

RESOLUTION No. 17-67

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A MAINTENANCE AGREEMENT WITH MIAMI-DADE COUNTY FOR THE CITY OF DORAL TO MAINTAIN THE LANDSCAPING, IRRIGATION, AND LIGHTING IMPROVEMENTS PROPOSED TO BE CONSTRUCTED BY THE CITY OF DORAL WITHIN THE MIAMI-DADE COUNTY RIGHT-OF-WAY ALONG NW 36 ST/NW 41 ST/DORAL BOULEVARD FROM THE HOMESTEAD EXTENSION OF FLORIDA'S TURNPIKE (HEFT) TO NW 97 AVENUE; AUTHORIZING THE EXPENDITURE OF FUNDS IN FURTHERANCE HEREOF; PROVIDING FOR IMPLEMENTATION AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, City Council for the City of Doral (the "City") passed Resolution No. 07-13 adopting the Doral Boulevard Beautification Master; and

WHEREAS, Council passed Resolution No. 16-129 allowing the City to proceed with the design of the median landscape, irrigation, and lighting improvements proposed along Doral Boulevard between the Homestead Extension of the Florida Turnpike (the "HEFT") and NW 97 Avenue; and

WHEREAS, Doral Boulevard between the HEFT and NW 97 Avenue is owned and maintained by Miami-Dade County ("MDC"); and

WHEREAS, the City is required to execute a Maintenance Memorandum of Agreement, in substantially the form provided in Exhibit "A", which is incorporated herein and made a part hereof by this reference (the "MMOA") in order to be authorized to proceed with the improvements on Miami-Dade County's Right-of-Way; and

WHEREAS, the Public Works Department has recommended that the City Council authorize the City Manager to enter into MMOA with Miami-Dade County for the City of Doral to maintain the proposed median landscaping, irrigation, and lighting improvements on Doral Boulevard from the HEFT to NW 97 Avenue.

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, adopted, and incorporated herein and made part hereof by this reference.

Section 2. Approval. The agreement for the maintenance by the City of Doral of the proposed median landscaping, irrigation, and lighting improvements on Doral Boulevard, a copy of which is attached hereto in Exhibit "A", together with such non-material charges as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is hereby approved.

Section 3. Authorization. The City Manager is authorized to execute the maintenance agreement and expend budgeted funds on the behalf of the City.

Section 4. Implementation. The City Manager and the City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and the provisions of this resolution.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Fraga who moved its adoption. The motion was seconded by Councilmember Rodriguez and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Pete Cabrera	Not Present at Time of The Vote
Councilwoman Christi Fraga	Yes
Councilwoman Claudia Mariaca	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED AND ADOPTED this 12 day of April, 2017.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

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



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

EXHIBIT “A”

**COVENANT FOR MAINTENANCE OF LANDSCAPING WITHIN RIGHT-OF-WAY
BETWEEN THE CITY OF DORAL AND MIAMI-DADE COUNTY**

A. The City of Doral, a political subdivision of the State of Florida, through its Public Works Department (the "City") will install the landscaping and irrigation system in the medians (the "Landscape Work") within the right-of-way of NW 41 Street between NW 117 Avenue and NW 97 Avenue (the "Project Limits"); and

B. The City shall be solely responsible for the maintenance and preservation of the Landscape Work within the Project Limits.

In consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. Upon completion of the Landscape Work by the City, and in accordance with Paragraph 9, the City shall, at its sole cost and expense, maintain, repair and/or replace, as necessary, the irrigation system, the landscape lighting, the sod and all landscaping, in a like or similar manner as that installed by the City in the medians within the Project Limits. The maintenance by the City shall further include, but not be limited to, the following:

- a) Mow, cut and/or trim and edge the grass or turf in accordance with the latest edition as of the date of this Covenant, of the State of Florida "Guide for Roadside Mowing" and the latest edition as of the date of this Covenant, of the "Maintenance Rating Program";
- b) Properly prune all plants, which include plant and tree trimmings, in accordance with the latest edition as of the date of this Covenant, of the "Maintenance Rating Program", and prune, trim and/or edge such parts thereof which may present a visual or other safety hazard for those using or intending to use the right-of-way;
- c) Keep plants as free as possible from disease and harmful insects; remove and properly dispose of dead, diseased or otherwise deteriorated plants in their entirety, and replace those that fall below original Landscape Work standard;
- d) Properly remove and dispose of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials;
- e) Properly mulch all plant beds;
- l) Water and fertilize all plants properly;
- g) Remove and dispose of all trimmings, roots, branches, litter, etc., resulting from the activities described above;
- h) Ensure that the irrigation system is fully functional by performing routine and regular observations of irrigation performance; identify damage and/or malfunctions; repair and/or replace broken or missing irrigation equipment; and adjust spray heads to eliminate overspray of water onto paved areas. All costs associated with water use will be the responsibility of the City. In the event that the City shall require a well-water irrigation system, the City shall be responsible for the maintenance of the pump system and electrical meter.

2. The City shall be responsible for performing the work described in Paragraph 1 with a minimum frequency of twelve (12) times per year. The work shall include any additional conditions that the County, or the authority having jurisdiction over the right-of-way, may impose.

3. The City will also be responsible for replacing damaged trees for reasons other than maintenance such as natural disasters, storm events, and traffic accidents.

