

The Underline - Segment 6

BUILD Grant FY 2018

Appendix Q

**The Underline Management
Organization Agreement with
Miami-Dade County**

**THE UNDERLINE
MANAGEMENT AGREEMENT**

This Management Agreement (the "Agreement") is entered into this 29th day of May, 2018, (the "Effective Date") by and between Miami-Dade County (the "County") and The Underline Management Organization, Inc., a Florida not-for profit corporation (the "Manager") (collectively referred to as the "Parties" or individually as "Party").

RECITALS

WHEREAS, the County owns the real property underneath and around portions of the Metrorail guideways, consisting of more than 100 acres of open space over 10 miles that stretch from the southern seawall of the Miami River to the Dadeland South Metrorail Station, as generally depicted in **Exhibit A** to this Agreement; and

WHEREAS, in addition to serving as an access point for crews performing maintenance work on and routine inspections of the Metrorail system, the public has utilized the space depicted in **Exhibit A** for recreational and transportation purposes, and specifically as a path for jogging, walking, biking, and other forms of non-motorized transportation; and

WHEREAS, as the result of a grassroots movement led by Friends of The Underline, Inc. ("Friends"), there is substantial public interest in making certain improvements to the space depicted in **Exhibit A** to create The Underline, a proposed ten-mile long mobility corridor and recreational space designed to be a safe and appealing recreational space, while preserving the property's function for the operation, maintenance, and inspection of the Metrorail system and as access for emergency vehicles and personnel; and

WHEREAS, the proposed improvements and the subsequent level of management to be provided under this Agreement for The Underline will transform the space under the Metrorail system into a world-class urban trail and living art destination featuring restored natural habitats and connecting communities, improving pedestrian and bicyclist safety, encouraging healthy lifestyles, and providing an easily accessible place to exercise; and

WHEREAS, the Parties intend that the management and operation of The Underline will generally resemble, in quality, level of maintenance, and reputation as of the date of this Agreement, the characteristics embodied by Comparable First-Class Trails; and

WHEREAS, it is further anticipated that The Underline will create a mobility corridor that integrates various modes of transportation, including public transportation, cycling, jogging, and walking, while allowing those who choose mass transit, cycling, and walking as their means of transportation to safely coexist with those who choose to travel by private automobile; and

WHEREAS, an economic impact study prepared by HR&A Advisors, Inc. concluded that the creation of The Underline will attract development and generate significant positive jobs and other positive economic impact to the County; and

WHEREAS, once sufficient funds for the development of The Underline have been secured as set forth in this Agreement, the County intends to procure the development of The

Underline utilizing (as set forth in Section 2.04) plans developed by the Manager through James Corner Field Operations or other entities and thereafter provided to the County, upon the approval of those plans through the appropriate County processes; and

WHEREAS, once the first Phase of The Underline is developed, the County desires for the Manager to manage, operate, and maintain the developed portions of The Underline under the terms and conditions set forth in this Agreement, in accordance with the County's desire that this property be maintained as a public place for recreational and transportation uses by members of the public, while preserving the property for the regular operation, maintenance, and inspection of the Metrorail system, including, but not limited to, any possible future improvements to the Metrorail system, changes in its design, and/or changes to the manner of its operation, maintenance, and inspection of that system,

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I
DEFINITIONS

1.01 "Applicable Law" shall mean any law, statute, code, ordinance, administrative order, charter, resolution, order, rule, regulation, judgment, decree, writ, injunction, franchise, permit, or license, now existing or hereafter enacted, adopted, promulgated, entered, or issued, of any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them.

1.02 "Comparable First-Class Trails" shall mean the High Line in New York City, the 606 in Chicago, the Atlanta BeltLine, and the Katy Trail in Dallas, all in the quality and level of maintenance in their fully developed stage, and in reputation as of the date of this Agreement. Attached as **Exhibit B** are promotional materials and/or photographs of the Atlanta BeltLine and the Katy Trail in Dallas, as samples of the of quality and level of maintenance of the trails. Attached as **Exhibit C** is a Preliminary Maintenance and Operations Memorandum procured by The Underline that provides an expense calculation for the Brickell Backyard and other parts of The Underline.

1.03 "County Contract Manager" shall mean the person designated by the County in accordance with Section 4.01.

1.04 "Excluded Areas" shall mean any areas leased or licensed to third parties, including public and private entities; the Metrorail infrastructure, guideway, station, traction power substation, ancillary structures, and structural support (except to the extent the Parties agree to an installation on the infrastructure or structural support for the Metrorail as part of the implementation of the James Corner Field Operations Framework Plan in which case said installation only shall not be an Excluded Areas as defined herein); and any other areas described or depicted in a Management NTP as Excluded Areas.

1.05 "Existing Assets" shall mean the paved asphalt trail existing underneath and around the Metrorail guideway—now known as the "M-Path"—as of the date of this Agreement, in its condition, as-is and where-is, as of the same date.

1.06 “Funding Agreement” shall mean the agreement between the Manager and Funding Entity described in Article VIII of this Agreement.

1.07 “Funding Entity” shall mean Friends (or any successor entity) incorporated as a not-for-profit entity under the laws of Florida and operating exclusively for educational, cultural, and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986.

1.08 “Gross Revenues” shall mean all revenues generated by the operation of concessions, events, or any other revenue-generating process allowed by this Agreement. Gross Revenues shall exclude charitable contributions to the Funding Entity or Manager, but only to the extent those charitable contributions are utilized for the purpose described in Section 2.02 of this Agreement. Gross Revenues shall also exclude the Maintenance of Effort Payment due under Section 8.06 of this Agreement.

1.09 “James Corner Field Operations Framework Plan” shall mean the document titled “The Underline: Framework Plan and Demonstration Projects” prepared by James Corner Field Operations on or about December 18, 2015, which is attached to this Agreement as **Exhibit A**, and any more specific construction documents, as they may be amended.

1.10 “Management NTP” shall mean the written notification to proceed given by the County to the Manager pursuant to Section 2.03 of this Agreement, which notice shall authorize the Manager to be solely responsible for the management and maintenance of a particular Phase of The Underline as provided in this Agreement.

1.11 [reserved]

1.12 “The Underline” shall mean all Phases for which the County has issued a Management NTP for the purposes of this Agreement, excluding the Excluded Areas.

