

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into this ___ day of 2017 by and between the City of Coral Gables, a municipal corporation of the State of Florida whose principal address is 405 Biltmore Way, Coral Gables, Florida 33134 (the "City"), and Miami-Dade County, a political subdivision of the State of Florida, whose principal address is 111 NW 1st Street, Miami, Florida 33178 (the "County") on the following terms and conditions:

Recitals

WHEREAS, to facilitate the design, development, and enhancement of a portion of land consisting of the Miami-Dade County Metrorail right of way from Douglas Road to Granada Boulevard, in connection with a series of multiple open space recreational areas, collectively known as The Underline (hereinafter, "The Underline"), the City desires to provide the County with up to Ten Million Dollars (\$10,000,000.00) in funding on the terms and conditions set forth herein (the "Grant"), which funds are to be expended on the design, development, and enhancement of The Underline solely within the City's territorial limits; and

WHEREAS, the City and County will have obtained as of the date hereof the legislative, administrative or other necessary approvals and authorizations to enter into this MOU setting forth the County's and City's rights and obligations;

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

Terms and Conditions

1. **Incorporation of Recitals.** Each of the foregoing recitals are true and correct, and are incorporated herein by reference and made a part thereof.

2. **Funding and Use of Grant.** On the terms and conditions set forth herein and the County's compliance with all of its obligations hereunder, the City hereby agrees to make available to the County the Grant to be used for the design, development, and enhancement of The Underline.
 - a. **Funding.** The City shall provide Grant funds to the County on an as-available basis, and the County shall be required to deposit any such funds in a segregated account. The City represents and warrants that Grant funds will be provided to the County from a funding source that shall not limit or compromise the County's ability to use The Underline for public transportation purposes, including for the continued operation of existing systems and services or for the future expansion of public transportation systems and services.

 - b. **Use of Grant.** The Grant shall be expended on Qualifying Expenses incurred in connection with the planning, design, development, and enhancement of The

Underline within the City's territorial boundaries. For the purpose of this MOU, a Qualifying Expense shall mean all planning, design, development and enhancement costs, including, for example, the costs of land acquisition and development, expansion of existing surfaces, surveying, site testing, construction, engineering, construction management and inspection, and permitting. Qualifying Expenses shall specifically exclude costs related the operation and maintenance of The Underline.

3. **Grant Administration.** The County shall not require the City's approval before expending Grant funds that have been transferred to the County pursuant to § 2(a), above. Notwithstanding the foregoing, the County shall provide the City with a quarterly report detailing how the County has expended Grant funds.

4. **Term.** The term of this MOU shall commence when approved by both parties and shall terminate upon the earlier of:

a. The completion of The Underline within the territorial limits of the City; or

b. The City's transfer of \$10,000,000.00 pursuant to § 2(a) of this MOU, or the City's written notification to the County that no additional funds are available to be provided to the County; or

c. The issuance of a notice of termination for default by either party, which shall be issued only in the event of a material default of this MOU and only after sixty (60) days have elapsed from the issuance of a notice of default identifying the default(s) to be relied upon in the notice of termination. During the 60-day period, the party against whom default is alleged may cure the alleged default, in which case the notice of termination shall not issue. If the alleged default cannot be cured within the 60-day period, but the party against whom default is alleged commenced efforts to cure the alleged default within the 60-day period, then a notice of termination shall not issue as long as efforts to cure the default remain in progress.

d. The issuance of a notice of termination by either party to this MOU, which termination shall be effective fifteen (15) days after its issuance. In the event of termination pursuant to this subparagraph:

i. If by the City, the City shall be relieved of all obligations under this MOU except those obligations that expressly survive the termination of this MOU; or

ii. If by the County, until funds provided to the County in accordance with § 2(a) are exhausted, the County shall continue to utilize such funds in accordance with § 2(b) and provide the City with the quarterly reports required under §2 (a) and 3. Upon exhaustion of such funds, the County shall be relieved of all obligations under this MOU except those obligations that expressly survive the termination of this MOU.

5. **Survival of Rights and Obligations/Representations and Warranties.** Termination of this MOU will not relieve either party of liability for any claim(s) against it that arose before the termination of the MOU, including the obligation to indemnify in accordance with § 11 of this MOU. The representation and warranty contained within § 2(a) of this MOU shall continue indefinitely beyond the termination of this MOU. The City shall have a continuing right to audit the County, solely to evaluate compliance with §§ 2(a) and (b) and (3) for a period of four (4) years beyond the date of the final report provided by the County to the City pursuant to §§ 2 (a) and (b) and 3.

6. **Audit Rights.** During the term of this MOU and upon reasonable notice, the City shall have the right to conduct audits of all of the County's records pertaining to the Grant and to visit any site on which Grant funds have been expended in order to conduct monitoring and evaluation activities. Any monitoring and evaluation activities conducted by the City shall be conducted at the City's own expense and without disruption to the County's and/or County affiliated entities' operations on said site.

