

ATTACHMENT B

**ARTIFICIAL REEF AGREEMENT BETWEEN
CITY OF MIAMI BEACH
AND
MIAMI-DADE COUNTY**

THIS ARTIFICIAL REEF AGREEMENT ("Agreement") is made and entered into this _____ day of _____ by and between the **City of Miami Beach** (hereinafter referred to as the "City") and **Miami-Dade County**, a political Subdivision of the State of Florida (hereinafter referred to as the "County").

WHEREAS, the County, through its Department of Regulatory and Economic Resources, Division of Environmental Resources Management (hereinafter referred to as "DERM"), manages artificial reef activities and is the permittee for various local, state, and federal regulatory permits for artificial reefs in Miami- Dade County outside of Biscayne National Park and Florida Keys National Marine Sanctuary; and

WHEREAS, the City is requesting to place approximately 188 cubic yards of artificial reef material at the South Beach Artificial Reef Site; and

WHEREAS, the City is requesting to conduct this artificial reef work under certain local, state, and federal regulatory permits pursuant to which the County is the permittee and the County has been authorized to conduct certain artificial reef work; and

WHEREAS, the County is permitted to conduct artificial reef activities at the South Beach Artificial Reef Site pursuant to: Miami-Dade County Class I Coastal Construction Permit No. 2011-CLIPER-00185; the Florida Department of Environmental Protection (FDEP) General Permit No. 13-0402095-001-EG, and the United States Army Corps of Engineers (the "Corps") Jacksonville (SAJ) Permit No. SAJ-2010-01270, as they may be amended from time to time (collectively, the "County Permits"); and

WHEREAS, the City has represented that all of its artificial reef materials, the City's proposed manner of installation, and all other components of its artificial reef project are in full compliance with all of the requirements and regulations in the above-referenced County Permits; and

WHEREAS, the City needs the County's authorization to work under the County Permits and place artificial reef material, and the City has requested such County authorization; and

WHEREAS, the City has presented detailed project plans (defined below as the "Artificial Reef Plans") for its proposed work, which are exhibits to this Agreement and incorporated by reference, and the City shall conduct all work consistent with such Artificial Reef Plans; and

WHEREAS, this Agreement allows the City to conduct certain artificial reef work under the County Permits, pursuant to the conditions and requirements stated herein,

NOW THEREFORE, in consideration of these premises and mutual covenants contained herein, the parties hereby agree as follows:

1. The foregoing recitals are hereby incorporated into this Agreement and made a part hereof.
2. The City has submitted project plans to the County for the proposed artificial reef work, which consist, at a minimum, of a Project Plan attached hereto as **Exhibit A**; a Transit and Construction Plan attached hereto as **Exhibit B**; and a Post-Construction Plan attached hereto as **Exhibit C** [*Any other supplementary attached exhibits deemed necessary by the County shall be attached as additional exhibits*] (hereinafter referred to collectively as the "Artificial Reef Plans"). The Artificial Reef Plans are incorporated into this Agreement as if fully set forth herein.
3. The Artificial Reef Plans are required to include all the pertinent and necessary information for execution and authorization to implement the proposed work, and the City agrees and acknowledges that it has an ongoing obligation under this Agreement to ensure that the Artificial Reef Plans are up-to-date, complete, and include, at a minimum, all of the minimum required information as set forth herein.
4. If any information is missing from the Artificial Reef Plans, if information contained therein is no longer fully accurate or correct, or if changes to the Artificial Reef Plans are needed or desired for any reason, the City is required to first submit to DERM a written request for an amendment to said Artificial Reef Plans, and any such amendment shall require written approval from the DERM Director or DERM Director's designee.
5. The City shall perform all work pursuant to attached Artificial Reef Plans, including all provisions and components of the attached Artificial Reef Plans, and in compliance with all requirements in the County Permits. As a courtesy, the County will provide notice to the City as to relevant changes to the County Permits, but failure by the County to provide such courtesy notice shall not affect the City's obligations. For avoidance of doubt, the City shall comply with the most current versions of all County Permits in effect at the time of any work related to the Artificial Reef Plans.
6. The Project Plan attached as **Exhibit A** is required to include, at a minimum, the following:
 - a. Statement as to the purpose and goals of the artificial reef project and how the project will provide net benefits to the marine environment and stakeholders.
 - b. Artificial reef project map/plan.
 - c. Detailed description and/or plans of each proposed unique artificial reef element including but not limited to material type and dimensions, how each element will be arranged, stacked, or otherwise secured to one another, and how the material and arrangement complies with all County Permit conditions.
 - d. Selected deployment contractor with prior successful artificial reef project experience.
 - e. Location where artificial reef materials are being built and/or staged prior to deployment.
 - f. Project budget itemized by task.
 - g. Proposed project timeline(s) and implementation schedule(s).
7. The Transit and Construction Plan attached as **Exhibit B** is required to include, at a minimum, the following:
 - a. Vessel/Barge specifications (length, draft, etc.) that will be used to transport the artificial reef material to the deployment site including how these vessels/barges comply with any Coast Guard standards required for safe transport.
 - b. Partially completed Florida Fish and Wildlife Conservation Commission Cargo Manifest (County staff will complete the form after inspection of artificial reef material).
 - c. Description on how artificial reef material will be loaded and secured on the transporting vessel in compliance with Coast Guard standards.
 - d. Travel path from staging site/loading area to and from the artificial reef site and how

