

## MEMORANDUM

Agenda Item No. 8(M)(4)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

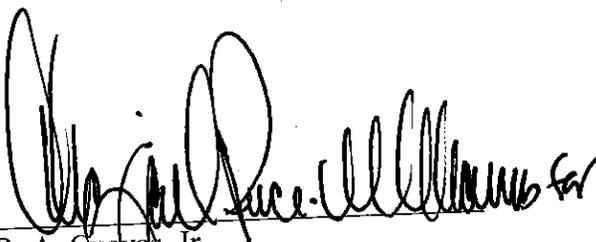
**DATE:** June 30, 2015

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

**SUBJECT:** Resolution authorizing the conveyance of a Perpetual Easement to the State of Florida Department of Transportation, in accordance with Florida Statute Section 125.38, for nominal consideration of \$1.00, on a portion of County-owned property for improvements and maintenance of traffic features along the northeast corner of the intersection of State Road No. 969 (NW 72 Avenue) and NW 58 Street; and authorizing the Mayor to execute same and exercise all provisions therein

Resolution No. R-585-15

The accompanying resolution was prepared by Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.



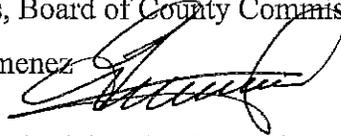
R. A. Cuevas, Jr.  
County Attorney

RAC/cp

**Date:** June 30, 2015

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor



**Subject:** Resolution Authorizing the Conveying of a Perpetual Easement to the Florida Department of Transportation on a Portion of County-Owned Property along the Northeast Corner of the Intersection of NW 72 Avenue and NW 58 Street for Improvements to State Road No. 969 (NW 72 Avenue) for FDOT Parcel 801

### Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution conveying a perpetual easement to the Florida Department of Transportation (FDOT) on a portion of County-owned canal right-of-way along the northeast corner of the intersection of NW 72 Avenue and NW 58 Street for road improvements and maintenance, and authorizing the Mayor to execute said instrument conveying the perpetual easement.

### Scope

The site is in an unincorporated area at NW 72 Avenue and 58 Street in Commission District 12, which is represented by Commissioner Jose "Pepe" Diaz.

### Fiscal Impact/Funding Source

This item does not require the expenditure of any Miami-Dade County funds.

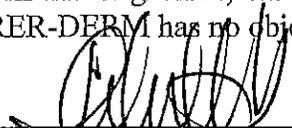
### Track Record / Monitor

The Water Control Section Manager within the Department of Regulatory and Economic Resources, Division of Environmental Resources Management (RER-DERM), Maria D. Molina, P.E., will be responsible for tasks related to this transaction.

### Background

The FDOT has requested a perpetual easement within the NW 58 Street Canal right-of-way that serves State Road No. 969 (NW 72 Avenue), labeled Parcel 801 by the FDOT, for the purpose of constructing and maintaining a curb ramp and a guardrail (collectively, the "Traffic Features") along the northeast corner of the intersection of NW 72 Avenue and NW 58 Street. The project includes milling and resurfacing the roadway, updating the existing signage and pavement markings, upgrading all facilities to comply with ADA requirements, providing signal upgrades, replacing a substandard guardrail at the NW 58 Street intersection, and upgrading the traffic railings on the bridge over the NW 58 Street Canal. The improvements proposed by FDOT will not impair the County's ability to access and maintain the existing canal.

Section 125.38 of the Florida Statutes allows agencies, such as the FDOT, to request the use of the County-owned land when such use is for public benefit. The FDOT has requested that the County convey a perpetual easement for the area of the planned improvements which are for public benefit. If granted, the FDOT will be responsible for maintaining the proposed improvements. RER-DERM has no objection to the proposed perpetual easement being conveyed to the FDOT.

