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

MEMORANDUM

Agenda Item No. 8(L)(47)

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

DATE: July 2, 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 Hialeah to utilize the resources of Miami-Dade County for the acquisition of right-of-way and easements, including the subordination of utilities, for a roadway project along NW 37 Avenue from NW North River Drive to NW 79 Street
Resolution No. R-569-13

The accompanying resolution was prepared by the Public Works and Waste Management Department and placed on the agenda at the request of Prime Sponsor Commissioner Jean Monestime.

R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum

MIAMI-DADE COUNTY

Date: July 2, 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 Hialeah to Utilize the Resources of Miami-Dade County for the Acquisition of Right-of-Way and Easements, Including the Subordination of Utilities, for a Roadway Project Along NW 37 Avenue from NW North River Drive to NW 79 Street

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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 Hialeah (City) to delegate to the County all authority for the acquisition of right-of-way and easements, including the subordination of utilities, (Property) for a roadway improvement project along NW 37 Avenue from NW North River Drive to NW 79 Street (Project).

Scope

The Property to be acquired lies within the City of Hialeah in Commissioner Jean Monestime's District 2.

Fiscal Impact/Funding Source

This Agreement allows the City's delegation of authority to the County to acquire the Property. No funds are requested under this JPA.

Track Record/Monitor

Francisco Fernandez, Chief Real Estate Officer, Roadway Engineering and Right-of-Way Division, Public Works and Waste Management Department, will oversee the acquisition of the Property.

Background

This project is listed in Exhibit 1 of the People's Transportation Plan Ordinance, under the Board Requested Projects in Commission District 2. The City has requested that the County be responsible for, and in control of, all phases of acquiring the Property for the Project.

NW 37 Avenue is a major north/south corridor at the eastern edge of the City. The Project will include widening the existing roadway to three (3) lanes, with on-street parking, sidewalks, curb and gutters, a new storm drainage system, signalization, pavement markings, signing, and roadway lighting. The City Council approved this JPA on April 9, 2013, under City Resolution No. 13-30 (attached). The Project is tentatively scheduled to begin construction by January 2015.

Alina T. Hudak
Deputy Mayor

MEMORANDUM
(Revised)

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

DATE: July 2, 2013

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

SUBJECT: Agenda Item No. 8(L)(47)

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)(47)
7-2-13

RESOLUTION NO. R-569-13

RESOLUTION APPROVING EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF HIALEAH TO UTILIZE THE RESOURCES OF MIAMI-DADE COUNTY FOR THE ACQUISITION OF RIGHT-OF-WAY AND EASEMENTS, INCLUDING THE SUBORDINATION OF UTILITIES, FOR A ROADWAY PROJECT ALONG NW 37 AVENUE FROM NW NORTH RIVER DRIVE TO NW 79 STREET; 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, the roadway project along NW 37 Avenue from NW North River Drive to NW 79 Street is a project listed in Exhibit 1 of the People's Transportation Plan Ordinance, and requires the acquisition of portions of properties located along such roadway in order to construct such improvements; and

WHEREAS, portions of NW 37 Avenue are located within Unincorporated Miami-Dade County, while other portions are located in the City of Hialeah; and

WHEREAS, both the City of Hialeah and Miami-Dade County wish to facilitate this roadway improvement project; and

WHEREAS, the City of Hialeah is willing to delegate authority to Miami-Dade County to acquire the property located in the City of Hialeah in order to accomplish this purpose, in accordance with the terms and conditions of the Joint Participation Agreement attached hereto,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board adopts the foregoing recitals as though fully set forth herein, and approves the Joint Participation Agreement between Miami-Dade County and the City of Hialeah to utilize the resources of Miami-Dade County for the acquisition of right-of-way and easements, including the subordination of utilities, for a roadway improvement project along NW 37Avenue from NW North River Drive to NW 79 Street, 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 **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Xavier L. Suarez** and upon being put to a vote, the vote was as follows:

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

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

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Debra Herman

JOINT PARTICIPATION AGREEMENT
BETWEEN THE CITY OF HIALEAH AND MIAMI-DADE COUNTY
NW 37 AVENUE FROM NW NORTH RIVER DRIVE TO NW 79 STREET
EASEMENT AND RIGHT-OF-WAY ACQUISITION

