

RESOLUTION No. 2007-105-612

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN JOINT PARTICIPATION AGREEMENT WITH MIAMI-DADE COUNTY FOR THE DESIGN, CONSTRUCTION AND ADMINISTRATION OF CONSTRUCTION OF THE IMPROVEMENT TO NORTHWEST 7<sup>TH</sup> AVENUE FROM NORTHWEST 183<sup>RD</sup> STREET TO NORTHWEST 199<sup>TH</sup> STREET, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Northwest 7<sup>th</sup> Avenue road segment from Northwest 183<sup>rd</sup> Street to Northwest 199<sup>th</sup> Street, is in substantial need of repair, and

WHEREAS, such road segment is subject to the jurisdiction of Miami-Dade County, and

WHEREAS, such road segment lies within the City of Miami Gardens, and

WHEREAS, both the City and the County wish to facilitate the construction of the improvement of such road segment and desire to enter into a Joint Participation Agreement for the design and re-construction of such roadway segment to provide roadway construction, medians, left turn and bike lanes, sidewalks, lighting, landscaping and stormwater drainage,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

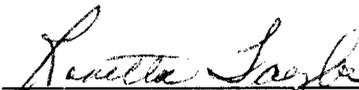
Section 2. AUTHORITY: The City Manager and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Joint Participation Agreement with Miami-Dade County for the design, construction and administration of construction of the improvement to Northwest 7<sup>th</sup> Avenue from Northwest 183<sup>rd</sup> Street to Northwest 199<sup>th</sup> Street, a copy of which is attached hereto as **Exhibit A.**

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Miami-Dade County, and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON JULY 11, 2007.

ATTEST:

  
\_\_\_\_\_  
RONETTA TAYLOR, CMC, CITY CLERK

  
\_\_\_\_\_  
SHIRLEY GIBSON, MAYOR

Prepared by JAMES C. BRADY, ESQ.  
Assistant City Attorney

SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

MOVED BY: Vice Mayor Braynon  
SECONDED BY: Councilman Campbell

**VOTE: 6-0**

Mayor Shirley Gibson	<u>  x  </u> (Yes)	<u>    </u> (No)
Vice Mayor Oscar Braynon, II	<u>  x  </u> (Yes)	<u>    </u> (No)
Councilman Melvin L. Bratton	<u>  x  </u> (Yes)	<u>    </u> (No)
Councilman Aaron Campbell	<u>  x  </u> (Yes)	<u>    </u> (No)
Councilman André Williams	<u>  x  </u> (Yes)	<u>    </u> (No)

Councilwoman Sharon Pritchett  
Councilwoman Barbara Watson

(Yes)  (No) Not present  
 (Yes)  (No)

JCB/teh  
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# City of Miami Gardens

1515-200 NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Oscar Braynon II  
Councilman Melvin L. Bratton  
Councilman Aaron Campbell Jr.  
Councilwoman Sharon Pritchett  
Councilwoman Barbara Watson  
Councilman André Williams

## Agenda Cover Page

Date: July 11, 2007

Fiscal Impact: No  Yes

(If yes, explain in Staff Summary)

Funding Source:

Contract/P.O. Requirement: Yes  No

Sponsor Name/Department:

**Danny Crew. City Manager**

Public hearing

Ordinance

1st Reading

Advertising requirement:

RFP/RFQ/Bid # \_\_\_\_\_

Quasi-Judicial

Resolution

2nd Reading

Yes  No

### Title

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN JOINT PARTICIPATION AGREEMENT WITH MIAMI-DADE COUNTY FOR THE DESIGN, CONSTRUCTION AND ADMINISTRATION OF CONSTRUCTION OF THE IMPROVEMENT TO NORTHWEST 7<sup>TH</sup> AVENUE FROM NORTHWEST 183<sup>RD</sup> STREET TO NORTHWEST 199<sup>TH</sup> STREET, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

### Staff Summary

As indicated at a recent City Council meeting, Staff has been working to take control of the proposed NW 7<sup>th</sup> Avenue reconstruction project from the County. The County has agreed to allow us to do this with conditions. These conditions are found in the Proposed Joint Participation Agreement (JPA) attached.

