



## Town of Miami Lakes Memorandum

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**To:** Honorable Mayor and Councilmembers  
**From:** Raul Gastesi, Town Attorney  
**Subject:** Attorney's Reports  
**Date:** 2/5/2019

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### **Recommendation:**

There are currently several matters being litigated by the Town of Miami Lakes. Some of these matters are being referred to our insurance carrier to mitigate the Town's legal expense. This report will highlight the active files, and a report of expenses incurred to date. Additionally this report will discuss the need to exercise eminent domain in order to complete the N.W. 59th Avenue Project and will discuss necessary changes to the Town's Legal Services Policy.

### **Background:**

#### **MICHAEL PIZZI JR. v. TOWN OF MIAMI LAKES**

While the appeal process is ongoing, there have been no additional monies expended during the month of January.

(Criminal Matter)

#### **JUAN VALIENTE V. TOWN OF MIAMI LAKES**

Matter continues to be litigated. Costs and expenses are likely.

#### **EMINENT DOMAIN**

On January 29, 2019, the Town held a workshop with Town Council and Town Residents to discuss the need to proceed with an Eminent Domain process in order to allow the connection of 59th Avenue. The public purpose and necessity of this project were discussed, as well as two possible options. In order to move forward with the 59th Avenue and Eminent Domain process it is required for the Council to approve proceeding with Eminent Domain process on Option 1 or Option 2, as attached hereto as Exhibit "A" and Exhibit "B".

#### **LEGAL REPRESENTATION POLICY**

Current policy only allows legal representation of current Town of Miami Lakes Elected Officials, Chartered Officers and Certain Staff. Based on recent litigation, it is suggested to amend our Town's Legal Representation Policy to include past and present Elected Officials, Chartered Officers and Certain Staff. Attached for consideration is a Resolution with the proposed amendment as Exhibit "C."

### **ATTACHMENTS:**

**Description**

**Resolution Legal Defense Policy**

**Exhibit A- NW 59th Avenue**

**Exhibit B- NW 59th Avenue**

**RESOLUTION NO. 19-\_\_\_\_\_**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA AMENDING THE LEGAL REPRESENTATION POLICY; PROVIDING FOR RETROACTIVE APPLICATION; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREFORE**, during the June 10, 2008 Town of Miami Lakes (the “Town”) Council Meeting, the Council adopted the Legal Representation Policy; and

**WHEREFORE**, Section 2, Definitions, defines the term Official to mean “the Mayor, all members of the Town Council, the Town Manager, the Town Clerk, the Town Attorney, and Town Staff as determined by the Town Manager;” and

**WHEREFORE**, it is recommended that the Definition be amended to include “all past and present members of the Town Council, previous Town Managers, Town Mayors, Town Attorneys and Town Staff as determined by the Town Manager; and

**WHEREFORE**, it is recommended that this modification, and the revised Legal Representation Policy, attached hereto as Exhibit “A,” be adopted by the Town Council.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section1. Recitals.** The foregoing Recitals are true and correct and incorporated herein by this reference.

**Section2. Adoption of Legal Representation Policy.** The Legal Representation Policy as amended and described in Exhibit “A,” is hereby adopted.

**Section 3. Retroactive Application of Legal Representation Policy.** The Legal Representation Policy as amended and described in Exhibit “A,” shall be effective, retroactively to the date of the Town of Miami Lakes’ incorporation.

**Section 4. Effective Date.** This Resolution shall take effect immediately upon adoption.

Passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2019

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

Mayor Manny Cid \_\_\_\_\_  
Vice Mayor Nelson Rodriguez \_\_\_\_\_  
Councilmember Carlos O. Alvarez \_\_\_\_\_  
Councilmember Luis Collazo \_\_\_\_\_  
Councilmember Josh Dieguez \_\_\_\_\_  
Councilmember Jeffrey Rodriguez \_\_\_\_\_  
Councilmember Marilyn Ruano \_\_\_\_\_

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MANNY CID  
MAYOR

Attest:

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Gina Inguanzo  
TOWN CLERK

Approved as to form and legal sufficiency:

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Raul Gastesi, Jr.  
Gastesi & Associates, P.A.  
TOWN ATTORNEY

**EXHIBIT "A"**

**LEGAL REPRESENTATION POLICY:**

1. Representation of Officials.

A. Upon the request of a Town Official (the "Official"), the Town may, in its discretion, provide for the Legal Representation in any action or proceeding brought against such Official or brought by such Official:

1. For acts or omissions arising out of and in the course and scope of the Official's employment or function pursuant to Chapter 111, Florida Statutes;
2. For legal matters arising out of the performance of the Official's performance of their official duties while serving a public purpose;
3. When such Official is charged with a violation of any provision of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes, Section 2-11.1, Miami-Dade County Code, or any applicable Town ethics ordinances; or
4. Should factual circumstances arise that necessitate the need for the initiation of legal action by the Town on behalf of an Official.

B. The provision of Legal Representation is limited to the payment of Legal Expenses to Counsel for the purpose of either defending actions or initiating proceedings approved under this Policy.

C. This policy shall not apply to any action brought or initiated by the Town against an Official.

2. Definitions.

When used in this Policy, the following words shall mean as indicated:

1. The term “*Counsel*” shall mean the Town Attorney or if the Town Attorney is precluded from representing the Official based upon a conflict of interest, an attorney independently selected by the Town Manager and Town Attorney for the purpose of representing the Official. Counsel shall be licensed to practice law in Florida, experienced in the subject matter, and otherwise adequately qualified for the purpose of such representation.
2. The term “*Legal Expenses*” shall mean reasonable attorney’s fees and necessary expenses directly incurred in representing an Official.
3. The term “*Legal Representation*” shall mean the services provided by Counsel in representing an Official.
4. The term “*Official*” shall mean solely the following: ~~the~~ all past and present Mayors, all members, past and present, of the Town Council, all past and present Town Managers, ~~the~~ Town Clerks, the Town Attorneys, and Town staff as determined by the current Town Manager.
5. The term “*Town*” shall mean the “Town Council.”
6. The term “*Town Funds*” shall mean only such funds appropriated for expenditure by the Town Council for the purposes of this Policy.

3. Request and Approval.

A written request for the provision of Legal Representation (“Request”) shall be submitted by the Official and reviewed in accordance with the following procedure:

- A. A Request shall be submitted to and reviewed by the Town Manager and Town Attorney, except where the Town Manager submits a Request on his or her personal behalf; in which event, the Town Council and Town Attorney shall review such Request;
- B. A Request shall be submitted within 72 hours after the Official is served with a complaint, notice, charge, summons, process or other initiating pleading, such that the Town has ample time to review such Request and respond accordingly;
- C. A Request shall include a copy of the complaint, notice, charge, summons, process or other initiating pleading; or if the Request is to initiate litigation, the Request shall include all available backup documentation;

- D. The Town Manager shall, subject to the Town Attorney's concurrence that said Request is consistent with the requirements of this policy, approve or deny the Request in writing no later than ten (10) days after receipt of such Request or as soon as practical if the circumstances warrant a shorter response time; and
- E. Notwithstanding the above procedure, in the event that either the Request is denied pursuant to Subsection D, an elected Official should not be prohibited from making a Request for Legal Representation directly to the Town Council.
- F. A copy of the Request and Town Manager's response shall be timely distributed to the Mayor and Council.

4. Authorization to Expend Funds.

The Town Manager is authorized to expend Town Funds, upon the review and approval of a Request, for the payment of Legal Expenses. The expenditure of Town Funds for the payment of Legal Expenses shall be subject to the following:

- A. Counsel for the Official shall on a monthly basis submit all current bills for Legal Expenses to the Town finance department in a format approved by the Town;
- B. The Town Manager (and the Town Attorney if the Town Attorney is not providing Legal Representation) shall review and approve all submitted bills prior to payment by the Town; and the Counsel shall be paid at an hourly rate consistent with the rates paid by the Town for the Town Attorney's services;
- C. Upon approval of submitted bills, the Town Manager shall provide for direct payment to Counsel. Payments shall be made on a monthly basis during the pendency of the action or proceeding;
- D. The Town Manager shall on a monthly basis provide a copy of all approved bills to the Town Clerk for filing and retention as a public record and for public inspection, subject to any applicable statutory exemptions;
- E. The authorization to expend Town Funds shall not extend to any appeal or other judicial review without additional authorization of Town Council;