1.13 “Phase” or “sub-Phase” shall mean each phase of The Underline as described in Section 2.05 of this Agreement.

ARTICLE II

MANAGEMENT AND DEVELOPMENT OF THE UNDERLINE

2.01 Incorporation of Recitals. The Parties agree that each of the foregoing recitals, which are incorporated by reference, are true and correct.

2.02 Maintenance and Management of The Underline. For each Phase, and immediately upon the County’s issuance of a Management NTP, the Manager shall undertake the exclusive maintenance, management, and operation of The Underline in accordance with the terms and conditions of this Agreement. The Manager shall be obligated to undertake the exclusive maintenance, management, and operation of any Phase of The Underline for which the County has issued a Management NTP, without regard to the Manager’s satisfaction with the County’s development of the Phase for which it has issued a Management NTP, including, without

limitation, the County's adherence to the James Corner Field Operations Framework Plan in developing the Phase(s). The Manager agrees to maintain, manage, and operate The Underline for and on behalf of the County throughout the Term as a public place for recreational and transportation uses by members of the public. In performing these functions, and to the extent permitted by and consistent with Applicable Law, including whatever permit(s) may be required to serve them, the Manager may serve alcoholic beverages; however, the Manager may not serve such beverages in any part of The Underline abutting single-family residential areas. All expenses that the Manager incurs under this Agreement shall be paid by the Manager and, for its services as manager, the Manager shall be entitled to no compensation from the County, except as set forth in Section 8.06 and Section 5.02(e) of this Agreement. The Manager shall have the authority to generate revenue through The Underline in the manner set forth in this Agreement. The Manager agrees that any revenue generated from The Underline, including but not limited to revenue derived from Special Event Contracts as set forth in Section 5.03, Licenses as set forth in Section 5.04, and marketing, naming, and sponsorship agreements as set forth in Article VI, shall be used for any purpose for The Underline, including but not limited to for such things as maintenance, operation, programming, development, salaries, advertisement, promotion, the provision of information, and any and all general and administrative costs, consistent with an annual budget prepared by the Manager, which budget shall be subject to the approval of the County Contract Manager. The Manager shall not be authorized to construct any permanent buildings within The Underline suitable for occupancy by commercial establishment or residential use.

2.03 Issuance of a Management NTP. The County shall be responsible for the maintenance, management, and operation of any area otherwise comprising a portion of The Underline until the County issues a Management NTP. A Management NTP shall be issued on a Phase-by-Phase or sub-Phase basis and only after the improvements to any particular Phase have been completed, as determined by the County in the exercise of its sole and exclusive discretion. Nothing in the Agreement limits or changes the County's existing obligations and responsibilities regarding the Metrorail and the County shall continue to perform its duties for the Metrorail existing before the Effective Date, provided that nothing in this Agreement shall be construed to require the County to continue to operate the Metrorail system, or to prevent the County from altering schedules or providing for limited Metrorail service. The Manager shall have no responsibility or obligations for the Metrorail, including but not limited to, its infrastructure and columns. The County's issuance of a Management NTP shall not preclude the County from entering The Underline for any purpose, without the necessity of prior notice to the Manager, including but not limited to for the purpose of ordinary or emergency repairs or inspection of any public infrastructure, including the Metrorail. Notwithstanding any other provision in this Agreement, the County shall have the right to utilize The Underline for County-sponsored events. Any such events shall be coordinated with the Manager to avoid conflicts with events previously scheduled by the Manager. For any such events, the County shall not be required to compensate the Manager.

2.04 Development of The Underline. The County, or any other entity designated by the County, shall develop, in accordance with its ability, each Phase of The Underline in accordance with a permissible set of plans developed on the basis of the James Corner Field Operations Framework Plan, and only to the extent the James Corner Field Operations Framework Plan may be implemented for any particular Phase within available funding, consistent with Applicable Law, and existing site conditions. The County's development of any Phase of The Underline will

commence only after the Manager and/or any other funding entity other than the County (which may, but shall not be required to, provide funding towards the development of any Phase of The Underline, except insofar as the County is a recipient of grant funds specifically for the purpose of developing The Underline) has provided sufficient funds for the development of that particular Phase. The sufficiency of funding for any particular Phase of The Underline shall be determined solely by the County Contract Manager in the exercise of its reasonable discretion based on development estimates prepared by the County or its consultants. The County will not commence development of any Phase of The Underline until the Manager has provided proof of availability, in any manner reasonably required by the County Contract Manager, of 100% of the cost of development (inclusive of soft and hard costs and the cost of any insurance required under Article XI of this Agreement, or evidence that the Manager has procured such insurance) of the particular Phase of The Underline to be developed. The Manager shall transfer the funds necessary to develop a Phase to the County for the County's commencement of construction activities for The Underline. As a further condition precedent to the County's development of any Phase of The Underline, after the County secures proof of available funding from the Manager, as required under this Section, the County shall not develop The Underline unless and until it successfully procures, negotiates, and enters into a development agreement for the Phase to be developed, which development agreement shall contain all County contracting requirements applicable at the time of contracting, unless those requirements are lawfully waived by the County through the Board of County Commissioners, unless the authority to waive such requirements has been delegated by the Board of County Commissioners.

2.05 Sequence of Development. The Parties anticipate that The Underline will be developed in Phases or sub-Phases, that may be adjusted based on funding or as deemed necessary by the County Contract Manager, the Manager, and the Funding Entity, jointly. For ease of reference, and to facilitate construction or funding, the following are proposed Phases:

Phase 1—From the southern seawall of the Miami River to the northern edge of Southwest 13th Street;

Phase 2—SW 13th to SW 19th Avenue;

Phase 3—SW 19th Ave to SW 23rd Avenue.

Phase 4—SW 23rd Ave to SW 37th Avenue;

Phase 5—SW 37th Ave to SW 42nd Avenue;

Phase 6—SW 42nd Avenue to Granada Blvd.;

Phase 7—Granada Blvd. to SW 57th Avenue;

Phase 8—SW 57th Avenue to SW 65th Avenue; and

Phase 9—SW 65th Avenue to Dadeland Blvd.

Any improvement that requires continuous construction over two phases (e.g., a pedestrian overpass commencing on the edge of one Phase and terminating on the edge of another) may be

constructed as part of either Phase and when a Management NTP is issued, the Manager's obligation shall conclude at the edge of any such improvement, without obligation for the remainder of the incomplete Phase.

