

RESOLUTION NO. 07- 509

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE NW 87 AVENUE FROM NW 162 STREET TO NW 170 STREET JOINT PARTICIPATION AGREEMENT BETWEEN THE TOWN AND MIAMI-DADE COUNTY; AUTHORIZING TOWN OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Miami Lakes (the "Town") has, in conjunction with Miami-Dade County (the "County") previously contracted with the County for enhanced street lighting and landscaping for the NW 87th Avenue Corridor; and

WHEREAS, County has completed its design of NW 87th Avenue between NW 162nd Street and NW 170th Street; and

WHEREAS, this project will result in the widening of NW 87th Avenue from its existing two lane capacity to a four lane divided roadway; and

WHEREAS, the Town has worked with the County to design the corridor with the upgraded streetlights that are currently in place south of Miami Lakes Drive; and

WHEREAS, the Town will be responsible for the difference between the standard lighting and the upgraded lighting cost, the design and installation of the irrigation system and the maintenance costs of the landscaping and irrigation systems; and

WHEREAS, the cost for the upgraded lighting, the design and installation of the irrigation system and the maintenance costs of the landscaping and irrigation systems is approximately \$230,000.00; and

WHEREAS, the Town Council finds that approval of the NW 87 Avenue from NW 162 Street to NW 170 Street Joint Participation Agreement (“JPA”) between the Town and the County for these improvements to NW 87th Avenue, from north of NW 162nd Street to NW 170 street, is in the best interest of the Town.

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

Section 1. Recitals. The foregoing Recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Joint Participation Agreement. The NW 87 Avenue from NW 162 Street to NW 170 Street Joint Participation Agreement between the Town and Miami-Dade County (the “JPA”), a copy of which is attached as Exhibit “A,” regarding the upgraded street lights, the design and installation of the irrigation system, and the maintenance costs of the landscaping and irrigation systems of NW 87th Avenue between NW 162nd Street and NW 170th Street, together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

Section 3. Authorization of Town Officials. The Town Manager and Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the JPA.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town’s Purchasing Procedures Ordinance, the Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the JPA.

Section 5. Execution of JPA. The Town Manager is authorized to execute the JPA on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the JPA and to execute any extensions and/or amendments to the JPA, subject to the approval as to form and legality by the Town Attorney.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 10 day of April, 2007.

Motion to adopt by Nancy Simon, second by Mary Collins.

FINAL VOTE AT ADOPTION

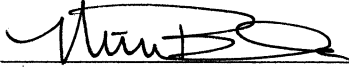
Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Mary Collins	<u>yes</u>
Councilmember Roberto Alonso	<u>absent</u>
Councilmember Robert Meador	<u>yes</u>
Councilmember Michael Pizzi	<u>yes</u>
Councilmember Richard Pulido	<u>yes</u>
Councilmember Nancy Simon	<u>yes</u>

Wayne Slaton
Wayne Slaton
MAYOR

ATTEST:

Debra Eastman
Debra Eastman, MMC
TOWN CLERK

Approved as to form and legality for the use
and benefit of the Town of Miami Lakes only:

A handwritten signature in black ink, appearing to read "M. B.", written over a horizontal line.

Weiss, Serota, Helfman, Pastoriza,
Cole & Boniske, P.L.
TOWN ATTORNEY

EXHIBIT A

NW 87 AVENUE FROM NW 162 STREET TO NW 170 STREET JOINT PARTICIPATION AGREEMENT

This AGREEMENT, made and entered into this _____ day of _____, 2007, by and between the TOWN OF MIAMI LAKES, FLORIDA, a municipal corporation of the STATE OF FLORIDA, hereinafter referred to as the "Town", and MIAMI-DADE COUNTY, a political subdivision of the STATE OF FLORIDA, hereinafter referred to as the "County".

WITNESSETH

WHEREAS, both parties herein wish to facilitate the construction of a four lane road improvement project in MIAMI-DADE COUNTY, along NW 87 Avenue, from north of NW 162 Street to NW 170 Street, hereinafter referred to as the "Project"; and

WHEREAS, both parties wish to facilitate implementing enhancements for a portion of the Project, hereinafter referred to as the "Enhancements" described as follows:

The construction by the County of enhanced street lighting and the construction by the Town of irrigation, along NW 87 Avenue, from north of NW 162 Street to NW 170 Street.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties agree:

Section 1. Responsibilities of the County: The County will be responsible for:

- a) Redesign costs for the enhanced street lighting; and
- b) Costs for construction of standard street lighting, including the costs of standard street lighting fixtures and installation.
- c) Costs for total street lighting maintenance.
- d) Required landscaping for the project.

Section 2. Responsibilities of the Town: The Town will be responsible for:

- a) Construction and installation costs above the standard cost, for the enhanced street lighting, including costs of proposed decorative lighting fixtures;
- b) Design costs of the entire irrigation system;
- c) Construction and installation of the entire irrigation system;
- d) Construction and installation costs of the of the entire irrigation system; and
- e) Maintenance costs of all landscaping, and the entire irrigation system.

Section 3. Town Payments of Enhancement Costs: The Town shall reimburse the County for the construction and installation costs, above the standard cost, of the enhanced street lighting project incurred by the County (the "Town Reimbursable"), an amount currently estimated at \$230,000 subject to the following provisions:

- a) Of the Town Reimbursable, \$100,000 (the "Initial Payment") shall be paid to the County by the Town within 10 days after notification is provided to the Town Manager of the final execution of this Agreement. The Initial Payment shall be applied by the County to the costs incurred as they accrue.

