

MEMORANDUM

Agenda Item No. 8(L)(1)

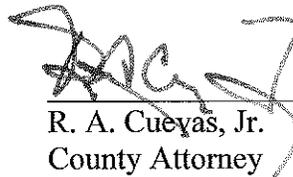
TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: June 4, 2013

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

SUBJECT: Resolution approving Execution
of a Joint Participation
Agreement between Miami-Dade
County and the City of
Homestead to provide the City of
Homestead with funding in an
amount up to \$2,000,000.00 for
the acquisition of right-of-way
and easements, including the
subordination of utilities, for a
roadway project along SW 328
Street from US-1 to SW 162
Avenue
Resolution No. R-432-13

The accompanying resolution was prepared by the Public Works and Waste Management Department and placed on the agenda at the request of Co-Prime Sponsors Vice Chair Lynda Bell and Commissioner Dennis C. Moss.



R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum



Date: June 4, 2013

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 City of Homestead to Provide the City of Homestead with Funding in an Amount up to \$2,000,000.00 for the Acquisition of Right-of-Way and Easements, Including the Subordination of Utilities, for a Roadway Project Along SW 328 Street from US-1 to SW 162 Avenue

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 City of Homestead (City) to reimburse the City for the acquisition of right-of-way and easements, including the subordination of utilities, (Property) for a roadway improvement project along SW 328 Street from US-1 to SW 162 Avenue (Project).

Scope

The Property to be acquired lies within the City in Commissioner Lynda Bell's District 8, and Commissioner Dennis C. Moss' District 9.

Fiscal Impact/Funding Source

The County will provide up to \$2,000,000.00 from Road Impact Fee District 6 funds. The funding index code is CPE06C.

Track Record/Monitor

Francisco Fernandez, Chief Real Estate Officer, Roadway Engineering and Right-of-Way Division, Public Works and Waste Management Department, will review the Property acquisitions and submissions for the accounting of eligible costs provided by the City.

Background

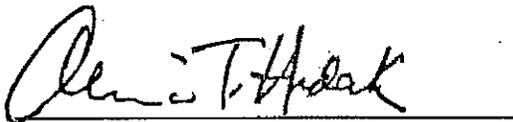
The City requested that the County utilize Road Impact Fee funding to cover the costs of the acquisition of Property within the City of Homestead associated with the Project. The total amount necessary for these acquisitions has been estimated at a cost of \$2,000,000.00.

The construction of the Project is a priority for the City as SW 328 Street (Lucy Street) is a major east/west corridor. The Project will provide an increase in traffic capacity for residential and commercial development, improve traffic mobility, provide ADA compliance, and ensure the availability of multiple modes of transportation. The area is comprised of major retailers, local businesses, and agricultural production that generate economic support and employment which benefits the southern portion of Miami-Dade County.

The Project will be constructed by the County and include widening the existing roadway from two (2) to four (4) lanes, sidewalks, curb and gutters, raised median, bicycle facilities, a continuous storm drainage system, signing and pavement markings, signalization and decorative lighting.

The County will furnish the funded amount within 90 days of the final execution of this JPA. The City will provide to the County documentation including all eligible costs incurred on a parcel by parcel basis every 90 days. In the event final accounting of the total eligible costs is less than the funded amount, a refund of the excess amount will be made by the City to the County. The City further agrees that any costs in excess of the funded amount required to acquire the Property shall be borne solely by the City.

The City Council approved this JPA on March 20, 2013, under City Resolution No. R2013-03-17 (attached). The Project is tentatively scheduled to begin construction by July 2014.



Alina T. Hudak
Deputy Mayor



MEMORANDUM

(Revised)

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

DATE: June 4, 2013

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

SUBJECT: Agenda Item No.

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.
6-4-13

RESOLUTION NO. R-432-13

RESOLUTION APPROVING EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF HOMESTEAD TO PROVIDE THE CITY OF HOMESTEAD WITH FUNDING IN AN AMOUNT UP TO \$2,000,000.00 FOR THE ACQUISITION OF RIGHT-OF-WAY AND EASEMENTS, INCLUDING THE SUBORDINATION OF UTILITIES, FOR A ROADWAY PROJECT ALONG SW 328 STREET FROM US-1 TO SW 162 AVENUE; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO 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 City of Homestead (City) and Miami-Dade County wish to facilitate a roadway improvement project along SW 328 Street from US-1 to SW 162 Avenue,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves a Joint Participation Agreement between Miami-Dade County and the City of Homestead to provide the City with funding in an amount up to \$2,000,000.00 for the acquisition of right-of-way and easements, including the subordination of utilities, for a roadway improvement project along SW 328 Street from US-1 to SW 162 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

Esteban L. Bovo, Jr.

