



# Town Council Agenda Report

**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:**

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A JOINT PARTICIPATION AGREEMENT BETWEEN BROWARD COUNTY AND THE TOWN OF DAVIE PROVIDING FOR CONSTRUCTION OF CERTAIN IMPROVEMENTS CONCERNING THE RELOCATION OF REESE ROAD; AND PROVIDING AN EFFECTIVE DATE

**REPORT IN BRIEF:**

This project will accomplish the relocation of Reese Road approximately 200 feet south of its present intersection with Davie Road to establish a new signalized intersection. The attached agreement provides for contract funding from Broward County in the amount of \$181,930.00 which, in concert with the \$125,000.00 previous commitment from the Florida Department of Transportation will support the construction elements of this project.

**DISCUSSION:** (include background, project summary, significant impacts, citizen participation, workload impacts, purpose, project workscope, evaluation and selection process, and conclusion)

This project will be of significant benefit to the residents of Everglade Lakes Mobile Home Community and the commercial/industrial properties along Reese Road.

**CONCURRENCES:** (concerns and/or opinions of affected departments, Committees, Boards or Council)

**FISCAL IMPACT:**

Contract funding supported by Broward County and Florida Department of Transportation

Is appropriation required?                      no                      If yes, expected cost \$

Funding appropriated?                              no                      If yes, amount \$

Account Name:

Additional Comments:

**RECOMMENDATION(S):**

Motion to approve Resolution.

**Attachment(s):**

Agreement between Broward County and Town of Davie for Joint Participation in the Improvement and Relocation of the Intersection of Reese Road and Davie Road.

Item No.

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A JOINT PARTICIPATION AGREEMENT BETWEEN BROWARD COUNTY AND THE TOWN OF DAVIE PROVIDING FOR CONSTRUCTION OF CERTAIN IMPROVEMENTS CONCERNING THE RELOCATION OF REESE ROAD; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Town of Davie wishes to relocate the intersection of Reese Road and Davie Road to establish a new signalized intersection; and

WHEREAS, the Town of Davie solicited bids for the reconstruction and realignment of Reese Road to approximately two hundred feet south of its present intersection with Davie Road; and

WHEREAS, it is of mutual benefit to the residents of Broward County and the Town of Davie to reconstruct and realign Reese Road and establish a new signalized intersection; and

WHEREAS, the Town Council deems it in the best interests of the residents of the Town to enter into the Joint Participation Agreement, a copy of which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie hereby authorizes the Mayor to execute the Joint Participation Agreement between Broward County and the Town of Davie, a copy of which is attached hereto as Exhibit "A".

SECTION 2. The appropriate Town officials are authorized to take all necessary actions to implement the Agreement.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000

AGREEMENT

Between

BROWARD COUNTY

and

TOWN OF DAVIE

for

JOINT PARTICIPATION IN THE IMPROVEMENT AND RELOCATION  
OF THE INTERSECTION OF REESE ROAD AND DAVIE ROAD

Project No. 5147

AGREEMENT

Between

BROWARD COUNTY

and

TOWN OF DAVIE

for

JOINT PARTICIPATION IN THE IMPROVEMENT AND RELOCATION  
OF THE INTERSECTION OF REESE ROAD AND DAVIE ROAD

Project No. 5147

This is an Agreement, made and entered into by and between BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

AND

TOWN OF DAVIE, a municipal corporation located in Broward County, Florida, and organized and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "TOWN."

WITNESSETH:

WHEREAS, the Town of Davie wishes to relocate the intersection of Reese Road (Town Street) and Davie Road (County Road), which is a public trafficway located within the municipal boundaries of TOWN, to establish a new signalized intersection; and

WHEREAS, the Town of Davie solicited bids for the reconstruction and realignment of Reese Road to approximately two hundred (200) feet south of its present intersection with Davie Road (the road relocation hereinafter referred to as the "trafficway"); and

WHEREAS, it is of mutual benefit to the residents of COUNTY and TOWN to reconstruct and realign Reese Road and establish a new signalized intersection; and

WHEREAS, TOWN, by resolution of its governing body adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has approved joint funding of relocation of the trafficway with COUNTY pursuant to the terms of this Agreement and has authorized the appropriate officers of TOWN to execute this Agreement; and

WHEREAS, COUNTY, by action of its Board of County Commissioners on the day of \_\_\_\_\_, 20\_\_\_\_, has likewise approved the joint funding of the relocation of the trafficway with TOWN and has authorized the appropriate COUNTY officers to execute this Agreement; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payment hereinafter set forth, COUNTY and TOWN agree as follows:

ARTICLE 1  
DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Agreement:** "Agreement" shall mean this document, Articles 1 through 9, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board:** "Board" shall mean the Broward County Board of County Commissioners.
- 1.3 **Contract Administrator:** "Contract Administrator" shall mean the Broward County Administrator, the Director of Public Works, or the designee of such County Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with TOWN and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.4 **COUNTY:** "COUNTY" shall mean Broward County, through the Board, a political subdivision of the State of Florida.
- 1.5 **County Attorney:** "County Attorney" shall mean the chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 4.03 of the Broward County Charter.
- 1.6 **TOWN:** "TOWN" shall mean the Town of Davie.
- 1.7 **Project:** "Project" shall mean the services described in Article 2.

