

RESOLUTION NO. 2018-117

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, APPROVING AN AMENDMENT TO A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY, MIAMI-DADE EXPRESSWAY AUTHORITY, THE CITY OF HIALEAH GARDENS, FLORIDA AND THE CITY OF HIALEAH, FLORIDA FOR THE IMPROVEMENT OF NORTHWEST 107 AVENUE FROM NORTHWEST 138 STREET TO NORTHWEST 170 STREET, APPROVED BY HIALEAH, FLA. RESOLUTION NO. 2016-115 (OCTOBER 11, 2016). WITH AN EFFECTIVE DATE OF APRIL 28, 2017, TO PHASE CONSTRUCTION AND ADVANCE COUNTY FUNDING FOR THE ROADWAY PROJECT, IDENTIFYING THE STATUS OF THE PENDING REQUIRED RIGHT OF WAY DONATIONS AND THE ONGOING OBLIGATION TO ACQUIRE THE NECESSARY RIGHT OF WAY BY THE PARTICIPATING MUNICIPALITIES; AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO EXECUTE THE AMENDMENT TO THE JOINT PARTICIPATION AGREEMENT, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Miami-Dade County and the parties to the Joint Participation Agreement (JPA) entered into an agreement to facilitate the construction of N.W. 107 Avenue, from N.W. 138 Street to N.W. 170 Street, a road improvement project benefitting the constituents of the participating governmental entities, on ;

WHEREAS, Miami-Dade County and the Miami-Dade Expressway Authority wish to memorialize certain changes in the construction of the roadway project and funding mechanism and in addition identify the status of the pending right of way acquisitions by the participating cities and clarify the cities' continuing obligations as to the pending right of way;

WHEREAS, the City finds it is in the best interest, health and welfare of the community to amend the Joint Participation Agreement with Miami-Dade County and the other participating governmental entities to provide its residents with improved and more accessible roads.

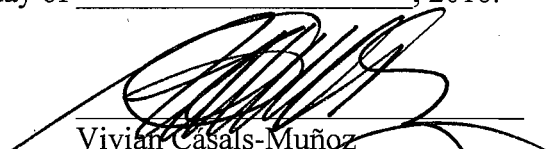
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City Council of the City of Hialeah, Florida hereby approves the terms of the Amendment to the Joint Participation Agreement between Miami-Dade County, Miami-Dade Expressway Authority, the City of Hialeah Gardens, Florida and the City of Hialeah, Florida for the improvement of Northwest 107 Avenue from Northwest 138 Street to Northwest 170 Street, with an effective date of April 28, 2017, approved by Hialeah, Fla. Resolution No. 2016-115 (October 11, 2016).

Section 2: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to execute and deliver the Amendment to the Joint Participation Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "1", and all other necessary and customary documents in furtherance thereof on behalf of the City.


Section 3: This resolution shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 13 day of November, 2018.


Vivian Casals-Muñoz
Council President

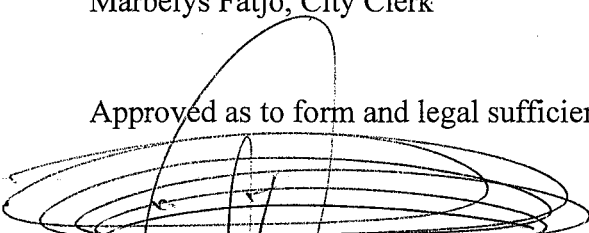
Attest:

Approved on this 20 day of November, 2018.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernández

Approved as to form and legal sufficiency:


Lorena E. Bravo, City Attorney

Resolution was adopted by a 6-0-1 vote with Councilmembers, Zogby, Lozano, Casals-Munoz, Hernandez, Garcia Martinez and Cue-Fuente voting "Yes" and with Councilmember Caragol absent.

