

MEMORANDUM

Agenda Item No. 14(A)(8)


TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: February 19, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving memorandum of understanding between Miami-Dade County (County) and the City of Miami (City) for a grant by the City to the County of \$1,000,000.00 to be used for the construction of phase 1 of The Underline; authorizing the County Mayor to execute the memorandum of understanding and to exercise all rights contained therein

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairwoman Audrey M. Edmonson.


Abigail Price-Williams
County Attorney

APW/uw



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

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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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) 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. 14(A)(8)
2-19-20

RESOLUTION NO. _____

RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN MIAMI-DADE COUNTY (COUNTY) AND THE CITY OF MIAMI (CITY) FOR A GRANT BY THE CITY TO THE COUNTY OF \$1,000,000.00 TO BE USED FOR THE CONSTRUCTION OF PHASE 1 OF THE UNDERLINE; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE MEMORANDUM OF UNDERSTANDING AND TO EXERCISE ALL RIGHTS CONTAINED THEREIN

WHEREAS, on September 10, 2015, the City of Miami Commission adopted Resolution No. R-15-0397, authorizing a grant of \$1,000,000.00 from the City of Miami ("City") to Miami-Dade County to be used towards the construction of the first phase of The Underline; and

WHEREAS, this Board desires to accept that grant and apply its proceeds towards the County's expenditures in the construction of the first phase of The Underline from the Miami River to SW 17th Rd. ("Phase 1 of The Underline"),

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Adopts, approves, and incorporates herein each of the foregoing recitals.

Section 2. Approves the memorandum of understanding with the City for a City grant of \$1,000,000.00 for Phase 1 of The Underline in substantially the form attached hereto as Exhibit "A," and authorizes the County Mayor or County Mayor's designee to execute the memorandum of understanding for and on behalf of Miami-Dade County, take all actions necessary to effectuate the memorandum of understanding, and exercise all rights contained therein.

The Prime Sponsor of the foregoing resolution is Chairwoman Audrey M. Edmonson. It 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:

Audrey M. Edmonson, Chairwoman	
Rebeca Sosa, Vice Chairwoman	
Esteban L. Bovo, Jr.	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Eileen Higgins	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared this resolution duly passed and adopted this 19th day of February, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the 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.

MAG

Miguel A. Gonzalez

CITY OF MIAMI / UNDERLINE MEMORANDUM OF UNDERSTANDING

This CITY OF MIAMI / UNDERLINE MEMORANDUM OF UNDERSTANDING (the "MOU"), made and entered into this ____ day of _____, 2020 (the "Effective Date"), by and between the City of Miami, a municipal corporation of the State of Florida whose principal address is 444 SW 2nd Avenue, 10th Floor, Miami, Florida 33130 (the "City"), and Miami-Dade County, a political subdivision of the State of Florida, whose principal address is 111 NW 1st Street, Miami, Florida 33178 (the "County"), is entered into as follows:

RECITALS

A. The County, in conjunction with the Parks Foundation of Miami-Dade, Inc., a Florida not-for-profit corporation and Friends of the Underline, a Florida not-for-profit corporation, is enhancing an approximately ten (10) mile long portion of the land consisting of the Miami-Dade County Metrorail right of way from the Brickell Metrorail Station (1001 SW 1st Avenue, Miami, Florida 33130) to the Dadeland South Metrorail Station (9150 Dadeland Boulevard, Miami, Florida 33156) to create an iconic linear park (the "Project").

B. The City wishes to facilitate the enhancement of the portion of the Project in the City's territorial limits known as Phase One, more particularly described on page 8 of 12 of that Powerpoint presentation made to the City Commission on September 10th, 2015, depicted as "Brickell Backyard Proposed, Miami River to SW 17th Rd" in Exhibit "A" ("Phase One" or "Phase One of the Project", as applicable), attached hereto, as a Parks and recreation system improvement as defined in Ch. 13 of the City Code that draws patrons from the entire geographic area of the City by providing partial funding to the County from impact fees.

C. The County pursuant to Board of County Commissioners Resolution _____, passed and adopted _____, a copy of which is attached as Exhibit "B" hereto and made a part hereof, has agreed to certain conditions, described below, to ensure that the City remains in compliance with the applicable law governing the collection and expenditure of impact fees.

