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

MEMORANDUM

Agenda Item No. 8(N)(2)

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

DATE: March 8, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving execution of a covenant for maintenance of landscaping within the public rights-of-way between Miami-Dade County and the City of Doral along NW 74 Street from NW 114 Avenue to NW 107 Avenue; and authorizing the County Mayor to exercise the provisions contained therein

Resolution No. R-215-16

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.

Abigail Price-Williams
County Attorney

APW/cp

Memorandum

MIAMI-DADE COUNTY

Date: March 8, 2016

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

From: Carlos A. Gimenez
Mayor

Subject: Covenant for Maintenance of Landscaping Within the Public Rights-of-Way Between Miami-Dade County and the City of Doral to Provide for the Maintenance and Preservation of Landscaping and Irrigation Improvements by the City Along NW 74 Street from NW 114 Avenue to NW 107 Avenue

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Recommendation
It is recommended that the Board of County Commissioners (Board) approve the attached Resolution authorizing the execution of a Covenant for Maintenance of Landscaping within the Public Rights-of-Way between Miami-Dade County (County) and the City of Doral (City) to provide for the maintenance and preservation of landscaping and irrigation improvements by the City in medians along NW 74 Street from NW 114 Avenue to NW 107 Avenue.

Scope
The project is located in Commissioner Jose "Pepe" Diaz's District 12.

Fiscal Impact/Funding Source
There is no fiscal impact to the County. The County will be installing the landscaping and irrigation improvements through the on-going roadway construction project awarded by the Board on December 2, 2014, through Resolution R-1053-14. The project is being funded by Charter County Transportation Sales Surtax Bond proceeds and is to be fully reimbursed by the Florida Department of Transportation (FDOT). The County will save the costs associated with the maintenance and preservation of the landscaping improvements.

Track Record/Monitor
The project will be assigned to Bassam Moubayed, CFM, Chief of the Public Works and Waste Management Department's (PWWM) Construction Division, who will oversee inspections conducted by PWWM staff to enforce compliance with covenant plans and specifications.

Background
On October 12, 2012, the Board approved a Local Agency Program (LAP) Agreement under Resolution R-792-12 with FDOT for the construction of NW 74 Street from NW 114 Avenue to NW 107 Avenue. The County is providing upfront funding for the project, with the full amount to be reimbursed by FDOT through the LAP Agreement. The City has requested that this project include the installation of enhanced landscaping in the medians within the project limits. The County agreed to include enhanced landscaping and irrigation systems, provided that the City assumes responsibility to maintain and preserve these improvements.

This Covenant for Maintenance of Landscaping obligates the City to maintain, repair and/or replace, as necessary, the irrigation system, sod and all landscaping in the medians. In the event that the City does not comply with these requirements, it will be sent a written notice and given 30 calendar days to make corrections. Failure to address any deficiencies will

result in the County making the necessary corrections and the City will be invoiced for the County's costs.

On March 14, 2012, the Doral City Council adopted Resolution No. 12-27 authorizing the City Manager to execute a Covenant for Maintenance of Landscaping with the County (attached).

Alina T. Hudak
Deputy Mayor

Attachments:
Resolution
Covenant (exclusive of plans; plans are available upon request of the department)
Resolution of the City of Doral

MEMORANDUM

(Revised)

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

DATE: March 8, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(N)(2)

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

_____ Statement of social equity 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(N)(2)
3-8-16

RESOLUTION NO. R-215-16

RESOLUTION APPROVING EXECUTION OF A COVENANT FOR MAINTENANCE OF LANDSCAPING WITHIN THE PUBLIC RIGHTS-OF-WAY BETWEEN MIAMI-DADE COUNTY AND THE CITY OF DORAL ALONG NW 74 STREET FROM NW 114 AVENUE TO NW 107 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 Doral and Miami-Dade County wish to facilitate the maintenance and preservation of landscaping improvements to be installed along NW 74 Street, from NW 114 Avenue to NW 107 Avenue,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Covenant for Maintenance of Landscaping Within the Public Rights-of-Way between Miami-Dade County and the City of Doral, in substantially the form attached hereto and made a part hereof; and authorizes 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 **Barbara J. Jordan** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of March, 2016. 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.