- F. The Town Manager shall seek authorization to expend Town funds for the Legal Representation at the first available opportunity from the Town Council; provided however that the Town Manager may expend Town funds within the Town's purchasing policy limitations for the Legal Representation until the Town Council acts on the request. The Town Council shall authorize a budget for the litigation.
- G. The subsequent expenditure of Town funds for an Official's Legal Representation beyond the amount budgeted in Paragraph (F), shall be subject to prior approval by the Town Council.

5. Reservations of rights.

The provision of the Legal Representation of an Official including those acts for which the representation may be provided and the extent of Town Funds which may be expended, shall be solely within the discretion of the Town Manager up to the amount specified in this Policy or within the discretion of the Town Council for expenditures beyond the Town Manager's authorization, subject to the following:

- A. The Town reserves unto itself the right to deny or revoke approval of the Request if it is determined by the Town Manager to be beyond the scope of this Policy;
- B. The Town reserves unto itself the right to deny the Request where the Official has failed to agree to Legal Representation by the Town Attorney or other selected Counsel;
- C. The Town reserves unto itself the right to revoke approval of the Request where such Official fails to cooperate in the defense of such action or proceeding; and

6. Reimbursement to Town.

- A. The Official shall reimburse the Town for any and all Town funds expended for payment of Legal Expenses where it is determined that the alleged act or omission was taken outside the course or scope of the employment or duties of the Official, the activity did not arise out of the Official's performance of his/her official duties or does not serve a public purpose, or where such Official was adjudicated guilty of the alleged violation.

7. Limitation.

- A. Any Official who submits a Request and is subsequently provided Legal Representation at the expense of the Town shall be prohibited from seeking further remuneration from the Town for any expenses incurred by said Official during or resulting from the defense of the action or proceeding.

