

MEMORANDUM

Agenda Item No. 8(N)(28)

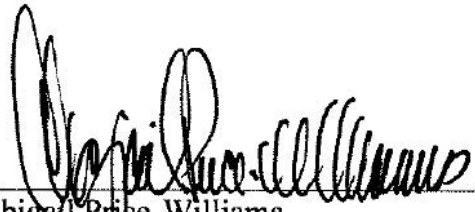
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 6, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving a Covenant for Maintenance of Certain Improvements within Miami-Dade County Right-of-Way between Miami-Dade County and the Village of Pinecrest for the maintenance of lighting and landscape improvements along SW 136th Street from SW 72nd Avenue to SW 70th Avenue; and authorizing the County Mayor to execute same for and on behalf of Miami-Dade County and to exercise all provisions contained therein

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.


Abigail Price-Williams
County Attorney

APW/uw

Memorandum



Date: October 6, 2020

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

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez", written over the "From:" line.

Subject: Covenant for Maintenance of Certain Lighting and Landscape Improvements Within Miami-Dade County Right-of-Way between Miami-Dade County and the Village of Pinecrest Along SW 136th Street From SW 72nd Avenue to SW 70th Avenue

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the execution of a Covenant for Maintenance of Certain Improvements within Miami-Dade County Right-of-Way between Miami-Dade County and the Village of Pinecrest (Village) for the maintenance, repair and replacement of certain specialty lighting and landscape within decorative urns (Maintenance Items) as part of the replacement of bridge No. 874420 along SW 136 Street from east of SW 72 Avenue to SW 70 Avenue (Project).

Scope

The Project is located along SW 136 Street which serves as both the boundary between the Village of Pinecrest and the Village of Palmetto Bay and between County Commission Districts 7 and 8 which are represented by Commissioners Xavier L. Suarez and Commissioner Daniella Levine Cava, respectively.

Fiscal Impact/Funding Source

The Project construction is estimated to cost \$1.8 million and will be funded by Miami-Dade County utilizing Road Impact Fee funds under Capital Project No. P2000000534. The Village will be solely responsible for the costs associated with the maintenance, repair and replacement of Maintenance Items upon completion of the Project.

Track Record/Monitor

The Project will be assigned to Rene Idarraga, P.E., Chief, Construction Division, Department of Transportation and Public Works (DTPW), who will be responsible for monitoring this Project for the County.

Background

DTPW is currently working on a project to replace the existing bridge along SW 136 Street located east of SW 72 Avenue to SW 70 Avenue. In coordination with the Village, it was decided that aesthetic lighting and decorative urns were to be designed as an enhancement to the Project. It was agreed upon that the aesthetic lighting and decorative urns are to be installed by the County, and upon completion of the Project, maintenance responsibility for such improvements including any additional landscaping would be the sole responsibility of the Village at no cost to the County. Construction of the Project is scheduled to commence in Fall 2020.

A handwritten signature in blue ink, appearing to read "Jennifer Moon", written over the signature line.

Jennifer Moon
Deputy Mayor



MEMORANDUM (Revised)

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

DATE: October 6, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(N)(28)

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(N)(28)
10-6-20

RESOLUTION NO. _____

RESOLUTION APPROVING A COVENANT FOR MAINTENANCE OF CERTAIN IMPROVEMENTS WITHIN MIAMI-DADE COUNTY RIGHT-OF-WAY BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE OF PINECREST FOR THE MAINTENANCE OF LIGHTING AND LANDSCAPE IMPROVEMENTS ALONG SW 136TH STREET FROM SW 72ND AVENUE TO SW 70TH AVENUE; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL 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,

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 Certain Improvements within Miami-Dade County Right-of-Way between Miami-Dade County and the Village of Pinecrest, in substantially the form attached hereto and made a part hereof, for the maintenance of lighting and landscape within decorative urns along SW 136th Street from SW 72nd Avenue to SW 70th Avenue; and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise all provisions contained therein.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman

Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.

