

**Memorandum of Understanding  
Between the City of Miami Beach  
And the Lincoln Road Business Improvement District, Inc.**

This Memorandum of Understanding ("MOU") is hereby entered into as of the \_\_\_\_ day of May 2020 by and between the City of Miami Beach, a municipal corporation organized and existing under Florida law, with principal offices at 1700 Convention Center Drive, Miami Beach, FL 33139 (the "City") and the Lincoln Road Business Improvement District, Inc., a Florida not-for-profit corporation with principal offices at 350 Lincoln Road, 2nd Floor, Miami Beach, FL 33139 (the "LRBID") (collectively, the City and the LRBID may hereinafter be referred to as the "Parties").

**RECITALS**

**WHEREAS**, on April 15, 2015, the Mayor and City Commission adopted Resolution No. 2015-28992, which created a special assessment district to be known as the Lincoln Road Business Improvement District (the "District") for a period of ten (10) years, to stabilize and improve the Lincoln Road retail business district, which is located within a nationally recognized historic district, through promotion, management, marketing, and other similar services; and

**WHEREAS**, on October 1, 2016, the LRBID entered into an agreement with Mydatt Services Inc., dba Block by Block ("Block by Block") to provide environmental maintenance services and hospitality and safety services for the area located within the District (the "Services"); and

**WHEREAS**, Block by Block provides safety, cleaning, hospitality, and outreach services for business improvement districts; and

**WHEREAS**, on February 9, 2017, and pursuant to City Resolution No. 2016-29692, the City and the LRBID entered into a Memorandum of Understanding (the "MOU") to provide City funding in the amount of \$13,333.33 per month for the Services, for a Term of approximately eight (8) months, which Term ended on September 30, 2017; and

**WHEREAS**, on October 18, 2017, and pursuant to City Resolution No. 2017-30051, the City Manager executed Amendment No. 1 to the MOU to extend the Term for one additional year until September 30, 2018, with the option to extend the Term for one additional year, until September 30, 2019; and

**WHEREAS**, on September 11, 2019, the City Commission adopted Resolution No. 2019-30948, approving an amendment to the MOU to extend the Term on a month-to-month basis, provided that this extension of the MOU shall not exceed a period of six (6) months; and

**WHEREAS**, the LRBID and Block by Block temporarily suspended the performance of the Services in the District as a result of the COVID-19 pandemic, intending to resume the Services in or around May 2020; and

**WHEREAS**, the City Administration recommends that the City Commission approve a new MOU with a term of one year, commencing on May 1, 2020 and ending on September 30, 2020, in order to continue providing City funding for the Services at the rate of \$160,000 per year (i.e. \$13,333 per month); and

**WHEREAS**, the Administration further recommends that the MOU include two (2) one year renewal terms, to be exercised at the City Commission's sole discretion.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties agree as follows:

1. The recitals are true and correct and are hereby incorporated into and made a part of this MOU.
2. **LRBID's Responsibilities:** The City's agreement to provide funding pursuant to this MOU shall at all times be contingent on the execution of an agreement between LRBID and Block by Block, substantially in the form attached hereto as Exhibit "A" ("Block by Block Agreement"). If, for any reason, the Block by Block Agreement terminates, the LRBID shall promptly notify the City Manager in writing.
3. **City's Responsibilities:** The City shall provide the LRBID with an annual contribution in the amount of \$160,000. The City shall reimburse LRBID on a monthly basis, in the amount of \$13,333.33 per month, in accordance with the procedures set forth in Section 4 of this MOU, to be applied solely toward the cost of the Services performed by Block by Block.
4. **Reimbursement:** At least once every month, LRBID shall submit to the City a request for reimbursement in the amount set forth in Section 3 of this MOU, which reimbursement shall be applied to the cost of the Services performed by Block by Block. Each request for reimbursement shall be submitted to the Miami Beach Property Management Division Director ("Director") on or before the tenth (10th) day of each month during the Term. The Director shall have ten (10) days after he or she is presented with the request for reimbursement to review and approve same or state in writing any reasons for non-approval. The City shall pay the approved requests for reimbursement within twenty (20) days after the submittal of each request for reimbursement. With each request for reimbursement, the LRBID shall submit the applicable invoice(s) for services provided by Block by Block. Notwithstanding anything contained in this MOU, once a payment on a request for reimbursement has been made by the City to the LRBID, the City shall have no liability and/or other obligation to Block by Block or LRBID with regard to such reimbursement.
5. **Term:** The initial term of this MOU shall commence on the date of the execution of the Block by Block Agreement and shall terminate on September 30, 2020. This MOU may be renewed for up to two (2) additional one-year periods, at the City Commission's discretion and, subject to any required budgetary appropriations by the Miami Beach City Commission.
6. **Termination:** This MOU shall terminate automatically upon the termination of the Block by Block Agreement or upon the dissolution or bankruptcy of the LRBID.