**AMENDED INTERLOCAL AGREEMENT
BETWEEN MIAMI-DADE COUNTY, THE CITY OF HIALEAH, THE CITY OF HIALEAH
GARDENS, AND MIAMI-DADE EXPRESSWAY AUTHORITY
FOR NW 107 Avenue between NW 138 Street and NW 170 Street**

This Amended Interlocal Agreement (“Amended Interlocal Agreement”) is made and entered into on this ___ day of _____ 2018 (“Effective Date”), between Miami-Dade County (the “County”), a political subdivision of the State of Florida, the City of Hialeah, a municipal corporation of the State of Florida (“Hialeah”), the City of Hialeah Gardens, a municipal corporation of the State of Florida (“Hialeah Gardens”), and Miami-Dade County Expressway Authority d/b/a/ the Miami-Dade Expressway Authority (“MDX”), a body politic and corporate, a public instrumentality and an agency of the State of Florida. The parties are hereafter collectively referred to as “the Parties.”

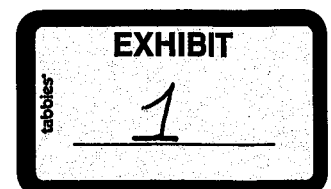
RECITALS

WHEREAS, in April 2017, the Parties entered into an Interlocal Agreement (“Interlocal Agreement”) providing for certain rights and responsibilities of the Parties with respect to the construction of 107th Avenue between NW 138th Street and NW 170th Street (“107th Avenue Phase”) in connection with and as part of MDX Project 92404 (“MDX Project”) (collectively the “Project”); and

WHEREAS, pursuant to the Interlocal Agreement, MDX agreed to extend the MDX Project to include the construction of the 107th Avenue Phase on behalf of the County provided that: (i) MDX’s resources would not be used to acquire the necessary right-of-way, including any necessary subordination of utilities for the Project; (ii) County funding would be in place for the 107th Avenue Phase (“County Funding”); and (iii) all right-of-way had been acquired for the 107th Avenue Phase; and

WHEREAS, MDX and the County seek to proceed with the Project, and to phase the construction so that the 107th Avenue Phase is the first phase constructed; and

WHEREAS, MDX will contract and deliver to the County the 107th Avenue Phase pursuant to the terms and conditions of the Interlocal Agreement and as amended by this Agreement; and



WHEREAS, the County shall be fiscally responsible for all Eligible Costs of the 107th Avenue Phase incurred by MDX and as outlined in the Interlocal Agreement and this Agreement; and

WHEREAS, pursuant to the Interlocal Agreement, Hialeah Gardens had agreed to acquire the right-of-way required within the City of Hialeah Gardens for the 107th Avenue Phase, but certain properties have not yet been acquired; and

WHEREAS, Hialeah Gardens has requested the County to take over the process of seeking to acquire the remaining properties by donation; and

WHEREAS, other than as specifically provided herein, Hialeah Gardens no longer seeks to have any rights or responsibilities under the Interlocal Agreement; and

WHEREAS, the Parties seek to identify the properties acquired by Hialeah and Hialeah Gardens thus far, to clarify a mechanism for conveyance of properties to the County, and to revise the method of funding in light of the re-phasing of the Project; and

WHEREAS, to accomplish the foregoing, the Parties desire to enter into this Amended Interlocal Agreement,

NOW, THEREFORE, the County, Cities, and MDX, in consideration of the promises and covenants contained herein, and for other good and valuable consideration, receipt of which is acknowledged, amend the Interlocal Agreement as follows:

1. Incorporation of Recitals and Initial Interlocal.

The above recitals are incorporated as though fully set forth herein. All terms and conditions of the Interlocal Agreement that are not amended herein remain in full force and effect. To the extent that there is any conflict between the terms of the Interlocal Agreement and this Amended Interlocal Agreement, the terms of this Amended Interlocal Agreement shall govern. Any reference to the rights or responsibilities of Hialeah and Hialeah Gardens under the Interlocal Agreement shall be deleted, and their only remaining responsibilities and applicable provisions are set forth in paragraphs 5 through 22 of this Amended Interlocal Agreement.

