RESOLUTION NO. 2013-72

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA APPROVING A JOINT PARTICIPATION AGREEMENT WITH MIAMI-DADE COUNTY, FLORIDA TO CONSTRUCT ROAD IMPROVEMENTS WIDENING WEST 24 AVENUE, FROM WEST 60 STREET TO WEST 76 STREET, FROM 2 TO 3 LANES, INCLUDING, BUT NOT LIMITED TO, PAVING, SIDEWALK, CURB AND GUTTER, PAVEMENT MARKINGS, STORM DRAINAGE SYSTEM, SIGNING, SIGNALIZATION, BICYCLE FACILITIES AND ROADWAY LIGHTING SUBJECT TO THE RECEIPT OF FUNDS FROM MIAMI-DADE COUNTY TO UNDERWRITE THE COSTS OF THE IMPROVEMENTS FROM ROAD IMPACT FEES IN AN AMOUNT NOT TO EXCEED $3,282,321.39, INCLUSIVE OF A 5% CONTINGENCY; AND FURTHER AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO THE JOINT PARTICIPATION AGREEMENT IN SUBSTANTIAL FORM AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1" AND EXECUTE SUCH DOCUMENTS AND AGREEMENTS IN FURTHERANCE THEREOF.

WHEREAS, the City finds that it is in its best interest to facilitate the construction of county road improvements within the City of Hialeah with funds reimbursed by the County through County road impact fees.

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

Section 1: The City of Hialeah, Florida hereby approves a joint participation agreement with Miami-Dade County, Florida to construct road improvements widening West 24 Avenue, from West 60 Street to West 76 Street, from 2 to 3 lanes, including, but not limited to, paving, sidewalk, curb and gutter, pavement markings, storm drainage system, signing,

signalization, bicycle facilities and roadway lighting, and subject to the receipt of funds from Miami-Dade County, Florida to underwrite the costs of the improvements from County road impact fees in the amount to exceed $3,282,321.39, inclusive of a 5% contingency.

Section 2: The City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into a Joint Participation Agreement, in substantial form as attached hereto and made a part hereof as Exhibit "1", and execute such documents and agreements in furtherance thereof.

PASSED AND ADOPTED this 13 day of August, 2013.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 16 day of August, 2013.

Marbelys Fatjo, Acting City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

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

Carlos Hernandez
Mayor

Isis Garcia-Martinez
Council President

Luis Gonzalez
Council Vice President

City of Hialeah

Council Members

Jose F. Caragol
Vivian Casals-Muñoz
Katharine E. Cue-Fuente
Paul B. Hernandez
Lourdes Lozano

July 18, 2013

Honorable Mayor Carlos Hernandez
And City Council Members
City of Hialeah
Hialeah, Florida 33010

Re: Miami Dade County Joint Participation Agreement with the City for Roadway Improvement on West 24 Avenue, from West 60 to 76 Street

Dear Mayor and Council Members:

Proposed resolution authorizing the Mayor to enter into a Joint Participation Agreement with Miami Dade County, Florida to construct road improvements by widening West 24 Avenue, from West 60 to West 76 Street, from 2 to 3 lanes.

Subject to the receipt of funds from Miami Dade County to underwrite the costs of the improvements from road impact fees in an amount not to exceed $3,282,321.39.

Respectfully,

Jorge E. Hernandez
Director of Streets Department

JEH/od

Approved/Disapproved

Ines F. Beecher, Acting OMB Director 8/9/13

Approved/Disapproved

Carlos Hernandez, Mayor

RESOLUTION NO. _____

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signalization, bicycle facilities and roadway lighting, and subject to the receipt of funds from Miami-Dade County, Florida to underwrite the costs of the improvements from County road impact fees in the amount to exceed $3,282,321.39, inclusive of a 5% contingency.

Section 2: The City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into a Joint Participation Agreement, in substantial form as attached hereto and made a part hereof as Exhibit "1", and execute such documents and agreements in furtherance thereof.

