

RESOLUTION No. 19-69

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE PROPOSED MIAMI-DADE COUNTY FIRE DEPARTMENT CANAL MAINTENANCE EASEMENT AGREEMENT THAT WILL HOLD MIAMI-DADE FIRE DEPARTMENT RESPONSIBLE FOR THE MATERIAL COST FOR AN 8-FOOT METAL PICKET FENCE, AND HOLD THE CITY RESPONSIBLE FOR ITS INSTALLATION ALONG THE FIRE RESCUE HEADQUARTERS FRONTAGE TO THE DRESSEL CANAL; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CANAL MAINTENANCE EASEMENT AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the proposed picket fence would be installed along the canal maintenance easement limit fronting the Miami-Dade Fire Rescue Headquarters as part of the construction of Year 5B of the Canal Bank Stabilization Program; and

WHEREAS, Year 5B of the Canal Bank Stabilization Program is part of the canal Capital Improvement Program included in the Canal Feasibility Study completed in March 2008; and

WHEREAS, Resolution 18-199 was passed and adopted by the City of Doral Council awarding the Invitation to Bid #2018-13 Canal Bank Stabilization Year 5B to ENCO, LLC and the Notice to Proceed for construction was issued and dated for February 18, 2019; and

WHEREAS, as part of the construction and permitting process, the City must obtain Canal Maintenance Easement Agreements (CMEA) from all properties along the project whose canal maintenance easement will include the construction of a maintenance/pedestrian/bicycle shared use path (SUP); and

WHEREAS, the CMEA authorizes the City to open the SUP to the general public as the canal maintenance easement is located within private property. As part of the CMEA, the City offers to take over the maintenance of the canal easement and proposes the construction of a 6-foot chain link fence to the interested property owners; and

WHEREAS, Miami-Dade Fire Department (MDFD) requested to replace the original proposed 6-foot chain link fence with an 8-foot metal picket fence to safeguard the general public due to the proximity of their training facility to the proposed SUP. With this change, MDFD will agree to submit the CMEA to the Miami-Dade County Board of County Commissioners for execution; and

WHEREAS, the Public Works Department requests authorization to include language in the proposed MDFD Canal Maintenance Easement holding the easement property owner financially responsible of the material cost for an 8-foot metal picket fence and the City responsible for its installation as part of the project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL 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 Canal Maintenance Easement Agreement with the MDFD, which holds the easement property owner financially responsible of the material cost for an 8-foot metal picket fence and the City responsible for its installation as part of the project, a copy which is attached hereto as Exhibit "A", is hereby approved.

Section 3. Authorization. The City Manager is authorized to execute the Canal Maintenance Easement 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 Vice Mayor Mariaca who moved its adoption.

The motion was seconded by Councilmember Cabral and upon being put to a vote, the

vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Claudia Mariaca	Yes
Councilwoman Digna Cabral	Yes
Councilman Pete Cabrera	Absent/Excused
Councilwoman Christi Fraga	Yes

PASSED AND ADOPTED this 13 day of March, 2019.




JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

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



LUIS FIGUEREDO, ESQ.
CITY ATTORNEY

EXHIBIT “A”

This Instrument Was Prepared By and Return to:

City of Doral Public Works Department

8401 NW 53rd Terrace
Doral, Florida 33166

Folio: 35-3028-001-0010

EASEMENT

This Grant of Easement (the “**Easement**”) for the construction, placement, maintenance and use by the general public of a bike & pedestrian pathway and related facilities is made this ____ day of _____, 2018 by **MIAMI-DADE COUNTY FIRE RESCUE DEPARTMENT**, (hereinafter the “**Grantor**”) whose address is **9300 NW 41 Street** to and in favor of **CITY OF DORAL**, a Florida Municipal Corporation (hereinafter the “**Grantee**”) whose address is 8401 NW 53 Terrace, Doral, Florida 33166. The Grantor and Grantee are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS Grantor is the owner of that certain real property (hereinafter the "Easement Property") located in Miami-Dade County, Florida, more particularly described as follows, to wit:

SEE EXHIBIT A

WHEREAS Grantor wishes to grant an easement for the construction, placement, maintenance and use by the general public of a bike & pedestrian pathway and related facilities over, under, across and upon the Easement Property.

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) in hand paid by Grantee to Grantor and other good and valuable consideration, the receipt and sufficiency of which Grantor hereby acknowledges, Grantor agrees as follows:

Section 1. Recitals. The foregoing recitals are incorporated herein and made a part hereof by this reference.

1. Grant of Easement. Grantor does hereby grant and convey to Grantee a non-exclusive Easement over, under, across and upon the Easement Property for the construction, placement, maintenance and use by the general public of a bike & pedestrian pathway and related facilities.

2. Use of Easement.

(a) Grantee shall have the right to do all things reasonably necessary for the purposes set forth in Section 1, except to the extent that such uses are inconsistent with the existing 25-foot canal maintenance easement granted to Miami-Dade County in the **Miami-Dade Fire Rescue Department** Plat recorded in Plat Book **91**, Page **50**, of the Public Records of Miami-Dade County, Florida. Grantee's uses that exceed the construction, placement, maintenance and use by the general public of a bike & pedestrian pathway and related facilities shall be subject to Grantor approval in its sole discretion.

(b) Grantee agrees to keep the Easement Property clean and in good repair, ordinary wear and tear excepted, and shall provide such maintenance of the grass and other landscaping as is routinely provided in the public parks in the City of Doral.

(c) Grantee shall install an eight (8) foot metal picket fence all along the length of the Easement Property so as to block access to the adjacent properties. Grantor shall be financially responsible for the cost of material of the 8- foot metal picket fence and gate. Grantee shall maintain the fence in good repair, ordinary wear and tear excepted.

3. Title. Grantor does hereby warrant that it has title to the above described property, that it has full power and authority to grant this Easement, and that it will defend title to said land against the lawful claims of all persons whomsoever, claiming by, through or under it.

4. Term. This Grant of Easement shall be in effect for a term of thirty (30) years, commencing on the effective date hereof, and shall renew automatically for successive ten (10) year period(s). The effective date of this Easement shall be the date on which all Parties hereto fully execute it ("Effective Date"). The Parties further understand and agree that this Easement is subject to automatic reversion to Grantor in accordance with terms and conditions hereof , including but not limited to, in the event of expiration, abandonment, termination, cancellation, unauthorized assignment or material default.

5. Covenants of Grantor. Grantor hereby warrants and covenants the following:

(a) Grantor and Grantee acknowledge that the Easement Property is subject to an existing maintenance easement between the Grantor and Miami-Dade County, and that the existing encumbrance is not in conflict with this easement.

(b) The Easement Property is free and clear of all encumbrances that are inconsistent with the terms of this easement and all mortgages have been joined or subordinated.

(c) Grantee shall have quiet and peaceful possession, use and enjoyment of this Easement.

6. Remedies for Breach. Grantor and/or Grantee shall each have the right to enforce the terms of this Easement and the rights and obligations created herein by all remedies provided under the laws of the State of Florida, including without limitation, the right to sue for damages for breach or for injunction or specific performance. In the event that it is necessary for either Grantor and/or Grantee to file suit in order to enforce the terms hereof, then each party in such suit shall be responsible to pay their own attorney's fees and court costs.

7. Indemnification. Subject to the limitations set forth in Section 768.28, Florida Statutes, Grantee shall indemnify and hold Grantor, its successors or assigns, harmless against any injuries, damage or claims which may arise from Grantee's use or the use by any permitted invitee, of the Easement Property, except to the extent arising from Grantor's negligence or willful misconduct.

8. Third Party Beneficiaries. This Easement is solely for the benefit of the Grantor and the Grantee and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Easement. Nothing in this Easement, either expressed or implied, is intended or shall be construed to confer upon any person or corporation other than the Grantor and the Grantee any right, remedy or claim under or by reason of this Easement or any of the provisions or conditions thereof; and all of its provisions, representations and conditions shall inure to the sole benefit of, and shall be binding upon, the Grantor and the Grantee, and their respective legal representatives, successors and assigns.

9. Joint Preparation. Grantor and Grantee participated fully in the preparation of this instrument and received the advice of their respective legal counsels; consequently, in case of a dispute concerning the interpretation of any provision hereof, this Easement will not be interpreted or construed against any party.

10. Covenant Running with the Land. This Easement and all conditions and covenants set forth herein are intended and shall be construed as covenants running with the land, binding upon and insuring to the benefit of Grantor or Grantee, as the case may be, and their respective heirs, successors and/or assigns, including without limitation, all subsequent owners of the Easement Property and all persons claiming by, through and under them.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Grantor has executed and delivered this Grant of Easement on the day and year written in the first paragraph.

Signed, sealed and delivered in the presence of:

GRANTOR:

Witness

By: _____
Address: _____

Witness

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

The foregoing instrument was acknowledged before me this ___ day of _____ 2018, by _____, on behalf of Grantor, who took an oath, and who is:

- PERSONALLY KNOWN TO ME -OR-
- PRODUCED THE FOLLOWING ID: _____
ID NO.: _____.

NOTARY PUBLIC
Print or Stamp Below Notary's Name:
Print or Stamp Below Commission No.:
Print or Stamp Below Commission Expires:
(NOTARY STAMP/SEAL BELOW)

Acknowledged and Accepted this __ day of _____, 2018:

CITY OF DORAL

By: _____
EDWARD ROJAS, CITY MANAGER

ATTEST:

CONNIE DIAZ, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE CITY OF DORAL

LUIS FIGUEREDO, ESQ., CITY ATTORNEY