2. Project Construction Activity.

The following paragraph (d) shall replace the corresponding paragraph 2(d) in the Interlocal Agreement:

(d) MDX shall prepare and submit to the County a proposed masterplan for the Project. The master plan shall at a minimum denote the connection of NW 107th Avenue and NW 170th Street and contain a minimum of five lanes, unless otherwise agreed to in writing by the County. No further design or construction work shall commence until the County has approved the master plan. In the event that the County does not approve the master plan in the manner provided herein within sixty (60) days of MDX's submission of the master plan as the deadline may be extended by mutual written agreement of MDX and the County, this agreement shall terminate and MDX shall not be entitled to reimbursement beyond the costs to prepare the master plan.

3. Indemnification.

The following language shall replace the first section of paragraph 7 "Indemnification" of the Interlocal Agreement:

To the extent and within the statutory limits provided in Florida law, MDX agrees to indemnify, defend, save and hold harmless the other Parties within the limits of Section 768.28, Florida Statutes, from all claims, demands, liabilities and suits as a result of MDX's negligence, or breach of this Agreement by MDX, its agents, employees, or contractors. MDX and its agents, employees, or contractors shall not be obligated to indemnify, defend, save or hold harmless any other party from their respective negligence or breach of this Agreement.

4. Schedule and Manner of Payments.

This paragraph shall replace paragraph 3. "Payment Requirements" in the Interlocal Agreement:

Upon execution of the Agreement, MDX shall furnish the County with a copy of the estimated budget for the Project, and will similarly furnish the County with any and all revisions thereto. As set forth above in this Amended Interlocal Agreement, MDX shall

prepare and submit to the County a proposed master plan. Until such time that the County reviews and approves the proposed master plan, the County shall not reimburse or provide MDX any funds other than those costs MDX has incurred for preparing and submitting the proposed master plan.

The \$14,000,000.00 in County funds set forth in paragraph 3 “Payment Requirements” of the Interlocal Agreement shall be divided into two separate draws, each in the amount of \$7,000,000.00. Within thirty (30) days of the Effective Date of this Amended Interlocal Agreement, the County shall advance the initial draw of \$7,000,000.00 to MDX. The subsequent draw shall be provided at the point at which MDX has expended 75% of the initial draw on Eligible Costs for the 107th Avenue Phase. When 75% of the draw has been expended on such Eligible Costs, MDX shall provide the County with written notice together with certified copies of invoices and payments, including but not limited to certified copies of paid contractor and subcontractor invoices, and any other invoices reflecting payment of such costs. Additionally, MDX shall periodically provide such documents to the County during the implementation of the Project as requested by the County. MDX shall not be responsible for cost overruns for the Project’s Eligible Costs, and any such overruns in excess of \$14,000,000.00 shall be subject to approval by the County Commission.

This section supersedes and replaces paragraph 33 “Schedule and Manner of Reimbursements” of the Interlocal Agreement.

5. Hialeah Right-of-Way Acquisition.

Hialeah shall seek to acquire by donation the properties identified by folio number as follows (the “Hialeah Properties”):

Folio No.	Owner
04-2017-001-0320	FDG Beacon Countyline, LLC
04-2017-001-0310	
04-2017-001-0300	
04-2017-001-0290	
04-2017-001-0280	
04-2017-001-0270	
04-2017-001-0260	

04-2017-001-0250	
04-2017-001-0480	
04-2017-001-0470	
04-2017-001-0460	
04-2017-001-0450	
04-2017-001-0440	Countyline 2, LLC
04-2017-001-0431	
04-2017-001-0420	
04-2017-001-0410	
04-2017-001-0015	City of Hialeah
04-2020-002-0010	F03-4 LLC / Dunn
04-2020-001-0073	DMG Properties LLLP / DeMoya
04-2020-002-0015	Royal Container & Trailers Repairs, Inc.
04-2020-001-0030	REL P Beacon Logistics, LLC / Codina
04-2020-001-0072	
04-2020-001-0075	Flightway Fourteen LLC
04-2020-001-0070	T-23884
04-2020-001-0071	

Within ten days of the Effective Date, Hialeah shall provide the County all proposed deeds, title work and opinions of title for the Hialeah Properties. All properties acquired by Hialeah shall be conveyed to the County upon written request by the County, but in any event, such properties shall be conveyed to the County prior to the Procurement of the Project by MDX.

