

MEMORANDUM

Agenda Item No. 8(K)(1)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

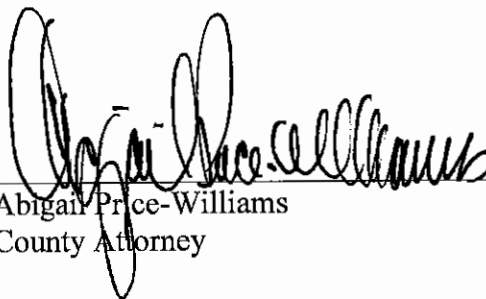
DATE: October 3, 2019

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving and authorizing the County Mayor to execute a covenant between Miami-Dade County, subject to a long term leasehold estate in favor of Liberty Square Phase One, LLC, and the City of Miami, Florida for the construction and maintenance of textured asphalt crossings within the public right-of-way at the intersection of NW 15th Avenue and NW 65th Street, and NW 15th Avenue and NW 67th Street; and authorizing the County Mayor to exercise all provisions contained therein, including the indemnification and hold harmless provision

Resolution No. R-1057-19

The accompanying resolution was prepared by the Public Housing and Community Development Department and placed on the agenda at the request of Prime Sponsor Chairwoman Audrey M. Edmonson.



Abigail Price-Williams
County Attorney

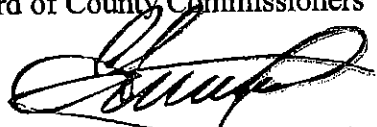
APW/uw

Memorandum



Date: October 3, 2019

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Approving a Covenant between Miami-Dade County and the City of Miami for the Construction and Maintenance of Textured Asphalt Crossings Associated with Liberty Square Phase One

Recommendation

It is recommended that the Board of County Commissioners (Board) approve and authorize the County Mayor or the County Mayor's designee to execute a covenant between Miami-Dade County (County), subject to a long term lease with Liberty Square Phase One, LLC and the City of Miami (City) for the construction and maintenance of textured asphalt crossings associated with Liberty Square Phase One. It is further recommended that the Board authorize the County Mayor or the County Mayor's designee to exercise all provisions contained in the covenant, including the indemnification and hold harmless provision.

Scope

The public right-of-way at the intersection of NW 15th Avenue and NW 65th Street, and NW 15th Avenue and NW 67th Street, adjacent to the Liberty Square Phase One property, located in County Commission District 3, which is represented by Chairwomen Audrey M. Edmonson.

Fiscal Impact/Funding Source

There is no fiscal impact to the County for this item.

Track Record/Monitor

Michael Liu, Director, Public Housing and Community Development Department (PHCD) will monitor the Covenant.


Background

On July 6, 2016, the Board adopted Resolution No. R-636-16, which authorized the execution of a master development agreement and ground lease with Related Urban Development Group, LLC for the redevelopment of Liberty Square and Lincoln Gardens, which is a multi-phase project. Liberty Square Phase One is being constructed by Liberty Square Phase One, LLC, a Related Urban Development Group, LLC affiliate, and includes a total of 204 housing units including 73 public housing units and 131 affordable and workforce housing units. The construction of this phase of the project commenced in December 2017 and is anticipated to be completed in September 2019.

The construction of Liberty Square Phase One requires the installation of textured asphalt crossings within the public right-of-way at the intersection of NW 15th Avenue and NW 65th

Street, and NW 15th Avenue and NW 67th Street. The City requires a covenant between the County and the City to allow for the installation and maintenance of these textured asphalt crossings in favor of the City. The textured asphalt crossings will be installed and maintained by Liberty Square Phase One, LLC.

The covenant provides that in the event the County fails to remove the textured asphalt crossings when so requested, the City can remove the textured asphalt crossings at the County's expense. Additionally, the covenant requires that the County, subject to the limitations in section 768.28, Florida Statutes, to indemnify, defend, and hold the City, its officers and employees, harmless in the event of any claim or investigation that arises out of the acceptance by the City of the covenant and/or the use, construction, maintenance and/or removal of the textured asphalt crossings. This includes the payment of all costs, attorneys' fees, expenses and liabilities incurred in the defense of any claims. Notwithstanding the foregoing, under the terms of the ground lease between the County and Liberty Square Phase One, LLC and master development agreement between the County and Related Urban Development Group, LLC, the developer is required to indemnify and hold the County harmless. Therefore, should any claim arise related to the construction and maintenance of textured asphalt crossings, the County will enforce the terms of its agreements with Liberty Square Phase One, LLC and Related Urban Development Group, LLC. Accordingly, the Department recommends that it is in the County's best interest to approve the covenant for the construction and maintenance of the textured asphalt crossings.



