

Memorandum



Date: September 1, 2021

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Agenda Item No. 8(A)(2)

Resolution No. R-808-21

Subject: License Agreement with the Florida Department of Transportation for Use of Land Adjacent to Miami International Airport by Miami-Dade County

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the County Mayor or County Mayor’s designee to enter into a License Agreement with the Florida Department of Transportation (“FDOT”) for the use of a parcel of land adjacent to Miami International Airport (MIA) by Miami-Dade County, at no cost to the County. The County has an immediate need for this FDOT Property as it will be used for MIA’s capital improvement program.

Under the terms and conditions of this License Agreement, either party may terminate this License Agreement upon written notice 30 days in advance by either party or upon the effective date of the conveyance of the parcel to the Miami-Dade Aviation Department (MDAD), whichever comes first.

Scope

MIA is located primarily in District 6, which is represented by Commissioner Rebeca Sosa. However, the impact of this agenda item is countywide as MIA is a regional asset.

Delegation of Authority

There are no delegated authorities to the County Mayor or County Mayor’s designee with respect to this License Agreement beyond those authorities authorized by the attached Resolution.

Fiscal Impact/Funding Source

Although the County will not be required to pay FDOT for its use of the land, there will be a fiscal impact to the County for maintaining this parcel of land in the estimated amount of \$6,400 each year for mowing the grass and picking up trash.

Track Record/Monitor

MDAD’s Division Director of Aviation Planning, Land-Use and Grants, Jose A. Ramos, will oversee the implementation of this License Agreement.

Background

In 2008, the County executed a land exchange memorandum of agreement (“2008 MOA”) with FDOT and the Miami-Dade Expressway Authority (“MDX”). The 2008 MOA called for the County’s conveyance of approximately 4.61 acres of County-owned land located at MIA (near the State Road 836/LeJeune Road Interchange) to MDX in exchange for 4.61 acres of land (also located near the State Road 836/LeJeune Road Interchange) owned by FDOT through a joint participation agreement with MDX. Subsequent to the execution of the 2008 MOA, FDOT determined that it no longer needed the County parcel and, accordingly, the parties did not follow through with the land exchange called for in the 2008 MOA.

FDOT, however, has expressed interest in another smaller parcel of land owned by the County at MIA that is not needed for airport purposes. In exchange, FDOT, with MDX's agreement, has offered to convey to the County substantially the same parcel of land as (but slightly larger than) the parcel that FDOT and MDX agreed to convey in the 2008 MOA. The exchange would not require any monetary payment by the County. The County has an immediate need for the FDOT Property, which it intends to use in furtherance of MIA's capital improvement program. To effectuate this transaction, the parties would need to execute a new land exchange agreement that ends the 2008 MOA.

FDOT has agreed to license the FDOT property to the County free of any rental charges until the parties have negotiated and executed a new land exchange agreement that terminates the 2008 MOA.



Jimmy Morales
Chief Operations Officer

Item/Seg.No. : 2502341
S.R. No. : MIC
County : Miami-Dade
District : Six
Parcels : 4502, 4503, 4504

THIS AGREEMENT ("License") between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, located at 1000 NW 111th Avenue, Miami, Florida 33172-5800, herein called the Licensor, and **MIAMI-DADE COUNTY, THROUGH ITS AVIATION DEPARTMENT ("MDAD")**, P.O. Box 025504, Miami, FL 33102-5504, herein called the Licensee.

WHEREAS, FDOT, MDAD and the Miami-Dade Expressway Authority entered into a Memorandum of Agreement dated February 28, 2008 for a Land Exchange (the "Exchange Agreement") which exchange will convey FDOT Parcels 4502, 4503 and 4504 (the "Parcels") to MDAD which Parcels are further described in Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, while the process of the Land Exchange is being finalized, MDAD has a need for the Parcels and has requested the use of the Property for the purposes as described in Schedule of Permitted Uses in the attached Exhibit "B"; and

WHEREAS, the parties have agreed that MDAD may use the Property at no rental cost to the County pursuant to the term outlined below and that, during the time that MDAD is in actual possession of the Property under this License, MDAD shall be the responsible party to maintain the Property under the terms and conditions of this License, thus relieving FDOT of the cost of the periodic maintenance and oversight of the Property.