Hugo Benitez

COVENANT FOR MAINTENANCE OF LANDSCAPING WITHIN RIGHT-OF-WAY BETWEEN THE CITY OF DORAL AND MIAMI-DADE COUNTY

A. Miami-Dade County, a political subdivision of the State of Florida, through its Public Works and Waste Management Department (the "County") will install the landscaping and irrigation system in the medians (the "Landscape Work") within the right-of-way of NW 74 Street between NW 114 Avenue and NW 107 Avenue (the "Project Limits"), along with the roadway improvements for NW 74 Street (the "Highway Project"); and

B. The City of Doral (the "City") shall be solely responsible for the maintenance and preservation of the Landscape Work within the Project Limits.

In consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. Upon completion of the Landscape Work by the County, and in accordance with Paragraph 9, the City shall, at its sole cost and expense, maintain, repair and/or replace, as necessary , the irrigation system, the sod and all landscaping, in a like or similar manner as that installed by the County in the medians within the Project Limits. The maintenance by the City shall further include, but not be limited to, the following:

a) Mow, cut and/or trim and edge the grass or turf in accordance with the latest edition as of the date of this Covenant, of the State of Florida "Guide for Roadside Mowing" and the latest edition as of the date of this Covenant, of the "Maintenance Rating Program";
b) Properly prune all plants, which include plant and tree trimmings, in accordance with the latest edition as of the date of this Covenant, of the "Maintenance Rating Program", and prune, trim and/or edge such parts thereof which may present a visual or other safety hazard for those using or intending to use the right-of-way;
c) Keep plants as free as possible from disease and harmful insects; remove and properly dispose of dead, diseased or otherwise deteriorated plants in their entirety, and replaced those that fall below original Landscape Work standard;
d) Properly remove and dispose of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials;
e) Properly mulch all plant beds;
f) Water and fertilize all plants properly;
g) Remove and dispose of all trimmings, roots, branches, litter, etc., resulting from the activities described above;
h) Ensure that the irrigation system is fully functional by performing routine and regular observations of irrigation performance; identify damage and/or malfunctions; repair and/or replace broken or missing irrigation equipment; and adjust spray heads to eliminate overspray of water onto paved areas. All costs associated with water use will be the responsibility of the City. In the

event that the City shall require a well-water irrigation system, the City shall be responsible for the maintenance of the pump system and electrical meter.

2. The City shall be responsible for performing the work described in Paragraph 1 with a minimum frequency of twelve (12) times per year. The work shall include any additional conditions that the County, or the authority having jurisdiction over the right-of-way, may impose.

3. The County shall be only responsible for replacing damaged trees for reasons other than maintenance such as natural disasters, storm events, and traffic accidents.

4. If the County, or the authority having jurisdiction over the right-of-way, determines that the City is not accomplishing or complying with its responsibilities and/or duties under this Covenant, the County shall provide the City with a written notice, stating any deficiency or deficiencies that require correction. The City shall have thirty (30) calendar days, from the date of the receipt of the notice, to correct the cited deficiency or deficiencies.

In the event that the City has not corrected the deficiency or deficiencies for which notice is given or, if the deficiencies are of a nature that cannot be corrected within that time period and the City does not commence to correct the deficiencies within the time period stipulated, then the County shall maintain, repair, replace or otherwise correct the deficiency or deficiencies, and all costs and expenses shall be invoiced to the City. The City must pay the invoice in full, within thirty (30) calendar days of the receipt of the invoice by the City.

Any notices to be provided hereunder shall be in accordance with the provisions of Paragraph 11.

In the event of any default of the City in the payment of the invoice and/or its failure to comply with its maintenance responsibilities under this Covenant, the County or the authority having jurisdiction over the right-of-way, may, at its election and option, remove the Landscape Work from the medians within the Project Limits.

5. It is understood and agreed that all landscaping, irrigation system and sod covered by this Covenant may be removed, relocated, or adjusted, at any time in the future, as found necessary by the County or the authority having jurisdiction over the right-of-way, in order that the adjacent public right of way be widened, altered or otherwise changed and maintained to meet with future criteria or planning by the County or the authority having jurisdiction over the right-of-way. In such an event, the maintenance responsibilities of the City shall survive any such relocation or adjustments, so long as the materials or facilities remain with the Project Limits.