ARTICLE 2  
SCOPE OF SERVICES

- 2.1 COUNTY and TOWN shall participate in the improvement and relocation of the intersection of the trafficway in the manner set forth in this Agreement.

- 2.2 COUNTY shall approve plans and specifications for improvement and relocation of the intersection of the trafficway and shall have no further obligation except as otherwise specifically set forth herein.
- 2.3 TOWN shall contract for the improvement and relocation of the trafficway intersection as follows:
  - 2.3.1 The TOWN shall be responsible for advertising for bids, accepting bids, and awarding the contract for improvement and relocation of the trafficway intersection, pursuant to TOWN procedures and the terms and conditions of this Agreement. TOWN agrees to be responsible for all coordination with respect to the Project.
  - 2.3.2 Upon award and proper execution of a contract between TOWN and the selected vendor (hereinafter referred to as "CONTRACTOR"), COUNTY shall make payment to TOWN as per Article 3 and the terms and conditions of this Agreement.
- 2.4 COUNTY and TOWN agree and understand that the trafficway shall remain classified as a TOWN road.

ARTICLE 3  
COSTS

- 3.1 The Florida Department of Transportation (hereinafter referred to as "FDOT"), pursuant to the terms and conditions of the Agreement attached hereto as Exhibit "A," and TOWN shall be responsible for all costs associated with the services required by Article 2 hereinabove during the term of this Agreement, except as otherwise set forth herein.
- 3.2 COUNTY shall contribute to the cost of right of way acquisition, improvement and relocation of the trafficway intersection as set forth hereinbelow.
- 3.3 COUNTY shall contribute to TOWN the sum of One Hundred and Eighty-one Thousand Nine Hundred and Thirty Dollars (\$181,930.00) or sixty-six percent (66%) of the cost of right of way acquisition, construction cost of the improvement and relocation of the trafficway intersection, whichever is less, as per Sections 3.4 and 3.5 herein.
- 3.4 The first half of the total sum due and owing to TOWN shall be paid by COUNTY upon the award and proper execution of the Agreement between TOWN and CONTRACTOR for the improvement and relocation of the trafficway intersection.

- 3.5 The second half of the total sum due and owing to TOWN shall be paid by COUNTY upon completion and acceptance of the project by the TOWN and the COUNTY, Department of Public Works, for the improvement and relocation of the trafficway intersection.
- 3.6 Any and all additional costs and/or expenses of any type or nature over and above the estimated amount set forth above for the improvement and relocation of the trafficway intersection shall be the sole responsibility of TOWN.
- 3.7 Notwithstanding any provision of this Agreement to the contrary, COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to Contract Administrator. The amount withheld shall not be subject to payment of interest by COUNTY.

#### ARTICLE 4 TERM AND TERMINATION

- 4.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall end on December 15, 2000; provided, however, if the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from COUNTY in accordance with Chapter 129, Florida Statutes.
- 4.2 This Agreement may be terminated for cause by COUNTY, through action of the Board, or by TOWN, upon a thirty (30) days written notice given by the terminating party to the other party setting forth the breach. If TOWN, or COUNTY, corrects the breach within thirty (30) days after written notice of same, to the satisfaction of the terminating party, the Agreement shall remain in full force and effect. If such breach is not corrected and improved within thirty (30) days of receipt of notice of breach, the terminating party may terminate the Agreement.
- 4.3 Termination of this Agreement for cause shall include, but not be limited to, failure of the TOWN to improve and relocate the trafficway intersection pursuant to the terms of this Agreement, failure of the parties to suitably perform the services required by Article 2 herein, and failure of the parties to continuously perform the services required by the terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives set forth herein, notwithstanding whether any such breach was previously waived or cured.
- 4.4 In the event this Agreement is terminated for convenience, upon being notified of election to terminate, the parties shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. TOWN acknowledges and agrees that ten dollars (\$10.00), the adequacy of which is

hereby acknowledged by TOWN, is given as specific consideration to TOWN for COUNTY's right to terminate this Agreement for convenience.

- 4.5 Notice of termination shall be provided in accordance with Article 6, "NOTICES," herein except that notice of termination by Contract Administrator which Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with Article 6, "NOTICES," herein.