This AGREEMENT, made and entered into this _____day of_____, 2013, by and between the CITY OF HIALEAH, 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 NW 37 Avenue from NW North River Drive to NW 79 Street which will include, but is not limited to, widening the existing roadway to three (3) lanes, with on-street parking, sidewalks, curb and gutters, a new storm drainage system, signalization, pavement markings, signing, and roadway lighting, referred to as Roadway Expansion and Improvements to NW 37 Avenue from NW North River Drive to NW 79 Street, Project Number 20040330; and

WHEREAS, the County and the City agree to utilize the resources of the County 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:

7

1. **DELEGATION BY CITY AND RESPONSIBILITIES OF CITY:**

1.1. Right-of-Way Acquisitions and Utility Subordination or Relocation: The City hereby delegates to the County all authority for the acquisition of the right of way and properties necessary for the Project, including but not limited to establishing compensation and acquiring the Property, and any subordination or relocation related thereto.

1.2. The City retains jurisdiction of all rights, title and interest to the right-of-way acquisition, and responsibilities over the portion of the road lying within the boundary of the City at all times, other than the rights specifically delegated to the County herein, including but not limited to maintenance and all other costs and expenses.

2. **RESPONSIBILITIES OF COUNTY:**

2.1. The County shall be responsible for, and in control of, all phases of acquiring the Property, including but not limited to acquisition, relocation, subordination, and establishing compensation for any offer, settlement, donation, sale, or litigation.

2.2. The County shall be responsible for all costs associated with the acquisition of the Property and construction of the Project. The County is to be responsible and in control of all phases of acquiring the Property.

2.3. The County agrees to provide the City with proof of ownership of the Property acquired within thirty (30) calendar days after a Property Closing or Order of Taking.

3. **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.

To the extent authorized by Florida law, the County hereby agrees to indemnify, defend, save and hold harmless the City 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 City for its sole negligence or breach of contract.

4. **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.

5. **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 any modification, waiver of condition or amendment must be made in writing and executed by both parties. The parties agree that the written waiver of conditions or requirements set forth herein may be made by the County Mayor or the County Mayor's designee on behalf of the County. It is further understood that the obligations and duties set forth herein are solely for the benefit of the respective parties. No third party beneficiaries are intended to be created by the terms herein, nor shall the agreement be the basis of any cause of action or defense asserted by any person or entity other than the parties hereto.

6. **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.

7. **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.

8. **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: Carlos Hernandez
Mayor, City of Hialeah
501 Palm Avenue
Hialeah, Florida 33010
(305) 883-5800

9. **EFFECTIVENESS**: The effective date of this agreement is the date the County Mayor or the County Mayor's designee signs the agreement and terminates with notice of completion.

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:

BY:_____
Marbelys L. Fatjo
Acting City Clerk

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

BY:_____
Carlos Hernandez
Mayor

(Affix City Seal)

Approved by City Attorney
as to legal form and correctness

William Grodnick
William Grodnick
City Attorney

RESOLUTION NO. 13-30

A cer... true copy of the Original Document on file with the City of Hialeah WITNESS my hand and Official Seal on APR 17 2013

CITY CLERK
CITY OF HIALEAH, FLORIDA

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA APPROVING A JOINT PARTICIPATION AGREEMENT WITH MIAMI-DADE COUNTY, FLORIDA FOR THE COUNTY TO EXPEND COUNTY FUNDS TO ACQUIRE RIGHTS-OF-WAY AND EASEMENTS FOR COUNTY ROADWAY IMPROVMENTS ALONG NW 37 AVENUE, FROM NW NORTH RIVER DRIVE TO NW 79 STREET, AND FURTHER AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER 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, it is the best interest of the City to enter into a Joint Participation Agreement with Miami-Dade County for the County to expend County funds to acquire rights-of-way and easements for County roadway improvements along NW 37 Avenue, from NW North River Drive to NW 79 Street, with the City retaining right, title and interest to rights-of-way on City property.

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 a Joint Participation Agreement with Miami-Dade County for the County to expend County funds to acquire rights-of-way and easements for County roadway improvements along NW 37 Avenue, from NW North River Drive to NW 79 Street.

Section 2: The City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into 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 09 day of April, 2013.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 12 day of April, 2013.

Marbelys Fatjo, Acting City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

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Resolution was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".