- impacts to natural resources will be avoided.
- e. Anchoring methodologies to position the barge, crane, or other equipment at the deployment location in areas void of benthic resources.
 - f. Deployment methodology, including equipment/machinery, that will be utilized to strategically place artificial reef material to adhere to project plans and permit conditions and to avoid impact to existing natural or artificial resources in the project area.
 - g. Construction/deployment schedule detailing the general order of deployments and estimated time for completion as well as more detailed plans about day-to-day operations.
8. The Post-Construction Plan attached as **Exhibit C** is required to include, at a minimum, the following:
 - a. Description of how final location and relief of artificial reef material will be verified and documented including the submission of post deployment bathymetric survey depending on scope and scale of the project.
 9. The City shall adhere to and uphold all conditions of all applicable County Permits, including, but not limited to, the requirements for the placement of artificial reef material within the approved locations; placement of artificial reef material that is free of contaminants, debris and solid waste; and placement of artificial reef material without impacting existing natural resources.
 10. It is the City's responsibility to review, be aware of, and comply with all relevant County Permit conditions and deadlines. As a courtesy, the County will provide notice to the City as to relevant changes to the County Permits, but failure by the County to provide such courtesy notice shall not affect the City's obligations.
 11. With respect to any written submittals, reports, documentation, including but not limited to photos or videos, audit, notices, or other written materials that are requested or required pursuant to any County Permit (collectively, "Reports"), the City shall submit all Reports to DERM with adequate time for DERM to review and approve prior to the deadlines or timelines by which DERM would need to submit the respective Report to the respective agencies, as set forth in the respective County Permits. The County, as the permittee, through DERM staff, will submit the Reports, after review and approval, to the appropriate permitting agency, unless the DERM Director or the DERM Director's designee makes a written request to the City to submit the Reports directly to agencies. Nothing in this Agreement shall empower or authorize the City to act as an agent of the County, nor is the City authorized to seek modification of any of the County Permits, or otherwise bind the County in any way.
 12. Post-construction, the County will perform routine inspections that are required by the County Permits and the corresponding reports required by the County Permits. Whether an inspection is considered a "routine inspection" pursuant to this paragraph shall be determined by the County in its sole discretion, and the County, upon request by the City, shall advise whether a particular upcoming inspection is a "routine inspection." Notwithstanding anything to the contrary herein, an inspection shall not be considered a "routine inspection" if it is in any way related to construction, installation, corrective action, or violation of this Agreement or the County Permits, and any such inspection shall remain the obligation of the City.
 13. The City shall expeditiously implement and shall be solely responsible for implementing the attached Artificial Reef Plans, in accordance with all County Permits. The City shall be responsible for all aspects of the Artificial Reef Plans, with the exception as provided in Paragraph 11 of the submission of Reports to the respective permitting agencies for the

County Permits. All such Reports to the permitting agencies of the County Permits shall be made by the County, unless otherwise requested in writing by the County to the City.