The numbering of Phases in this Section is for reference only and is not intended to require that the Phases be developed in any particular sequence. The sequence of development will be determined by the County Contract Manager and the Manager, jointly, based on, among other things, the sufficiency of funding, as determined by the County Contract Manager under Section 2.04. It is presently anticipated at the time of the Parties' entry into this Agreement, that the first phase to be developed will be the "Brickell Backyard" (Phase 1), followed by the "UM Colonnade" (Phase 6).

2.06 Independent Contractor Relationship. The Manager is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed under this Agreement shall at all times, and in all places, be subject to the Manager's sole direction, supervision, and control. The Manager shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Manager's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

2.07 Governance of the Manager. The composition of the Manager's initial board of directors, which shall be the governing body of the Manager, shall be set forth in the Manager's articles of incorporation or by-laws. The County Mayor or designee shall have voting representation on the Manager's board of directors, the Parties agreeing that the County's representation shall consist of at least one representative from the Parks, Recreation and Open Spaces Department (or its successor department) and one representative from the Department of Transportation and Public Works (or its successor department with responsibility for the maintenance and operation of the Metrorail system). Notwithstanding any provision in the Manager's articles of incorporation or by-laws to the contrary, only the County Mayor or designee shall be entitled to remove any director appointed by the County Mayor or designee. Any amendment to the articles of incorporation or by-laws having the effect, directly or indirectly, of depriving the County of representation on the Manager's board of directors or of imposing any requirements on the County or its representatives shall be subject to the approval of the County by a two-thirds vote of the membership of the Board of County Commissioners. Any votes and/or statements by County-appointed directors shall not bind or constitute an admission by the County with respect to any matter or action taken by the County concerning this Agreement or The Underline. Membership of County-appointed directors shall not require such directors to participate in fundraising for the Manager or any affiliated entity, including the Funding Entity, or to otherwise engage in any activity that the Executive Director of the Miami-Dade Commission on Ethics and Public Trust determines is inconsistent with the County's Code of Ethics, or any opinions or regulations issued pursuant to the County's Code of Ethics.

2.08 Non-Interference. The Parties hereby mutually agree not to unreasonably interfere with the free flow of pedestrian or vehicular traffic to and from County buildings, facilities, or transit systems. They further agree that, except for those structures reasonably necessary for security and safety purposes and approved by the County, no fence, or any other structure of any

kind (except as may be specifically permitted or maintained under the provisions of this Agreement and mutually agreed upon in writing) shall be placed, kept, permitted, or maintained in such fashion as to materially or adversely interfere with pedestrian or vehicular traffic to and from County buildings, facilities, or transit systems.

ARTICLE III **TERM**

3.01 **Term.** This Agreement shall be effective upon its execution by all Parties; the FTA having issued an incidental use permit allowing the use of The Underline for the purposes described in this Agreement. The FTA's approval of the incidental use permit is attached as **Exhibit D** to this agreement. The term of this Agreement shall run concurrently with the term of the FTA's incidental use permit as it may be renewed or reissued from time to time, for an initial period not to exceed thirty (30) years.

3.02 **Renewal.** The County and the Manager, by mutual agreement, shall have the option to renew this Agreement for two additional periods each of thirty (30) years, provided that (1) the Manager is not in default of any obligations under this Agreement and (2) the FTA renews or reissues incidental use permits as in the initial term.

3.03 **Expiration.** The term of this Agreement shall expire on the sooner of (1) the conclusion of the initial term or any renewal term(s), if exercised; or (2) upon the FTA's refusal to issue, reissue, or renew an incidental use permit allowing the use of The Underline for the purposes described in this Agreement.

3.04 **Commencement of Obligations.** As used in this Agreement, "Term" shall encompass the initial thirty-year period and, if exercised pursuant to this paragraph, any renewal periods. As set forth in Article II, the Manager's obligations to maintain, manage, and operate The Underline shall not commence until the County's issuance of a Management NTP for the corresponding Phase or subpart thereof as designated in accordance with Section 2.05.

ARTICLE IV **COUNTY OVERSIGHT**

4.01 **County Contract Manager.** The County Mayor or designee shall have the right to designate the County Contract Manager.

4.02 **Meetings with County Contract Manager.** The Manager shall meet with the County Contract Manager every two months to discuss any matters relating to this Agreement and/or The Underline, including, without limitation, lawsuits involving The Underline and any special events planned for The Underline. At least twice per year, the Manager shall deliver to the County Contract Manager a written report summarizing all matters pertaining to the management, maintenance, revenue, expenses, and operation of The Underline.

4.03 **County Contract Manager's Request for the Removal of the Manager's Employees.** The County Contract Manager shall be entitled to a satisfactory performance of the Manager's obligations under this Agreement. At the written request of the County Contract Manager, and for the reasons set forth in Section 5.02(c) of this Agreement, the Manager shall promptly remove

from contact with the public any of the Manager's employees, contractors, subcontractors, volunteers, and/or any other person performing services under this Agreement until such time as the issues can be resolved to the mutual satisfaction of the Manager and the County. The Manager and the County agree that any such removal does not require the termination or demotion of the removed employee, contractor, subcontractor, volunteer, or other person.

4.04 County Retains Continuing Control. Notwithstanding any other provision of this Agreement, the County reserves such access rights to The Underline as is necessary to enable the County to comply with the obligation to maintain "continuing control" under the requirements/regulations of the FTA and the FDOT as it relates to the property and operation of the Metrorail Rapid Transit System.

ARTICLE V

MANAGEMENT OF THE UNDERLINE

5.01 Standards of Operation. During the Term, for each Phase or sub-Phase of The Underline for which the Manager has been granted a Management NTP in accordance with Section 2.03 of this Agreement, the Manager agrees to diligently and in good faith, manage, operate and maintain The Underline in a manner comparable, at a minimum, to that of other Comparable First-Class Trails. The Manager shall continuously and uninterruptedly manage, operate, and maintain The Underline open to the public as a public transportation and recreational amenity in accordance with, without limitation, Sections 2.02 and 2.08 of this Agreement. "Open to the public" may be accomplished by the Manager designating certain points of entry, provided that points of entry to The Underline must exist at every intersection along The Underline and at every Metrorail station along The Underline. The Manager's management and operation of The Underline shall be in accordance with Applicable Law and this Agreement.