In the event that Hialeah determines that it is unable to acquire by donation any of the Hialeah Properties, then it shall advise the County and MDX by written notice, and in such event, Hialeah shall have no further responsibility to seek such donations. In such event, the County shall have the right, but not the obligation, to attempt to acquire any remaining properties.

6. Hialeah Gardens Right-of-Way Acquisition.

Hialeah Gardens has acquired the properties identified by folio number (the “Hialeah Gardens Properties Acquired”) as follows:

- 27-2019-001-0050; 27-2019-001-0060; 27-2019-001-0070 (BRIDGE HG ONE, LLC
- 27-2019-001-0600 (BRIDGE HG SOUTH)
- 27-2019-001-0590 (SEAGULL DEVELOPMENT HOLDINGS)

Within ten (10) days of the Effective Date, Hialeah Gardens shall convey such properties to the County along with all title work and opinions of title related to the Hialeah Gardens Properties Acquired.

The properties within the City of Hialeah Gardens which remain to be acquired in connection with the Project (the "Hialeah Gardens Remaining Properties") are identified by folio number as follows:

27-2018-001-0013 (VECELLIO & GROGAN, Inc.)

27-2019-001-0080 (14500 HOLDINGS LLC)

27-2019-001-0560 (JEANETTE HALPERIN & MELVIN DEUTSCH TR)

27-2019-001-0570 (OSVALDO MAYTIN SR & JR)

27-2019-001-0580 (TEBA DEVELOPMENT II LLC)

27-2019-001-0620 (HGY LAND CO LLC)

Hialeah Gardens has prepared deeds and legal descriptions for the Hialeah Gardens Remaining Properties, attached hereto as Exhibit "A." Hialeah Gardens shall provide the County any title work and opinions of title for the Hialeah Gardens Remaining Properties no later than ten (10) days after the Effective Date.

The County agrees to seek the donations of the Hialeah Gardens Remaining Properties, and Hialeah Gardens shall no longer have such responsibility for such acquisition. In the event that the County determines that is unable to acquire by donation the Hialeah Gardens Remaining Properties, then the County shall advise Hialeah and MDX by written notice, and in such event, it shall have no further responsibility to seek such donations.

MDX shall not begin procurement of this Project until after the County provides MDX with notice that the County has acquired and has possession of the requisite right of way deeds, permeant easements (including any necessary subordination of utilities), and if necessary, all temporary construction easements required for this Project.

7. Effective Date.

This Amended Interlocal Agreement shall become effective on the Effective Date.

8. Counterparts.

This Amended Interlocal Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

9. Severability.

The provisions of this Amended Interlocal Agreement are independent of and separable from each other and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part, except to the extent that such invalidity or unenforceability causes the Amended Interlocal Agreement to fail of its essential purpose, in which case either party shall have the right to terminate the Amended Interlocal Agreement upon written notice to the other.

10. Amendment of Agreement.

This Amended Interlocal Agreement may only be amended by mutual agreement of the County, MDX, and Hialeah as expressed in writing and executed and delivered by each.

11. Format.

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

12. Notices.

All notice, requests, demands and other communications required or permitted under this Amended Interlocal Agreement shall be in writing and shall be deemed to have been duly given and received when delivered personally or by courier service or upon actual receipt or registered or certified mail, addressed as set forth below:

- a. To MDX: Miami-Dade Expressway Authority
Javier Rodriguez, P.E., Executive Director
3790 NW 21" Street
Miami, FL 33142
- b. To County: Alice N. Bravo, P.E.
Director of the Department of Transportation and Public Works
(DTPW)
Overtown Transit Village
701 NW 1st Ct., 17th FL
Miami, FL 33136
- c. To City of Hialeah: Carlos Hernandez
Mayor, City of Hialeah
501 Palm Avenue
Hialeah, FL 33010
- d. To City of Hialeah Gardens: Yioset De La Cruz
Mayor, City of Hialeah Gardens
10001 NW 87 Avenue
Hialeah Gardens, FL 33016

A party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph.