Jose "Pepe" Diaz

Eileen Higgins

Joe A. Martinez

Dennis C. Moss

Xavier L. Suarez

Daniella Levine Cava

Sally A. Heyman

Barbara J. Jordan

Jean Monestime

Sen. Javier D. Souto

The Chairperson thereupon declared this resolution duly passed and adopted this 6th day of October, 2020. 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: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Annery Pulgar Alfonso

**COVENANT FOR MAINTENANCE OF CERTAIN IMPROVEMENTS WITHIN MIAMI-DADE
COUNTY RIGHT-OF-WAY BETWEEN
MIAMI-DADE COUNTY AND THE VILLAGE OF PINECREST**

WHEREAS, the Village of Pinecrest (hereto referred to as the "Village") requests that Miami-Dade County, through its Department of Transportation and Public Works (hereto referred to as the "County"), design and install a specialty lighting system and decorative urns to be as part of the County's project replacing the SW 136 Street bridge over the C-100A Canal (former Department of Transportation and Public Works Bridge No. 874420, new Bridge No. 874495); and

WHEREAS, the Village and the County are mutually desirous of providing assurances for the future continued maintenance, repair and replacement of the enhanced elements constructed in this project; and

WHEREAS, the Village shall be solely responsible for the maintenance, repair, and replacement of any landscaping contained in the subject decorative urns and associated lighting, as well as the bridge and rail mounted lighting within the public right-of-way along SW 136 Street, from SW 72 Avenue to SW 70 Avenue (hereinafter referred to as the "Improvements" and as further depicted in Exhibit A attached herein).

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

1. The recitals are true and correct and are incorporated herein by this reference to form a part of this Covenant.
2. The Village agrees to maintain, repair, and replace, as may become necessary from time to time, the Improvements. If it becomes necessary for the County to make repairs or maintain the Improvements including restoration of all lighting elements, by reason of the Village's failure to do so, such expense shall be paid by the Village. The Village shall not allow any liens to be placed on County rights-of-way or property.
3. The Village does hereby agree that the County shall not be responsible for the maintenance, repair, or replacement of the lighting system or the landscaping in the urns. Further, the Village acknowledges that the County does not stock the specific fixtures and conduits to be installed as part of the Improvements. In the event that the Village desires to replace a damaged lighting element with an element identical or similar in kind to those initially installed, the Village will provide such lighting element at its sole expense for installation by the County. The County, at its sole discretion, reserves the right to remove and not replace, or allow replacement by the Village or another third-party of, the Improvements. Additionally, and at the County's sole discretion, the County reserves the right to replace the entire lighting system to a system of the County's choosing or to relocate or/and adjust the Improvements. The Village's maintenance, repair, replacement responsibilities shall continue to be in full force and effect for any Improvements that are relocated and/or adjusted.
4. To the extent allowed by Florida Statute 768.28, the Village does hereby agree to indemnify and hold the County harmless from any and all liability for personal injury/property damage that may arise from the County installing the Improvements, and/or

from any act or omission of the Village related to the maintenance, replacement, repair, and/or preservation thereof, including any and all work to be performed within the public right-of-way, or from the Village's negligent failure to maintain or operate the Improvements.

5. If the County determines that the Village is not accomplishing or complying with its responsibilities and/or duties under this Covenant, the County shall provide the Village with a written notice, stating any deficiency or deficiencies that require correction. The Village shall have sixty (60) calendar days from the date of receipt of the notice to correct the cited deficiency or deficiencies. In the event that the Village has not corrected the deficiency or deficiencies for which notice was given, or if the deficiency or deficiencies are of a nature that cannot be corrected, within that time period stipulated, then the County may maintain, repair, replace, remove, or otherwise correct the deficiency or deficiencies, and all such costs and expenses shall be invoiced to the Village. The Village must pay the invoice in full within thirty (30) calendar days of the receipt of the invoice by the Village. In the event of any default by the Village in the payment of the invoice and/or its failure to comply with its responsibilities under this Covenant, the County may at its sole election and option remove and not replace the Improvements, in whole or in part. The Village's maintenance, repair, replacement responsibilities shall continue to be in full force and effect for any Improvements that remain.
6. This Covenant is subject to termination under any one of the following conditions:
 - a. By the County if the Village fails to perform its duties and obligation herein subject cure provisions under Paragraph 5.
 - b. If mutually agreed to by the parties, with a six (6) months prior written notice.
7. The undersigned further agrees that these conditions shall be deemed a covenant between the Village and the County and shall remain in full force and effect and be binding on the Village until such time as this obligation has been cancelled by instrument filed in the Public Records of Miami-Dade County, Florida by the authorized representative of the County.
8. This Covenant is the entire understanding and agreement as relates to the subject matter herein, and may only be modified by written amendment subject to approval by the County's Board of County Commissioners.
9. This Covenant shall be governed by the laws of the State of Florida. Any provisions 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 Covenant shall lie exclusively in a court of appropriate jurisdiction in Miami-Dade County, Florida.
10. This Covenant shall become effective upon the construction and installation of the Improvements, and upon issuance by the County to the Village of a written Notice to Proceed letter.
11. It is expressly understood that notwithstanding any provision of this Covenant and County's status hereunder:

(a) The County retains all of its sovereign prerogatives and rights as a county under State of Florida laws and shall not be estopped from withholding or refusing to issue any approvals of and applications for buildings, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the design, construction and development of the Improvements provided for in this Covenant, and

(b) The County is not obligated to grant any applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the design, construction and development of the improvements or installation or construction of the Improvements provided for in this Covenant.

12. All notices or other communications required or permitted to be given under this Covenant shall be in writing and shall be considered as properly given or made: (i) on the third (3rd) day after being mailed from within the United States by certified mail, return receipt requested, postage prepaid and addressed to the person to whom it is intended at the address of said person as set forth below, whether actually received or not; or (ii) the next business day if sent for and guaranteeing next business day delivery by a nationally recognized overnight delivery service or (iii) when actually received by the person to whom it is intended if given in any other manner, including, without limitation, confirmed electronic mail or facsimile transmission. The mailing address for a Party shall be the most recent address of said Party designated in writing to the other Party.

To the County: Department of Transportation and Public Works, ATTN: Director, 701 NW 1st Court, 17th Floor, Miami, Florida 33136, with a copy to Miami-Dade County Attorney, 111 NW 1st Street, Suite 2810, Miami, Florida 33128.

To the Village: Village of Pinecrest Public Works Department, ATTN: Director, 10800 Red Road, Pinecrest, Florida 33156.

Signed, sealed, executed and acknowledged on the 18 day of June, 2020, at Miami, Florida.

VILLAGE OF PINECREST

By: [Signature]
Name: Yocelyn Galiano, ICMA-CM
Title: Village Manager

Attest: [Signature]
Name: Guido H. Inguanzo, Jr., CMC
Title: Village Clerk

MIAMI-DADE COUNTY

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

(ACKNOWLEDGEMENT – INDIVIDUAL)

STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY, that on this ____ day of _____, A.O. 20 __, before me personally appeared, _____
_____ to me known to be the person _____ described in and who executed the foregoing Covenant to the County of Miami-Dade, a body Corporate, and a political subdivision of the State of Florida, and acknowledge to me the execution thereof to be free act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official Seal at _____, in the County and State aforesaid, the day and year last aforesaid.

Notary Public, State of _____

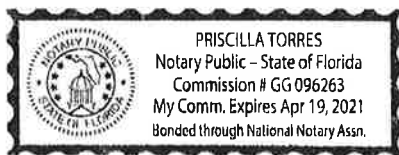
My Commission expires: _____

(ACKNOWLEDGEMENT – CORPORATION)

STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, this day personally appeared Yocelyn Galiano and Guido H. Inguanzo, Jr. both being to me well known and known by me to be the Village Manager and Village Clerk of the Village of Pinecrest, a Corporation under the laws of the State of Florida, and which said Corporation is known by me to be the person described in and which executed the foregoing Covenant, the said officers of the said Corporation being likewise known by me to be the officers thereof who, in their official capacities as such officers of said Corporation executed, signed and delivered the said Covenant as the act and deed of said Corporation, and the said officers of said Corporation then and there severally acknowledged to and before me that they executed the said Covenant, acting in their said official capacities, for and as the act and deed of the said Corporation and in its name, and impressed thereon its Corporate Seal, for the uses and purposes therein mentioned, and after being thereunto by the said Corporation duly authorized and directed.

WITNESS my hand and official Seal at Village of Pinecrest, in the County and State aforesaid, on this, the 18th day of June, A.D. 20 20.



[Signature]
Notary Public, State of Florida

My Commission expires: April 19, 2021