Memorandum

MIAMI-DADE COUNTY

Agenda Item No. 8(P)(1)(B)

Date: November 3, 2009

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: First Amendment to the Joint Participation Agreement (JPA) between Miami-Dade County and the City of Hialeah, in the Amount of $330,000, to Fund Construction of a Road Improvement Project Along NW 97 Avenue, from NW 138 Street to NW 154 Street

RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing execution of a First Amendment to the Joint Participation Agreement (JPA) between Miami-Dade County and the City of Hialeah (City), to reimburse the City for the construction of a new four (4) lane road along NW 97 Avenue, from NW 138 Street to NW 154 Street. The Amendment provides an additional $330,000 in funds from Road Impact Fee (RIF) District 3.

SCOPE

This project is located within the City of Hialeah, in Commission District 12.

FISCAL IMPACT/FUNDING SOURCE

The net increase in cost to the County as a result of this Amendment is $330,000. The County's participation in funding has therefore increased from the original amount of $3,300,000 to $3,630,000. RIF District 3 will continue to provide the County's funding for the project.

TRACK RECORD/MONITOR

The County is utilizing the resources of the City to contract, construct and administer the project on a reimbursable basis. Disbursement of County funds to the City shall be based upon City invoices with certified copies of paid contractor invoices. The Project has been assigned to Mr. Bassam Moubayed, CFM, Chief, Construction Division, Public Works Department (PWD), who is responsible to oversee inspections conducted by PWD staff before release of funds is recommended.

BACKGROUND

On July 18, 2006, the BCC approved the subject JPA under Resolution No. R-872-06. Under the JPA, the City would be provided up to $3,300,000 of the cost for the construction of a new four (4) lane road along NW 97 Avenue, from NW 138 Street to NW 154 Street.

Due to unforeseen conditions encountered during construction of this roadway, the City discovered an extensive amount of unsuitable material that had to be removed and properly disposed of. The existence of large piles of illegally dumped material on the east side of the Avenue resulted in limited accessibility, so soil borings could not be conducted along this area of the project. Consequently, the amount of unsuitable material greatly exceeded the quantities from the design estimates. In addition, the removal of this additional material caused the amount of fill required to complete the project to

increase, and as a result, the cost to the City has exceeded the amount originally provided under the JPA.

The City submitted a request to the County to provide a sum of $491,450.52 to cover the increase in project costs. In accordance with Section VII of the JPA, adjustments to the construction cost of the project ($3,300,000) can be authorized for unforeseen conditions, provided that the amount of County funds required does not exceed ten percent (10%) of the total construction amount of the project. The remaining difference ($161,450.52) will be borne by the City.

This increase will be provided by the addition of $330,000 in new funding from RIF District 3. Any costs in excess of the previously agreed amount and the additional amount provided for in this Amendment shall be borne solely by the City. It is anticipated that construction will be completed in August 2010.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: November 3, 2009

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

SUBJECT: Agenda Item No. 8(P)(1)(B)

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 Manager'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(P)(1)(B)
11-3-09

RESOLUTION NO. _____

RESOLUTION APPROVING EXECUTION OF THE FIRST AMENDMENT TO THE JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF HIALEAH, IN THE AMOUNT OF $330,000, TO FUND CONSTRUCTION OF A ROAD IMPROVEMENT PROJECT ALONG NW 97 AVENUE, FROM NW 138 STREET TO NW 154 STREET; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS 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 City of Hialeah and Miami-Dade County wish to facilitate the construction of a road improvement project along NW 97 Avenue, from NW 138 Street to NW 154 Street,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves this amendment to the Joint Participation Agreement between Miami-Dade County and the City of Hialeah, providing up to an additional $330,000 to the City for eligible costs incurred in this construction, 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 ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of November, 2009. 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:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

FIRST AMENDMENT TO JOINT PARTICIPATION AGREEMENT FOR NW 97 AVENUE FROM NW 138 STREET TO NW 154 STREET BETWEEN MIAMI-DADE COUNTY AND THE CITY OF HIALEAH

This First Amendment to the Joint Participation Agreement is made and entered into this _____ day of _____, 2009, by and between Miami-Dade County, a political subdivision of the State of Florida, herein referred to as the "County", and the City of Hialeah, a political subdivision of the State of Florida, herein referred to as the "City".