(a) Minimum Hours of Operation. The trail located underneath and around the Metrorail guideway shall be open continuously, 24 hours per day, 365 days per year, at no cost to the public. Other facilities shall have operating hours as determined by the Manager, subject to County Contract Manager approval. The Parties, upon mutual agreement, may change the hours of operation of The Underline if such a change is desirable in providing the best service to the public.

(b) Pricing. The pricing for any areas or facilities of The Underline for which the Manager desires to charge users shall be specified in an appendix to the Agreement to be added after the Effective Date, which appendix shall be subject to the written approval of the County Contract Manager, and may vary from time to time with the prior written consent and approval of the County Contract Manager. Notwithstanding the foregoing, the Manager shall not have the right to impose any charges that limit the public's ordinary use of The Underline's bicycle and pedestrian trails. Without the expectation of remuneration to the Manager, the County Contract Manager may require a change in the pricing at The Underline if, in the reasonable discretion of the County Contract Manager, such a change is desirable in providing the best service to the public.

(c) No Discrimination Permitted. The Manager shall not discriminate among County residents with respect to user fees, access, or availability based upon where a County

resident resides or in a manner contrary to Applicable Law, including Federal Transit Administration regulations.

(d) The Manager's On-Site or On-Call Manager. If the Manager maintains an on-site office, then the Manager shall be required to provide an On-Site Manager for The Underline; otherwise, the Manager shall be required to provide an On-Call Manager for The Underline. The On-Site or On-Call Manager shall have sufficient delegated authority to ensure the competent fulfillment and performance of the Manager's duties under this Agreement. The Manager shall provide the County Contract Manager with the name, address, mobile phone number, and e-mail address of each On-Site or On-Call Manager, and shall promptly notify the County of any changes. The Manager's On-Site or On-Call Manager shall be reasonably available at all times, for emergencies or other matters relating to the operations of The Underline. Contact information for the Manager's On-Site or On-Call Manager, consisting of a telephone number (at a minimum), shall be posted throughout The Underline to allow the public to contact the Manager's On-Site or On-Call Manager.

(e) Establishment of Rules and Regulations for Public Use. With the prior written approval of the County's Contract Manager, the Manager may establish reasonable rules and regulations for the use of The Underline by the general public. The Manager shall be responsible for booking, managing, and overseeing The Underline, and all of its components and amenities. The rules and regulations adopted by the Manager shall be consistent with, and comparable to (but need not be identical to), the general rules and regulations applicable to similar County facilities. The uses and operations which the Manager may conduct are those approved by the applicable regulatory authorities with jurisdiction and may include, but are not limited to: facility rental services (provided that the trail underneath and around the Metrorail guideway shall remain open to the public, without charge, at all times); concessions, retail outlets, kiosks, hospitality, catering services, exercise services, water services, camps, clinics, conferences, and other events.

(f) Security. Except in areas where security services are provided under an agreement entered into by the County for the provision of security services, the Manager shall be responsible for providing general and reasonable security and protection of each area of The Underline for which the County has issued a Management NTP, consistent with the security and protection in place at similar County facilities. The County shall have no obligation to provide security for The Underline other than those police services ordinarily provided to the public-at-large and in the same manner as such services are provided to the public-at-large (without regard to the County's provision of security services through its off-duty employment program). The Manager may provide its own specialized security for The Underline, subject to the County Contract Manager's written approval. The Manager shall be required to prepare a hurricane emergency plan for The Underline, which shall be subject to the approval of the Department of Transportation and Public Works, Office of Safety and Security, or its successor department or office.

5.02 Employment of Personnel.

(a) Sufficient Personnel Required. The Manager shall employ a sufficient number of staff to ensure that The Underline is open and operating during the timeframes set forth by the Manager and approved by the County Contract Manager, pursuant to Section 5.01(a) of this Agreement. The Manager shall supervise the performance of all personnel employed in fulfillment of its obligations under this Agreement.

(b) Minimum Standards for Personnel. During those timeframes set forth pursuant to Section 5.01(a), the Manager shall ensure that its personnel are adequately serving and attending to the public's needs at a level of service that is equal to or better than that provided to the public at Comparable First-Class Trails. All personnel providing services under this Agreement shall be courteous and cooperative and present a neat, clean, and professional appearance at all times. All personnel having regular contact with the public shall be able to understand and communicate in spoken English.

(c) Personnel as Responsibility of the Manager. All of the Manager's personnel shall be considered to be, at all times, employees of the Manager under its sole direction and not employees or agents of the County. The Manager shall supply competent personnel. All personnel shall have and wear proper identification. The Manager shall control the conduct, demeanor, and appearance of its officers, employees, agents and representatives. Upon any complaints by the County (which must be in writing), or by the public, as to the conduct of any such officer, employee, agent and/or representative, the Manager shall take immediate steps to address the complaints and take appropriate action.

(d) Salaries and Compensation of Personnel. The Manager shall pay all wages, salaries and/or commissions of all employees, service personnel and maintenance personnel who are employed by the Manager or engaged by the Manager as independent contractors with respect to The Underline. For all applicable positions, the Manager shall pay wages in accordance with County Ordinance No. 99-44 and Administrative Order 3-30, "Living Wages Requirement for County Service Contracts." The Manager shall pay all amounts due for workmen's compensation insurance, social security taxes, unemployment insurance, and all other taxes or levies now in force or hereafter imposed with respect to any such employees or personnel; keep and maintain all necessary payroll and employment records and make all necessary withholding deductions from the salaries and wages of such employees and personnel as required by federal, state, and local laws. The Manager shall promptly, upon the County Contract Manager's written request, and without the necessity of a request from the County Contract Manager when in connection with the County Contract Manager's approval of the Manager's annual budget in accordance with Section 2.02, provide a list of the employees employed and contractors engaged in the management, operations, maintenance or repairs of The Underline. This list will include the number of employees and their positions, salaries (or wages), and details regarding any benefits.