  
\_\_\_\_\_  
Jack Osterholt, Deputy Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** June 30, 2015

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

**SUBJECT:** Agenda Item No. 8(M)(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(M)(4)  
6-30-15

RESOLUTION NO. R-585-15

RESOLUTION AUTHORIZING THE CONVEYANCE OF A PERPETUAL EASEMENT TO THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, IN ACCORDANCE WITH FLORIDA STATUTE SECTION 125.38, FOR NOMINAL CONSIDERATION OF \$1.00, ON A PORTION OF COUNTY-OWNED PROPERTY FOR IMPROVEMENTS AND MAINTENANCE OF TRAFFIC FEATURES ALONG THE NORTHEAST CORNER OF THE INTERSECTION OF STATE ROAD NO. 969 (NW 72 AVENUE) AND NW 58 STREET (PARCEL 801); AND AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ALL 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**, the State of Florida Department of Transportation (FDOT) has proposed to improve and maintain State Road No. 969 (NW 72 Avenue) / Segment No. 429345-1 / FDOT Parcel 801 in Miami-Dade County; and

**WHEREAS**, in order to do so, the FDOT has requested a perpetual easement for the purpose of constructing and maintaining a curb ramp and guardrail (collectively, the "Traffic Features") along the northeast corner of NW 72 Avenue and NW 58 Street in order to improve pedestrian and vehicular traffic flow and safety; and

**WHEREAS**, FDOT's project would include milling and resurfacing the roadway, updating the existing signage and pavement markings, upgrading all facilities to comply with the federal Americans with Disabilities Act (ADA) requirements, providing signal upgrades, replacing a substandard guardrail at the NW 58th Street intersection, and upgrading the traffic railings on the bridge over the NW 58th Street Canal; and

**WHEREAS**, the FDOT has requested the granting of this Perpetual Easement, attached to this resolution, and particularly described in Exhibits A and B to the Perpetual Easement, which legal description encompasses 229.5 square feet of land located at the intersection of NW 72 Avenue and NW 58 Street; and

**WHEREAS**, the activities and improvements proposed by the FDOT would not impair the County's ability to access and maintain the existing canal in the subject area; and

**WHEREAS**, the Board finds that pursuant to Section 125.38 of the Florida Statutes, said easement is required for such use, is not needed for County purposes, and would promote public benefit and welfare,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board (1) adopts the foregoing recitals as set forth herein; (2) approves the conveyance to FDOT for the nominal consideration of \$1.00 pursuant to Section 125.38, Florida Statutes, of a Perpetual Easement in substantially the form attached hereto and made a part hereof, subject to the restriction that said parcel be used by FDOT for transportation related improvements and maintenance to State Road No. 969; (3) authorizes the Mayor to execute said easement, for and on behalf of Miami-Dade County and to exercise all provisions therein; and (4) pursuant to Resolution No. R-974-09, (a) directs the Mayor or Mayor's designee to record said instrument of conveyance executed herein in the Public Records of Miami-Dade County and to provide a recorded copy of said instrument to the Clerk of the Board within thirty (30) days of execution of said instrument; and (b) directs the Clerk of the Board to attach and permanently store a recorded copy of said instrument together with this resolution.

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:

Jean Monestime, Chairman	aye		
Esteban L. Bovo, Jr., Vice Chairman	aye		
Bruno A. Barreiro	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	absent	Audrey M. Edmonson	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Dennis C. Moss	aye	Rebeca Sosa	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 30<sup>th</sup> day of June, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.

Abbie Schwaderer-Raurell

07-PE.11-04/93

This instrument prepared by,  
or under the direction of,  
Alicia Trujillo, Esq.  
District General Counsel  
State of Florida  
Department of Transportation  
1000 N.W. 111<sup>th</sup> Avenue  
Miami, Florida 33172  
March 28, 2014 - NE

Parcel No. : 801.1R (4-9-2014)  
Item/Segment No. : 4293451  
Managing District : 6

**PERPETUAL EASEMENT**

THIS EASEMENT Made the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by MIAMI-DADE COUNTY, a political subdivision of the State of Florida, grantor, to the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, its successors and assigns, grantee.

WITNESSETH: That the grantor for and in consideration of the sum of One Dollar and other valuable considerations paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the Grantee, its successors and assigns, a perpetual easement for the purpose of constructing and maintaining a Curb Ramp and a Guardrail (collectively, the "Traffic Features") over the following described land (the "Easement Area") in Miami-Dade County, Florida:

**AS SHOWN ON EXHIBIT "A" AND EXHIBIT "B" ATTACHED HERETO AND TO BE MADE A PART  
HEREOF**

TO HAVE AND TO HOLD the said premises unto the Grantee, subject, however, to the following conditions:

Grantee shall be responsible for the routine, day-to-day maintenance of the Traffic Features, and Grantor shall continue to be responsible for the maintenance of the land, including but not limited to the berm, the embankment area, slopes and erosion control within the easement area granted herein.