WITNESSETH

WHEREAS, pursuant to Resolution No. R-872-06, approved by the Board of County Commissioners of Miami-Dade County, Florida, on July 18, 2006, the parties hereto entered into a Joint Participation Agreement to facilitate the construction of a road improvement project in Miami-Dade County, (the "Agreement") including the construction of a new four (4) lane road along NW 97 Avenue, from NW 138 Street to NW 154 Street in Hialeah, Miami-Dade County, as more particularly described in the Agreement (the "Project"); and

WHEREAS, during construction of the Project, an extensive amount of unsuitable material was discovered that had to be properly disposed of and additional fill was required, and

WHEREAS, due to the necessity of addressing this unforeseen condition the City has requested that changes be made in the amount of funding for the Project, and

WHEREAS, the Agreement allows for the amendment of the of the County

funds available for the Project upon the recommendation of the Public Works Director, and approval by the Board of County Commissioners;

NOW, THEREFORE, in consideration of the mutual desires of the parties hereto, the following modifications are made to the aforementioned Agreement:

Section 7. County Payments of Project Costs. The County funds provided for eligible expenses as defined herein, incurred for the construction of the Project under this Agreement are specified below:

Funding Amount	Funding Source	County Fiscal Year of Commitment
~~$3,300,000~~ $3,630,000	Road Impact Fee District 3	2005-2006

~~The parties recognize that adjustments to the above-referenced costs 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 the increase in the amount of County funds required does not exceed by ten percent (10%) the total amount for the construction of the Project, as authorized by the Governing Board of the Metropolitan Planning Organization (MPO) in the 2006 Transportation Improvement Program (TIP) as amended January 26, 2006, such amendments may be executed by the County Manager, upon recommendation of the County Public Works Director, and approval by the Board of County Commissioners.~~ This amount represents the County's maximum participation in the Project. The City shall be responsible for completing the Project as set forth in the Agreement. Any costs in excess of the previously agreed amount and the additional amount provided for in this amendment shall be borne solely by the City.

~~Section 8. Project Cost Adjustments. The County shall incur no liability for costs in excess of the total amount of funds set forth above in the absence of: (i) a duly authorized increase in the TIP by the MPO, and (ii) a duly authorized resolution by the Board of County Commissioners amending the terms of this Agreement to provide for the additional funding.~~

In all other respects, except as herein amended, the original Agreement shall remain unchanged and in full force and effect.

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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

BY: _____
Deputy Clerk

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

BY: _____
County Mayor or County Mayor' Designee

Approved by County Attorney
as to form and legal sufficiency _____

ATTEST:

BY: _____
Rafael E. Granado
City Clerk

(Affix City Seal)

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

BY: _____ 8/26/09
Julio Rabaina
Mayor

Approved by City Attorney
as to form and legal sufficiency

A certified true copy of the Original Document on file with the City of Hialeah
WITNESS my hand and Official Seal on SEP - 8 2009

CITY CLERK
CITY OF HIALEAH, FLORIDA

RESOLUTION NO. 09-99

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA APPROVING THE FIRST AMENDMENT TO THE JOINT PARTICIPATION AGREEMENT WITH MIAMI-DADE COUNTY, FLORIDA TO CONSTRUCT A FOUR-LANE ROADWAY ON NW 97 AVENUE, FROM NW 138 STREET TO NW 154 STREET, PROVIDING FOR MIAMI-DADE COUNTY TO SUPPLEMENT ITS SHARE OF THE COSTS OF THE IMPROVEMENTS FROM $3,300,000 TO $3,630,000, REPRESENTING AN INCREASE OF $330,000; AND FURTHER AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO THE FIRST AMENDMENT TO THE JOINT PARTICIPATION AGREEMENT IN SUBSTANTIAL FORM AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1" AND TO EXECUTE SUCH DOCUMENTS AND AGREEMENTS IN FURTHERANCE THEREOF.

