii) it is using the current year's portion of the Municipal Share received in accordance with this Agreement. Such certification shall include a certified copy of City's budget for the current fiscal year, together with a list of the projects (including ongoing or completed projects that the City is paying debt service on borrowed funds) on which the current year's portion of the Municipal Share received is being expended. If City fails to meet the certification requirements, after being given a reasonable opportunity to correct any deficiencies, the amount equal to the pro rata portion of the Municipal Share City is to receive in the ensuing year shall not be distributed to City and shall be distributed among the remaining eligible cities.

4.3 Funds Received or Made Available for Projects: The City shall appropriately record in the program account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all payments received by it from the County pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the program, which County payments and other funds are herein collectively referred to as "program funds". The City shall require

depositories of program funds to secure continuously and fully all program funds in excess of the amounts insured under Federal plans, or under State plans which have been approved for the deposit of program funds by the County, by the deposit or setting aside of collateral of the types and in the manner as prescribed by State law for the security of public funds, or as approved by the County.

4.4 Documentation of Program Costs: All costs incurred by the program, including any approved services contributed by the City or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

ARTICLE 5
AUDIT AND INSPECTION

5.1 Audit Reports: By November 1 a certified report with a disclosure of surtax proceeds expended in accordance with State law, Ordinance No. 02-116, and this Agreement followed by an independent audit report six (6) months after the fiscal year end. The City agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the CITT, including but not limited to site visits and limited scope audits. The City further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the CITT or the Audit and Management Services Department of Miami-Dade County, the Office of the Commission Auditor, the Miami-Dade County Office of the Inspector General or an agent of the County. The City shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of three (3) years from the date the audit report is issued, and shall allow the CITT access to such records and working papers upon request.

5.2 Other Requirements: If an audit discloses any significant audit findings relating to any award, including material noncompliance with individual project compliance requirements or reportable conditions in internal controls of the City, the City shall submit as part of the audit package to the CITT a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary. The City shall take timely and appropriate corrective action to any audit findings, recommendations, and corrective action plans.

5.3 The City shall permit and require its contractors to permit the County and the CITT's authorized representative to inspect all work, materials, payrolls, records, and to audit the books, records and accounts pertaining to the financing and development of the program.

ARTICLE 6
RESTRICTIONS, PROHIBITIONS, CONTROLS, AND LABOR PROVISIONS

6.1 Equal Employment Opportunity: In connection with the carrying out of any project, the City shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex, sexual orientation or national origin. The City will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, sexual orientation or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Grantees, recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of CITT assisted contracts.

The City shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the project/program, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement, or similar work, the City shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the County setting forth the provisions of the nondiscrimination clause.

6.2 Title VI - Civil Rights Act of 1964: Execution of this Interlocal Agreement constitutes a certification that the City will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the City pursuant thereto.

6.3 The Americans with Disabilities Act of 1990 (ADA): Execution of this Interlocal Agreement constitutes a certification that the City will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et. seq.), the regulations of the Federal government issued thereunder, and the assurance by the City pursuant thereto.

6.4 Prohibited Interests: Neither the City nor any of its contractors or its subcontractors shall enter into any contract, subcontract, or arrangement in connection with projects or any property included or planned to be included in the projects, in which any member, officer, or employee of the City during his tenure or for two years

thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the City, the City with prior approval of the BCC and the CITT, may waive the prohibition contained in this subsection: Provided, that any such present member, officer or employee shall not participate in any action by the City relating to such contract, subcontract, or arrangement. The City shall insert in all contracts entered into in connection with projects or any property included or planned to be included in any project, and shall require its contractors to insert in each of its subcontracts, the following provision: "No member, officer, or employee of the City during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof." The provisions of this subsection shall not be applicable to any agreement between the City and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a governmental entity.

6.5 Interest of Members of, or Delegates to, Congress: No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 Environmental Pollution: Execution of this Interlocal Agreement constitutes a certification by the City that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The City will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the CITT for any loss incurred in connection therewith.

7.2 Not Obligated to Third Parties: The County, the BCC Members, the CITT Members and all of the County's officers, agents, and employees shall not be obligated or liable hereunder to any party other than the City.

