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

Memorandum

MIAMI-DADE COUNTY

Date: December 2, 2014

Agenda Item No. 8(L)(4)

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 Village of Virginia Gardens to Provide the Village of Virginia Gardens with Funding in an Amount up to $70,628.00 for the Construction of an Intersection Improvement Project at NW 40 Street and NW 57 Avenue

Resolution No. R-1055-14

Recommendation

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing execution of a Joint Participation Agreement (JPA) between Miami-Dade County (County) and the Village of Virginia Gardens (Village) to reimburse the Village for the construction of an intersection improvement project at NW 40 Street and NW 57 Avenue (Project).

Scope

The Project is located within the Village in Commissioner Jose "Pepe" Diaz's District 12.

Fiscal Impact/Funding Source

The County will provide up to $70,628.00 from Road Impact Fee District 1 funds. The funding index code is CPE01C and the Capital project number is 6050261.

Track Record/Monitor

The County will utilize the resources of the Village to contract and construct the Project on a reimbursable basis. The Project will be assigned to Mr. Bassam Moubayed, CFM, Chief, Construction Division, Public Works and Waste Management Department (PWWM), who will oversee construction inspections conducted by PWWM staff before the release of construction funds is recommended.

Whenever County funds are utilized for work under this JPA, the Village agrees to comply with applicable County regulations including, but not limited to, the Community Small Business Enterprise (CSBE) Program, Community Business Enterprise (CBE) Program, the Community Workforce Program (CWP), and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143). The work covered under this JPA has been reviewed by the County's Small Business Development Division, and a Contract Measure Recommendation of 10.6% was established for a CSBE Subcontractor Goal.

Delegated Authority
The Mayor is delegated the authority to award the contract provided there is no increase in the authorized funding. Increases in funding shall require the approval of the Board of county Commissioners.

Background
The Village has requested the construction of the Project to address traffic needs and has agreed to bid and construct the Project on a reimbursable basis. The Village Council approved this JPA on August 21, 2014 under Village Resolution No. 888 (attached). The Project is tentatively scheduled to begin construction by March 2015.

Alina T. Hudak
Deputy Mayor

MEMORANDUM
(Revised)

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

DATE: December 2, 2014

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

SUBJECT: Agenda Item No. 8(L)(4)

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(L)(4)
12-2-14

RESOLUTION NO. R-1055-14

RESOLUTION APPROVING A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE OF VIRGINIA GARDENS TO PROVIDE THE VILLAGE WITH FUNDING IN AN AMOUNT UP TO $70,628.00 FOR THE CONSTRUCTION OF INTERSECTION IMPROVEMENTS AT NW 40 STREET AND NW 57 AVENUE; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE THE PROVISIONS CONTAINED THEREIN

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

WHEREAS, both the Village of Virginia Gardens and Miami-Dade County wish to facilitate an intersection improvement project at NW 40 Street and NW 57 Avenue,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Joint Participation Agreement between Miami-Dade County and the Village of Virginia Gardens to provide the Village with funding in an amount up to $70;628.00 for the construction of an intersection improvement project at NW 40 Street and NW 57 Avenue, in substantially the form attached hereto and made a part hereof; and authorizing the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise the provisions contained therein.

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

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

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

HB

Hugo Benitez

JOINT PARTICIPATION AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE OF VIRGINIA GARDENS
NW 40 STREET AND NW 57 AVENUE

This AGREEMENT, made and entered into this _____ day of _____, 2014, by and between the VILLAGE OF VIRGINIA GARDENS, FLORIDA, a municipal corporation of the STATE OF FLORIDA, hereinafter referred to as the "Village", and MIAMI-DADE COUNTY, a political subdivision of the STATE OF FLORIDA, hereinafter referred to as the "County".

WITNESSETH

WHEREAS, both parties herein wish to facilitate the construction of a road improvement project in MIAMI-DADE COUNTY, hereinafter referred to as the "Project" described as follows:

The construction of an intersection improvement project at NW 40 Street and NW 57 Avenue; and

WHEREAS, the County wishes to utilize the resources of the Village to contract and construct the Project, subject to the terms and conditions of this Agreement;

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

RESPONSIBILITIES OF VILLAGE:

1.1. **Permits and Approvals**: The Village shall obtain all necessary permits, and utility adjustments; and coordinate the review of construction documents by utilities and permitting agencies. The Village shall make all necessary adjustments as required for approval and/or permitting by those agencies. The Village shall obtain all necessary permits, and utility adjustments for the Project in accordance with applicable state, federal and local laws and ordinances. The Village shall not pay for any permits required by the Miami-Dade County Public Works and Waste Management Department.