NOW, THEREFORE, in consideration of the benefits hereby acknowledged as mutually accruing unto each party, the parties agree as follows:

Property

The Licensor hereby grants to the Licensee a license to enter upon and use, subject to all the terms and conditions contained herein, the following described premises ("Property") at no rental cost to the County (subject to the maintenance obligations described below):

**FDOT Parcels 4502, 4503 and 4504
as further described in the a
attached Exhibit "A"**

This License creates no vested interest in the Property to the benefit of the Licensee. The Licensee agrees to return the Property to the Licensor in the same condition existing at the commencement of this License and agrees to restore any damage at its sole cost to Licensor's satisfaction unless otherwise specified herein.

Term of License

Licensor hereby grants unto the Licensee a license and privilege to enter upon the Property as of the effective date of this License and until such time as the License is terminated by either party or

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the Parcels are conveyed to MDAD, whichever comes first.

Contemplated Use

Property may be entered upon and used by Licensee solely for the purposes listed in the attached Schedule of Permitted Uses, attached as Exhibit "B". If the Property is used for any other purpose without the written consent of Licensor, Licensor may immediately terminate this License and upon termination, Licensee shall surrender the Property without delay in the same condition existing at the commencement of this License. Any additional or alternative uses shall be by amendment to the Schedule of Permitted Uses in Exhibit "B".

Licensee, its officers, agents, employees, contractors, representatives, solicitors, invitees, or sub-licensees or permittees of the Licensee duly authorized in accordance with Licensee's ordinances or procedures, shall have use and access of the Property, subject to compliance with the terms of this License. Licensee, and those using the Property under the authority of Licensee, shall manage and supervise the Property, and shall further provide for safety and security thereon.

Licensee will not introduce toxic or hazardous materials to the Property in conducting the contemplated use. Furthermore, Licensee will take the following precautions to reduce risk of contamination: The surface will be prepared and protected with suitable plastic sheeting (i.e., visqueen) before soils are staged. Stockpiles will also be covered with visqueen while profiling soils for re-use and/or "proper" disposal in accordance with applicable regulations. All material will be hauled for re-use or disposal off site once analytical results are received and reviewed by the local agencies having jurisdiction.

Licensee will obtain all permits, if any, from other governmental agencies that are necessary to carry out the contemplated use and coordinate such activities with the appropriate police department(s), if appropriate.

Licensee may not remove, modify, install, maintain, construct or undertake any improvements, either temporary or permanent, on the Property, other than those approved in writing by Licensor after receipt of a written request from Licensee (such approval being subject to the sole discretion of Licensor).

Licensee agrees that the contemplated use will be performed in a lawful, prudent, and safe manner, and will not unreasonably interfere with the normal activities of the Licensor or its contractors, if any. If Licensor notifies Licensee that the contemplated use interferes with the Licensor's operations, if any, or Licensor otherwise requests that the Licensee's use of the premises cease or be reduced, upon receipt of such notice or request, Licensee will immediately cease or reduce the contemplated use, and remove personnel and equipment as necessary to comply with Licensor's notice or request. If the actual use will materially vary from the contemplated use, the Licensee will promptly notify Licensor of such anticipated variances and obtain Licensor's prior written concurrence prior to engaging in such activities.

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Licensee shall keep and maintain the Property in good and safe condition and repair at Licensee's own expense throughout the term of this License, and shall keep the same free and clear of any and all grass, weeds, brush, and debris of any kind, so as to prevent the same from becoming dangerous, inflammable, or objectionable. Licensor shall have no duty to inspect or maintain any of the Property during the term of this License; however, Licensor shall have the right, upon twenty-four (24) hour notice to Licensee, to enter the Property for purposes of inspection, including conducting an environmental assessment, if needed. Such assessment may include: surveying; sampling of building materials, soil, and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other actions which may be reasonable and necessary at the Licensor's discretion. Licensor's right of entry shall not obligate inspection of the property by Licensor, nor shall it relieve the Licensee of its duty to maintain the Property. In the event of emergency due to a release or suspected release of hazardous waste on the property, Licensor shall have the right of immediate inspection, and the right, but not the obligation, to engage in any necessary remedial action, without notice, the sole cost and expense of which shall be the responsibility of the Licensee.

Vehicles/Personal Property/Property Condition

In the event that Licensor, at its sole discretion, determines that the Property is required for debris staging or other emergency situation that requires vacant land by the Licensor, Licensee agrees to provide to Licensor an alternative and viable site easily accessible for the intended purpose. In the event that a statewide emergency necessitates vacation of the property by Licensee, it is understood and agreed that Licensee shall, upon notice, cooperate to its fullest extent to vacate the Property, at Licensee's sole cost and expense. If Licensee fails to timely vacate the Property and remove its personal property, including any and all vehicles maintained therein, Licensor, upon the giving of notice reasonable under the circumstances, may do so at Licensee's sole cost and expense, and without any liability to Licensor. The Property is being made available for use in an "As Is" condition. Additionally, upon removal of Licensee's personal property and/or vehicles, Licensee shall have a reasonable time to restore the Property to the condition existing prior to the commencement of this License Agreement.