ARTICLE 5  
CHANGES IN SCOPE OF SERVICES

Any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 9.14 below.

ARTICLE 6  
NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

Director  
Broward County Public Works Department  
Governmental Center, Suite 514  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301

FOR TOWN:

Town Administrator  
6591 Orange Drive  
Davie FL 33314-3399

ARTICLE 7  
INDEMNIFICATION

- 7.1 TOWN is a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and agrees to be fully responsible for acts and omissions of its

agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.

7.2 TOWN's contract with CONTRACTOR shall include the following provisions:

7.2.1 Indemnification: TOWN's CONTRACTOR shall at all times hereafter indemnify, hold harmless and, at County Attorney's option, defend or pay for an attorney selected by County Attorney to defend COUNTY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of TOWN's CONTRACTOR, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and County Attorney, any sums due TOWN's CONTRACTOR under this Agreement may be retained by TOWN and/or COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amounts withheld shall not be subject to payment of interest by TOWN and/ or COUNTY.

7.2.2 In order to insure the indemnification obligation TOWN's CONTRACTOR shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in Article 8, Section 8.2, in accordance with the terms and conditions required by this Article.

7.2.3 The policies referred to in Section 7.2.2 hereinabove shall be without any deductible amount and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida.

#### ARTICLE 8 INSURANCE

8.1 The parties hereto acknowledge that TOWN is a self-insured governmental entity subject to the limitations of Section 768.28, Florida Statutes. The TOWN shall institute and maintain a fiscally sound and prudent risk management program with

regard to its obligations under this Agreement in accordance with the provisions of Section 768.28, Florida Statutes.

8.2 TOWN's contract with CONTRACTOR shall include the following provisions:

8.2.1 Insurance: TOWN's CONTRACTOR shall at all times during the term of this Agreement keep and maintain in full force and effect, at CONTRACTOR's sole cost and expense, insurance of the types and amounts as set forth on Exhibit "B," a copy of which is attached hereto and incorporated herein by reference as if set forth in full, and shall name COUNTY and Broward County Board of County Commissioners as an additional insured.

8.2.2 TOWN's CONTRACTOR shall furnish to the Contract Administrator Certificates of Insurance or Endorsements evidencing the insurance coverages specified by this Article prior to the beginning performance of work under this Agreement.

8.2.3 Coverage is not to cease and is to remain in full force and effect (subject to cancellation notice) until all performance required of TOWN's CONTRACTOR is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

#### ARTICLE 9 MISCELLANEOUS

9.1 DOCUMENTS

Any and all reports, photographs, surveys, plans and other data and documents provided or created in connection with this Agreement shall be made available to COUNTY at no cost.

9.2 NONDISCRIMINATION, EQUAL  
EMPLOYMENT OPPORTUNITY, AND  
AMERICANS WITH DISABILITIES ACT

TOWN shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. TOWN shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In

addition, TOWN shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

TOWN's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

TOWN shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Agreement.

### 9.3 THIRD PARTY BENEFICIARIES

Neither TOWN nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

### 9.4 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, except as authorized herein, TOWN shall not subcontract any portion of the work required by this Agreement.

TOWN represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to COUNTY's satisfaction for the agreed compensation.

TOWN shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of TOWN's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

9.5 MATERIALITY AND WAIVER OF BREACH

COUNTY and TOWN agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

The failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.6 COMPLIANCE WITH LAWS

TOWN shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.7 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or TOWN elects 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.

9.8 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 than the other.

9.9 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 of this Agreement shall prevail and be given effect.

9.10 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

9.11 AMENDMENTS

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 Board and TOWN.

9.12 PRIOR AGREEMENTS

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 or conditions contained herein shall be effective unless set forth in writing in accordance with Section 9.11 above.

9.13 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached exhibits are incorporated into and made a part of this Agreement.

9.14 MULTIPLE ORIGINALS

This Agreement may be fully executed in five (5) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[Intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair or Vice Chair, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and TOWN OF DAVIE, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
County Administrator and Ex-Officio  
Clerk of the Board of County  
Commissioners of Broward County,  
Florida

By \_\_\_\_\_  
Chair  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Approved as to form by  
Office of County Attorney  
Broward County, Florida  
EDWARD A. DION, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By \_\_\_\_\_  
Sharon V. Thorsen  
Assistant County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND THE TOWN OF DAVIE FOR JOINT PARTICIPATION IN THE IMPROVEMENT AND RELOCATION OF THE INTERSECTION OF REESE ROAD AND DAVIE ROAD

TOWN

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

\_\_\_\_\_ Town Clerk

(CORPORATE SEAL)

TOWN OF DAVIE

By \_\_\_\_\_

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_

Town Attorney

SVT:wp  
1/26/00  
3/09/00  
daviejpa.a03  
#99-088.04