(e) Background Screening. In accordance with the Shannon Melendi Act, County Ordinance No. 08-07 (as it may be amended from time to time), all of the Manager's employees, volunteers, contractors, consultants and any other entity or persons that will perform any work at The Underline must comply with the Shannon Melendi Act before the scheduled start of such employment, volunteerism, or work, as if The Underline were a park facility, regardless of its designation as any other type of facility. The County agrees to reimburse the Manager for the reasonable costs incurred by the Manager on background checks required by the Shannon Melendi Act, up to a limit of \$5,000.00 in any 12-month period. The County shall reimburse the Manager within ninety (90) calendar days of delivering the invoice to the County Contract Manager.

(f) First Source Hiring Referral Program. Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Manager, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Manager is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until the Manager performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

5.03 Special Event Contracts. The Manager may enter into contracts, subject to all required regulatory approvals, and to the extent permitted by and consistent with Applicable Law, for the use of The Underline by groups conducting parties, camps, conferences and other events and such contracts shall be issued on a first-come, first-serve basis and to all persons and entities meeting the pre-established requirements for issuance of an event contract. To the extent permitted by and consistent with Applicable Law and the terms of this Agreement, any special event contracts entered into pursuant to this Section may permit the service of alcoholic beverages. The pricing for any such special event contracts entered into under this Section shall be priced as set forth in the pricing appendix approved pursuant to Section 5.01(b) of this Agreement.

5.04 Licenses. The County agrees to allow the Manager to issue temporary licenses, not exceeding one year, to third parties for use of The Underline, provided, however, that no license shall be issued to any debarred vendor or vendor named in the County's delinquent vendor list. The Manager shall have the right to issue licenses in connection with such activities and amenities that may include, but are not limited to: concession stands, kiosks, retail outlets, vending machines, photography sessions, special events, cooking classes, and farmers' markets. The Manager agrees that all licenses will be issued in accordance with Applicable Law. Activities and amenities shall be subject to all required regulatory approvals and shall only be allowed to the extent permitted by and consistent with Applicable Law and the terms of this Agreement. The Manager may require licensees to be responsible for obtaining such approvals.

5.05 Service Contracts. To discharge its obligations under this Agreement, including but not limited to the provision of maintenance and repair for The Underline, the Manager may negotiate and enter into service and supply contracts as it deems necessary and reasonable for the proper operation of The Underline (the "Service Contracts"). The Manager shall supervise the performance of all independent contractors, subcontractors, suppliers, and servicing agents required for the proper management, maintenance, repair, and operation of The Underline. The Manager, without the prior written consent of the County Contract Manager, may negotiate and enter into, bona-fide Service Contracts with third parties for concessions, services (including catering services that will be rendered on a continuing basis), electricity, trash or rubbish hauling, vermin extermination, janitorial services, parking area and landscape maintenance, and such other services for The Underline as the Manager shall reasonably determine to be advisable. All Service Contracts shall be in writing, in the name of the Manager, and assignable to the County. All Service Contracts shall be fully subject to and consistent with this Agreement, including the Term.

(i) SBE Compliance Required. Except where prohibited under Applicable Law, the Manager shall be required to comply with the County's Small Business Enterprise ("SBE") Program in awarding Service Contracts that are non-revenue generating contracts. The SBE goals shall be established by the County in accordance with the process set forth in the SBE program provisions. The Manager shall comply with the SBE program and shall submit annual compliance statements to the County Contract Manager in a form reasonably required by and acceptable to the County Contract Manager.

(ii) County Indemnification Required. All Service Contracts shall include the following indemnification provision:

[Contractor] shall indemnify and hold harmless Miami-Dade County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including any damages to persons, vehicles, equipment, or improvements resulting from particles or sediments caused by the operation of the Metrorail system, including attorneys' fees and costs of defense, which Miami-Dade 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 Service Contract by the [Contractor] or its employees, agents, servants, partners principals or subcontractors. [Contractor] shall pay all claims and losses in connections therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of Miami-County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. [Contractor] expressly understands and agrees that any insurance protection required by this Service Contract or otherwise provided by [Contractor] shall in no way limit the responsibility to indemnify, keep and save harmless and defend Miami-Dade County or its officers, employees, agents and instrumentalities as herein provided.

(iii) Living Wages. For all applicable positions, any Service Contract entered into pursuant to this Section 5.05 shall require the contractor to pay wages in accordance with

County Ordinance No. 99-44 and Administrative Order 3-30, "Living Wages Requirement for County Service Contracts."

5.06 [reserved]

5.07 [reserved]

5.08 Duty to Promote and Advertise The Underline. The Manager shall advertise and promote The Underline to maximize its use on a year-round basis by the public. The Manager shall not display or exhibit any kind of signage, including in the course of promoting and advertising The Underline, that is not in compliance with Applicable Law. In the event the Manager seeks advertisement and promotion opportunities for The Underline in the transit area (i.e., areas restricted to fare-paying transit users) of the Metrorail and Metromover, this advertisement and promotion shall be subject to the prior reasonable approval of the County Contract Manager.

5.09 Restrictions on the Manager's Authority. In performing management services hereunder, the Manager shall not, without the prior written consent of the County Contract Manager: (1) defend, compromise, settle or adjust any claim against the County or condemnation of The Underline nor make a claim for said proceeds; (2) commence or discontinue any actions on behalf of the County in the nature of legal proceedings in any court, before any governmental authority, or in arbitration; (3) terminate existing permit agreements or license agreements; (4) sell, lease, lien, allow a lien to be placed, grant easements or otherwise encumber The Underline; (5) enter into any agreements on behalf of the County with any third party; and/or (6) execute, assign, or consent/approve an amendment to any existing third-party contracts relating to The Underline except as otherwise permitted under this Agreement.

ARTICLE VI

MARKETING PARTNERSHIPS, NAMING, AND SPONSORSHIPS

6.01 Marketing Partnerships Program; Selection of the Manager as Marketing Partner. The County has enacted Section 2-2201 of the Code, as implemented through Implementing Order 8-9, authorizing the County to enter into agreements with third-party entities, such as the Manager, and to grant to such third-party entities marketing privileges, such as the sale of naming and sales rights, facility and event signage, program advertising, and exclusivity agreements with product and service providers. For the purpose of the County's Marketing Partnerships Program, the Manager shall serve as the County's Marketing Partner with respect to The Underline, and the Manager shall have such rights that include but are not limited to the sale of certain naming rights, facility and event signage, program advertising, and exclusivity agreements with product and service providers, subject to compliance with all Applicable Law and approval of all required regulatory agencies. Marketing opportunities sold pursuant to this Article shall include provisions allowing, upon the expiration or earlier termination of this Agreement, (1) the automatic assignment of the marketing opportunity to the County and any successor to the Manager and (2) the County's termination of the marketing opportunity without penalty to the County.