6. Subject to the provisions of 768.28, Florida Statutes, the City does hereby agree to indemnify and hold harmless the County, or the authority having jurisdiction over the right-of-way, from any and all damages and/or liability which may arise by virtue of the County installing the landscaping and irrigation system within the public right of way, and/or from any act or omission of the City related to the maintenance and preservation thereof, including any and all work to be performed within the public right-of-way, pursuant to this Covenant.

7. This Covenant and the rights hereunder may be assigned by the County to the authority having jurisdiction over the right-of way. The provisions and conditions herein stated shall remain in full force and effect until such time as this obligation has been cancelled by instrument filed in the Public Records of Miami-Dade County, Florida by an authorized representative of the County, or by an authorized representative of the authority having jurisdiction over the right-of-way.

8. This Covenant only pertains to the Landscape Work, as herein defined, of NW 74 Street medians, as further depicted on the landscape plans, attached as Exhibit "A".

9. This covenant is subject to termination under any one of the following conditions:

a) By the County, or the authority having jurisdiction over the right-of-way, if the City fails to perform its duties under Paragraph 1, following thirty (30) days written notice.
b) If mutually agreed to by the parties, with a six (6) month prior written notice.

10. This Covenant shall become effective upon completion of the roadway construction of NW 74 Street, within the Project Limits, and upon issuance by the County to the City of a written Notice to Proceed letter from the Miami-Dade County Director of Public Works and Waste Management.

11. All notices, requests, demands, consents, approvals and other communications which are required to be served or given hereunder shall be in writing, and hand delivered, or sent by certified U.S. Mail, return receipt requested, postage prepaid, addressed to the party to receive such notices, or at such other address that the authority having jurisdiction over the right-of-way may provide:

To the County: Alina T. Hudak, Deputy Mayor and Interim Director, Public Works and Waste Management Department, 111 NW First Street, Suite 1610, Miami, FL 33128

To the City: City of Doral, Edward Rojas, City Manager,
8401 NW 53rd Terrace
Doral, FL 33166

12. This Covenant is the entire understanding and agreement as relates to the subject matter herein, and may only be modified or amended by written mutual consent of the parties.

13. This agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Miami-Dade County, Florida.

Signed, sealed, executed and acknowledged on _____ day of _____, 20___.

CITY OF DORAL

By: Yvonne S. McKinley
Name: Yvonne S. McKinley
Title: City MANAGER

MIAMI-DADE COUNTY

By: _____
Name: _____
Title: _____

Attest: Barbara Hernandez
Name: Barbara Hernandez
Title: City Clerk

Attest: _____
Name: _____
Title: _____

Legal Review:

City Attorney

By: _____
Name: Jimmy Morales

County Attorney

By: _____
Name: _____

RESOLUTION NO. 12-27

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO A COVENANT WITH MIAMI-DADE COUNTY FOR THE PROVISION OF N.W. 74TH STREET LANDSCAPE MAINTENANCE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Miami-Dade County, through its Public works and Waste Management Department, has offered to install landscaping and irrigation systems in the medians within the right-of-way of N.W. 74th Street between N.W. 114th Avenue and N.W. 107th Avenue; and

WHEREAS, the County is only willing to provide irrigation and the upgraded landscape if the City of Doral is responsible for the maintenance and preservation of the landscape work; and

WHEREAS, Staff respectfully requests that the City Council authorize the City manager to negotiate and enter into a covenant with Miami-Dade County for the provision of N.W. 74th Street landscape maintenance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL AS FOLLOWS:

Section 1. The City Council of the City of Doral hereby authorizes the City Manager to negotiate and enter into a covenant with Miami-Dade County for the provision of N.W. 74th Street landscape maintenance.

Section 2. This Resolution shall become effective immediately upon adoption.

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The foregoing Resolution was offered by Vice Mayor DiPietro, who moved its adoption. The motion was seconded by Councilmember Boria and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Michael DiPietro	Yes
Councilmember Luigi Boria	Yes
Councilmember Pete Cabrera	Yes
Councilmember Ana Maria Rodriguez	Yes

PASSED AND ADOPTED this 14th day of March, 2012.

JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

for:
JIMMY L. MORALES, CITY ATTORNEY