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

| | | |
|----------------------|-------------------------|----------------------|
| | Rebeca Sosa, Chairwoman | aye |
| | Lynda Bell, Vice Chair | absent |
| Bruno A. Barreiro | absent | Esteban L. Bovo, Jr. |
| Jose "Pepe" Diaz | absent | Audrey M. Edmonson |
| Sally A. Heyman | aye | Barbara J. Jordan |
| Jean Monestime | aye | Dennis C. Moss |
| Sen. Javier D. Souto | aye | Xavier L. Suarez |
| Juan C. Zapata | absent | absent |

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of June, 2013. 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

Christopher Agrippa

By: _____
Deputy Clerk



Approved by County Attorney as
to form and legal sufficiency.

Debra Herman

**JOINT PARTICIPATION AGREEMENT
BETWEEN THE CITY OF HOMESTEAD AND MIAMI-DADE COUNTY
SW 328 STREET FROM US-1 TO SW 162 AVENUE**

This AGREEMENT, made and entered into this __ day of ____, 2013, by and between the CITY OF HOMESTEAD, a municipal corporation of the STATE OF FLORIDA, hereinafter referred to as the "City", and MIAMI-DADE COUNTY, a political subdivision of the STATE OF FLORIDA, hereinafter referred to as the "County".

WITNESSETH

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

Roadway improvements along SW 328 Street from US-1 to SW 162 Avenue which include widening the existing roadway from two (2) to four (4) lanes, sidewalks, curb and gutters, raised median, bicycle facilities, continuous storm drainage system, signing and pavement markings, signalization and decorative lighting; and

WHEREAS, the County and the City agree to utilize the resources of the City to acquire the necessary right-of-way and easements including any necessary subordination of utilities for the Project, hereinafter referred to as the "Property", subject to the terms and conditions of this Agreement;

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

1. RESPONSIBILITIES OF CITY:

1.1. Right-of-Way Acquisitions and Utility Subordination or Relocation: The City shall establish compensation and acquire the Property necessary for the Project. The City shall provide appraisal services and all necessary expert witness services for the parcels to be acquired for the Project, provide analysis of title for the parcels to be acquired, including all necessary title work to determine and clear all ownership interests, provide appraisal support and expert services in regard to the cost of improvements in the parcels being acquired, and cure plans for the remainder properties in order to mitigate severance damages. The City is to be responsible and in control of all phases of acquiring the Property.

1.2. General Requirements: The City shall act in accordance with the following requirements:

- a. The City shall comply with all applicable federal, state and local laws, rules, regulations, guidelines and standards.
- b. The City shall have the responsibility for establishing compensation as described in the Uniform Standards of Professional Appraisal Practice.
- c. The City shall acquire the title to the Property free of encumbrances and encroachments.
- d. The County reserves the right to request reimbursement in the event that title to the Property has not been conveyed to the City by marketable title free and clear of encumbrances and encroachments, except those deemed acceptable to the County in its sole discretion.

1.3. Acquisition Policies: The City agrees to comply with the Uniform Act of 49

CFR Part 24, Florida Statutes Chapters 73, 74, and any and all applicable laws and regulations including the following acquisition policies while acquiring the Property.

- a. **Expeditious acquisition.** The City shall make every reasonable effort to acquire the Property expeditiously by negotiation.
- b. **Notice to owner.** As soon as feasible, the owner shall be notified of the City's interest in acquiring the Property and the basic protections, including the City's obligation to secure an appraisal which, by law, is to be provided to the owner upon their request.
- c. **Appraisal waiver thereof and Invitation to owner.** Before the initiation of negotiations, the Property to be acquired shall be appraised according to the Uniform Standards of Professional Appraisal Practice and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the Property. An appraisal is not required if the owner is donating the property and releases the City from this obligation.
- d. **Establishment and offer of just compensation.** Before the initiation of negotiations the City shall establish an amount which it believes is just compensation for the Property. The amount shall not be less than the approved appraisal of the fair market value of the Property, taking into account the value of allowable damages or benefits to any remaining property. Promptly thereafter, the City shall make an offer to the property owner to acquire the Property for the full amount believed to be just

compensation.

e. **Summary statement.** Along with the Initial purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation.

f. **Basic negotiation procedures.** The City shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the Property, including the basis for the offer of just compensations, and explain its acquisition policies and procedures, including its payment of incidental expenses.

g. **Updating offer of just compensation.** If the information presented by the owner, or a material change in the character or condition of the Property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the Property, the City shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the City shall promptly reestablish just compensation and the City shall offer that amount to the owner in writing.

h. **Payment before taking possession.** Before requiring the owner to surrender possession of the Property, the City shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, the appraised value of the Property.