6.02 Sale of Marketing Opportunities (Other Than Naming Rights). The Manager agrees to notify the County Contract Manager of the sale of marketing opportunities with a value of less than \$1,000,000.00. For the sale of marketing opportunities with a value of \$1,000,000.00 or more,

the Manager shall propose, and the County Contract Manager shall have the right to approve or disapprove, the specific sales of marketing opportunities. The County Contract Manager shall provide its written approval or disapproval of any sale of marketing opportunities pursuant to this Section within a reasonable amount of time, not to exceed thirty (30) calendar days after delivery by e-mail to the County Contract Manager. The County Contract Manager shall only have the discretion to disapprove the proposed sale of marketing opportunities for the reasons set forth in Section 6.06. The Manager agrees to send a courtesy copy of the request for the sale of marketing opportunities by certified return receipt mail to the following address:

Office of Management and Budget
Stephen P. Clark Center
111 Northwest 1st Street, 22nd Floor
Miami, Florida 33128
Attn.: OMB Assistant Director (Marketing Partnerships)

In the absence of a written denial from the County Contract Manager of the proposed sale of marketing opportunities within thirty (30) calendar days pursuant to this Section, the proposed sale shall be deemed approved.

6.03 Sale of Naming Rights. The authority to enter into agreements concerning the sale of naming rights for a County facility, except event-specific naming rights and other programming activities, shall rest with the Board of County Commissioners, which retains the prerogative to approve the naming of any County facility and conduct due diligence prior to the approval of the sale of any naming right. The Manager shall have the right to sell naming rights for events and other programming activities. Notwithstanding the foregoing, and subject to the Board of County Commissioners' approval of any agreement for the sale of naming rights for a County facility, the Manager and Funding Entity are authorized to solicit funds on the basis of a sale of naming rights.

6.04 Solicitation of Marketing Opportunities. Subject to the rights and restrictions in this Article, the Manager shall have the right to solicit marketing opportunities, even for Phases, parts, or sub-Phases thereof, for which the County has not issued a Management NTP.

6.05 Use of Funds Derived Through Marketing Partnership. All revenues from marketing opportunities sold pursuant to this Article shall be used exclusively for those purposes described in Section 2.02.

6.06 Limitation on Marketing Rights. Notwithstanding anything in this Agreement to the contrary, the County's selection of the Manager as its Marketing Partner shall not authorize the Manager to enter into any agreements concerning naming and sales rights, facility and event signage, program advertising, and exclusivity agreements with product and service providers where the rights sold pursuant to those Agreements, if implemented, would violate Applicable Law, as determined by the County in its regulatory capacity. This includes, but is not limited to, to Section 33-121.20 of the Code of Miami-Dade County, Florida, *et seq.*, as an existing limitation on the placement of signage along the rapid transit system right-of-way, which includes The Underline.

With respect to The Underline, the County agrees that the Manager shall not be subject to any exclusivity agreements for products and services that the County may enter with any third-party. As such, pursuant to this Agreement, the Manager shall have the right to enter into exclusivity agreements for products and services for The Underline.

In addition, the Manager shall not enter into marketing agreements that would cause the County to be in breach of other existing agreements or with entities or depicting material that would, in the County's sole and exclusive determination, discredit or embarrass the County. In addition, the following content is prohibited: (1) political or political campaign advertising/marketing; (2) advertising/marketing promoting the sale of tobacco; (3) advertising/marketing that is clearly defamatory or likely to hold up to scorn or ridicule any person or group of persons; (4) advertising/marketing that is obscene or pornographic or in advocacy of imminent lawlessness or unlawful violent action; and (5) advertising/marketing that in the sole judgment of the County conflicts with any advertising/marketing agreements entered into between or actively being negotiated by the County and any other third-party.

Private donors shall not receive any material benefit from their donation (e.g., property ownership) apart from public recognition for their support of The Underline.

Nothing in this Agreement shall limit the County's authority to amend or eliminate its Marketing Partnerships Program through legislation, provided that any amendment or elimination of the County's Marketing Partnerships Program legislation shall not be applied to advertising/marketing agreements entered into in accordance with Sections 6.02 and 6.03 in a manner that would impair existing contractual obligations.

6.07 Solicitation and Sale of Sponsorship Opportunities. Subject to any limitations imposed by Applicable Law, including, but not limited to, Section 33-121.20 of the Code of Miami-Dade County, the Manager and Funding Entity shall have the right to solicit, sell, and enter into agreements for sponsorship opportunities for The Underline. Sponsorship opportunities sold pursuant to this Section are distinguished from marketing opportunities and naming rights sold pursuant to Sections 6.01-6.06 insofar as a sponsorship opportunity entails an agreement with a sponsor for the purchase of a specific asset for The Underline (e.g., benches, tables, bike racks, exercise equipment, fountains, foliage, and paving materials (such as bricks), and the like) or groups of assets (e.g., dog areas, rinks, playgrounds, and the like). A sponsorship agreement may provide for recognition of the sponsor in the form of a plaque or other signage. Recognition for the sponsorship shall be phrased in a manner that does not suggest that a particular asset or facility has been named after the sponsor (i.e., the recognition may state that the asset is "sponsored by [sponsor's name]," but not that the asset is the "[sponsor's name] Dog Area") and shall be commensurate with the monetary value of the sponsorship.

Sponsorship agreements entered into pursuant to this Section shall not be subject to the prior approval of the County, other than required regulatory approvals, provided that no sponsorship agreement entered into pursuant to this section shall consist of sponsorship (1) supporting or opposing any political candidate or campaign; (2) promoting the sale of tobacco; (3) that is clearly defamatory or likely to hold up to scorn or ridicule any person or group of persons; (4) that is obscene, pornographic, related to adult entertainment, or in advocacy of imminent lawlessness or unlawful violent action; or (5) that embarrasses or discredits the County. The

County Contract Manager shall be entitled to prompt notice of any sponsorship agreement entered into under this Section. Sponsorship agreements entered into pursuant to this Section shall include provisions allowing, upon the expiration or earlier termination of this Agreement (1) the automatic assignment of the sponsorship agreement to the County and any successor to the Manager and (2) the County's termination of the sponsorship agreement without penalty to the County. Sponsors shall not receive any material benefit from their donation (e.g., property ownership) apart from public recognition for their support of The Underline as described above and in the Manager's or Funding Entity's printed materials. All revenues from sponsorship opportunities sold pursuant to this Section shall be used exclusively for those purposes described in Section 2.02.