Even though we will drive the project and will be responsible for management including inspection, the County will keep a strong control arm on us. More than I would have liked. I believe that any savings we could have had on this project will be largely lost due to the requirements that the County insists we must follow in bidding. Since it is their money, I guess that that it their call. At least we can move the project forward at our speed.

### Recommendation

I recommend that the Council approve the JPA between the City and County Public Works Department.

**J-5) CONSENT AGENDA  
RESOLUTION  
MIAMI-DADE COUNTY**

**NW 7 AVENUE FROM NW 183 STREET TO NW 199 STREET  
JOINT PARTICIPATION AGREEMENT**

This AGREEMENT, made and entered into this 22 day of Oct, 2007, by and between the CITY OF MIAMI GARDENS 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 within the City and County limits. hereinafter referred to as the "Project" described as follows:

The design and construction of a road improvement project along NW 7 Avenue, from NW 183 Street to NW 199 Street to provide roadway reconstruction, medians, left turn and bike lanes, sidewalks, lighting, landscaping, and stormwater drainage; and

WHEREAS, the County wishes to utilize the resources of the City to design, contract, construct and administer 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:

**1 RESPONSIBILITIES OF CITY:**

The City is responsible for the management and administration of the Project.

**1.1 Design:** The City will secure engineering design and consulting services from qualified firms to develop the construction plans, technical specifications, special provisions, pay items and cost estimates for the Project in accordance with standard County and/or City, as applicable, design criteria, to the satisfaction of the County's Public Works Director or their designee. The City's design consultant shall be made available to County to review shop drawings and perform required post-design services, limited to project design. The County agrees that the selection, retention and discharge of the design consultant shall be the responsibility of the City in accordance with applicable laws and City procedures. Notwithstanding any provision to the contrary, the City shall comply with the Community Business Enterprise (CBE) Program in accordance with Section 6 of this Joint Participation Agreement. Prior to the advertisement to solicit design services from qualified firms, the City will contact the County's Public Works Contracts and Specifications Section to ensure this compliance

**1.2 Permits and Approvals:** During the course of the design, 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 permits required by the Miami-Dade County Public Works Department.

- 1.3 **Right-of-Way**: The City shall acquire at its sole expense, any right-of-way that is required to complete the construction of the Project.
- 1.4 **Public Information and Involvement**: The City will implement a Public Involvement Plan (PIP) during the design and 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 will be used to develop the goals and objectives to implement this plan. The City shall submit a copy of the PIP to the County Public Works director for review and concurrence prior to the NTP for construction.
- 1.5 **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 years after completion of the Project. These records shall be made available to the County for inspection within five (5) working days upon written receipt of a written request from the County.

1.6 **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 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 the Community Small Business Enterprise (CSBE), Community Business Enterprise (CBE), Community Workforce Programs (CWP), and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143), in accordance with Section 6 of this Joint Participation Agreement. Prior to the advertisement to solicit a licensed contractor to construct the Project, the City will contact the County's Public Works 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 ten percent (10%) 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 Director. The County shall respond, in writing, within ten (10) working 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 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 Director in accordance with Section 2.4 of this Agreement. The County agrees that the selection, retention and discharge of such contractor shall be the responsibility of the City.

**1.7 Claims and Change Orders:** The City shall notify the County Public Works 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.

**1.8 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 Director, or his representative, 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 Director or designee. The City shall certify upon completion that the Project has been constructed pursuant to the design plans, specifications and approved change orders.

## **2 RESPONSIBILITIES OF COUNTY:**

**2.1 Funding Amount, Reimbursement of Project Costs:** The County agrees to provide funds up to \$5,173,000 (this amount includes 10% contingency) for eligible expenses, as defined herein, incurred by the City for the design and construction of the Project. The County shall disburse to the City funds for the Project in the manner set forth in this Section. 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.