D. The City Commission, by Resolution No. R-15-0397, a copy of which is attached as Exhibit "C" hereto and made a part hereof, passed and adopted on September 10th, 2015, authorized the City Manager to enter into a memorandum of understanding with the County for funding of Phase One of the Project from park impact fees attributable to construction of buildings within five hundred (500) feet to the east of Phase One of the Project in an amount not to exceed one million dollars (\$1,000,000.00) provided that said funds shall be expended on within four (4) years (the "Grant").

E. The City and the County wish to enter into this MOU to set forth the terms and conditions relating to the use of this Grant.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the City and the County agree as follows:

1. RECITALS. The Recitals of this MOU are true and correct, and are incorporated herein by reference and made a part thereof.

2. GRANT. Subject to the terms and conditions set forth herein and the County's compliance with all of its obligations hereunder, the City hereby agrees to make available to the County the Grant, on a reimbursement basis, in an amount not to exceed One Million Dollars (\$1,000,000.00) from the City's impact fees that are derived from developments that have paid or will pay impact fees within five hundred (500) feet of Phase One, to be used solely for the purpose and disbursed in the manner hereinafter provided, subject to availability of those impact fees from that delineated area from where impact fees for this Grant shall be derived.

3. USE OF GRANT. The Grant shall be used only for the design and construction of capital improvements, capital facilities, and capital equipment that add capacity to the City's park system exclusively for that portion of the Project within the City's territorial boundaries that is also part of Phase One of the Underline. No portion of the Grant shall be used for the reconstruction, refurbishment, or replacement of existing capital improvements, capital facilities, or capital equipment. At the City's sole discretion, payment of the Grant or portions thereof may be withheld for non-compliance with the terms of this MOU. The City shall give Grant payments to the County under this MOU upon receipt of documentation satisfactory to the City that the County's expenditures are compliant with the restrictions of the Grant in this MOU.

4. TERM. The term of this MOU shall commence on the Effective Date and shall terminate upon the earlier of:

- a. Completion of the Project; or
- b. Four (4) years from the date of execution, whichever occurs last; or
- c. The expenditure of One Million Dollars (\$1,000,000.00) from the City's impact fees that are derived from developments that have paid or will pay impact fees within five hundred (500) feet of Phase One to the County; or
- d. Termination for any or no reason whatsoever by the City upon giving five (5) days written notice to the County at which time the City shall be relieved of all obligations under this MOU; or
- e. Earlier termination as provided in this MOU.

However, all rights of the City to audit, inspect, require reversion of funds, enforce representations and warranties, to avail itself of default remedies, and any limitation of liability and / or indemnification shall survive the expiration or termination of this MOU.

5. COMPLIANCE WITH APPLICABLE LAW. The County understands that the use of this Grant is subject to specific reporting, recordkeeping, administrative, and contracting guidelines affecting the activities funded by the Grant. The County agrees to comply with all applicable federal, state, and local laws, codes, rules, and regulations in connection with this MOU.

6. AUDIT RIGHTS. The City shall have the right to conduct audits of all of the County's records pertaining to the Grant and to visit the Project site in order to conduct monitoring and evaluation activities.

7. NOTICE. All notices or other communications that may be given pursuant to this MOU shall be in writing and delivered by personal service or registered mail to the address indicated for the particular party below. Such notice shall be considered given on the day of personal service, or if by registered mail, five (5) days after posting or the date of actual receipt, whichever is earlier.

To City:	City of Miami 444 SW 2 nd Avenue, 10 th Floor Miami, FL 33130 Attn: City Manager	To County:	Miami-Dade County 111 NW 1 st Street, Miami, FL 33128, 29 th Floor Attn: Mayor Carlos Giménez
	AND		
	City of Miami 444 SW 2 nd Avenue, Ste. 915 Miami, FL 33130 Attn: Victoria Méndez, City Attorney		

8. REMEDIES FOR NON-COMPLIANCE. If the County fails to perform any of its obligations or covenants hereunder, or materially breaches any of the terms contained herein, then the City shall have the right to take one or more of the following actions:

- a. Recover payments made to the County, including both spent and unspent payments;
- b. Take any and all other remedies as may be legally permitted.
- c. Terminate this MOU pursuant to Section 4(d).