THAT Grantee shall indemnify and hold Grantor harmless from any and all damages and /or liability, claims, demand, actions and/or suits of any nature arising out of, relating to, or resulting from negligent or wrongful act(s) of Grantee's employees, agents, or instrumentalities, acting within the scope of their office or employment, in connection with the rights granted to or exercised by Grantee hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes.

However, nothing herein shall be deemed to indemnify Grantor from any liability or claim arising out of the negligent performance or failure of performance of Grantor.

THAT this easement is solely for the purpose of constructing and maintaining a Curb Ramp and a Guardrail and no other uses of the Easement Area are permitted.

THAT in the event said transportation use is permanently discontinued or abandoned, Grantee's easement shall terminate, and title to the above described property shall immediately revert to the Grantor, its heirs and assigns, and it shall have the right to immediately possess same. In the event Grantee's easement terminates and Grantor deems it necessary to request the removal of the Traffic Features or any of its components occupying the Easement Area, Grantee shall remove the Traffic Features or any of its components, as requested, and restore the Easement Area to a like or similar condition as existed prior to this Easement, at Grantee's sole cost and expense.

THAT Grantee shall not obstruct the County canal right-of-way, except as may be required temporarily from time to time to effect construction, inspections, maintenance, repairs, improvements and replacement of the Traffic Features.

Any construction, improvement or major repair and/or replacement work is subject to formal approval and permit as may be required by Grantor. Grantee shall promptly repair any damage to the Grantor's right-of-way, resulting from Grantee's exercising its rights hereunder.

During Construction, Grantee shall cause its construction contractor(s) to maintain comprehensive general liability insurance providing for a limit amount of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractor's Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried. Grantor shall be named as Additional Insured in such policies and Grantee will provide a current copy of such insurance certificate to Grantor.

THAT this Easement is subject to all applicable permit requirements and any other required agreements or approvals, and concurrences.

THAT the Easement is granted pursuant to Resolution No. \_\_\_\_\_ passed by the Miami-Dade Board of County Commissioners of the Miami-Dade County, Florida records, a copy of which is attached herewith and forms part thereof;

THAT the provisions of this Easement may be enforced by all appropriate actions at law and in equity by the respective parties.

THAT Grantor makes no representations as to the title or condition of the property within the Easement Area or the suitability of the Easement Area property for the use intended hereunder.

The rights and obligations of the parties shall inure to the benefit of and be binding upon their respective successors and assigns.

Nothing in this Easement shall restrict the Grantor's right to utilize said property for any use which is not inconsistent with the rights conveyed hereunder.

This grant conveys only an interest of the County and its Board of County Commissioners in the property herein described, and shall not be deemed to warrant the title or to represent any state of facts concerning the same.

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed in its name by its Board of County Commissioners acting by the County Mayor or the County Mayor's designee, the day and year aforesaid.

ATTEST: \_\_\_\_\_

Clerk (or Deputy Clerk) of the Circuit Court

(Affix County Seal)

Miami-Dade County, Florida,  
By its Board of County Commissioners

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(Address)

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Type, print or stamp name under signature)

Title or rank and serial number, if any: \_\_\_\_\_

ATTEST: Margaret Heggens  
Executive Secretary

(Affix State Seal)

State of Florida Department of Transportation

By: [Signature]  
Title: Gus Pego, P.E., District Secretary  
1000 N.W. 111<sup>th</sup> Avenue, Room 6015  
Miami, Florida 33172

\_\_\_\_\_  
(Address)

STATE OF FLORIDA

COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of December  
2014, by Gus Pego, who is personally known to me or who has produced  
\_\_\_\_\_ as identification.

[Signature]  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Type, print or stamp name under signature)

Title or rank and serial number, if any: \_\_\_\_\_



KEVIN WARTHEN  
MY COMMISSION # FF 081903  
EXPIRES: January 9, 2019  
Bonded Thru Budget Notary Services



# Exhibit B



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