

RESOLUTION NO. 12 -21

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE CITY AND MIAMI-DADE COUNTY FOR RECEIPT OF THE CITY'S PRO RATA SHARE OF THE CITY SURTAX REVENUES; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

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

WHEREAS, twenty (20) percent of the Surtax proceeds shall be distributed annually to those cities existing as of November 5, 2002, and

WHEREAS, the County and the City of Doral (the "City") desire to include those cities that were incorporated between November 5, 2002 and the date of this agreement in the distribution of surtax proceeds that meet certain conditions (hereinafter referred to collectively as "Eligible Cities"); and

WHEREAS, the County and the City wish to enter into an interlocal agreement substantially in the form of Exhibit "A" hereto (the "Agreement"); and

WHEREAS the County and the City agree that the City shall receive within 30 days of the Agreement becoming effective, in exchange for an executed release and voluntary dismissal with prejudice of CITY OF DORAL v. MIAMI-DADE COUNTY, FLA., case no. 11-10063-CA-11, its pro-rata share as calculated herein from the County's 80% share of surtax revenue for the fiscal years of 2010-2011 and 2011-2012 in the form of a lump sum payment which funds may be applied in the City's sole and exclusive discretion without limitation by any provision contained herein to reimburse for

eligible expenses incurred by the City since 2002, and subject to Florida Statute Section 212.055; and

WHEREAS, the City Council finds that entering into the Agreement is in the best interests of the City and its residents.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL AS FOLLOWS:

Section 1. The City Council hereby approves an Interlocal Agreement with Miami-Dade County for payment to the City of its pro rata shares of the CITT surtax revenues, substantially in the form of Exhibit "A" attached hereto. The Mayor is hereby authorized to execute the Agreement, subject to any non-substantial changes that are approved by the City Attorney.

Section 2. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Councilmember Boria who moved its adoption. The motion was seconded by Councilmember Cabrera and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Michael DiPietro	Yes
Councilman Luigi Boria	Yes
Councilman Pete Cabrera	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED and ADOPTED this 8th day of February, 2012.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE CITY OF DORAL:



JIMMY MORALES, CITY ATTORNEY

EXHIBIT “A”

**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 _____ 2012, by and between Miami-Dade County, a political subdivision of the State of Florida ("County"), and the City of Doral, 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, twenty (20) percent of surtax proceeds shall be distributed annually to those Cities existing as of November 5, 2002, and the County and the City desire to include those Cities that were incorporated between November 5, 2002 and the date of this agreement in the distribution of surtax proceeds that meet certain conditions (hereinafter referred to collectively as "Eligible Cities") including:

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

WHEREAS, County and City agree that City shall receive within 30 days of this agreement becoming effective as defined in section 2.1 in exchange for an executed release and voluntary dismissal with prejudice of CITY OF DORAL v. MIAMI-DADE COUNTY, FLA., case no. 11-10063-CA-11, its pro-rata share as calculated herein from the County's 80% share of surtax revenue for the fiscal years of 2010-2011 and 2011-2012 in the form of a lump sum payment which funds may be applied in the City's sole and exclusive discretion without limitation by any provision contained herein to reimburse for eligible expenses incurred by the City since 2002, and subject to Florida Statute Section 212.055; and

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 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" or "Town" shall mean a municipal corporation located within the geographic boundaries of Miami-Dade County, Florida. As used herein "City" shall mean the City of Doral, 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 January, 2012.
- 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 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 approval by the Commission or Council of City. This agreement shall remain in force through September 30, 2012.

2.2 PAYMENT

Within 10 days of this agreement becoming effective, City shall provide an executed release, which shall be kept in trust by the County Attorney until such time as the payment referenced below is made. Within 30 days of County's receipt of said executed release, the City shall receive from the County its pro-rata share as calculated herein from the County's 80% share of surtax revenue for the fiscal years of 2010-2011 and 2011-2012 in the form of a lump sum payment which funds may be applied in the City's sole and exclusive discretion without limitation by any provision contained herein to reimburse for eligible expenses incurred by the City since 2002, and subject to Florida Statute Section 212.055. Within 2 business days of City receiving the lump sum payment described herein, City shall file a Notice of Voluntary Dismissal with Prejudice in CITY OF DORAL v. MIAMI-DADE COUNTY, FLA., case no. 11-10063 CA 11.

2.3 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.

- 2.4 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.
- 2.5 The County reserves the right to cancel unilaterally this Agreement for refusal by the City, after notice to cure by the County, 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 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 representatives 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 there under, 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 there under, 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 there from.

**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. The City, its council and its officers, agents and employees shall not be obligated or liable to any party other than the County or the CITT under this agreement and this agreement shall not create any right of any kind on the part of any person or entity that is not a party to this agreement.
- 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 County 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 and 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 sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients 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 CITY OF DORAL:

Yvonne Soler-McKinley
Office of the City Manager
City of Doral
8300 NW 53 Street, Suite 100
Doral, Florida 3318

With Copies to:

Jimmy Morales, Esq.
City Attorney
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 W. Flagler Street, Suite 2200
Miami, Florida 33130

- 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.

ARTICLE 12 FAVORED NATION STATUS

The County agrees that if, after the effective date of this agreement, it enters into an agreement with any of the Eligible Cities, which is more favorable than the terms provided for in this Agreement, the City shall be entitled to the same favorable terms as the other Eligible Cities without the need for an amendment to this Agreement.

IN WITNESS WHEREOFF, the parties hereto have made and executed this Agreement on the respective dates under each signature:

ATTEST:

FOR THE COUNTY:

MIAMI-DADE COUNTY,
a political subdivision of the State of
Florida

Harvey Ruvlin, Clerk

By its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
County Mayor or Mayor's Designee

Date Executed: _____

Approved as to Form and Legal Sufficiency

By: _____
Assistant County Attorney

ATTEST:

FOR THE CITY:

THE CITY OF DORAL,
a political subdivision of the State of
Florida

By: _____
Barbara Herrera, City Clerk

By: _____
Mayor Juan Carlos Bermudez

Date Executed: _____

Approved as to Form and Legal Sufficiency

By: _____
Jimmy Morales
City Attorney