13. No Third Party Beneficiaries to this Agreement.

Nothing in this Amended Interlocal Agreement, express or implied, is intended to (a) confer upon any entity or person other than the parties and their successors or assigns any right or remedies under or by reason of the Amended Interlocal Agreement as a third party beneficiary or otherwise, except as specifically provided in this Amended Interlocal Agreement; or (b) authorize anyone not a party to this Amended Interlocal Agreement to maintain an action pursuant to or based upon this Amended Interlocal Agreement, or (c) construed as a waiver of the sovereign immunity of the parties hereto under Florida Statute Section 768.28.

14. Entire Agreement.

This Agreement, including the exhibits to this Amended Interlocal Agreement, contain the sole and entire agreement between the Parties with respect to their subject matter and supersede any and all other prior written or oral agreements between them with respect to such subject matter.

15. Binding Effect.

This Amended Interlocal Agreement shall be binding upon the parties and their respective representatives, successors and assigns.

16. Waiver.

Waiver by either party of any breach of any provision of this Amended Interlocal Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this agreement.

17. Captions.

The captions contained in this Amended Interlocal Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Amended Interlocal Agreement or the intent of any of its provisions.

18. Other Documents.

The Parties will take all such actions and execute all such documents that may be reasonably necessary to carry out the purposes of this Amended Interlocal Agreement, whether or not specifically provided for herein; provided that each Party acknowledges that certain additional actions by the respective governing boards may be required, to the extent such approval is required by applicable law or agency policies, obtaining such approval shall be a condition to their obligations hereunder.

19. Governing Law.

This Amended Interlocal Agreement and the interpretation of its terms shall be governed by the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Amended Interlocal Agreement or arising from or related to this Amended Interlocal Agreement shall lie exclusively in Miami-Dade County, Florida.

20. Recordation.

Hialeah shall be responsible for recording the right-of-way and property transfers herein with respect to the properties within the City of Hialeah in the public records of Miami-Dade County. The County shall be responsible for all costs of recordation with respect to properties within the City of Hialeah Gardens. This paragraph supersedes paragraph 23 "Recordation" of the Interlocal Agreement.

21. Joint Preparation.

The language agreed to herein express the mutual intent and agreement of the Parties and shall not, as a matter of judicial construction, be construed more severely against one of the parties from the other.

22. Time of the Essence.

Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Amended Interlocal Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement, the Miami-Dade Expressway Authority, signing by and through its Executive Director; Miami-Dade County, signing by and through the County Mayor or County Mayor's Designee; City of Hialeah, signing by and through its Mayor; and City of Hialeah Gardens, signing by and through its Mayor, each duly authorized to execute same.

MIAMI-DADE EXPRESSWAY AUTHORITY

Approved

Javier Rodriguez, P.E., Executive Director

Approved as to form and legal sufficiency

Carlos Zaldivar, General Counsel

Approved by MDX Operations Committee

Approved by MDX Board

ATTEST:

MIAMI-DADE COUNTY FLORIDA

**HARVEY RUVIN,
CLERK OF SAID BOARD**

**BY ITS BOARD OF COUNTY
COMMISSIONERS**

Deputy Clerk

County Mayor or County Mayors Designee

Approved by County Attorney as
to form and legal sufficiency

Assistant County Attorney

The foregoing was authorized and approved by Resolution No. _____ of the
Board of County Commissioners of Miami-Dade County, Florida, on the ____ day of
_____, 2018.

Mayor of City of Hialeah

City Clerk

The foregoing was authorized and approved by Resolution No. _____, on the
____ day of _____, 2018.

Mayor of City of Hialeah Gardens

City Clerk

The foregoing was authorized and approved by Resolution No. _____, on the
____ day of _____, 2018.