7. **Default:**

- a. If LRBID breaches its obligations as specified herein (and same are not waived in writing by the City), then the City shall give LRBID written notice specifying the nature of the default and the LRBID shall have ten (10) days after receipt of such notice, in the case of a monetary default, or thirty (30) days after receipt of such notice, in the case of a non-monetary default, within which to cure the specified default; provided, however, if the nature of such default is such that it cannot reasonably be cured within the specified period, the LRBID shall not be deemed to be in default if the LRBID shall, within such period, commence such cure and thereafter diligently prosecute same to completion; provided further, however, the maximum cure period for any default hereunder shall not exceed ninety (90) days from the date of the original notice of default from the City to the LRBID. The City may thereafter terminate this MOU, without restriction or penalty, if the LRBID fails to cure the default following the expiration of the notice and cure period herein.
- b. If City breaches its obligations as specified herein (and same are not waived in writing by the LRBID), then the LRBID shall give City written notice specifying the nature of the default and the City shall have ten (10) days after receipt of such notice, in the case of a monetary default, or thirty (30) days after receipt of such notice, in the case of a non-monetary default, within which to cure the specified default; provided, however, if the nature of such default is such that it cannot reasonably be cured within the specified period, the City shall not be deemed to be in default if the City shall, within such period, commence such cure and thereafter diligently prosecute same to completion; provided further, however, the maximum cure period for any default hereunder shall not exceed ninety (90) days from the date of the original notice of default from the LRBID to the City. The LRBID may thereafter terminate this MOU, without restriction or penalty, if the City fails to cure the default following the expiration of the notice and cure period herein.

8. **Termination for Convenience:** The City may also, following the approval of the City Commission, and for its convenience and without cause, terminate this MOU at any time during the Term by giving written notice to the LRBID of such termination; which shall become effective within sixty (60) days following receipt by the LRBID of such notice. If the MOU is terminated for convenience by the City, the LRBID shall be paid for any services satisfactorily performed up to the date of termination; following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this MOU.

9. **Other Services:** The Parties agree that the services provided by Block by Block shall substitute and replace the private security services formerly provided by the City for the Lincoln Road Mall. However, the services provided by Block by Block shall not replace any maintenance and/or janitorial services being provided by the City for the Lincoln Road Mall.

10. **Assignment:** this MOU and all the rights hereunder shall not be assignable by either the City or the LRBID without the prior written consent of the other.

11. **No Joint Venture:** it is not intended by this MOU to, and nothing contained in this Agreement shall, create any partnership, joint venture, limited liability company, or other arrangement between the City and the LRBID other than the arrangement set forth in this MOU.

12. **Governing Law:** this MOU and the rights of the Parties hereto shall be governed and construed in accordance with the laws of the State of Florida and all claims related to this MOU shall be brought and prosecuted in Miami-Dade County, Florida, which shall be the exclusive venue for all such matters..
13. **Entire Agreement:** This Agreement constitutes the entire agreement between the City and LRBID with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous discussion, negotiations, letters, memoranda or other communications, oral or written, with respect to the subject matter hereof. This Agreement may only be subsequently modified or amended in a writing signed by both the City and LRBID.
14. **Amendments:** No change, amendment or modification of this Agreement shall be valid or binding upon the parties hereto unless such change amendment, or modification shall be in writing and duly executed by all parties hereto.
15. **No Waiver:** Any waiver by any party of a breach of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall neither be considered a waiver nor deprive that party of any right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing and signed by the party to be charged therewith.
16. **Waiver of Jury Trial:** The parties to this Agreement hereby agree not to elect a trial by jury of any issue triable of right by jury, and waive any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Agreement or any action or proceeding in which more than one of such parties may be involved. This waiver of right to trial by jury is given knowingly and voluntarily by the parties hereto, and is intended to encompass individually each instance and each issue as to which the right to trial by jury would otherwise accrue. The parties hereto are each hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver.
17. **Exculpation of LRBID:** Notwithstanding anything contained in this Agreement to the contrary, upon the occurrence of any claim under this Agreement or termination caused by LRBID's default, the recourse of the City against LRBID shall be limited to the actual damages incurred by the City resulting from LRBID's material breach under this Agreement (after expiration of any applicable notice and cure period) or LRBID's willful misconduct or gross negligence for the recovery of any judgment from LRBID, it being agreed that any officers, shareholders, partners, members, directors, employees or agents of LRBID shall never be personally liable for any such judgment and are hereby unconditionally and irrevocably released, satisfied, and forever discharged of and from any and all actions, causes of action, claims, demands, losses, costs and expenses, whether direct, contingent or consequential, liquidated or unliquidated, at law or in equity, that the City has or may or shall have.
18. **Exculpation of the City:** Notwithstanding anything contained in this Agreement to the contrary, upon the occurrence of any claim under this Agreement or termination caused

by City's default, the recourse of the LRBID against the City shall be limited to the actual damages incurred by the LRBID resulting from City's material breach under this Agreement (after expiration of any applicable notice and cure period) or City's willful misconduct or gross negligence, it being agreed that any employees or agents of the City shall never be personally liable for any such judgment and are hereby unconditionally and irrevocably released, satisfied, and forever discharged of and from any and all actions, causes of action, claims, demands, losses, costs and expenses, whether direct, contingent or consequential, liquidated or unliquidated, at law or in equity, that the LRBID has or may or shall have. In no event shall the City's liability under this MOU exceed the value of the City's contribution as set forth in Section 3 of this MOU.

19. **Counterparts/Facsimile:** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A facsimile signature shall be deemed for all purposes to be an original.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

**IN WITNESS WHEREOF**, the Parties hereto have affixed their signatures, effective on the day first above written.

**CITY OF MIAMI BEACH, FLORIDA**

Attest:

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

Date: \_\_\_\_\_

\_\_\_\_\_  
Jimmy L. Morales  
City Manager

Date: \_\_\_\_\_

**LINCOLN ROAD BUSINESS IMPROVEMENT DISTRICT, INC.**

Attest:

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\_\_\_\_\_  
Natalie Meija  
BID Administrator

Date: \_\_\_\_\_

\_\_\_\_\_  
Timothy F. Schmand  
Executive Director

Date: \_\_\_\_\_