



**MEMORANDUM**

Agenda Item No.: 8(L)(1)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** July 3, 2012

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Resolution approving execution of a joint participation agreement between Miami-Dade County and the City of Miami to provide funding in an amount up to \$204,444.08 for the construction of drainage improvements along South Miami Avenue, from SW/SE 12 Street to SW/SE 10 Street

The accompanying resolution was prepared by the Public Works & Waste Management Department and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.



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R. A. Cuevas, Jr.  
County Attorney

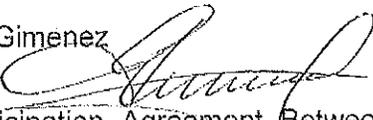
RAC/cp

# Memorandum



**Date:** July 3, 2012

**To:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Joint Participation Agreement Between Miami-Dade County and the City of Miami to Provide Funding in the Amount up to \$204,444 for the Construction of Drainage Improvements Along South Miami Avenue from SW/SE 12 Street to SW/SE 10 Street

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## **RECOMMENDATION**

It is recommended that the Board of County Commissioners (BCC) approve the attached resolution authorizing execution of a Joint Participation Agreement (JPA) between Miami-Dade County and the City of Miami (City) to reimburse the City for the construction of drainage improvements along South Miami Avenue from SW/SE 12 Street to SW/SE 10 Street (Project).

## **SCOPE**

The Project to be constructed is within the City of Miami, in Commission District 5.

## **FISCAL IMPACT/FUNDING SOURCE**

The County will provide up to \$204,444 from Stormwater Utility funds for the construction of the Project. The funding index code for this Project is CPE316PWARTR. Upon the completion of construction, the County shall be responsible for maintenance of the Project. The estimated annual maintenance cost is \$911 and will be funded through the Stormwater Utility.

## **TRACK RECORD/MONITOR**

The County will utilize the resources of the City to contract and construct the Project on a reimbursable basis. Disbursement of County funds to the City shall be based upon City submissions of requested documentation to include certified copies of paid contractor invoices. The Project will be assigned to Mr. Bassam Moubayed, CFM, Chief, Construction Division, Miami-Dade County Public Works and Waste Management Department (PWWM), who will oversee construction inspections conducted by PWWM staff, before the release of funds is recommended.

The work covered under this JPA has been reviewed by the County's Small Business Development Division, and a contract measure recommendation of no measure was established for Community Small Business Enterprise Participation.

## **BACKGROUND**

The City requested that the County consider improving the drainage along South Miami Avenue to help mitigate stormwater runoff in the area. As a result, County engineering staff evaluated the existing drainage system and determined that additional drainage infrastructure was required to bring the drainage system to current County standards. The subject segment of South Miami Avenue is County maintained.

In order to minimize the impact to the area, the City requested that the County agree to them building the South Miami Avenue drainage improvements along with their proposed drainage improvements in the Mary Brickell Village neighborhood.

Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners  
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The City Commission approved this JPA on April 12, 2012 under Resolution No. 12-00294. The Project is tentatively scheduled to begin construction in August 2012, and is anticipated to be completed by June 2013.



Aljha T. Hudak  
County Manager/Deputy Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** July 3, 2012

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 8(L)(1)

**Please note any items checked.**

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(L)(1)  
7-3-12

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI TO PROVIDE FUNDING IN AN AMOUNT UP TO \$204,444.08 FOR THE CONSTRUCTION OF DRAINAGE IMPROVEMENTS ALONG SOUTH MIAMI AVENUE, FROM SW/SE 12 STREET TO SW/SE 10 STREET; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS THEREIN

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

**WHEREAS**, both the City of Miami and Miami-Dade County wish to facilitate the construction of drainage improvements along South Miami Avenue, from SW/SE 12 Street to SW/SE 10 Street,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board approves the Joint Participation Agreement between Miami-Dade County and the City of Miami, providing funding up to \$204,444.08 to the City for eligible expenses incurred in the construction of these improvements, in substantially the form attached hereto and made a part hereof; and authorizing the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise the provisions contained therein.

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

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

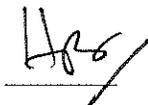
The Chairperson thereupon declared the resolution duly passed and adopted this  
3<sup>rd</sup> day of July, 2012. This resolution shall become effective ten (10) days after the date  
of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only  
upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Hugo Benitez

**JOINT PARTICIPATION AGREEMENT  
BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI  
DRAINAGE IMPROVEMENTS ALONG SOUTH MIAMI AVENUE**

This AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF MIAMI, 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 drainage improvement project in MIAMI-DADE COUNTY, hereinafter referred to as the "Project" described as follows:

Drainage improvements along South Miami Avenue from SW/SE 12 Street to SW/SE 10 Street which includes the construction and installation of drainage structures, exfiltration trench, grading, sodding, and miscellaneous roadway restoration (including construction of concrete curb and gutters, and sidewalks);  
and

WHEREAS, the County wishes to utilize the resources of the City to contract and 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. RESPONSIBILITIES OF CITY:

1.1. 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 Public Works and Waste Management Department.

1.2. Public Information and Involvement: The City will implement a Public Involvement Plan (PIP) during the 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 Public Works and Waste Management Director for review and concurrence prior to the Notice to Proceed for construction.