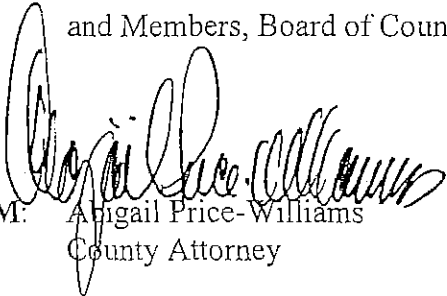
Maurice L. Kemp
Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 3, 2019

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(K)(1)

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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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(K)(1)
10-3-19

RESOLUTION NO. _____ R-1057-19

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE A COVENANT BETWEEN MIAMI-DADE COUNTY, SUBJECT TO A LONG TERM LEASEHOLD ESTATE IN FAVOR OF LIBERTY SQUARE PHASE ONE, LLC, AND THE CITY OF MIAMI, FLORIDA FOR THE CONSTRUCTION AND MAINTENANCE OF TEXTURED ASPHALT CROSSINGS WITHIN THE PUBLIC RIGHT-OF-WAY AT THE INTERSECTION OF NW 15TH AVENUE AND NW 65TH STREET, AND NW 15TH AVENUE AND NW 67TH STREET; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS CONTAINED THEREIN, INCLUDING THE INDEMNIFICATION AND HOLD HARMLESS PROVISION

WHEREAS, This Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recital is incorporated in this resolution and is approved.

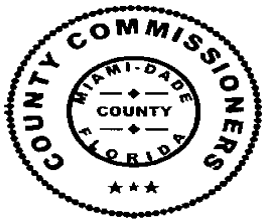
Section 2. This Board approves the covenant between Miami-Dade County and the City of Miami, in substantially the form attached here to as Attachment A and incorporated herein by reference, for the construction and maintenance of textured asphalt crossings within the public right-of-way at the intersection of NW 15th Avenue and NW 65th Street, and NW 15th Avenue and NW 67th Street. This Board authorizes the County Mayor or County Mayor's designee to execute the covenant and exercise all provisions contained therein, including the indemnification and hold harmless provision contained therein.

Section 3. This Board directs the County Mayor or the County Mayor's designee, pursuant to Resolution No. R-974-09, to record in the public records the covenant and any other instrument creating or reserving a real property interest in favor of the County and to provide a copy of such recorded instrument to the Clerk of the Board within 30 days of execution and final acceptance. This Board directs the Clerk of the Board, pursuant to Resolution No. R-974-09, to attach and permanently store a recorded copy of any instrument provided in accordance herewith together with this resolution.

The foregoing resolution was offered by Commissioner **Esteban L. Bovo, Jr.**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	aye		
Rebeca Sosa, Vice Chairwoman	aye		
Esteban L. Bovo, Jr.	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Sally A. Heyman	aye
Eileen Higgins	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Dennis C. Moss	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of October, 2019. 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: Linda L. Cave
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "TAS", is written over a horizontal line.

Terrence A. Smith

LOCATION: 6512 NW 14 AVENUE
MIAMI, FLORIDA 33147
FOLIO No.: 01-3114-009-0010

Prepared by and return recorded copy to:

City of Miami Department of Resilience and Public Works
Attention: Director, Alan M. Dodd, P.E.
444 SW 2nd Avenue, 8th Floor
Miami, FL 33130-1910

COVENANT RUNNING WITH THE LAND ("COVENANT")

THIS COVENANT made and entered into this ____ day of _____, 20____, by and between **MIAMI-DADE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA**, (the "COVENANTOR"), subject to a long-term leasehold estate in favor of Liberty Square Phase One, LLC, a Florida limited liability company, and the **CITY OF MIAMI, FLORIDA**, a municipal corporation of the State of Florida, located in Miami-Dade County (the "CITY"); and

WHEREAS, COVENANTOR is the fee owner of the real property described in Exhibit "A" (the "PROPERTY"); and

WHEREAS, COVENANTOR has requested permission from CITY to construct and maintain within the public right-of-way at the intersection of **NW 15th AVENUE AND NW 65th STREET, AND NW 15th AVENUE AND NW 67th STREET** ("TEXTURED ASPHALT CROSSINGS"), adjacent to the PROPERTY; and

WHEREAS, CITY has required the COVENANTOR to execute and deliver to CITY this instrument as a condition precedent to the granting of said permission.

NOW THEREFORE, in consideration of the permission by CITY to allow the construction and maintenance of the TEXTURED ASPHALT CROSSINGS within the dedicated public right of way by COVENANTOR, or its designee, successor or assigns, and in the further

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consideration of the premises, COVENANTOR does hereby covenant and agree with CITY that COVENANTOR shall, at no cost to the CITY, remove the aforementioned TEXTURED ASPHALT CROSSINGS whenever requested by, and upon thirty (30) days written notice from, the Director of the Department of Resilience and Public Works of CITY.