4. If the County, or the authority having jurisdiction over the right-of-way, determines that the City is not accomplishing or complying with its responsibilities and/or duties under this Covenant, the County shall provide the City with a written notice, stating any deficiency or deficiencies that require correction. The City shall have thirty (30) calendar days, from the date of the receipt of the notice, to correct the cited deficiency or deficiencies.

In the event that the City has not corrected the deficiency or deficiencies for which notice is given or, if the deficiencies are of a nature that cannot be corrected within that time period and the City does not commence to correct the deficiencies within the time period stipulated, then the County shall maintain, repair, replace or otherwise correct the deficiency or deficiencies, and all costs and expenses shall be invoiced to the City. The City must pay the invoice in full, within thirty (30) calendar days of the receipt of the invoice by the City.

Any notices to be provided hereunder shall be in accordance with the provisions of Paragraph 11.

In the event of any default of the City in the payment of the invoice and/or its failure to comply with its maintenance responsibilities under this Covenant, the County or the authority having jurisdiction over the right-of-way, may, at its election and option, remove the Landscape Work from the medians within the Project Limits.

5. It is understood and agreed that all landscaping, irrigation system and sod covered by this Covenant may be removed, relocated, or adjusted, at any time in the future, as found necessary by the County or the authority having jurisdiction over the right-of-way, in order that the adjacent public right-of-way be widened, altered or otherwise changed and maintained to meet with future criteria or planning by the County or the authority having jurisdiction over the right-of-way. In such an event, the maintenance responsibilities of the City shall survive any such relocation or adjustments, so long as the materials or facilities remain within the Project Limits. As part of any improvement, the City shall restore the plant material, irrigation, and landscape lighting to ensure functionality and consistent with the original landscape design plans. Coordination between the County or the authority having jurisdiction over the right-of-way, and the City is required before improvements are implemented.

6. Subject to the provisions of 768.28, Florida Statutes, the City does hereby agree to indemnify and hold harmless the County, or the authority having jurisdiction over the right-of-way, from any and all damages and/or liability which may arise by virtue of the City installing the landscaping, landscape lighting and irrigation system within the public right-of-way, and/or from any act or omission of the City related to the maintenance and preservation thereof, including any and all work to be performed within the public right-of-way, pursuant to this Covenant.

7. This Covenant and the rights hereunder may be assigned by the County to the authority having jurisdiction over the right-of-way. The provisions and conditions herein stated shall remain in full force and effect until such time as this obligation has been cancelled by instrument filed in the Public Records of Miami-Dade County, Florida by an authorized representative of the County, or by an authorized representative of the authority having jurisdiction over the right-of-way.

8. This Covenant only pertains to the Landscape Work, as herein defined, of NW 41 Street medians, as further depicted on the landscape plans, attached as Exhibit "A".

9. This covenant is subject to termination under any one of the following conditions:

- a) By the County, or the authority having jurisdiction over the right-of-way, if the City fails to perform its duties under Paragraph 1, following thirty (30) days written notice.
- b) If mutually agreed to by the parties, with a six (6) month prior written notice.

10. This Covenant shall become effective upon completion of the median landscape installation of NW 41 Street, within the Project Limits.

11. All notices, requests, demands, consents, approvals and other communications which are required to be served or given hereunder shall be in writing, and hand delivered, or sent by certified U.S. Mail, return receipt requested, postage prepaid, addressed to the party to receive such notices, or at such other address that the authority having jurisdiction over the right-of-way may provide:

To the County: Alice N. Bravo, P.E., Director,
Department of Transportation and Public Works
701 NW 1 Court, Suite 1700, Miami, FL 33136

To the City: City of Doral, Edward Rojas, City Manager,
8401 NW 53rd Terrace
Doral, FL 33166

12. This Covenant is the entire understanding and agreement as relates to the subject matter herein, and may only be modified or amended by written mutual consent of the parties.

13. This agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Miami-Dade County, Florida.

Signed, sealed, executed and acknowledged on _____ day of _____ ,
2016.

CITY OF DORAL

By: _____

(Affix City Seal)

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

Legal Review:

City Attorney

By: _____

Name: _____

(ACKNOWLEDGMENT - CORPORATION)

STATE OF FLORIDA)
) SS.
MIAMI-DADE COUNTY)

BEFORE ME, the undersigned authority, this day personally appeared _____ and _____ both being to me well know and know by me to be the _____ City Manager and _____ Assistant City Manager of the _____ a Corporation under the laws of the State of _____, and which said Corporation is known by me to be the person described in and which executed the foregoing Covenant, the said officers of the said Corporation being likewise known by me to be the officers thereof who, in their official capacities as such officers of said Corporation executed, signed and delivered the said Covenant as the act and deed of said Corporation, and the said officers of said Corporation then and there severally acknowledged to and before me that they executed the said Covenant, acting in their said official capacities, for and as the act and deed of the said Corporation and in its name, and impressed thereon its Corporate Seal, for the uses and purposes therein mentioned, and after being thereunto by the said Corporation duly authorized and directed.

WITNESS my hand and official Seal at _____, in the County and Sate aforesaid, on this, the _____ day of _____, A.D. 20 _____.

Notary Public, State of _____

My Commission expires: _____