WHEREAS, pursuant to Hialeah, Fla., Resolution 06-51 (Apr. 26. 2006), the City of Hialeah entered into Joint Participation Agreement with Miami-Dade County, Florida to construct a four-lane roadway on NW 97 Avenue, from NW 138 Street to NW 154 Street, with a raised median, sidewalk, curb and gutter, continuous storm drainage system, roadway lighting, signage and pavement markings; and

WHEREAS, during the course of site preparation and construction, the City encountered additional unanticipated expenses incurred for de-mucking and removal and disposal of trash and contaminated fill; and

WHEREAS, Miami-Dade County has agreed through this First Amendment to the Joint Participation Agreement to pay the City an additional 10% contingency for unanticipated additional expenses.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby approves the First amendment to the Joint Participation Agreement with Miami-Dade County, Florida to construct a four-lane roadway on NW 97 Avenue, from NW 138 Street to NW 154 Street, providing for Miami-Dade County, Florida to supplement its share of the costs of the improvements from $3,300,000 to $3,360,000, representing an increase of $330,000.

Section 2: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into the First Amendment to the Joint Participation Agreement, in substantial form as attached hereto and made a part hereof as Exhibit "1", and to execute such documents and agreements in furtherance thereof.

PASSED AND ADOPTED this 11th day of August, 2009.

Carlos Hernandez
Council President

Attest:

Approved on this 12 day of August, 2009.

Rafael E. Granado, City Clerk

Mayor Julio Robaina

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

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Resolution was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Gonzalez, Hernandez, Yedra voting "Yes" and Councilmember Garcia-Martinez absent.

MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

Legislative Notes

Agenda Item: 8(P)1(B)

File Number: 092719

Committee(s) of Reference: Board of County Commissioners

Date of Analysis: October 21, 2009

Commission District: 12

Type of Item: Amendment

Summary

This resolution authorizes the execution of the first amendment to the Joint Participation Agreement (JPA) between Miami-Dade County and the City of Hialeah (City) to provide an additional $330,000 in Road Impact Fee (RIF) District 3 proceeds. The County's maximum contribution now totals $3,630,000.

Public Works Department (PWD) staff mentions that unforeseen conditions (significant amounts of illegally dumped material) encountered during construction of the roadway caused the additional costs.

Questions: Did County staff provide an oversight role?

Background and Relevant Information

On July 18, 2006, the Board of County Commissioners, through Resolution 872-06, approved the above mentioned JPA to reimburse the City $3,300,000 for the construction of a four (4) lane road on 97th avenue.

- This road is contained within an area annexed by the City in 2004.
- The City contends that construction of this road is vital to the development of the area.
- At the request of the City and the Public Works Department, this project was expedited by the MPO in the 2030 Long Range Transportation plan, as well as, the 2006 Transportation Improvement Program (TIP).

On September 9, 2009, the City, through Resolution 09-99, approved the amendment to the JPA that the County increases its contribution from $3,300,000 to $3,630,000. The resolution mentions that the County agreed to pay an additional 10% contingency for unanticipated additional expenses.

- However, Section 6 of the JPA[1] mentions that: "The construction contract will contain a contingency amount to address unforeseen conditions and owner required changes which will not exceed 10% of the base amount of the contract."

    - **Question**: How were these contingency account funds spent?

      According to PWD staff, contingency funds were not included in the original estimate since the City of Hialeah according to Section 6 of the JPA determined that adjustments to the $3,300,000 could be required in the future and that amendments could be approved by the BCC provided that the increase amount of County funds did not exceed by 10% of the total amount of the construction. That is the reason why when the City of Hialeah submitted a request for $491,450.52 the County responded by saying that only 10% could be approved and the rest had to be done by the City of Hialeah.

PWD staff provided the following information:

- Who was responsible for surveying the project area before construction began? *The City of Hialeah was responsible for surveying the project prior to construction.*

- Why did the project commence without removing the existing material? *The piles were removed as part of the construction work during the initial clearing and grubbing phase, as it is commonly done in construction projects.*

Prepared by: Michael Amador-Gil

[1] See Resolution 872-06