In the event that COVENANTOR, its designee, successors, or assigns fails to remove the TEXTURED ASPHALT CROSSINGS when so requested, the Director of the Department of Resilience and Public Works of CITY shall cause the aforementioned TEXTURED ASPHALT CROSSINGS to be removed at the expense of COVENANTOR; the amount of such removal cost shall be declared and established as a lien on the property of such defaulting COVENANTOR and enforced as any lien of materials furnished and work and labor done provided under the Statutes of the State of Florida, the applicable Codes of the City and the County, provided that such lien shall only be imposed if at the time of the removal of the TEXTURED ASPHALT CROSSINGS, the PROPERTY is owned by a non-governmental third-party, and the COVENANTOR voluntarily, knowingly and freely covenants and agrees that all recourse or cause(s) of action against the CITY is hereby expressly waived as to any damage caused, direct, indirect, special, consequential or otherwise, to any portion, in whole or in part, of the remainder of COVENANTOR'S TEXTURED ASPHALT CROSSINGS, resulting from the removal of the aforesaid TEXTURED ASPHALT CROSSINGS from said public right-of-way.

COVENANTOR shall provide maintenance of the TEXTURED ASPHALT CROSSINGS, in accordance with the CITY'S standards and specifications.

COVENANTOR shall, subject to the limitations in Section 768.28, Florida Statutes (2018), indemnify, defend, and hold CITY, its officers and employees, harmless from any

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claims, demands, liabilities, losses or causes of action of any nature whatsoever arising out of the acceptance by the CITY of this Covenant and/or the use, construction, maintenance and/or removal of the TEXTURED ASPHALT CROSSINGS, or any part hereof, from and against any orders, judgments or decrees that may be entered, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of such claim or in the investigation thereof.

COVENANTOR, as a governmental agency, is self-insured and does not require insurance in connection with this COVENANT. However, if the PROPERTY is transferred or otherwise conveyed to a non-governmental third-party, that third-party, immediately prior to transfer or conveyance, shall keep in full force and effect, at all times during the exercise of this Covenant, a commercial general liability policy of insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, including death, and property damage. The certificate of insurance should afford coverage for premises and operations liability, products and completed operations, personal and advertising injury liability, and any other endorsements pertinent to the scope of work. The insurance should be primary and non contributory.

The insurance, if required, and COVENANT shall be subject to the approval of the CITY's Risk Manager and the CITY Attorney. The insurance policy, if required, shall be procured and premiums paid by COVENANTOR. The effective date of the policy shall be prior to or on the effective date of the Covenant, and the policy term or any renewals thereof shall remain in effect for the term of the Covenant.

The insurance carrier for the policy must be rated no less than A- as to management and no less than Class (V) as to strength by the latest edition of Best's Insurance Guide and must be

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approved by the CITY's Risk Manager. CITY shall be listed as Additional Insured under the policy. Proof of insurance shall be supplied to the satisfaction of CITY prior to the issuance of any permits. A Certificate of Insurance bearing CITY as "Additional Insured" shall in no way relieve COVENANTOR of the obligation to add CITY as "Additional Insured" to the actual insurance policy. The insurance policy shall provide that CITY be given at least thirty (30) days advance written notice of any material changes, cancellation or non-renewal notification of any policy and, in the event of such material change, cancellation or non-renewal notification, COVENANTOR shall immediately replace said policy with another policy to the satisfaction of CITY with the receipt of a certificate of insurance for such policy by CITY at least ten (10) days prior to the effective date of the material changes, cancellation or non-renewal of any policy. In the event that CITY is not in possession of same by such date, then CITY shall have the right to immediately secure a similar insurance policy in its name with the total cost of the premium and all monies that may become due during the term of the COVENANT being charged to COVENANTOR and CITY shall have the right to declare and establish said costs as a lien on the PROPERTY of COVENANTOR, enforced as any lien provided for under the statutes of the State of Florida. COVENANTOR agrees to increase from time to time, as required by the City's Code, the limits of the comprehensive liability insurance policy required to be provided pursuant to this COVENANT, upon the written request of CITY.

It is expressly understood and agreed that this COVENANT touches and concerns the PROPERTY, and shall be binding upon COVENANTOR, and also upon grantees, heirs, successors-in-interest or assigns of COVENANTORS, and shall be a condition-implied in any

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conveyance or other instrument affecting the title to the aforesaid property or any portion thereof.