In order to secure the License Agreement, the Licensee covenants and agrees, subject to the limits set forth in § 768.28, Fla. Stat., to indemnify, defend, save and hold harmless the State, the State of Florida Department of Transportation and all of its officers, agents, and employees from any claim, loss damage, judgment, cost, charge or expense arising out of any act, action, neglect, or omission made by the Licensee, its officers, agents, employees, representatives, or solicitors in any way pertaining to the License Agreement and the use of the license area by third parties, whether direct or indirect, except that neither the Licensee nor any its officers, agents, employees, representatives, or solicitors will be liable under this provision from damages arising out of injury or damages directly caused or resulting from the sole negligence of the State of Florida Department of Transportation or any of its officers, agents or employees.

Licensee's obligation to indemnify, defend and pay for the defense or at the Licensor's option, to

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participate and associate with the Licensor in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Licensor's notice of claim for indemnification to Licensee. Licensee's inability to evaluate liability or its evaluation of liability shall not excuse Licensee's duty to defend and indemnify within seven days after such notice by the Licensor is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the Licensor solely negligent shall excuse performance of this provision by Licensee. Licensee shall pay all costs and fees related to this obligation and its enforcement by the Licensor. Licensor's failure to notify Licensee of a claim shall not release Licensee of the above duty to defend.

Insurance

Licensee is self-insured in accordance with and subject to the limitations set forth in Section 768.28, Florida Statutes.

Licensee shall assure that all users that it authorizes to enter upon the Property on its behalf ("Authorized Users") are reasonably and properly insured for any claims that arise from their use of the Property under the License. MDAD shall obtain Certificates of Insurance from such Authorized Users showing FDOT as Certificate Holder and as an Additional Insured party under such policies in a minimum amount of not less than \$1,000,000.00 for bodily injury or death to any one person or any number of persons in any one occurrence and not less than \$1,000,000.00 for property damage or \$2,000,000.00 combined. All such policies shall be issued by companies of recognized responsibility licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified. Prior to using the Property, Licensee shall provide Licensor certificates showing such insurance to be in place and showing Licensor as additional name insured under the policies. Licensor may require the amount of any public liability insurance to be maintained by Authorized Users be increased so that the amount thereof adequately protects Licensor's interest.

FDOT shall be entitled to recover from the Authorized Users whatever amounts may be available from them individually or from their insurance carriers in payment for any damage, injury, or death affecting FDOT that arises out of the Authorized Users' use of the Property under this License.

Licensee further agrees that it shall, during the full term of this license and at its own expense, keep its contents and personal property located on the land fully insured against loss or damage by fire, vandalism or other casualty and does hereby release and waive on behalf of itself and its insurer, by subrogation or otherwise, all claims against Licensor arising out of any fire, damage, vandalism or other casualty whether or not such fire, damage, vandalism or casualty shall have resulted in whole or part from the negligence of the Licensor unless Licensor's agents were the sole and direct cause of damage to Licensee's property.

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Third Party Beneficiaries

This License Agreement shall be binding, except as may otherwise be provided for herein, upon and inure to the benefit of the parties hereto. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for in this License.

Termination of License

This License may be terminated upon written notice thirty (30) days in advance by either party or upon the effective date of the conveyance of the Parcels to MDAD, whichever comes first. Termination of the License shall be reflected by execution of the appropriate documents by the parties.

Miscellaneous

Licensor makes no representations that the property is suitable for the contemplated use. Licensee acknowledges that Licensor has disclosed its lack of knowledge regarding the integrity of the site and makes no warranties or representations regarding its condition for the intended use. This License creates no vested interest in the Property to the benefit of the Licensee. The Licensee agrees to return the Property to the Licensor in the same conditions existing prior to the contemplated use and agrees to restore any damage at its sole cost to Licensor's satisfaction.

Licensee will not hold Licensor liable for damage to or destruction of equipment or property during the contemplated use unless Licensor's agents or employees were the sole and direct cause of damage to Licensee's property.