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

<u>Funding Amount</u>	<u>Funding Source</u>	<u>County Fiscal Year of Commitment</u>
\$351,000	Road Impact Fee District 3 (Design)	2006-2007
\$300,000	Road Impact Fee District 3 (Construction)	2007-2008
\$2,400,000	Road Impact Fee District 3 (Construction)	2008-2009
\$2,122,000	Road Impact Fee District 3 (Construction)	2009-2010

- 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 costs 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 prior legislative authorization for funding is in place, additional amendments may be executed by the City and County Managers. Otherwise, further funding commitments shall be subject to the approvals of the parties' respective governing boards.
- 2.4 County Approvals:** Whenever County approval is required through its Department of Public Works and/or said Department Director, it will not unreasonably withhold or delay its approval. Failure of the County to respond, in writing, to the City's request for evaluation within ten (10) working days shall be automatically deemed an approval by County, without the necessity of future action by the County.
- 3 ELIGIBLE EXPENSES:** The parties agree that only identified expenses 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 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 design, construction or maintenance of such items that do not conform to this section of 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, or the design and construction of enhanced landscaping, decorative lighting, or an irrigation system.

**4 SCHEDULE AND MANNER OF REIMBURSEMENTS:** Upon execution, 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 Director. Quarterly disbursement of County funds to the City shall be based upon City invoices with certified copies of paid contractor estimates attached and shall not include any other charges. The quarterly submittal for invoice 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, and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143). Specifically, City agrees to abide by the goals for the participation of specified business entities and/or trades, and for Community Workforce employment, as approved by the Business Development Review Committee and administered by the County's Department of Business Development ("DBD"). The DBD shall have the right to oversee and ensure compliance with the goals established, including but not limited to, the right to audit and to require reports and documentation related to the Program goals.

**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 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) 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.

**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) 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: Esther L. Calas, P.E.  
Director, Public Works Department  
Miami-Dade County  
111 NW First Street, Suite 1640  
Miami, Florida 33128  
(305) 375-2960

**To the City:**

Attention: Dr. Danny O. Crew  
City Manager  
City of Miami Gardens  
1515 NW 167 Street  
Building 5, Suite 200  
Miami Gardens, Florida 33169  
(305) 622-8000

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

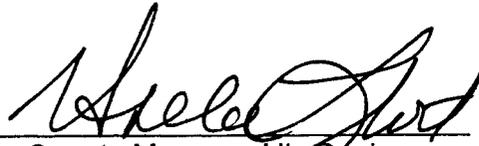
ATTEST:

HARVEY RUVIN  
CLERK OF THE BOARD

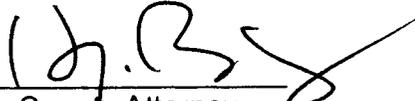
MIAMI-DADE COUNTY, FLORIDA,  
BY ITS BOARD OF  
COUNTY COMMISSIONERS



  
\_\_\_\_\_  
Deputy Clerk

BY:   
\_\_\_\_\_  
County Mayor or His Designee

Approved by County Attorney  
as to form and legal sufficiency

  
\_\_\_\_\_  
County Attorney

ATTEST:

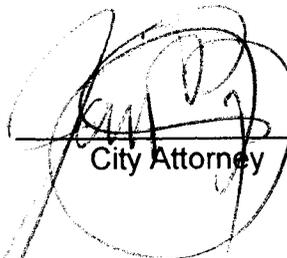
CITY OF MIAMI GARDENS, a municipal  
corporation of the State of Florida

BY:   
\_\_\_\_\_  
City Clerk

BY:   
\_\_\_\_\_  
City Manager

(Affix City Seal)

Approved by City Attorney  
as to form and legal sufficiency

  
\_\_\_\_\_  
City Attorney