ARTICLE VII
REPAIR, MAINTENANCE AND REPLACEMENTS

7.01 Maintenance and Repairs of The Underline. The Manager shall undertake, make or cause to be made, and pay for, all upkeep, maintenance and repairs (including preventive maintenance) of The Underline, including as to all assets within The Underline; assets that are missing or stolen shall be replaced by the Manager at its own expense (except where insurance coverage is available). The County shall use reasonable efforts to provide the Manager with all documents and records that the County has in its possession relating to warranties, repairs, and maintenance of the Existing Assets. The Manager's obligation to make repairs shall include, but not be limited to, the following:

- (1) Benches or Other Seating: The Manager shall replace any broken or missing benches and bench slats and paint benches, as needed.
- (2) Walls, Barriers and/or Fencing: Any broken or cracked walls, barriers and/or fencing shall be repaired or removed and replaced. To the extent feasible, replacement materials and designs shall match the materials and designs of existing walls, barriers and/or fencing.
- (3) Pavements: All paved surfaces and walkways shall be maintained in a safe and attractive condition. To the extent feasible, replacement materials shall match existing materials.
- (4) Signs: All graphics shall be maintained in a first-class condition, and all vandalized or damaged signs shall be promptly cleaned or replaced with new signs that match other installed signs.
- (5) Painting: All items with painted surfaces, shall be painted as needed in a timely manner. Graffiti removal or cover-up by painting shall be the Manager's responsibility wherever it occurs on The Underline. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.
- (6) Monuments and Public Art: All monuments and public art shall be maintained in good condition and repair to achieve consistent structural and aesthetic effect.

- (7) Lighting: All lighting shall be maintained in good and working condition.
- (8) Any other item installed as part of The Underline.

7.02 Janitorial and Cleaning Services. The Manager shall, at its sole cost and expense, provide for janitorial and cleaning services within The Underline, so that The Underline, all facilities within The Underline, and all furnishings, fixtures and equipment at The Underline are clean and orderly at all times. If The Underline and all therein is not kept clean and orderly at all times, the County will provide notice to the Manager of corrective action needed. Failure by the Manager to take any corrective action in a reasonable time frame shall permit the County, upon notice to the Manager, to cause the same to be cleaned and the Manager shall be responsible for reimbursing the County for its cost of cleaning, which costs shall be reasonable under County standards.

7.03 Litter and Trash. The Manager shall provide litter and trash removal service, and shall provide and maintain trash receptacles throughout The Underline. The Manager shall reasonably maintain The Underline free of litter, trash and debris. The Manager's services in this respect shall include, but not be limited to, the following:

- (1) Dirt, litter, and obstructions shall be removed as needed, and trash and leaves collected and removed as needed so as to maintain The Underline in a clean, neat and good condition.
- (2) All walkways and all other improvements and facilities on The Underline, including but not limited to entrances, accesses (not including the street), staircases, elevators, and playgrounds, shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.
- (3) Graffiti on The Underline shall be promptly painted over or removed, as appropriate to the nature of the surface. The Manager shall use commercially reasonable efforts to remove graffiti within four (4) business days after its detection by the Manager (or receipt of notice from the County) to the reasonable satisfaction of the County Contract Manager.
- (4) Drains, sewers, and catch basins shall be cleaned regularly to prevent clogging.
- (5) Branches and trees damaged or felled by excessive winds, vandalism, or by any other reasons whatsoever, shall be promptly removed.

7.04 Landscaping. The Manager shall provide routine landscape maintenance services, such as trimming, fertilization, and irrigation sufficient to maintain The Underline in a condition comparable to that of other Comparable First-Class Trails. Replacement, renovation or redesign of plant materials, landscape features or hardscaping, or removal of diseased trees and plants shall be the responsibility of the Manager. The Manager's landscaping responsibilities shall include, but not be limited to, the following:

- (1) Prune and trim trees and shrubs that are overextended, dead or are otherwise unsafe or unsightly, to maintain their natural form.
- (2) Remove or destroy any weeds from paving blocks, pavement, cobbled, and concrete areas.
- (3) Apply fertilizer to trees, shrubs, plants and other lawn areas, as appropriate. The Manager will be permitted to develop integrated pest management and fertilization protocols based on ecological sustainability goals, which are acceptable to the County Contract Manager.
- (4) Replace any plants or trees that are dead, diseased, and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size, where appropriate.
- (5) Reseed and/or re-sod grass covered areas as needed.
- (6) Rake and collect leaves.
- (7) Water all trees, shrubs, plantings, and grass-covered areas as necessary to maintain such vegetation in a healthy condition.
- (8) Mow and edge grass covered areas as needed, no fewer than 24 times per year.
- (9) Weed as needed.

7.05 Hazardous Materials. The Manager shall promptly notify the County Contract Manager of the presence of any hazardous materials found at The Underline which come to the Manager's actual knowledge, and assist the County and/or any of the County's environmental consultants in monitoring the environmental condition of The Underline and in conducting any environmental testing which the County may desire to conduct. Unless the condition was exacerbated, disturbed, and/or caused by The Manager through negligence, willful misconduct, or reckless acts or omissions in discharging its duties under this Agreement, any remediation shall be the sole responsibility of the County. To the extent that any hazardous materials or environmental condition was exacerbated, disturbed and/or caused by the Manager, then the remediation and mitigation and costs associated therewith shall be the sole responsibility of the Manager.

7.06 Utilities. The Manager shall not place an unacceptable load or burden on the capacity of the applicable building systems and utility lines of The Underline, as determined by either the utility providing such service or the County, in the exercise of its reasonable judgment. The Manager shall pay for all utility charges incurred in the operation of The Underline including, without limitation, water, electricity, gas, telephone, waste collection and sewage services, all of which shall be at the Manager's sole cost and expense. The Manager shall not be required to pay for utility charges incurred by the County, and the County shall pay for all utility charges related to the Metrorail, including but not limited to its infrastructure and support system.