9. LIABILITY OF CITY. In the event of breach of this MOU by the City, the County may only seek specific performance of this MOU and any recovery shall be limited to the funding from the Grant pursuant to this MOU. In no event shall the City be liable to the County for additional compensation, including consequential or incidental costs or damages.

10. MARKETING. County shall prominently mention that the Project is supported and funded by the City on all approved signage promotional media and brochures, publication and similar documents, or data. The City shall be referenced in the same or like manner as Miami-Dade County, the State of Florida or other public agency providing funding for the Project.

11. INDEMNIFICATION. The County shall indemnify, defend, save and hold harmless the City and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "liabilities") arising out of, resulting from or in connection with (i) the performance or non-performance of the services, supplies, materials and equipment contemplated by this MOU which is directly or indirectly caused, in whole or in part, by any act, omission, default, professional errors or omissions, or negligence (whether active or passive) of the County or its employees, agents or subcontractors (collectively referred to as the "County"), regardless of whether it is, or is alleged to be, caused in whole or part (whether joint, concurrent or contributing) by any act, omission, default, breach, or negligence (whether active or passive) of the City, unless such injuries or damages are ultimately proven to be the result of grossly negligent or willful acts or omissions on the part of the City; or (ii) the failures of the County to comply with any of the paragraphs provisions herein; or (iii) the failure of the County to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state, county, or city in connection with the granting or performance of this MOU, or any amendment to this MOU, or any actions or challenges that may arise out of an amendment of the MOU by, as due to alleged failure to comply with any applicable procurement requirements or similar limitations imposed on such agreements by law, the County expressly agrees to indemnify and hold harmless the City, from and against all liabilities which may be asserted by an employee or former employee of the County, or any of its subcontractors, as provided above, for which the County's liability to such employee or former employee would otherwise be limited to payments under state Worker's Compensation or similar laws. This section shall be interpreted in a manner to comply with any applicable Florida Statutes, including, without limitation, 725.06 and 725.08, Fla. Stat., if applicable. This Indemnification shall survive the cancellation or expiration of the MOU.

12. NON-DELEGABILITY. The obligations of the County under this MOU shall not be delegated or assigned to any other party without the City's prior written consent which may be withheld by the City, in its sole discretion, for any or no reason whatsoever. However, it is understood that the County will require the services of various subcontractors to facilitate the creation and completion of the Project. Nothing in this section shall be construed as prohibiting the County from contracting with others to facilitate Phase One of the Project consistent with the restrictions of the use of the Grant.

13. AMENDMENTS. No amendment to this MOU shall be binding on either party, unless in writing and signed by both parties

14. INTERPRETATION. This MOU shall be interpreted in accordance with the laws of the State of Florida, Miami-Dade County and the City of Miami.

- a. CAPTIONS. The captions in this MOU are for convenience only and are not a part of this MOU and do not in any way define, limit, describe or amplify the terms and provisions of this MOU or the scope or intent thereof.
- b. ENTIRE AGREEMENT. This instrument constitutes the sole and only agreement of the parties hereto relating to the Grant, and correctly set forth the rights, duties, and obligations of the parties. There are no collateral or oral agreements or understandings between the City and the County relating to the MOU. Any promises, negotiations, or representations not expressly set forth in this MOU are of no force or effect. This MOU shall not be modified in any manner except by an instrument in writing executed by the parties. The masculine (or neuter) pronoun and the singular number shall include the masculine, feminine and neuter genders and the singular and plural number. The word "including" followed by any specific item(s) is deemed to refer to examples rather than to be words of limitation.
- c. CONSTRUCTION. Should the provisions of this MOU require judicial or arbitral interpretation, it is agreed that the judicial or arbitral body interpreting or construing the same shall not apply the assumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party which itself or through its agents prepared same, it being agreed that the agents of both parties have equally participated in the preparation of this MOU.
- d. COVENANTS. Each covenant, agreement, obligation, term, condition or other provision herein contained shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, not dependent on any other provision of this MOU unless otherwise expressly provided. All of the terms and conditions set forth in this MOU shall apply throughout the term of this MOU unless otherwise expressly set forth herein.
- e. CONFLICTING TERMS. In the event of conflict between the terms of this MOU and any terms or conditions contained in any attached documents, the terms of this MOU shall govern.
- f. WAIVER. No waiver or breach of any provision of this MOU shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
- g. SEVERABILITY. Should any provision contained in this MOU be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, then such provision shall be deemed modified

to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, that same shall be deemed severable, and in either event, the remaining terms and provisions of this MOU shall remain unmodified and in full force and effect.