Any notice, request, demand, approval or consent given, or required to be given, under this COVENANT shall be in writing and shall be deemed as having been given when mailed by United States registered or certified mail (return receipt requested), postage paid, to the other parties at the addresses stated below or at the last changed address given by the party to be notified as hereinafter specified:

COVENANTOR:

MIAMI-DADE COUNTY
Attn: Maurice Kemp, Deputy Mayor
701 NW 1st Court, 16th Floor
Miami, Florida 33136

WITH A COPY TO:

LIBERTY SQUARE PHASE ONE, LLC
Attn: Albert Milo
315 S. Biscayne Boulevard, 4th Floor
Miami, Florida 33131

CITY:

THE CITY OF MIAMI
Attention: Director,
Department of Resilience and Public Works
444 S.W. 2nd Avenue, 8th Floor
Miami, Florida 33130

COVENANTOR herein expressly acknowledges that (a) permission granted by the CITY to construct the TEXTURED ASPHALT CROSSINGS on CITY public right of way is solely for the limited purposes set forth herein and does not constitute a lease and that the rights of the COVENANTOR hereunder are not those of a tenant but is a mere personal privilege to do certain acts on CITY public right of way, (b) the CITY retains dominion, possession and control of the CITY public right of way and can in the event of default by COVENANTOR unilaterally end the permission granted herein to COVENANTOR, without fault or breach or cause

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whatsoever provided, however, that notice is given to COVENANTOR and COVENANTOR has not cured the event of default within the period of time specified herein after receipt of notice and (c) COVENANTOR does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the CITY public right of way by virtue of its use hereunder or by virtue of any expenditures incurred in connection herewith.

[signature page follows]

LOCATION: 6512 NW 14 AVENUE
MIAMI, FLORIDA 33147
FOLIO No.: 01-3114-009-0010

Signed, Sealed, Attested
And delivered in our presence:

FIRST WITNESS:

Sign: _____
Print Name:
Address:

COVENANTOR:
MIAMI-DADE COUNTY, a Political Subdivision
of the State of Florida

By: _____
MAURICE L. KEMP
Deputy Mayor

SECOND WITNESS:

Sign: _____
Print Name:
Address:

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of _____,
_____ by Maurice L Kemp, as Deputy Mayor of Miami-Dade County. He is personally known
_____ or has produced _____ as identification.

[SEAL]

NOTARY PUBLIC STATE OF FLORIDA
Print Name:
Commission No.:
Commission Expires:

Approved as to form and legal sufficiency:

By: _____
Terrence A. Smith
Assistant County Attorney

LOCATION: 6512 NW 14 AVENUE
MIAMI, FLORIDA 33147
FOLIO No.: 01-3114-009-0010

CITY OF MIAMI
a municipal Corporation of the State of Florida

APPROVED AS TO CONTENT:

Alan M. Dodd, P.E., Director
Department of Resilience and Public Works

APPROVED AS TO INSURANCE REQUIREMENTS:

Anne-Marie Sharpe
Director of Risk Management

LOCATION: 6512 NW 14 AVENUE
MIAMI, FLORIDA 33147
FOLIO No.: 01-3114-009-0010

EXHIBIT A

LEGAL DESCRIPTION

All of Block 5, LOW COST HOUSING PROJECT H-4602, according to the Plat thereof as recorded in Plat Book 34, Page 99, of the Public Records of Miami-Dade County, Florida.

AND

Block 6, LOW COST HOUSING PROJECT H-4602, according to the Plat thereof as recorded in Plat Book 34, Page 99, of the Public Records of Miami-Dade County, Florida, LESS the West 10 feet, and less the external area of a 25 foot radius curve concave to the Southeast, having a central angle of $90^{\circ}25'23''$ and an arc distance of 39.45 feet, said arc being tangent to the North line of said Block 6 and tangent to the East line of the West 10 feet of said Block 6, and less the external area of a 25 foot radius curve concave to the Northeast, having a central angle of $89^{\circ}31'15''$ and an arc distance of 39.06 feet, said arc being tangent to the South line of said Block 6 and tangent to the East line of the West 10 feet of said Block 6.

LESS

Those portions of Block 5 and Block 6, LOW COST HOUSING PROJECT H-4602, according to the Plat thereof as recorded in Plat Book 34, Page 99, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:
The South 7 feet thereof,

AND

The external area of a circular curve lying within said Block 5, being concave to the Northwest, having a radius of 25 feet, and tangents which are 25 feet North of and parallel with the centerline of N.W. 65th Street and 35 feet West of and parallel with the centerline of N.W. 14th Avenue.

AND

The external area of a circular curve lying within said Block 6, being concave to the Northeast, having a radius of 25 feet, and tangents which are 25 feet North of and parallel with the centerline of N.W. 65th Street and 35 feet East of and parallel with the centerline of N.W. 15th Avenue.