- b) The remaining balance of the Town Reimbursable shall be paid to the County by the Town in the amount not less than \$50,000 by the end of each successive Fiscal Year until the full amount is satisfied.
- c) Except for approved change orders under Section 4 or additional costs approved under Section 3(c), neither party shall be responsible to the other party for financial participation for any costs to complete the Project above those amounts specified in this Agreement. Upon completion of the Project, final Project costs shall be determined by the County and the Town. If the final costs for the "enhanced street lighting" are less than the amounts approved in this Agreement, such difference shall be refunded to the Town.
- d) During the construction of the Project and installation of the Enhancements, each party shall ensure that construction activity is in compliance with the Town of Miami Lakes Ordinance No. 02-19.
- e) Summary:

SCHEDULE OF PAYMENT TO THE COUNTY FOR ENHANCED LIGHTING COST (TOWN REIMBURSABLE)

- \$100,000 Due upon Execution of Agreement
- \$ 50,000 Reimbursement to County by September 30 annually as necessary to fully reimburse the County for the Town Reimbursable in an amount estimated not to exceed \$230,000

Section 4. Design: The Town shall prepare irrigation system design plans in accordance with standard County design criteria and shall submit the completed plans to the County for approval. The Town shall not commence construction on the irrigation system until receiving written approval from the Miami-Dade County Public Works

Director. Approval of change orders or modifications of plans shall not be made without prior written approval of the County Manager.

The design of the enhanced street lighting, developed in consultation with and approved by the Town, will be similar to that existing lighting on Miami Lakes Drive East, which consists of black decorative poles and post top fixtures with the installation in accordance with standard County criteria.

The County shall submit completed street lighting plans to the Town for approval. The County shall not commence construction and installation of the street lighting until receiving written approval from the Town Manager. Approval of change orders or modifications of plans shall not be made without prior written approval of the Town Manager.

Section 5. County Permits: The Town shall not pay for County permits, other than required D.E.R.M. permits. The County shall not require the Town or its contractor to provide payment for the issuance of a permit to work in County right-of-way for the construction and installation of the irrigation system.

Section 6. Construction and Inspection: The Town shall be responsible for the construction, installation and inspection of the irrigation system.

The County will install PVC sleeves between the medians and the west side of the roadway to provide connection for the proposed irrigation pumps.

Section 7. Maintenance of Landscaping and Irrigation System: The Town, as part of this Agreement, shall be responsible for the maintenance in perpetuity of the

landscaping within the project limits, including existing plant materials, after the project is completed.

The Town shall remove or replace dead or diseased plant materials in their entirety, or remove or replace those that fall below original project standards. All plant material removed or replaced for whatever reason, shall be replaced by plants of the same size and grade as specified in the permitted plans and specifications. The cost for the replacement of dead or diseased plant material shall be at the sole cost and expense of the Town.

The Town will be responsible for the maintenance costs of the irrigation system.

Section 8. Audit: Either party may, upon the written request of the other party, inspect and/or audit during reasonable business hours, the books, records, and accounts of the Project during the course of the Project and for three years after completion of the Project. Records shall be made available for inspection within five (5) working days upon receipt of a written request.

Section 9. Indemnification: To the extent authorized by Florida law, the Town hereby agrees to indemnify, defend, save and hold harmless the County to the extent of all the limitations included with section 768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement by the Town, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the County for its sole negligence or breach of contract.

To the extent authorized by Florida law, the County hereby agrees to indemnify, defend, save and hold harmless the Town to the extent of all the limitations included with section 768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement by the County, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the Town for its sole negligence or breach of contract.

Section 10. Joint Preparation: The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties from the other.

Section 11. Entire Agreement, Amendments: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms contained herein shall be effective

unless set forth in writing in accordance with this section. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties.

Section 12. Compliance With Laws: The parties shall comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all applicable laws relating to the Project. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

Section 13. Dispute Resolution, Applicable Law: The parties shall resolve any disputes, controversies or claims between them arising out of this Agreement in accordance with the "Florida Governmental Conflict Resolution Act", Chapter 164, Florida Statutes, as amended. This Agreement shall be governed by the laws of the State of Florida. Venue in any proceedings shall be in Miami-Dade, Florida.

Section 14. Severance: In the event a portion of this Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions shall continue to be effective unless the Town or County elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

Section 15. Notices. Any and all notices required to be given under this agreement shall be sent by first class mail, addressed as follows:

To the County:

Attention: George M. Burgess, County Manager
Miami-Dade County
111 NW 1st Street, Suite 2910
Miami, Florida 33128

Copied: County Attorney
Miami-Dade County
111 NW 1st Street, Suite 2810
Miami, Florida 33128

To the Town:

Attention: Alex Rey, Town Manager
Town of Miami Lakes
6853 Main Street
Miami Lakes, Florida 33014

Copied: Nina L. Boniske, Esquire
Weiss Serota Helfman Pastoriza
& Guedes, P.A.
2665 South Bayshore Drive
Suite 420
Miami, Florida 33133

IN WITNESS WHEREOF, the parties hereto set their hands and official seals the day and year first above written.

ATTEST:

HARVEY RUVIN
CLERK OF THE BOARD

MIAMI-DADE COUNTY, FLORIDA,
BY ITS BOARD OF
COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
County Manager

Approved by County Attorney
as to form and legal sufficiency

County Attorney

ATTEST:

TOWN OF MIAMI LAKES, a municipal
corporation of the State of Florida

BY: _____
Deborah Eastman
Town Clerk

BY: _____
Hon. Wayne Slaton
Mayor

Approved by Town Attorney
as to form and legal sufficiency

Town Attorney