So long as Licensor provides notice and a reasonable opportunity for Licensee to remove its property as discussed above, Licensee herein waives its right to any court proceedings and procedures that it may be entitled to in connection with Licensor's removal of Licensee's property, including any vehicles, from the Licensor's Property should any direct or indirect breach of this License Agreement occur. In the event that Licensor must initiate any legal action for repossession of the Property and/or the removal of any personal property and/or vehicles and is successful, any legal fees and costs, including attorney's fees, shall be paid by Licensee.

This license embodies the entire agreement between the parties, and there are no other agreements or understandings, written or oral, between the parties relating to the subject matter hereof.

This License Agreement shall be construed according to the laws of the State of Florida.

IN WITNESS WHEREOF, the said parties have signed these presents on the date written below.

LICENSEE

MIAMI DADE COUNTY
AVIATION DEPARTMENT

Dated: _____

By: _____
Signature

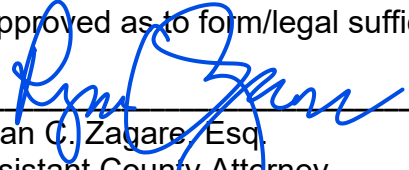
Print Name: _____

Title: _____

Witness: _____

Print Name: _____

Approved as to form/legal sufficiency:



Ryan C. Zagare, Esq.
Assistant County Attorney

LICENSOR

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Dated: _____

By: _____
Stacy L. Miller, P.E.
District Six Secretary

Attest: _____
Helen Shaheen
Assistant to District Six Secretary

Legal Review:

Alicia Trujillo, Esq.
District Six Counsel

OWNER'S NAME	PARCEL AREA	REMAINDER	COMMENTS
EXHIBIT "A"	4.965 AC.		