1.2. **Public Information and Involvement**: The Village will implement a Public Involvement Plan (PIP) during the design and construction of the Project to provide information to property owners, tenants, and area residents, including but not limited to: public meetings, Project documentation and flyers, business signs, directional parking signs, and schedules for major work to be performed in the area. Appropriate investigation of the Project stakeholders shall be used to develop the goals and objectives to implement the PIP. The Village shall submit a copy of the PIP to the County Public Works and Waste Management Director for review and concurrence.

Projects that exceed $1,000,000 in construction costs shall comply with the process and guidelines for the preparation and implementation of PIPs as established by Implementing Order 10-13.

1.3. **Publicity**: By the acceptance of these funds, the Village agrees that the Project elements funded by this Agreement shall recognize and adequately reference the County as a funding source. The Village shall ensure that all publicity, public relations, advertisements and signs recognizes and references the County for the support of all contracted activities. This is to include, but is not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions, and stationery. The use of the official County logo is permissible for the publicity purposes stated herein. The Village shall submit sample or mock up of such publicity or materials to the County for review and approval. The Village shall ensure that all media representatives, when inquiring about the activities funded by this Agreement, are informed that the County is its funding source.

1.4. **Accounting**: The Village shall at all times maintain separate accounting for the costs of the Project so those costs may be independently verified and audited by the County, at the request and cost of the County. The Village agrees to permit the County auditors to inspect the books, records and accounts of the Project for three (3) years after completion of the Project. These records shall be made available to the County for inspection within ten (10) business days upon written receipt of a written request from the County.

1.5. **Construction**: The Village shall procure the services of a licensed contractor holding an engineering contractor's license to construct the Project. The Village may award the contract through any available lawful means, in

accordance with Section 255.20, Florida Statutes, which in the Village's discretion, affords the most competitive price for construction of the Project and which may include, but is not limited to, bid solicitation, request for proposals, the award of a change order on existing Village contract(s), or the extension of unit-prices provided in connection with prior competitive bid awards. Notwithstanding any provision to the contrary, the Village shall comply with all applicable County contract compliance and oversight measures relating to the expenditure of County funds, in accordance with Section 6 of this Agreement. Prior to the advertisement to solicit a licensed contractor to construct the Project, the Village shall contact the County's Public Works and Waste Management Contracts and Specifications Section to ensure this compliance.

The construction contract shall also contain a requirement that the contractor(s) provide a payment and performance bond at least in the amount and form required by state law naming the County and Village as joint obligees or joint contracting public entities. The construction contract shall contain a contingency amount to address unforeseen conditions and owner required changes which shall not exceed ten percent (10%) of the base amount of the contract, unless otherwise approved by designated representatives of the County and Village. The commitment for the expenditures of any contingency funds shall not be made by the Village without the prior written approval of the County Public Works and Waste Management Director. The County shall respond, in writing, within thirty (30)

business days of receiving written requests from the Village to approve the commitment of contingency funds.

Subsequent to the evaluation of bids or proposals by the Village and the Village's determination of the most advantageous bid or proposal, the Village shall provide said evaluation to the County Public Works and Waste Management Director for review and approval. Final commitment of County funds for the Project shall occur upon approval of the contract award recommendation by the County Public Works and Waste Management Director. The County agrees that the selection, retention and discharge of such contractor shall be the responsibility of the Village.

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

1.7. **Construction Administration and Inspection**: The Village shall exercise all responsibilities of the owner under the construction contract, including construction administration and inspections. The Village may delegate this function to an authorized agent or Construction Engineering Inspection consultant. The County's inspector shall have an oversight role in the routine daily inspections. In the case of a disagreement over the interpretation of the

plans, the County Public Works and Waste Management Director or their designee shall have final authority subsequent to an independent final inspection by the County. The Village's designated representative and the County's designated representative shall jointly perform the inspection of the Project which immediately precedes substantial completion. The Village shall certify upon completion that the Project has been constructed pursuant to the design plans, specifications and approved change orders. Final payment to the Village and obligation of maintenance responsibility to the parties shall be subject to the final acceptance of the Project by the County Public Works and Waste Management Director or their designee.