1.4. **Accounting:** The City shall at all times maintain separate accounting for the

costs of the Property including but not limited to all eligible costs as defined in Section 2.1 so those costs may be independently verified and audited by the County, at the request and cost of the County. The City agrees to permit the County auditors to inspect the books, records and accounts for three (3) years after the Certificate of Completion. These records shall be made available to the County for inspection within five (5) business days upon receipt of a written request from the County.

1.5. Notification of Property Acquisition: Upon acquiring the last parcel of property, the City shall certify that all property necessary for the construction of the Project has been acquired as depicted on the construction plans provided to the City on January 24, 2012. The City shall acquire all Property within twenty-four (24) months after the final execution of this Agreement, other than those acquisitions impacted by appellate court process delays which are associated with Petitions for Orders of Taking which shall be a maximum of thirty-six (36) months from the date after execution of this Agreement. Should the City fail to acquire all needed Property within said time, the City will be responsible for the acquisition of the remaining Property with City funds.

2. RESPONSIBILITIES OF COUNTY:

2.1. Financial Provisions: The County agrees that it will, no later than ninety (90) business days after the final execution of this Agreement, furnish the City the amount of TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00) to cover (1) appraisal related costs associated with the acquisition of the Property as defined in Section 1.1, and (2) the cost of the Property. This amount represents

the County's maximum participation. Any costs in excess of this amount shall be borne solely by the City.

Eligible costs will include one initial appraisal and one update for Order of Taking, attorney fees of owners, and expert costs of owners, and the appraised value of the Property. Any compensation paid by the City in excess of the City's appraised value shall not be an eligible cost. No other costs shall be submitted or reimbursed, including but not limited to attorneys' fees, costs and expert fees hired by the City, City's administrative staff costs, the City's legal services including attorney fees and costs, copies, transcripts, court reporters, appraisal updates necessary for making the initial offer.

The City shall provide to the County the appraisals upon which compensation is based. The City will provide to the County every ninety (90) days, documentation including all eligible costs incurred on a parcel by parcel basis.

The City shall have its final and complete accounting of all costs incurred in connection with the work performed hereunder within one hundred eighty (180) calendar days of construction completion. Any additional costs incurred after this date will not be eligible. All Property acquisition cost records and accounts shall be subject to audit by a representative of the County for a period of three (3) years after the Certificate of Completion. The County will be notified of the final cost. Both parties agree that in the event final accounting of the total appraisal services costs together with the cost of the Property (as referenced in section 2.1) is less than the funded amount, a refund of the excess will be made

by the City to the County within ninety (90) business days.

The City shall provide the County with proof of ownership of the Property acquired within (30) calendar days after a Property Closing or Order of Taking. Failure of the City to provide proof of ownership will result in the City reimbursing the County for the cost of the Property, unless the City can demonstrate that the Order of Taking or Property Closing has been reset.

2.2. Funding Amount, Reimbursement of Property Costs: The County agrees to provide funds up to a maximum amount of \$2,000,000 for eligible costs, as defined herein, incurred by the City to acquire the Property. The County shall disburse to the City funds for the Property in the manner set forth in Section 2.1.

2.3. County Payments of Property Costs: The County funds provided for eligible costs as defined herein are specified below:

| <u>Funding Amount</u> | <u>Funding Source</u> | <u>County Fiscal Year of Commitment</u> |
|-----------------------|----------------------------|---|
| \$ 2,000,000 | Road Impact Fee District 6 | 2012-2013 |

This amount represents the County's maximum participation in the acquisition of Property. Any costs in excess of this amount shall be borne solely by the City.

3. **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.
4. **INDEMNIFICATION:** To the extent authorized by Florida law, the City hereby agrees

to indemnify, defend, save and hold harmless the County to the extent of all the limitations included with Section 768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement by the City, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the County for its sole negligence or breach of contract.

In the event of breach or non-performance by the persons selected by the City to perform the work, the City 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 City, at its option, pursues such claims, actions or causes of action through arbitration, administrative proceeding or lawsuit. The City agrees to cooperate fully with the County in the prosecution of any such claim or action.

5. **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.
6. **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.

7. **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.
8. **SEVERANCE**: In the event a portion of this Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions shall continue to be effective unless the City or County elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) business days after the finding by the court becomes final.