7. **Notice.** All notices or other communications that may be given pursuant to this MOU shall be in writing and delivered by electronic mail, personal service, or registered mail to the address indicated for the particular party below. Such notice shall be considered given on the day of e-mailing or personal service, or if by registered mail, five (5) days after posting. It is understood and agreed that notice may be provided to the successor of any officials listed below. If notice is:

To the City:

City Manager, City of Coral Gables
405 Biltmore Way, 1st Floor
Coral Gables, Florida 33134
Attn.: Cathy Swanson-Rivenbark, City Manager

AND

City Attorney, City of Coral Gables
405 Biltmore Way, 2nd Floor
Coral Gables, FL 33134
Attn.: Miriam Soler Ramos, City Attorney

To the County:

Miami-Dade County Mayor's Office
111 Northwest 1st Street, 29th Floor
Miami, Florida 33128
Attn.: Mayor Carlos Giménez

AND

Miami-Dade County Attorney
111 Northwest 1st Street. 28th Floor
Miami, Florida 33128
Attn.: Abigail Price-Williams, County Attorney

8. **Exclusive Remedies for Noncompliance.** If the County expends funds for a purpose other than as permitted by § 2(b) of this MOU, the County shall be required to reimburse the City in the amount of the improper expenditure(s). An expenditure shall be presumptively improper if it is not accounted for in the reports provided by the County to the City in compliance with and pursuant to §§ 2(a) and (b) and 3.

9. **Liability of City.** In the event of breach of this MOU by the City, the County may only seek specific performance of this MOU and any recovery shall be limited to the funding

from the Grant pursuant to this MOU. In no event shall the City be liable to the County for additional compensation, including consequential or incidental costs or damages.

10. **Marketing.** In a manner that is commensurate with the amount of funds provided by the City to the County pursuant to § 2(a) of this MOU, as reasonably determined by the County, the County shall mention that the development of The Underline was supported and funded by the City on all approved signage within the territorial limits of the City, promotional media and brochures, publications and similar documents, or data pertaining to the development of The Underline.

11. **Indemnification.**

a. **By the County.** The County does hereby agree to indemnify and hold harmless the City to the extent and within the limitations of § 768.28, Fla. Stat., subject to the provisions of that statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000.00 from any and all personal or property damage claims, liabilities, losses, and causes of action which may arise solely as a result of negligence of the County. However, nothing herein shall be deemed to indemnify the City from any liability or claim arising out of the negligent performance or failure of performance of the City or any unrelated third party.

b. **By the City.** The City does hereby agree to indemnify and hold harmless the County to the extent and within the limitations of § 768.28, Fla. Stat., subject to the provisions of that statute whereby the City shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000.00 from any and all personal or property damage claims, liabilities, losses, and causes of action which may arise solely as a result of negligence of the City. However, nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance or failure of performance of the County or any unrelated third party.

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

13. **Amendments.** No amendment to this MOU shall be binding on either party, unless in writing and signed by the respective authorized representatives of both parties.

14. **Interpretation.** This MOU shall be interpreted in accordance with the laws of the State of Florida.

a. **Captions.** The captions in this MOU are for convenience only and are not a part of this MOU and do not in any way define, limit, describe, or amplify the terms and provisions of this MOU or the scope or intent thereof

b. **Entire Agreement.** This instrument constitutes the sole and only agreement of the parties hereto relating to the Grant, and correctly sets forth the rights, duties, and obligations of the parties. There are no collateral or oral agreements or understandings between the City and the County relating to the MOU. Any promises, negotiations, or representations not expressly set forth in this MOU are of no force or effect. This MOU shall not be modified in any manner except by an instrument in writing executed by the respective authorized representatives of the parties. The masculine (or neuter) pronoun and the singular number shall include the masculine, feminine, and neuter genders and the singular and plural number. The word "including" followed by any specific item(s) is deemed to refer to examples rather than to be words of limitation.

c. **Construction.** Should the provisions of this MOU require judicial or arbitral interpretation, it is agreed that the judicial or arbitral body interpreting or construing the same shall not apply the assumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party which itself or through its agents prepared same, it being agreed that the agents of both parties have equally participated in the preparation of this MOU.

d. **Covenants.** Each covenant, agreement, obligation, term, condition, or other provision herein contained shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, not dependent on any other provision of this MOU unless otherwise expressly provided. All of the terms and conditions set forth in this MOU shall apply throughout the term of this MOU unless otherwise expressly set forth herein.

e. **Conflicting Terms.** In the event of conflict between the terms of this MOU and any terms or conditions contained in any attached documents, the terms of this MOU shall govern.

f. **Waiver.** No waiver or breach of any provision of this MOU shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

g. **Severability.** Should any provision contained in this MOU be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, then such provision shall be deemed modified to the extent necessary to conform with such laws, or if not modifiable to conform with such laws, that same shall be deemed severable, and in either event, the remaining terms and provisions of this MOU shall remain unmodified and in full force and effect.

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

15. **Attorneys' Fees and Costs.** In the event of any litigation between the parties under this MOU, the parties shall bear their own attorneys' fees and costs at trial and appellate levels.

16. **Compliance with Federal, State, and Local Laws.** The City and the County understand that this MOU is an interlocal agreement pursuant to Chapter 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969, as amended, which is subject to certain federal, state, and local laws and regulations pertaining to public records, conflicts of interest, record keeping, etc., and each agree to comply with and observe all applicable laws, statutes, rules, regulations, codes, and ordinances as such may be amended from time to time.

IN WITNESS WHEREOF, I/we have hereunto set my/our hand(s) and seal(s) this _____ day of _____, 2017.

ATTEST:
Harvey Ruvin, Clerk

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

Deputy Clerk

Carlos A. Giménez, Mayor

As to form and legal sufficiency:

Assistant County Attorney

ATTEST:

CITY OF MIAMI

Walter Foeman, City Clerk

Cathy Swanson-Rivenbark, City Manager

APPROVED AS TO LEGAL FORM
AND CORRECTNESS:

APPROVED AS TO RISK
MANAGEMENT REQUIREMENTS:

Miriam Soler Ramos, City Attorney

David Ruiz, Risk Manager