- h. THIRD-PARTY BENEFICIARIES. No provision of this MOU shall, in any way, inure to the benefit of any third party so as to make such third party a beneficiary of this MOU, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any party not a party hereto.

15. MISCELLANEOUS PROVISIONS

- a. TIME OF THE ESSENCE. Time shall be of the essence for each and every provision of this MOU.
- b. ATTORNEY'S FEES AND COSTS. In the event of any litigation between the parties under this MOU, the parties shall bear their own attorneys' fees and costs at trial and appellate levels.
- c. INCORPORATION BY REFERENCE. All exhibits attached to this MOU are incorporated in, and made a part of this MOU.

[This space intentionally left blank]

IN WITNESS WHEREOF, I have hereunto set my/our hand(s) and seal(s) this ____ day of _____, 2020.

Miami-Dade County, Florida

ATTEST:

Harvey Ruvín, Clerk

Deputy Clerk

MIAMI-DADE COUNTY,
Florida By its Board of County
Commissioners

Carlos A. Giménez, Mayor
Date: _____

Approved as to form and legal
sufficiency:

Assistant County Attorney

ATTEST:

CITY OF MIAMI, a municipal
corporation

Todd Hannon, City Clerk

Emilio T. Gonzalez, City Manager

APPROVED AS TO LEGAL FORM
AND CORRECTNESS:

APPROVED AS TO RISK
MANAGEMENT
REQUIREMENTS:

Victoria Méndez, City Attorney

Ann-Marie Sharpe, City Manager
Department of Risk Management

Exhibit A -Phase One of the Project

Exhibit B - Board of County Commissioners Resolution _____

Exhibit C - City Commission Resolution No. R-15-0397

Exhibit A
Phase One of the Project

Submitted into the public record for items RE.11, DI.6 on 9/10/2015. City Clerk.

Miami has The Underline

Brickell Backyard Proposed, Miami River to SW 17th Rd.