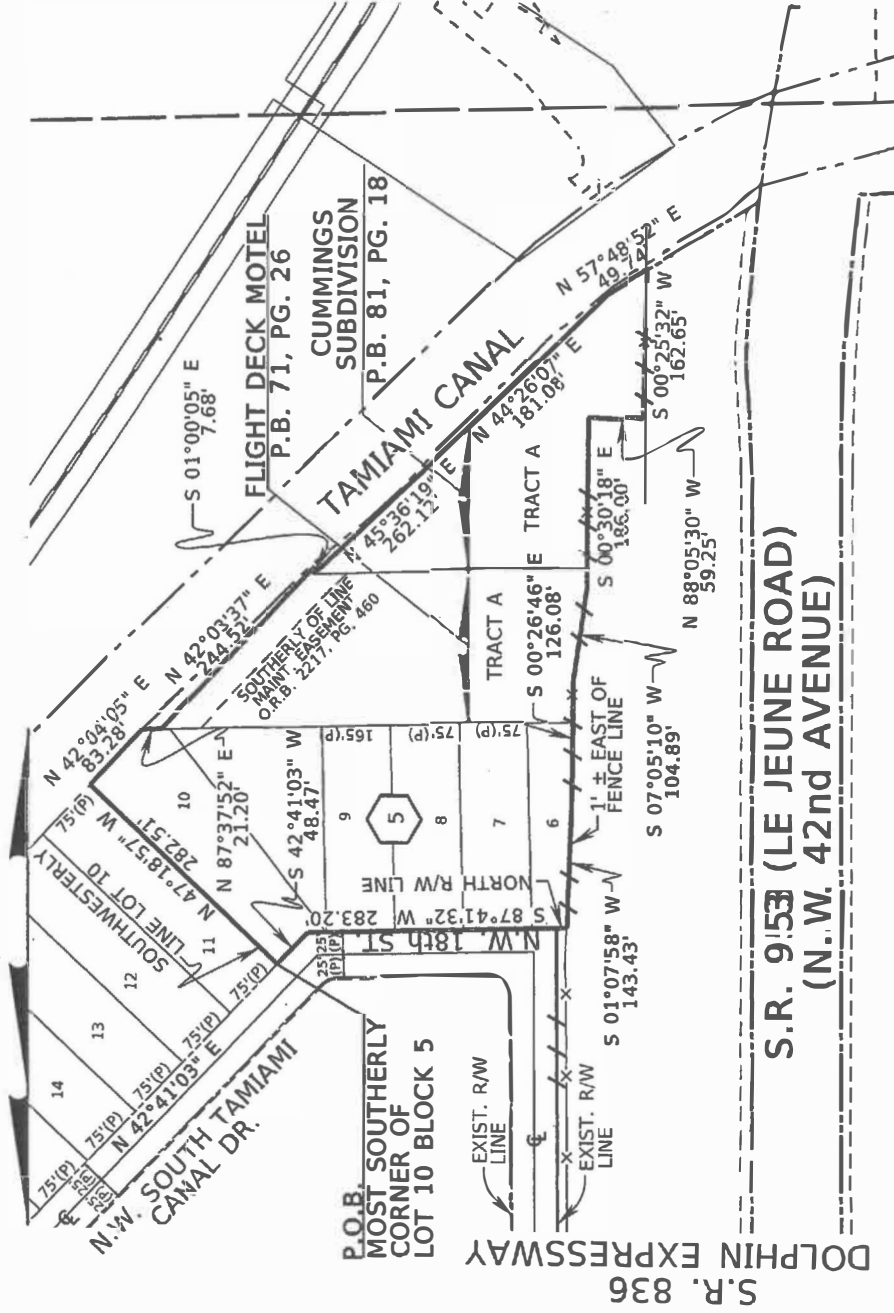
SEC.32, TWP.53S, RGE.41E

EXHIBIT "A"

LE JEUNE GARDEN ESTATES SECTION 3
P.B. 44, PG. 11

LEGEND:

- B - Baseline
- C - Centerline
- Δ - Curve Delta Angle
- 800 - Parcel Identification Number
- AH - Ahead
- BK - Back
- (C) - Calculated
- EXIST. - Existing
- FDOT - Florida Department of Transportation
- F.P. - Financial Project
- L - Length
- NO. - Number
- P.B. - Plat Book
- PG. - Page
- PI - Point of Intersection
- P - Property Line
- (R/W) - From Right of Way Map
- R - Radius
- RGE. - Range
- RT - Right
- R/W - Right-of-Way
- SEC. - Section
- STA. - Station
- TWP. - Township



THIS IS NOT A SURVEY

SCALE 1" = 200'

This document consists of two (2) sheets and shall not be considered full, valid, and complete unless each sheet is attached to the other.

FLORIDA DEPARTMENT OF TRANSPORTATION SKETCH TO ACCOMPANY LEGAL DESCRIPTION					STATE ROAD NO. 968				MIAMI-DADE COUNTY				
	REVISION		BY	DATE	DRAWN		BY	DATE	PREPARED BY:		DATA SOURCE:		
									TRIANGLE SURVEYING AND MAPPING, INC		8290 NW 64 STREET		
									MIAMI, FL 33166 (L87388)				
					CHECKED		LT	F.P. NO. 418091-1-32-03		SECTION 7281-MIC		SHEET 2 OF 2	
12:07:40 PM													

Exhibit B

Schedule of Permitted Uses

1. Vehicular parking and storage.
2. Construction office trailers and parking.
3. Construction employee vehicular parking.
4. Construction material lay-down and storage.
5. Construction soil, construction debris, and construction fill staging.



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: September 1, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(A)(2)

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. 8(A)(2)
9-1-21

RESOLUTION NO. R-808-21

RESOLUTION APPROVING THE TERMS AND AUTHORIZING EXECUTION BY THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE OF A LICENSE AGREEMENT BETWEEN MIAMI-DADE COUNTY, AS LICENSEE, AND THE FLORIDA DEPARTMENT OF TRANSPORTATION, AS LICENSOR, FOR THE MIAMI-DADE AVIATION DEPARTMENT'S USE OF A PARCEL OF LAND ADJACENT TO MIAMI INTERNATIONAL AIRPORT FREE OF ANY RENTAL CHARGE; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE SAME, AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN, INCLUDING ANY RIGHT OF TERMINATION

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

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

Section 1. Approves of and incorporates the foregoing recital as if fully set forth herein.

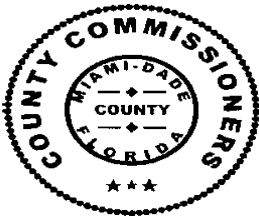
Section 2. Approves the terms of the License Agreement between the County, as licensee, and the Florida Department of Transportation, as licensor, in substantially the form attached to the accompanying memorandum, for the Miami-Dade Aviation Department's rent-free use of a parcel of land adjacent to Miami International Airport.

Section 3. Authorizes the County Mayor or County Mayor's Designee to take all actions necessary to effectuate same, and to exercise all rights conferred therein, including the right of termination.

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

Jose “Pepe” Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	aye		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	absent
Sen. Javier D. Souto	absent		

The Chairperson thereupon declared this resolution duly passed and adopted this 1st day of September, 2021. 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: **Melissa Adames**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

RQ

Ryan C. Zagare