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.

- 1.3. **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 mock up 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.
- 1.4. **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 five (5) business days upon written receipt of a written request from the County.
- 1.5. **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 6 of this Agreement. Prior to the advertisement to solicit a licensed contractor to construct the Project, the City will contact the County's Public Works and Waste Management 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 and Waste Management 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 Public Works and Waste Management 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 and Waste Management Director. The County agrees that the selection, retention and discharge of such contractor shall be the responsibility of the City.

- 1.6. **Claims and Change Orders:** The City shall notify the County Public Works and Waste Management 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 change orders or supplemental agreements, permits, modifications of plans, or other requests for approvals submitted by the City.
- 1.7. **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 Public Works and Waste Management 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 Public Works and Waste Management Director or their designee.

**2. RESPONSIBILITIES OF COUNTY:**

**2.1. Funding Amount, Reimbursement of Project Costs:** The County agrees to provide funds up to \$204,444.08 (this amount includes ten percent (10%) 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 4. 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 exceeds the funding amount, the City reserves its rights to reject all bids and re-bid the Project.

**2.2. 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:

<u>Funding Amount</u>	<u>Funding Source</u>	<u>County Fiscal Year of Commitment</u>
\$ 204,444.08	Stormwater Utility Funds	2011-2012

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 cost, 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 2.1, or of City funding amounts approved for the Project, amendments may be executed by the City Manager 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.

3. 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 drainage 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 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.

4. **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 Public Works and Waste Management 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 invoices 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 (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 Small Business Development Project Worksheet for the participation of specified business entities and/or trades, and for CWP requirements, as administered by the County's Sustainability, Planning and Economic Enhancement Department (SPEED). The Small Business Development Division of SPEED 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.

7. **MAINTENANCE**: The County will be responsible for Improvements within the County's right-of-way.
8. **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.

9. **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.
10. **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.

11. **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.

12. **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.

13. 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: Kathleen Woods-Richardson  
Director, Public Works and Waste Management Department  
Miami-Dade County  
111 NW First Street, Suite 1640  
Miami, Florida 33128  
(305) 375-2960

**To the City:**

Attention: Alice Bravo, P.E.  
Assistant City Manager/Chief of Infrastructure City of Miami  
444 SW Second Avenue  
Miami, Florida 33130  
(305) 416-1025

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: \_\_\_\_\_ BY: \_\_\_\_\_  
Deputy Clerk County Mayor or County Mayor's Designee

Approved by County Attorney  
as to form and legal sufficiency \_\_\_\_\_  
County Attorney

ATTEST: CITY OF MIAMI, a municipal  
corporation of the State of Florida

BY: Priscilla A. Thompson BY: Johnny Martinez  
Priscilla A. Thompson, CMC Johnny Martinez, P.E.  
City Clerk 5-1-12 City Manager

(Affix City Seal)

Approved by City Attorney  
as to legal form and correctness:

\_\_\_\_\_  
Julie O. Bru  
City Attorney *RJR*

Approved as to Insurance Requirements:

\_\_\_\_\_  
Calvin Ellis, Director  
Risk Management Department



City of Miami

City Hall  
3500 Pan American Drive  
Miami, FL 33133  
www.miamigov.com

Text File Report

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File ID: 12-00294	Type: Resolution	Status: Mayor's Office for Signature
Enactment #: R-12-0142		Enactment Date: 4/12/12
Version: 1	Introduced: 3/12/12	Controlling Body: City Commission

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A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), ACCEPTING FUNDS IN THE AMOUNT OF \$204,444.08, FROM MIAMI-DADE COUNTY, FOR A DRAINAGE IMPROVEMENT PROJECT ALONG SOUTH MIAMI AVENUE, MIAMI, FLORIDA; AUTHORIZING THE CITY MANAGER TO EXECUTE A JOINT PARTICIPATION AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, FOR SAID PURPOSE.

WHEREAS, the City of Miami ("City") and Miami-Dade County ("County") wish to facilitate the construction of a drainage improvement project within the municipal limits of the City; and

WHEREAS, the project is adjacent to the City's Mary Brickell Village Drainage Improvements Project, B-30637; and

WHEREAS, the scope of the project consists of drainage improvements along South Miami Avenue from Southwest/Southeast 12th Street to Southwest/Southeast 10th Street, Miami, Florida, which includes the construction and installation of drainage structures, exfiltration trench, grading, sodding and miscellaneous roadway restoration (including construction of concrete curb and gutters, and sidewalks); and

WHEREAS, the County wishes to utilize the resources of the City to contract and construct the project; and

WHEREAS, the City will be responsible for the construction, management and administration of the project; and

WHEREAS, the attached Joint Participation Agreement ("JPA") provides that the County will contribute \$204,444.08 towards the construction of the project;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as fully set forth in this Section.

Section 2. Funds in the amount of \$204,444.08, from the County, for a drainage improvement project along South Miami Avenue, Miami, Florida, are accepted.

Section 3. The City Manager is authorized (1) to execute a JPA, in substantially the attached form, for said purpose.

Section 4. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.(2)