PASSED AND ADOPTED this ____ day of _____, 2013.

_____
Isis Garcia-Martinez
Council President

Attest:

Approved on this ____ day of _____, 2013.

_____
Marbelys Fatjo, Acting City Clerk

_____
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William Grodnick

William M. Grodnick, City Attorney

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JOINT PARTICIPATION AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND THE CITY OF HIALEAH
W 24 AVENUE FROM W 60 STREET TO W 76 STREET

This AGREEMENT, made and entered into this _____ day of _____, 2013, by and between the CITY OF HIALEAH, FLORIDA, a municipal corporation of the STATE OF FLORIDA, hereinafter referred to as the "City", 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 road improvement project in MIAMI-DADE COUNTY, hereinafter referred to as the "Project" described as follows:

The widening of W 24 Avenue, from W 60 Street to W 76 Street from two (2) to three (3) lanes, with curb and gutter, sidewalks, storm drainage system, pavement markings, signing, signalization, bicycle facilities, and roadway lighting; and

WHEREAS, the County wishes to utilize the resources of the City to contract and construct the Project, subject to the terms and conditions of this Agreement;

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

RESPONSIBILITIES OF CITY:

1.1. **Permits and Approvals**: The City shall obtain all necessary permits, and utility adjustments; and coordinate the review of construction documents by utilities and permitting agencies. The City shall make all necessary adjustments as required for approval and/or permitting by those agencies. The City shall obtain all necessary permits, and utility adjustments for the Project in accordance with applicable state, federal and local laws and ordinances. The City shall not pay for any permits required by the Miami-Dade County Public Works and Waste Management Department.

1.2. **Public Information and Involvement**: The City will implement a Public Involvement Plan (PIP) during the construction of the Project to provide information to property owners, tenants, and area residents, including but not limited to: public meetings, Project documentation and flyers, business signs, directional parking signs, and schedules for major work to be performed in the area. Appropriate investigation of the Project stakeholders shall be used to develop the goals and objectives to implement the PIP. The City shall submit a copy of the PIP to the County Public Works and Waste Management Director for review and concurrence prior to the Notice to Proceed for construction.

Projects that exceed $1,000,000 in construction costs shall comply with the process and guidelines for the preparation and implementation of PIPs as established by Implementing Order 10-13.

1.3. **Publicity**: By the acceptance of these funds, the City agrees that the Project elements funded by this Agreement shall recognize and adequately reference the County as a funding source. The City shall ensure that all publicity, public relations, advertisements and signs recognizes and references the County for the support of all contracted activities. This is to include, but is not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions, and stationery. The use of the official County logo is permissible for the publicity purposes stated herein. The City shall submit sample or mock up of such publicity or materials to the County for review and approval. The City shall ensure that all media representatives, when inquiring about the activities funded by this Agreement, are informed that the County is its funding source.

1.4. **Accounting**: The City shall at all times maintain separate accounting for the costs of the Project so those costs may be independently verified and audited by the County, at the request and cost of the County. The City agrees to permit the County auditors to inspect the books, records and accounts of the Project for three (3) years after completion of the Project. These records shall be made available to the County for inspection within five (5) business days upon written receipt of a written request from the County.

1.5. **Construction**: The City shall procure the services of a licensed contractor holding an engineering contractor's license to construct the Project. The City may award the contract through any available lawful means, in accordance with Section 255.20, Florida Statutes, which in the City's discretion, affords

the most competitive price for construction of the Project and which may include, but is not limited to, bid solicitation, request for proposals, the award of a change order on existing City contract(s), or the extension of unit-prices provided in connection with prior competitive bid awards. Notwithstanding any provision to the contrary, the City shall comply with all applicable County contract compliance and oversight measures relating to the expenditure of County funds, in accordance with Section 6 of this Agreement. Prior to the advertisement to solicit a licensed contractor to construct the Project, the City shall contact the County's Public Works and Waste Management Contracts and Specifications Section to ensure this compliance.