8. Reimbursement subsequent to proceedings.

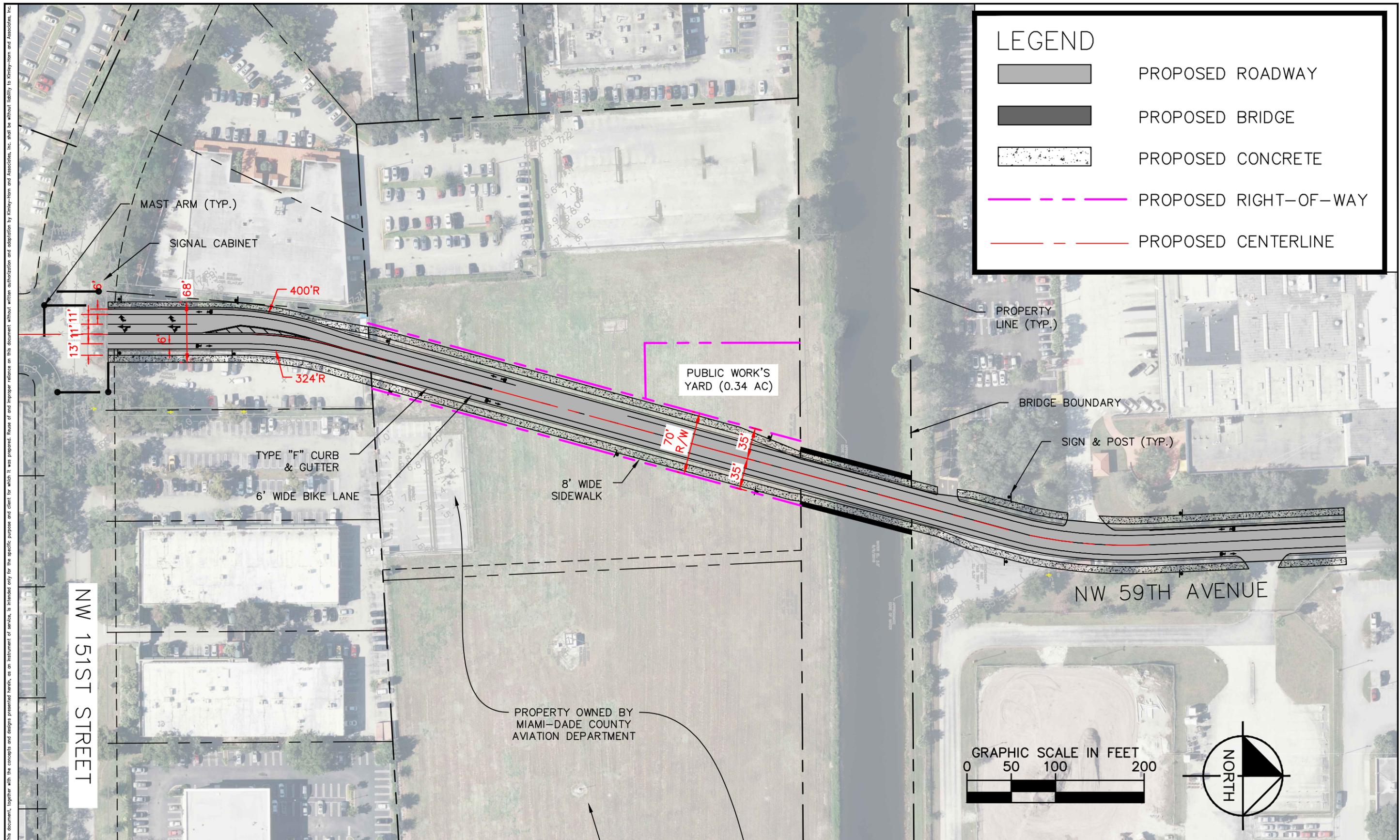
- A. If an Official fails to avail him/herself of the provisions of this policy, and no Legal Representation was provided at the expense of the Town, this policy shall not prohibit such Official from seeking reimbursement from the Town for legal expenses incurred in:

- 1. the successful defense of a violation or violations of any provision of the State Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes or the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1, Miami-Dade County Code;
- 2. or any applicable Town ethics ordinances, where said Official was acting in the course and scope of the Official's employment or function, and said Official is subsequently acquitted, or the charge or charges against said Official are dismissed upon no violation being found; or
- 3. the Official was performing his/her official duties while serving a public purpose.

9. Malicious, Frivolous or Groundless Allegations.

In accordance with Sections 57.105, Florida Statutes, Section 112.317(7), Florida Statutes or Section 2-1074(t), Miami-Dade County Code, where it is determined that the complaining party filed a frivolous or groundless complaint, or filed a complaint with malicious intent to injure the reputation of the Official by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation, the Town may seek recovery of Legal Expenses incurred by the Town against the complaining party in the name of the Official.





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No.	REVISIONS	DATE	BY

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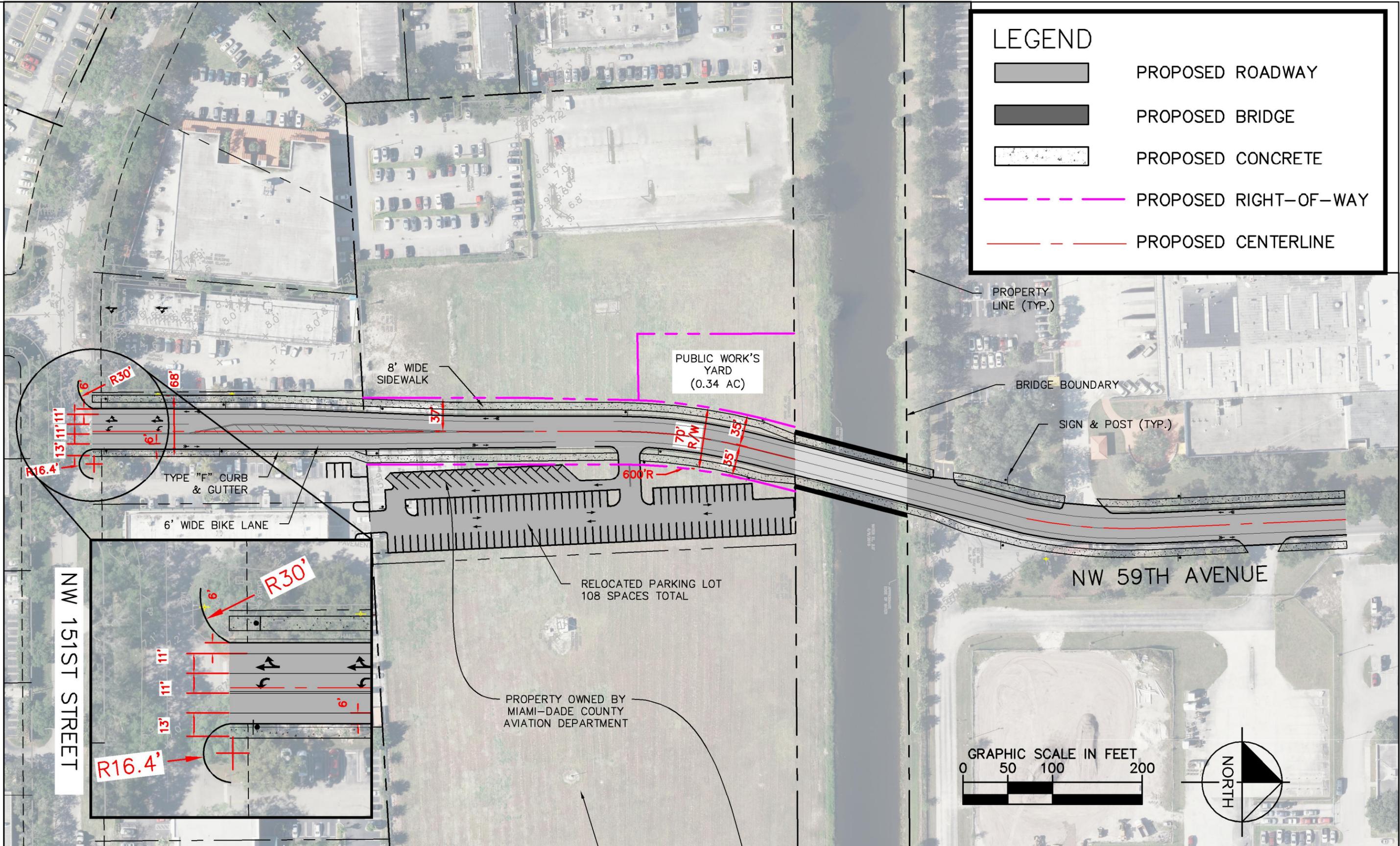
KHA PROJECT 044533197
DATE SEPT. 2018
SCALE AS SHOWN
DESIGNED BY
DRAWN BY
CHECKED BY

**TOWN OF MIAMI LAKES  
 TRANSPORTATION IMPROVEMENTS  
 CONCEPTUAL GRAPHICS**

**NW 59TH AVENUE EXTENSION  
 PROPOSED RIGHT-OF-WAY  
 OPTION 1**

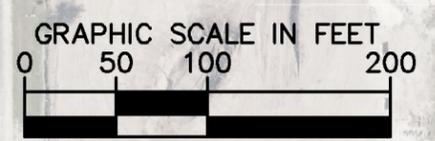
SHEET NUMBER  
**RW-1**

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**LEGEND**

- PROPOSED ROADWAY
- PROPOSED BRIDGE
- PROPOSED CONCRETE
- PROPOSED RIGHT-OF-WAY
- PROPOSED CENTERLINE



No.	REVISIONS	DATE	BY

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TOWN OF MIAMI LAKES  
 TRANSPORTATION IMPROVEMENTS  
 CONCEPTUAL GRAPHICS

NW 59TH AVENUE EXTENSION  
 PROPOSED RIGHT-OF-WAY  
 OPTION 2

SHEET NUMBER  
 RW-2