7.3 When Rights and Remedies Not Waived: In no event shall the making by the County of any payment to the City constitute or be construed as a waiver by the County of any breach of covenant or any default which may then exist, on the part of the City, and the making of such payment by the County while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the County with respect to such breach or default.

7.4 How Agreement Is Affected by Provisions Being Held Invalid: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.

7.5 State or Territorial Law: Nothing in the Agreement shall require the City to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State law: Provided, that if any of the provisions of the Agreement violate any applicable State law, the City will at once notify the OCITT in writing in order that appropriate changes and modifications may be made by the County and the City to the end that the City may proceed as soon as possible with projects.

7.6 Use and Maintenance of Project Facilities and Equipment: The City agrees that project facilities and equipment will be used by the City to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles. The City further agrees to maintain the project facilities and equipment in good working order for the useful life of said facilities or equipment.

7.7 Signage: For any project funded in whole or in part by surtax proceeds, The City shall post in a conspicuous location at the job site, structure or vehicle, a sign indicating that surtax proceeds are being used for this project.

7.8 Residency Requirement: For any project funded in whole or in part by surtax proceeds, the City may not provide any preferential access accommodations or pricing based on residency.

7.9 Administrative Expenses: Consistent with Miami-Dade County Ordinance 06-138 the City shall not expend more than five (5) percent of its municipal share of surtax proceeds on administrative expenses, exclusive of project management and oversight for projects funded by the surtax.

7.10 Contractual Indemnity: To the extent provided by law, the City shall indemnify, defend, and hold harmless the County, the BCC Members, the CITT Members and all of the County's officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the City, its agents, or employees, during the performance of the Agreement, except that neither the City, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the County or any of its officers, agents, or employees during the performance of the Agreement.

7.11 When the County receives a notice of claim for damages that may have been caused by the City in the performance of services required under this Agreement, the County will immediately forward the claim to the City. The County's failure to

promptly notify the City of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the City.

7.12 The County Manager or his designee shall have the authority to distribute and/or withhold surtax funds.

ARTICLE 8
AGREEMENT FORMAT

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

ARTICLE 9
EXECUTION OF AGREEMENT

This Agreement may be simultaneously executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

ARTICLE 10
RESTRICTIONS ON LOBBYING

10.1 Federal: The City agrees that no surtax proceeds have been paid or will be paid by or on behalf of the City, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federal appropriated funds have been paid by the City to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Interlocal Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The City shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

10.2 State: No funds received pursuant to this contract may be expended for lobbying the Legislature or a State agency.

10.3 County: No funds received pursuant to this contract may be expended for lobbying the County.

ARTICLE 11
MODIFICATIONS AND MISCELLANEOUS PROVISIONS

All notices and other communications required to be remitted pursuant to this Agreement to either party hereto shall be in writing and shall be delivered by verified facsimile transmission or certified mail, return receipt requested, to the parties at the address indicated below:

FOR MIAMI-DADE COUNTY:
OFFICE OF THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST
c/o Executive Director, OCITT
111 NW 1 Street, Suite 1010
Miami, FL 33128

Fax: (305) 375-4605

FOR _____ OF _____:

_____ of

Office of the _____ Manager

With Copies to:

11.1 COMPLETE AND BINDING AGREEMENT This writing embodies the full and complete agreement of the parties. No other terms, conditions or modifications shall be binding upon the parties unless in writing and signed by the parties.

11.2 GOVERNING LAW This Agreement shall be construed in accordance with the laws of the State of Florida

IN WITNESS WHEREOFF, the parties hereto have made and executed this

Agreement on the respective dates under each signature:

ATTEST:

Harvey Ruvin, Clerk

By: _____
Deputy Clerk

FOR THE COUNTY:

Miami-Dade County,
a political subdivision of the State of Florida

By its Board of County Commissioners

By: _____
County Manager

Date Executed: _____

Approved as to Form and Legal Sufficiency

By: _____
Assistant County Attorney

ATTEST:

FOR THE CITY:

_____,
a political subdivision of the State of Florida

By: _____
City Clerk

By: _____
Mayor or _____ Manager

Date Executed: _____

Approved as to Form and Legal Sufficiency

By: _____
City Attorney