The construction contract shall also contain a requirement that the contractor(s) provide a payment and performance bond at least in the amount and form required by state law naming the County and City as joint obligees or joint contracting public entities. The construction contract shall contain a contingency amount to address unforeseen conditions and owner required changes which shall not exceed five percent (5%) of the base amount of the contract, unless otherwise approved by designated representatives of the County and City. The commitment for the expenditures of any contingency funds shall not be made by the City without the prior written approval of the County Public Works and Waste Management Director. The County shall respond, in writing, within thirty (30) business days of receiving written requests from the City to approve the commitment of contingency funds.

Subsequent to the evaluation of bids or proposals by the City and the City's determination of the most advantageous bid or proposal, the City shall provide said evaluation to the County Public Works and Waste Management Director for review and approval. Final commitment of County funds for the Project shall occur upon approval of the contract award recommendation by the County Public Works and Waste Management Director. The County agrees that the selection, retention and discharge of such contractor shall be the responsibility of the City.

1.6. **Claims and Change Orders**: The City shall notify the County Public Works and Waste Management Director in writing when claims or change orders arise. The City shall also invite the County to participate in negotiations of these claims and change orders. The County shall review and make a determination or approval of all change orders or supplemental agreements, permits, modifications of plans, or other requests for approvals submitted by the City.

1.7. **Construction Administration and Inspection**: The City shall exercise all responsibilities of the owner under the construction contract, including construction administration and inspections. The City may delegate this function to an authorized agent or Construction Engineering Inspection consultant. The County's inspector shall have an oversight role in the routine daily inspections. In the case of a disagreement over the interpretation of the plans, the County Public Works and Waste Management Director or their designee shall have final authority subsequent to an independent final

inspection by the County. The City's designated representative and the County's designated representative shall jointly perform the inspection of the Project which immediately precedes substantial completion. The City shall certify upon completion that the Project has been constructed pursuant to the design plans, specifications and approved change orders. Final payment to the City and obligation of maintenance responsibility to the parties shall be subject to the final acceptance of the Project by the County Public Works and Waste Management Director or their designee.

1.8. **Maintenance**: The City shall be solely responsible for maintenance upon construction completion of the Project.

1.9. **Coordination with Miami-Dade County Public Schools**: Various schools have been identified as being in close proximity to the roadway construction project. Due to potential safety, operational and bus transportation impacts, the City shall coordinate with Miami-Dade County Public Schools staff to implement maintenance of traffic measures.

2. **RESPONSIBILITIES OF COUNTY**:

2.1. **Funding Amount, Reimbursement of Project Costs**: The County agrees to provide funds up to $3,282,321.39 (this amount includes five percent (5%) contingency) for eligible costs, as defined herein, incurred by the City for the construction of the Project. The County shall disburse to the City funds for the Project in the manner set forth in Section 4. The County shall incur no liability for any costs in excess of said funding amount unless there has been a duly authorized increase approved by the Board of County Commissioners.

The City shall not be obligated to commence work should the bid amount exceed the funding provided by the County. If the bid amount exceeds the funding amount, the City reserves its rights to reject all bids and re-bid the Project.

2.2. **County Payments of Project Costs**: The County funds provided for eligible costs as defined herein, incurred for the construction of the Project are specified below:

Funding Amount	Funding Source	County Fiscal Year of Commitment
$ 3,282,321.39	Road Impact Fees District 9	2012-2013

2.3. **Project Cost Adjustments**: The amount contributed by the County is based on the current estimated costs of the Project. The parties recognize that adjustments to the above-referenced cost, may be required in the future, and that at the option of the parties, amendments may be entered into to revise the funds available for the Project. Provided that there is no increase in the amount of County funds required as stated in Section 2.1, or of City funding amounts approved for the Project, amendments may be executed by the City Mayor and the County Mayor or County Mayor's designee without the need for approval by the City Council and County Commission. Otherwise, further funding commitments shall be subject to the approvals of the parties' respective governing boards.

3. **ELIGIBLE COSTS**: The parties agree that only the below identified costs that may be incurred by the City that are directly related to the Project are eligible for reimbursement, provided adequate documentation accompanies the reimbursement

request in the form of approved invoices, verified payment requests, documented journal entries, and/or check vouchers. For purposes of this Agreement, eligible costs are further defined as those pertaining to the construction of Project elements that are the standard items normally provided for by the County in County road improvement projects, and not the enhancement of standard items, or the incorporation of items which are in addition to those standard items. The County shall not be assumed to be liable to provide reimbursement for the construction or maintenance of such items that do not conform to this section of the Agreement. If enhancements to standard items are constructed in this Project, the City may request County reimbursement only to a maximum amount corresponding to that which would be expended in providing the normal standard version of that item for a project of the same scope. The parties further agree that eligible costs will not include fees for construction management, construction inspections, and project management.

4. **SCHEDULE AND MANNER OF REIMBURSEMENTS**: Upon execution of the Agreement, the City 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. At the time of contract award for this Project, the City shall submit the Estimated Quarterly Construction Payout Schedule for the Project to the County Public Works and Waste Management Director. Quarterly disbursement of County funds to the City shall be based upon City invoices with certified copies of paid contractor invoices attached and shall not include any other charges. The quarterly submittal for invoices shall also include a certified copy of payment to Sub-Contracted firms.

5. **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.

6. **BUSINESS PROGRAM COMPLIANCE AND OVERSIGHT**: Whenever County funds are used, the City agrees to comply with applicable County regulations including but not limited to the Community Small Business Enterprise (CSBE) Program, Community Business Enterprise (CBE) Program, the Community Workforce Program (CWP), and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143). Specifically, the City agrees to abide by the applicable contract measure recommendation(s) established by the Department of Regulatory and Economic Resources (RER) Project Worksheet for the participation of specified business entities and/or trades, and for CWP requirements, as administered by the County's RER. RER shall have the right to oversee and perform compliance monitoring, including but not limited to, the right to audit and to require reports and documentation related to the Code.

7. **INDEMNIFICATION**: To the extent authorized by Florida law, the City 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 City, 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 City to the extent of all the limitations included in 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 City for its sole negligence or breach of contract.

In the event of breach or non-performance by the persons selected by the City to perform the work, the City shall, upon written request by the County, assign to the County any and all of its rights under the affected contract for purposes of the County's prosecution of claims, actions or causes of action resulting from such breach or non-performance unless the City, at its option, pursues such claims, actions or causes of action through arbitration, administrative proceeding or lawsuit. The City agrees to cooperate fully with the County in the prosecution of any such claim or action. Any damage recovered by the County which is attributable to an expenditure by the City shall be returned to the City by the County, within sixty (60) business days of receipt.

8. **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. Each party will bear its own attorney's fees.

9. **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.

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.

11. **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 City or County elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) business days after the finding by the court becomes final.

12. **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: Kathleen Woods-Richardson
Director, Public Works and Waste Management Department
Miami-Dade County
111 NW First Street, Suite 1640
Miami, Florida 33128
(305) 375-2960

To the City:
Attention: Carlos Hernandez
Mayor, City of Hialeah
501 Palm Avenue
Hialeah, Florida 33010
(305) 883-5800

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 Mayor or County Mayor's Designee

Approved by County Attorney
as to form and legal sufficiency_____
County Attorney

ATTEST:

BY:_____
Marbelys L. Fatjo
Acting City Clerk

(Affix City Seal)

CITY OF HIALEAH, a municipal
corporation of the State of Florida

BY: _____
Carlos Hernandez
Mayor

Approved by City Attorney
as to legal form and correctness

_____
William Grodnick
City Attorney