1.8. **Maintenance**: The Village shall be solely responsible for maintenance upon construction completion of the Project.

1.9. **Coordination with Miami-Dade County Public Schools**: Due to potential safety, operational and bus transportation impacts, the Village shall coordinate with Miami-Dade County Public Schools staff to implement maintenance of traffic measures.

2. **RESPONSIBILITIES OF COUNTY**:

2.1. **Funding Amount, Reimbursement of Project Costs**: The County agrees to provide funds up to $70,628.00 (this amount includes ten percent (10%) contingency) for eligible costs, as defined herein, incurred by the Village for the construction of the Project. The County shall disburse to the Village funds for the Project in the manner set forth in Section 4. The County shall incur no liability for any costs in excess of said funding amount unless there has been

a duly authorized increase approved by the Board of County Commissioners. The Village shall not be obligated to commence work should the bid amount exceed the funding provided by the County. If the bid amount exceeds the funding amount, the Village reserves its rights to reject all bids and re-bid the Project.

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

Funding Amount	Funding Source	County Fiscal Year of Commitment
$ 70,628.00	Road Impact Fee District 1	2014-2015

2.3. **Project Cost Adjustments**: The amount contributed by the County is based on the current estimated costs of the Project. The parties recognize that adjustments to the above-referenced cost, may be required in the future, and that at the option of the parties, amendments may be entered into to revise the funds available for the Project. Provided that there is no increase in the amount of County funds required as stated in Section 2.1, amendments may be executed by the Village Mayor and the County Mayor or County Mayor's designee without the need for approval by the Village Council and County Commission. Otherwise, further funding commitments shall be subject to the approvals of the parties' respective governing boards.

3. **ELIGIBLE COSTS**: The parties agree that only the below identified costs that may be incurred by the Village that are directly related to the Project are eligible for reimbursement, provided adequate documentation accompanies the reimbursement

request in the form of approved invoices, verified payment requests, documented journal entries, and/or check vouchers. For purposes of this Agreement, eligible costs are further defined as those pertaining to the construction of Project elements that are the standard items normally provided for by the County in County road improvement projects, and not the enhancement of standard items, or the incorporation of items which are in addition to those standard items. The County shall not be assumed to be liable to provide reimbursement for the design, construction or maintenance of such items that do not conform to this section of the Agreement. If enhancements to standard items are constructed in this Project, the Village may request County reimbursement only to a maximum amount corresponding to that which would be expended in providing the normal standard version of that item for a project of the same scope. The parties further agree that eligible costs will not include fees for construction management, construction inspections, and project management.

4. **SCHEDULE AND MANNER OF REIMBURSEMENTS**: Upon execution of the Agreement, the Village shall furnish the County with a copy of the estimated budget for the Project, and will similarly furnish the County with any and all revisions thereto. At the time of contract award for this Project, the Village shall submit the Estimated Quarterly Construction Payout Schedule for the Project to the County Public Works and Waste Management Director. Quarterly disbursement of County funds to the Village shall be based upon Village invoices with certified copies of paid contractor invoices attached and shall not include any other charges. The quarterly submittal for invoices shall also include a certified copy of payment to Sub-Contracted firms.

5. **COMPLIANCE WITH LAWS**: The parties shall comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all applicable laws relating to the Project. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

6. **BUSINESS PROGRAM COMPLIANCE AND OVERSIGHT**: Whenever County funds are used, the Village agrees to comply with applicable County regulations, including but not limited to, the Community Small Business Enterprise (CSBE) Program, Community Business Enterprise (CBE) Program, the Community Workforce Program (CWP), and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143). Specifically, the Village agrees to abide by the applicable contract measure recommendation(s) established by the Internal Services Department (ISD), Small Business Development Division Project Worksheet for the participation of specified business entities and/or trades and for CWP requirements, as administered by the County's ISD. ISD shall have the right to oversee and perform compliance monitoring, including but not limited to, the right to audit and to require reports and documentation related to the Code.