14. Notwithstanding anything to the contrary herein, this Agreement shall not authorize the City to do any work not expressly included in the attached Artificial Reef Plans.
15. To the extent that all or a portion of the work included in the attached Artificial Reef Plans will require a modification or change to any of the County Permits after the effective date of this Agreement, the City shall, upon request by the County, prepare all plans and specifications for any such County Permit modifications or changes. In addition, the City agrees to reimburse the County, including but not limited to paying the applicable hourly rate for DERM staff time, for any costs incurred by the County associated with modifying a County Permit in connection with the Artificial Reef Plans. The County will submit such requests for reimbursement to the City together with documentation as to such costs.
16. If the City does not comply with any and all of the applicable County Permit conditions and all provisions of this Agreement and the attached Artificial Reef Plans, including, but not limited to, the requirement that the City submit all required Reports to the County, the County may require the City to take corrective actions, as determined the discretion of the DERM Director or the DERM Director's designee. Such corrective actions may include, but are not limited to, removing all or part of the placed artificial reef material, providing additional documentation as required by the respective permitting agencies of the County Permits, and reimbursing the County for all of the County staff time used in preparing and implementing any and all corrective actions needed. Any and all corrective actions shall be at the City's sole cost and expense, including the payment of all associated penalties.
17. Additionally, should a federal, state, or local permitting agency require the County to take corrective actions, including, but not limited to mitigation, or pay penalties related to actions or inaction by the City, the City shall be solely responsible for conducting any and all corrective actions and paying any and all associated penalties as required by the respective agency or agencies. In addition, City shall, upon written request by DERM, engage in discussions with the agency requesting these corrective actions and shall keep the County fully apprised of these discussions and shall consult with the County and obtain written approval from the DERM Director or the DERM Director's designee prior to performing any subsequent corrective work under County permits. Any and all corrective actions shall be at the City's sole cost and expense, including the payment of all associated penalties.
18. The City shall keep records which shall include, but not be limited to, project documents, contracts, deliverables, and correspondence. All such records will be retained by the City for not less than five (5) years beyond the end date of this Agreement. This Agreement, with any appendices and attachments, is a public record and is subject to public inspection under Chapter 286, Florida Statutes, popularly known as the "Government in the Sunshine Law". When the City advises the County in writing of the sensitive nature of information claimed to be proprietary, to the extent that Chapter 286, Florida Statutes, allows proprietary information to be withheld from public inspection, the County shall respect the sensitive nature of such proprietary information and not reveal such information only to the extent allowed by law.
19. **If the City has questions regarding the application of Chapter 119, Florida Statutes, to the City's duty to provide public records relating to this Agreement, contact the custodian of public records at 305-372-6564, DermRecords@miamidade.gov, or 701 NW 1st Court, Suite 300, Miami, FL**

33136.

To the extent required by applicable law, the City shall:

- a. Keep and maintain public records required by County in connection with this Agreement.
 - b. Upon request from the County's custodian of public records, provide the County 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 by Chapter 119 of the Florida Statutes, or as otherwise provided by law.
 - c. 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 this Agreement and following completion or termination of this Agreement if the City does not transfer the records to the County.
 - d. Upon completion or termination of this Agreement, transfer, at no cost, to the County all public records in possession of the City or keep and maintain public records required by the County in connection with this Agreement. If the City transfers all public records to the County upon completion or termination of this Agreement, the City shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the City keeps and maintains public records upon completion or termination of this Agreement, the City shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from County's custodian of public records, in a format that is compatible with the information technology systems of County.
20. The City shall provide the County with access to all of its records related to this Agreement and shall provide such assistance as may be necessary to facilitate the review of such records by the County. Additionally, all contracts between the City and third parties for work or materials related to the activities contemplated by this Agreement shall be provided to the County upon request and the County shall have the right to audit records associated with these contracts. The County shall have the right to access all records for not less than five (5) years beyond the end of this Agreement. The City shall make all records or documents which relate to this Agreement available to the County electronically, if so available.
21. Before commencing any construction work authorized under this Agreement, the City shall cause the general contractor that will be performing the work encompassed in the Artificial Reef Plans (the "Project Contractor") to procure, execute, record in the public records of the County and deliver to the County, a payment and performance bond reflecting the County and the City as obligees, in satisfaction of the requirements of Section 255.05 of the Florida Statutes and in satisfaction of the County's and City's bonding requirements, in the full amount of the proposed work for such project. The requirement that the City cause the Project Contractor to provide this payment and performance bond is in addition to all other requirements of this Agreement and shall not be construed as a limitation on the extent of the City's responsibility or liability pursuant to the indemnification provisions of this Agreement. The County will provide standard payment and performance bond forms as needed.
22. The City shall and shall require the Project Contractor to indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the City or its employees, agents, servants, partners principals

or subcontractors. The City shall and shall require the Project Contractor to pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The City expressly understands and agrees and shall require the Project Contractor to agree that any insurance protection required by this Agreement or otherwise provided by the City or the Project Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The City and the Project Contractor shall each furnish to **Department of Regulatory and Economic Resources-Division of Environmental Resources (DERM) (701 NW 1st Court, Suite 400, Miami FL 33136)**, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the City as required by Florida Statute 440.
 - a. As applicable, such worker's compensation insurance should include coverage required under the U.S. Longshoremen and Harbor Workers' Act (USL&H) and/or Jones Act for any activities on or about navigable water.
- B. Commercial General/Marine Liability Insurance in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, not to exclude Products & Completed Operations. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. Protection & Indemnity insurance for any vessels used in connection with the work, in the name of the owner of such vessel(s) in an amount not less than \$1,000,000 per occurrence. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength, by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services.

NOTE: CERTIFICATE HOLDER MUST READ:

**MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128**

Notwithstanding anything to the contrary herein, the County acknowledges that the City may self-insure for any of the above required coverages and the foregoing provisions are not intended to waive the City's right to so self-insure pursuant to Section 768.28(16)(a), Florida Statutes and other applicable law.

23. With respect to any contractor or other entity or organization that performs any of the work, duties, or other obligations in the Artificial Reef Plans, the City shall require all such contractors, entities, and organizations to indemnify and hold harmless the County and its officers, employees, agents and instrumentalities in the same manner as provided in paragraph 22 above. In addition, for any insurance that the City requires of any contractor or other entity or organization that will be performing any of the work, duties, or other obligations in the Artificial Reef Plans, the City shall require such insurance to name the County as an additional insured.
24. The term "City" shall include the City and its agents and employees.
25. Nothing in this Agreement relieves the City from the need to obtain any other local, state or federal permits or approvals, as may be required.
26. The City shall comply with all present and future applicable laws, ordinances, rules, regulations, authorizations, orders, and requirements of all federal, state, county and municipal governments, the departments, bureaus, or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Artificial Reef Plans.
27. In the event of a breach of any of the provisions of this Agreement by the City, the County may pursue correction action and/or terminate this Agreement, and/or seek to enforce any of its provisions. The remedies that the County may pursue shall be in addition to any other remedy provided for herein or otherwise allowable by law. To the extent that any artificial reef material has been placed pursuant to this Agreement, all of the City's obligations and requirements in this Agreement shall survive the termination of this Agreement.
28. DERM may conduct periodic site inspections of the work to ensure compliance with all the conditions of the Plans, and the City shall ensure that the County has access to conduct any such site inspections.
29. This Agreement shall be effective beginning on the date of execution by all parties. The Artificial Reef Plans may be amended, only after review and written approval by the County, and after being incorporated into this Agreement through a written amendment.
30. No payment from the County or other consideration from the County is required as part of this Agreement. The sole consideration provided by the County to the City for the City's placement of artificial reef material and the work contemplated by this Agreement is the ability of the City and the City's designee to work under the County Permits as described herein. This is agreed to be valuable consideration to the City.
31. The City acknowledges and agrees that the County has no obligation or duty to maintain, protect, preserve, repair, or otherwise care for the artificial reef material included in the Artificial Reef Plans, and in the event that the County is either required by a regulatory agency or elects to move or remove any or all of said artificial reef material, the City shall have no recourse whatsoever against the County and in no event shall the County be liable to the City for damages or any other form of relief.

32. Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.
33. The City cannot assign its obligations under this Agreement to another party, but may enter into written agreements with third parties to fulfill its obligations hereunder. The County acknowledges that Blue Lab Preservation Society, Inc. (dba ReefLine) and its contractors, including without limitation the Project Contractor, will execute the work in furtherance of the City's obligations hereunder pursuant to written agreement(s), copies of which will be provided to the County. The City shall remain liable for all of its obligations hereunder.
34. All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be sent by registered or certified mail, return receipt required, to the parties as follows:

As to the County:

Lisa Spadafina, Assistant Director
Dept. of Regulatory and Economic
Resources-DERM
701 N.W. 1 Court, Suite 400
Miami, Florida 33136

As to the City:

Eric Carpenter, Deputy City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
(305) 673-7010

With Copy to:

Rafael A. Paz, City Attorney
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
(305) 673-7470

or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt.

35. The City shall not make representations about the County's position or role with respect to this Agreement, including, but not limited to, the work proposed in the attached Artificial Reef Plans, or make statements on behalf of the County without prior direction and the County's written approval.
36. Recognizing that artificial reefs are one of the many types of coastal structures that may affect or otherwise impact the coast, and that coordination and cooperation with the County is needed so as to avoid the potential for negative impacts, whether from a particular project or cumulatively, the City agrees to coordinate and cooperate in advance with the County on all proposed artificial reefs and other coastal structures, wave breaks, jetties, hybrid reefs, and any other structures to be located in the ocean, whether such structures are proposed under the County's regulatory permits or another permittee's regulatory permits. These requirements that the City coordinate and cooperate in advance with the County shall apply to all of the above-mentioned coastal structures that are proposed, funded, or otherwise sponsored by the City. Any inadvertent failure to comply with the foregoing requirements shall not be deemed a breach of this Agreement, provided, however, that the City has otherwise demonstrated a good faith effort to comply with the requirements of this paragraph.
37. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Any litigation hereunder shall be brought in the Circuit Court of the Eleventh Judicial Circuit of Miami-Dade County, Florida.
38. (1) 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.

(2) 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 the contractor, its officers, agents and employees, lobbyists, city staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(3) Upon ten days' written notice to the contractor, the contractor 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 the contractor, its officers, agents and employees, lobbyists, city staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

(4) The inspector general shall have the right to inspect and copy all documents and records in the contractor'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.

(5) The contractor 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 contract, for examination, audit, or reproduction, until three years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

- i. If this contract is completely or partially terminated, the contractor shall make available records relating to the work terminated until three years after any resulting final termination settlement; and

- ii. The contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(6) The provisions in this section shall apply to the contractor, its officers, agents, employees, subcontractors and suppliers. The contractor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the contractor in connection with the performance of this contract.

(7) 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 the contractor or third parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative(s) on the latest day and year noted below.

CITY OF MIAMI BEACH

By: _____
City Manager Date

ATTEST:

By: _____
City Clerk Date
Print Name: _____

MIAMI-DADE COUNTY

By: _____
Mayor or Mayor's Designee Date

ATTEST: Juan Fernandez-Barquin,
Clerk of the Court and Comptroller

By: _____
(Deputy Clerk Signature)

Print Name: _____

Date: _____