9. **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: Kathleen Woods-Richardson
Director, Public Works and Waste Management Department
Miami-Dade County
111 NW First Street, Suite 1640
Miami, Florida 33128
(305) 375-2960

To the City:

Attention: Julio Brea
Director of Public Works and Engineering Department
City of Homestead
650 N.E. 22 Terrace, Suite 100
Homestead, Florida 33030
(305) 224-4772

With a Copy To:
Pete Waldman, Esq.
Weiss Serota Helfman, et al
200 East Broward Blvd., Suite 1900
Ft. Lauderdale, FL 33301
(954) 763-4242

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

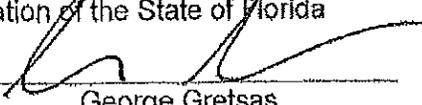
ATTEST:
HARVEY RUVIN
CLERK OF THE BOARD

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

BY: _____ BY: _____
Deputy Clerk County Mayor or County Mayor's Designee

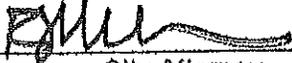
Approved by County Attorney
as to form and legal sufficiency _____
County Attorney

ATTEST: CITY OF HOMESTEAD, a municipal
corporation of the State of Florida

BY:  BY: 
Elizabeth Sewell, MMC George Gretsas
City Clerk City Manager

(Affix City Seal)

Approved by City Attorney
as to legal form and correctness


City Attorney

CITY OF HOMESTEAD, FLORIDA

RESOLUTION NO. R2013-03-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HOMESTEAD, FLORIDA, APPROVING A JOINT PARTICIPATION AGREEMENT BETWEEN THE CITY OF HOMESTEAD AND MIAMI- DADE COUNTY, CONCERNING FUNDING ASSISTANCE AND RESPONSIBILITIES FOR RIGHT-OF-WAY ACQUISITION FOR THE COUNTY'S SW 328TH STREET ROADWAY IMPROVEMENT PROJECT; ESTABLISHING GRANT BUDGET; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, pursuant to the attached Joint Participation Agreement (the " Agreement") the City of Homestead (the "City") and Miami-Dade County (the "County") desire to provide for County funding assistance (the " Grant ") to the City and to establish relationships and responsibilities for right- of- way acquisition concerning the County's 328th Street roadway improvement project (the " Project"); and

WHEREAS, the City Council desires to establish a budget for the expenditure of Grant funds in the amount of Two Million (\$2,000,000) Dollars; and

WHEREAS, the City Council finds that the approval of the attached Agreement, is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOMESTEAD, FLORIDA:

Section 1. Recitals Adopted. That each of the above-stated recitals is hereby adopted and confirmed.

Section 2. Agreement Approved. That the Agreement, in substantially the form attached hereto, between the City and the County is hereby approved, and the City Manager

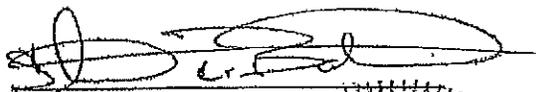
is hereby authorized to execute the Agreement on behalf of the City, once approved as to form and legal sufficiency by the City Attorney.

Section 3. Grant Budget. That a budget of Two Million (\$2,000,000) Dollars of revenues and expenditures is hereby established for the Grant.

Section 4. Implementation. That the City Manager and City Attorney are hereby authorized to take any and all action which is necessary to implement the purposes of this Resolution and the Agreement.

Section 5. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED THIS 20th day of March, 2013.

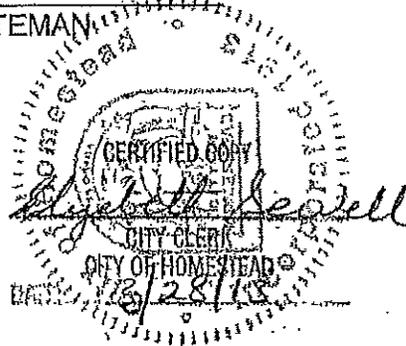

STEVEN C. BATEMAN
Mayor

ATTEST


ELIZABETH SEWELL, MVCA
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


WEISS, SEROTA, HELFMAN, PASTORIZA, COLE & BONISKE P.L.
City Attorney


CERTIFIED COPY
CITY CLERK
DATE: 3/28/13

Moved by:
Seconded by:
Council Vote

Councilman Jimmie L. Williams, III
Councilman Stephen Shelley
5-0

Mayor Steven Bateman
Vice Mayor Jon Burgess
Councilwoman Patricia Fairclough-McCormick
Councilman Elvis Maldonado
Councilman Stephen Shelley
Councilwoman Judy Waldman
Councilman Jimmie L. Williams, III

YES
YES
ABSENT
YES
YES
ABSENT
YES