

**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 _____ 2022, with an effective date of October 1, 2022 ("Effective Date") 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., d/b/a 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, on June 24, 2020, the Mayor and City Commission adopted Resolution No. 2020-31298, approving a new MOU with a term of five (5) months, commencing retroactively 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 previous MOU provided for two (2) one-year renewal terms, to be exercised at the City Commission's sole discretion, and subject to any required budgetary appropriations; and

WHEREAS, on September 16, 2020, the City Commission adopted Resolution No. 2020-31402, exercising the first renewal option and extending the term of the MOU for one year, commencing on October 1, 2020 and ending on September 30, 2021 ("First Renewal Term"); and

WHEREAS, on October 6, 2021, the City Commission adopted Resolution No. 2021-31843, exercising the second and final renewal option and extending the term of the MOU for an additional year, commencing on October 1, 2021 and ending on September 30, 2022 ("Second Renewal Term"); and

WHEREAS, the parties now desire to execute a new MOU with the LRBID for a term of one year, retroactively commencing on October 1, 2022 and ending on September 30, 2023, in order to continue to provide City funding for the services at the rate of \$160,000.00 per year (or \$13,333.33 per month). The MOU may be extended for up to two (2) optional one-year renewal terms that may be exercised at the City Manager's sole discretion; and

WHEREAS, on October 26, 2022, the Mayor and City Commission adopted Resolution No. _____, authorizing the City Manager and City Clerk to execute this MOU.

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 City of Miami Beach Facilities and Fleet Management 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 October 1, 2022, and shall terminate on September 30, 2023. This MOU may be renewed for up to two (2) additional one-year periods, at the City Manager's sole 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. **No Discrimination:** In connection with the performance of the Services, LRBID shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status. Additionally, LRBID shall comply with City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, or public services, on the basis of actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, familial and marital status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, political affiliation, or disability.
20. **Florida Public Records Law:**
 - A. LRBID shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
 - B. The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant

to law or ordinance or in connection with the transaction of official business of the City.

C. Pursuant to Section 119.0701 of the Florida Statutes, if LRBID meets the definition of "Contractor" as defined in Section 119.0701(1)(a), LRBID shall:

- i. Keep and maintain public records required by the City to perform the service;
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if LRBID does not transfer the records to the City;
- iv. Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of LRBID or keep and maintain public records required by the City to perform the service. If LRBID transfers all public records to the City upon completion of the Agreement, LRBID shall, subject to Chapter 119, Florida Statutes, destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If LRBID keeps and maintains public records upon completion of the Agreement, LRBID shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

D. REQUEST FOR RECORDS; NONCOMPLIANCE

- i. A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify LRBID of the request, and LRBID must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- ii. LRBID's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- iii. If LRBID fails to provide the public records to the City within a reasonable time may be subject to penalties under Section 119.10.

E. CIVIL ACTION

- i. If a civil action is filed against LRBID to compel production of public records relating to the City's contract for services, the court could assess and award against LRBID the reasonable costs of enforcement, including reasonable attorneys' fees, if:
 - a. The court determines that LRBID unlawfully refused to comply with the public records request within a reasonable time; and
 - b. At least eight (8) business days before filing the action, the plaintiff provided written pre-suit notice in accordance with and subject to the limitations set forth in Sections 119.0701 and 119.12, Florida Statutes.

F. IF LRBID HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO LRBID'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411**

21. INSPECTOR GENERAL AUDIT RIGHTS:

- A. Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- B. The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review

operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of LRBID, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

- C. Upon ten (10) days written notice to LRBID, LRBID shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of LRBID, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- D. The Inspector General shall have the right to inspect and copy all documents and records in LRBID's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- E. LRBID shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this contract. In addition:
 - i. If this Agreement is completely or partially terminated, LRBID shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

- ii. LRBID shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- F. The provisions in this section shall apply to LRBID, its officers, agents, employees, subcontractors and suppliers. LRBID shall incorporate the provisions in this section in all subcontracts and all other agreements executed by LRBID in connection with the performance of this Agreement.
- G. Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by LRBID or third parties.

22. E-VERIFY:

- A. LRBID shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, LRBID shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, LRBID shall expressly require any approved subcontractor performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract Term. If LRBID enters into a contract with an approved subcontractor, the subcontractor must provide the LRBID with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. LRBID shall maintain a copy of such affidavit for the duration of the Agreement or such other extended period as may be required under this Agreement.

B. TERMINATION RIGHTS

- 1. If the City has a good faith belief that LRBID has knowingly violated Section 448.09(1), Florida Statutes, the City shall terminate this Agreement with LRBID for cause, and City shall thereafter have or owe no further obligation or liability to LRBID.
- 2. If the City has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection 22(A), but the LRBID otherwise complied with such section, the City will promptly notify the LRBID and

order the LRBID to immediately terminate the contract with the subcontractor. LRBID's failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate the LRBID's contract for cause.

3. A contract terminated under the foregoing Subsections (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.
4. The City or LRBID or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsections (B)(1) or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.
5. If the City terminates the Agreement with LRBID under the foregoing Subsection 22(A), LRBID may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
6. LRBID is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 22.

23. 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

Alina T. Hudak
City Manager

Date: _____

LINCOLN ROAD BUSINESS IMPROVEMENT DISTRICT, INC.

Attest:

Natalie Mejia
BID Administrator

Anabel Llopis
Executive Director

Date: _____