7. **INDEMNIFICATION**: To the extent authorized by Florida law, the Village 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 Village, 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 Village 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 Village for its sole negligence or breach of contract.

In the event of breach or non-performance by the persons selected by the Village to perform the work, the Village shall, upon written request by the County, assign to the County any and all of its rights under the affected contract for purposes of the County's prosecution of claims, actions or causes of action resulting from such breach or non-performance unless the Village, at its option, pursues such claims, actions or causes of action through arbitration, administrative proceeding or lawsuit. The Village agrees to cooperate fully with the County in the prosecution of any such claim or action. Any damages recovered by the County which is attributable to an expenditure by the Village shall be returned to the Village by the County, within sixty (60) business days of receipt.

8. **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.

9. **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.

10. **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.

11. **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 Village 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.

12. **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: Public Works and Waste Management Department
c/o Director
Miami-Dade County
111 NW First Street, Suite 1640
Miami, Florida 33128
(305) 375-2960

To the Village:
Attention: Fred Spencer Deno
Mayor, Village of Virginia Gardens
6498 NW 38th Terrace
Virginia Gardens, Florida 33166
(305) 871-6104

IN WITNESS WHEREOF, the parties hereto set their hands and official seals the day and year first above written,

ATTEST:

HARVEY RUVIN
CLERK OF THE BOARD

MIAMI-DADE COUNTY, FLORIDA,
BY ITS BOARD OF
COUNTY COMMISSIONERS

BY:_____
Deputy Clerk

BY:_____
County Mayor or County Mayor's Designee

Approved by County Attorney
as to form and legal sufficiency_____
County Attorney

ATTEST:

VILLAGE OF VIRGINIA GARDENS, a municipal corporation of the State of Florida

BY:_____
Maritza Fernandez
Village Clerk

BY:_____
Fred Spencer Deno
Mayor

(Affix Village Seal)

Approved by Village Attorney
as to legal form and correctness

_____
Jose Herrera
Village Attorney

RESOLUTION NO.: 888

A RESOLUTION OF THE VILLAGE OF VIRGINIA GARDENS AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE, TO ENTER INTO AN AGREEMENT BETWEEN MIAMI DADE COUNTY AND THE VILLAGE OF VIRGINIA GARDENS FOR THE CONSTRUCTION OF AN INTERSECTION IMPROVEMENT PROJECT AT NW 40TH STREET AND NW 57TH AVENUE, REPEALING ALL RESOLUTIONS IN CONFLICT, AND PROVIDING FOR EFFECTIVE DATE

WHEREAS, The Village of Virginia Gardens and Miami-Dade County desires to participate in the construction of a road improvement project at the intersection of NW 40th Street and NW 57th Avenue;

WHEREAS, The Village of Virginia Gardens has determined that it is necessary and beneficial for the Village to enter into said agreement with Miami-Dade County;

NOW, THEREFORE, BE IT DULY RESOLVED BY THE VILLAGE OF VIRGINIA GARDENS, FLORIDA;

1. The Village Council authorizes the Mayor or the Mayor's Designee to execute the Joint Participation Agreement, as required by Miami-Dade County, for the construction of a road improvement project at the intersection of NW 40th Street and NW 57th Avenue.
2. All Ordinances and Resolutions, and parts thereof, in conflict herewith be and same are hereby repealed insofar as they are inconsistent or in conflict with the provisions of this Ordinance upon the effective date hereof.

RESOLUTION NO.: 888

3. If any portion of this Resolution is held invalid by a Court of competent jurisdiction, such invalidity shall not affect the remaining portions of this Resolution.

4. This Resolution shall take effect and be in force from and after its date of passage.

APPROVED, PASSED, AND ADOPTED this 21 day of August, 2014, at a regular meeting of the Village Council of the Village of Virginia Gardens, Florida.

ATTEST:

MARITZA FERNANDEZ
VILLAGE CLERK

FRED SPENCER DENO IV
MAYOR

JORGE ARCE
COUNCIL PRESIDENT

VOTE OF THE COUNCIL:

Council President Petterson	YES
Councilman Arce	YES
Councilman Block	YES
Councilwoman Conover	YES
Councilwoman Taylor-Martinez	YES

APPROVED AS TO FORM AND SUFFICIENCY:

JOSE M. HERRERA, ESQ.