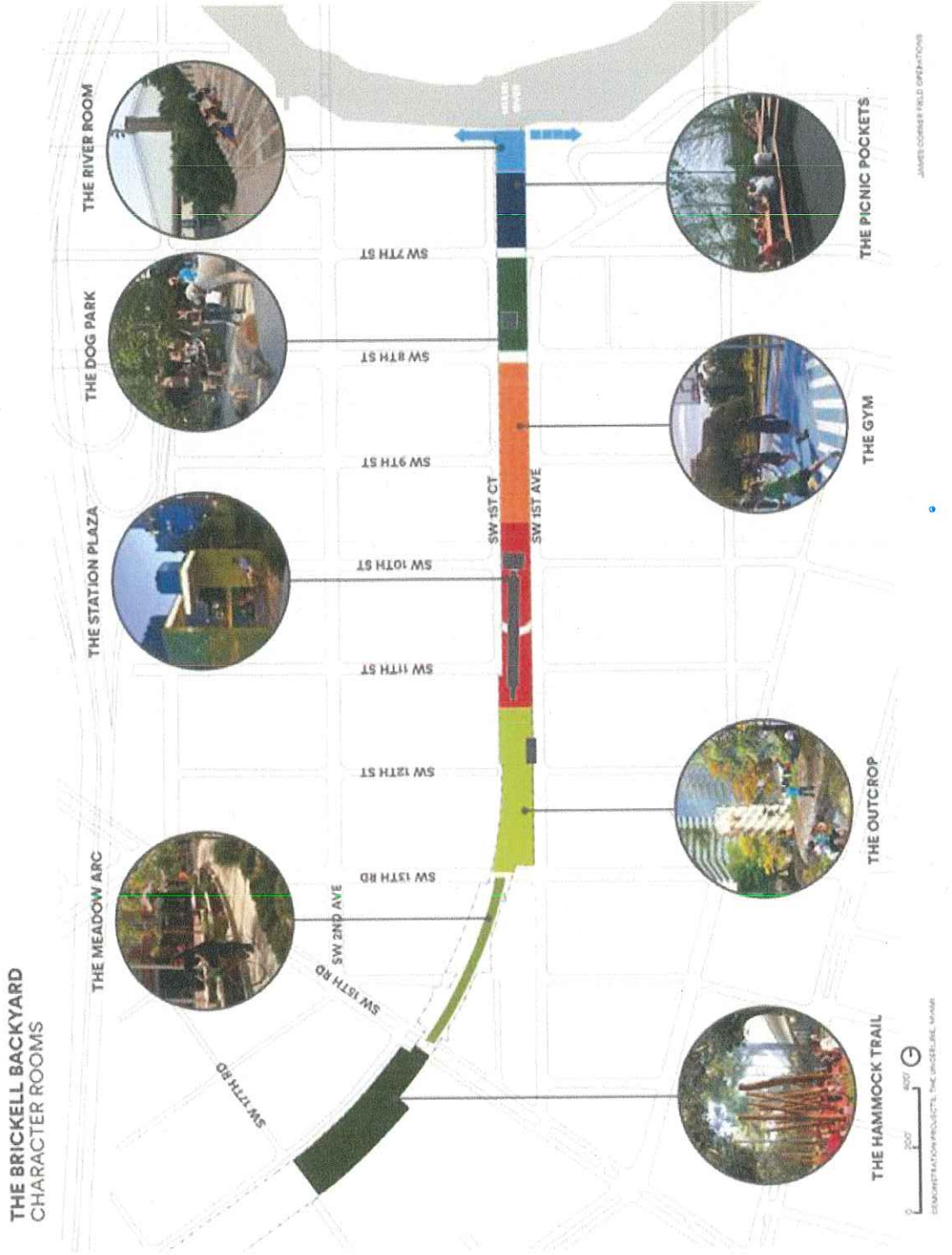


Exhibit B
Board of County Commissioners Resolution _____

Exhibit C
City Commission Resolution No. R-15-0397



City of Miami
Legislation
Resolution: R-15-0397

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

File Number: 15-01086a

Final Action Date: 9/10/2015

A RESOLUTION OF THE MIAMI CITY COMMISSION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH MIAMI-DADE COUNTY FOR FUNDING OF PHASE ONE OF THE UNDERLINE PROJECT FROM PARK IMPACT FEES ATTRIBUTABLE TO CONSTRUCTION OF BUILDINGS WITHIN FIVE HUNDRED (500) FEET TO THE EAST OF PHASE ONE OF THE UNDERLINE PROJECT IN AN AMOUNT NOT TO EXCEED ONE MILLION DOLLARS (\$1,000,000.00) PROVIDED THAT SAID FUNDS SHALL BE EXPENDED ON PHASE ONE OF THE UNDERLINE PROJECT WITHIN FOUR (4) YEARS.

WHEREAS, on September 10, 2015, the City Commission authorized a grant agreement for Parks Foundation of Miami-Dade, Inc. in an amount of two hundred thousand dollars (\$200,000.00) in impact fees for improvements to the Metrorail right of way from the Miami River to Dadeland South Station for a project known as "The Underline"; and

WHEREAS, enhancing this linear park within the City of Miami ("City") will provide numerous benefits to the surrounding community; and

WHEREAS, the City wishes to further effectuate this goal by entering into an agreement to give an additional one million dollars (\$1,000,000.00) in impact fees to Miami-Dade County for Phase One of The Underline;

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. The City Manager is authorized{1} to enter into a Memorandum of Understanding with Miami-Dade County for funding of Phase One of the Underline Project from park impact fees attributable to construction of buildings with five hundred (500) feet to the east of Phase One of the Underline Project in an amount not to exceed one million dollars (\$1,000,000.00) provided that said funds shall be expended on Phase One of the Underline Project within four (4) years.

Section 3. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.{2}

Footnotes: