

**RESOLUTION No. 16-156**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO A JOINT PARTICIPATION AGREEMENT, IN SUBSTANTIALLY THE FORM PROVIDED, WITH MIAMI-DADE COUNTY AND OTHER INVOLVED PARTIES TO COMPLETE THE 82 AVENUE UNDERPASS (THE STREET UNDER STATE ROAD 836 BETWEEN NW 10 STREET AND NW 12 STREET); AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the Miami-Dade County Express Authority (“MDX”) planned and developed the 826/836 Expansion Project, which included, without limitation, such improvements as fly-over ramps, bridges, and other highway travel lanes;

**WHEREAS**, under said project, a bridge over N.W. 82<sup>nd</sup> Avenue was designed and constructed, with the intention of developing a through street under the bridge to allow vehicular and pedestrian traffic to traverse; and

**WHEREAS**, to date, the road segment of 82<sup>nd</sup> Avenue under the bridge and between 10<sup>th</sup> and 12<sup>th</sup> streets (“82<sup>nd</sup> Avenue Underpass”) was never designed or constructed and remains unused as a thoroughfare;

**WHEREAS**, Miami-Dade County (the “County”) and the City of Doral (the “City”) have a mutual desire to increase generally connectivity of the roadway system to alleviate traffic conditions; and

**WHEREAS**, the County and the City have a specific mutual desire to ease congestions on N.W. 87<sup>th</sup> Avenue which serves as a key feeder road to State Road 836 for commuters, cargo traffic and business traffic entering or exiting Doral; and

**WHEREAS**, the City Council recognizing the vital importance of the thoroughfare, desired to participate in the development of plans and construction of the 82<sup>nd</sup> Avenue

Underpass, so as to improve the quality of life in the community for residents, businesses, and commuters alike.

**WHEREAS**, in order to achieve this outcome, staff has recommended that the City enter into a Joint Participation Agreement with the County and other agencies to jointly address the design and construction of the 82<sup>nd</sup> Avenue Underpass.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are confirmed and adopted and incorporated herein and made a part hereof by this reference.

**Section 2. Authorization.** The City Manager is hereby authorized to negotiate and enter into a Joint Participation Agreement with Miami-Dade County and other involved parties, in substantially the form provided in Exhibit "A", which is attached hereto and incorporated herein by reference, subject to approval by the City Attorney as to form and legal sufficiency, to design and construct the 82<sup>nd</sup> Avenue Underpass. The City Manager is further authorized to expend budgeted funds for the costs of designing the 82<sup>nd</sup> Avenue Underpass, in an amount not to exceed \$100,000.00, and to advance payment for the costs of construction recognizing that said costs will be reimbursed by the County to the extent finally negotiated.

**Section 3. Implementation.** The City Manager and the City Attorney are further authorized to take such further action as may be necessary to implement the purpose and provision of this Resolution.

**Section 4. Effective Date.** This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Councilmember Cabrera who moved its adoption.

The motion was seconded by Councilmember Ruiz and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Christi Fraga	Yes
Councilman Pete Cabrera	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Sandra Ruiz	Yes

PASSED AND ADOPTED this 10 day of August, 2016.

  
\_\_\_\_\_  
LUIGI BORIA, MAYOR

ATTEST:

  
\_\_\_\_\_  
CONNIE DIAZ, CMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:

  
\_\_\_\_\_  
WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.  
CITY ATTORNEY

# EXHIBIT “A”

**JOINT PARTICIPATION AGREEMENT  
BETWEEN MIAMI-DADE COUNTY AND THE CITY OF DORAL  
NW 82 AVENUE FROM NW 10 STREET TO NW 12 STREET**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF DORAL, 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**, an overpass/bridge was constructed in State Road 836 to allow the connection of NW 82 Avenue between NW 10 Street and NW 12 Street; and

**WHEREAS**, NW 82 Avenue is presently blocked to traffic flow creating an undue regional transportation burden that affects the entire area; and

**WHEREAS**, opening NW 82 Avenue to vehicular and pedestrian traffic will alleviate traffic and promote alternative routes to congested area; and

**WHEREAS**, recognizing the benefits of opening NW 82 Avenue to vehicular and pedestrian traffic, 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 construction of a roadway improvement project along NW 82 Avenue from NW 10 Street to NW 12 Street, under SR 836, which induces the construction of a new four (4) land roadway with associated bicycle lanes, turn lanes, sidewalks, curb and gutter, storm drainage system, roadway lighting, pavement markings and signing; and

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

1. The above recitals are true and correct and are incorporated herein by reference.
2. **EFFECTIVE DATE AND TERM**: This Agreement shall take effect upon its execution and shall terminate upon completion and close-out of the Project.
3. **RESPONSIBILITIES OF CITY**: The City is responsible for the management and administration of the construction of the Project.

**3.1 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 Department of Transportation and Public Works.

**3.2 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 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 Department of Transportation and Public Works Director for review and concurrence.

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.

**3.3 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 mockup 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.

**3.4 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 ten (10) business days upon written receipt of a written request from the County.

**3.5 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 8 of this Agreement. Prior to the advertisement to solicit a licensed contractor to construct the Project, the City shall contact the County's Department of Transportation and 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 Department of Transportation and Public Works 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 Department of Transportation and 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 Department of Transportation and Public Works Director. The County agrees that the selection, retention and discharge of such contractor shall be the responsibility of the City.

**3.6 Claims and Change Orders:** The City shall notify the County Department of Transportation and 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. The County shall review and make a determination or approval of all changes orders or supplemental agreements, permits, modifications of plans, or other requests for approvals submitted by the City.

**3.7 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 Department of Transportation and Public Works 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 Department of Transportation and Public Works Director or their designee.

**3.8 Coordination with Miami-Dade County Public Schools:** 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.

**4. RESPONSIBILITIES OF COUNTY:**

**4.1 Design:** The City will complete at its sole expense, the construction plans, design permitting, technical specifications, special provisions, pay items and cost estimates for the Project in accordance with standard County, as applicable, design criteria by \_\_\_\_\_, 2016. Prior to City entering into a bid process, County shall provide City with all the applicable bid documents including any program requirements indicated under Section 8 of this agreement and will be asked to respond to Request for information or clarifications during the bid process at no cost to the City. Should the City need to make modifications to the construction plans, the City's design consultant shall make such changes at the City's expense.

**4.2 Right-of-Way:** The County shall acquire at its sole expense, any right-of-way that is required to complete the construction of the Project.

**4.3 Funding Amount, Reimbursement of Project Costs:** The County agrees to provide funds up to \$1,000,000.00 (this amount does not include any 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 6. 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 exceed the funding amount, the City reserves its rights to reject all bids and rebid the Project.

**4.4 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:

<b><u>Funding Amount</u></b>	<b><u>Funding Source</u></b>	<b><u>County Fiscal Year of Commitment</u></b>
\$1,000,000.00	Road Impact Fee District 1	2016-2017

**4.5 Protect 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 there is no increase in the amount of County funds required as stated in Section 4.3, 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.

**4.6 County Approvals:** Whenever County approval is required through its Department of Transportation and 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 fifteen (15) days shall be automatically deemed an approval by County, without the necessity of future action by the County.

**5. 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 design, 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.

6. **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 Department of Transportation and Public Works 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.

7. **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.

**8. 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.

**9. 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.

**10. 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.

**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.

**12. 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.

**13. 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.

**14. 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: Alice Bravo, P.E., Director  
Department of Transportation and Public Works  
Miami-Dade County  
701 NW 1<sup>st</sup> Court, Suite 1700  
Miami, Florida 33136  
(786) 469-5675

**To the City:**

Attention: Edward Rojas, City Manager  
City of Doral  
8300 NW 53<sup>rd</sup> Street, Suite 100

Doral, FL 33166  
(305) 593-6725

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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 sufficiency

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

ATTEST:

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

BY: \_\_\_\_\_  
Connie Diaz  
City Clerk

BY: \_\_\_\_\_  
Edward Rojas  
City Manager

(Affix City Seal)

Approved by City Attorney  
as to legal form and correctness

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