7.07 Furniture, Fixtures, and Equipment Installed by the Manager. The Manager in consultation with the County Contract Manager, shall furnish, install, and maintain all furnishings, fixtures, and equipment necessary for the operation and management of The Underline. All furnishings, fixtures and equipment shall be of the same or higher quality than those found at Comparable First-Class Trails.

7.08 Delinquent Firms. The Manager shall not enter into Service Contracts with entities, or allow any entities to provide any services whatsoever at The Underline, that are delinquent or in arrears in their financial obligations with the County and/or that are debarred from doing work for the County as set forth in the County's debarment and delinquent contractors' list (which is available at <http://www.miamidade.gov/business/small-business.asp>).

7.09 Inspections. The Manager shall inspect each Phase of The Underline for which the County has issued a Management NTP on a regular basis. Manager will provide written reports to the County Contract Manager bi-annually as required under Section 4.02 regarding the condition of The Underline. The Manager shall promptly provide written notice of any material problems with the physical condition of The Underline. Annually, upon a written request by the County Contract Manager, on a mutually acceptable date, a representative from the Manager and the County, along with any other individuals deemed necessary by either Party, shall perform a joint, thorough walk-through and inspection of The Underline and all components and facilities therein to assess the adequacy of the upkeep, repairs and maintenance being performed by the Manager at The Underline. To the extent that any deficiencies exist, the County shall provide written notice to the Manager of all such deficiencies within twenty (20) calendar days of the completion of the inspection and walk-through and the Manager shall commence corrective action and/or respond to the County's written notice of deficiency explaining why such corrective action is not needed. Notwithstanding the foregoing, if the Manager fails to timely and/or adequately undertake corrective action, the County shall do so after ten (10) days' written notice to the Manager of its intent to commence the corrective action and the Manager shall reimburse the County for its cost and expense associated with such corrective action, but such cost and expense shall be reasonable under current County standards.

7.10 Warranties. On behalf of the County and with the County Contract Manager's prior consultation in each instance, the Manager shall seek to enforce warranties in effect from time to time that may relate to The Underline's improvements, fixtures and equipment.

7.11 Capital Improvements.

(a) By the Manager. The Manager shall be responsible, at its sole expense, for the replacement, when necessary, of all assets for The Underline. The determination of the necessity of the replacement of an asset shall be upon the Parties' consultation and in the exercise of their reasonable discretion. Notwithstanding the foregoing, the Manager shall be permitted to make emergency or necessary capital repairs to assets without the prior consent of the County Contract Manager.

(b) By the County. This Agreement shall not be interpreted so as to require the County to repair or replace any Existing Assets along the M-path—the existing area around and underneath the Metrorail guideway—including the M-path itself. If the County decides, in its sole

and exclusive discretion to repair or replace Existing Assets, that repair or replacement of Existing Assets shall be at the County's sole cost and expense, except if the Existing Assets are within The Underline in which case the repair and replacement shall be the responsibility of the Manager in the manner otherwise provided in this Agreement.

7.12 Capital Improvement and Repairs Reserve Fund (the "Reserve Fund"). Upon the issuance of the first Management NTP, the Reserve Fund shall be established within a County-created and administered account. The Reserve Fund shall be designed to ensure the Manager's performance of its obligations under this Agreement and may be accessed by the County, by providing notice to the Manager at least thirty (30) business days in advance, but without the necessity of the prior approval of the Manager, to remedy any instance of non-performance or inadequate performance by the Manager. To the extent the County utilizes funds in the Reserve Fund to remedy any instance of non-performance or inadequate performance by the Manager, the Manager shall be required, within thirty (30) business days of the County's removal of the funds, to replenish the Reserve Fund to the balance existing before the County's accessing of the Reserve Fund. After the expiration or earlier termination of this Agreement, the Reserve Fund shall remain in existence to be utilized by the County for any purpose relating to the management, maintenance, and operation of The Underline by the County or any successor to the Manager.

(a) The Manager, beginning the third year following the County's first issuance of a Management NTP for any Phase, shall deposit five-percent of its Gross Revenues annually, into the Reserve Fund which the County may use for the purposes described in the foregoing paragraph. Irrespective of the balance in the Reserve Fund, the Manager is responsible, at its sole expense, for the replacement of assets within The Underline and for the performance of all of its obligations under this Agreement, including, without limitation, those obligations set forth in Articles II, V, and VII relating to the Manager's obligation to manage, maintain, and repair The Underline and those set forth in Article XI relating to the Manager's obligation to procure insurance as required by the County. All funds in the Reserve Fund from the time of their deposit in the Reserve Fund and continuing through and beyond the expiration or earlier termination of this Agreement shall belong to the County, and shall be utilized for the purposes described in the foregoing paragraph.

7.13 The Manager's Performance of Capital Improvements. Any capital improvement work undertaken by The Manager under this Agreement shall be undertaken in accordance with Applicable Law, including, for the avoidance of all doubt, the provision of bonding or alternative security (in the form requested by the County), under Fla. Stat. § 255.05; competitive bidding, under Fla. Stat. § 255.20; the Competitive Consultants' Negotiation Act, Fla. Stat. § 287.055; and such improvements shall be subject to the approval of the County.

ARTICLE VIII

FINANCIAL TERMS AND AUDIT RIGHTS

8.01 Funding Entity and Funding Agreement. To fund the Manager's obligations under this Agreement, including for the funding of the development of each Phase of The Underline in accordance with Section 2.04 of this Agreement, within 180 days of its entry into this Agreement, the Manager shall enter into an agreement (the "Funding Agreement") with the Funding Entity incorporating the requirements of this Article VIII. The Manager shall not enter into an agreement

with any other entity to perform the functions of the Funding Entity, unless that other entity complies with all of the obligations of the Funding Entity as set forth in this Article VIII.

- (a) Requirements of Funding Entity. The Funding Entity shall maintain its principal place of business in Miami-Dade County, Florida. The Funding Agreement shall require that the Funding Entity, in its articles of incorporation and/or by-laws, devote itself exclusively to funding the Manager for the purposes of the development, maintenance, and operation of The Underline. The Funding Entity's articles of incorporation and/or by-laws shall further provide that amendments to either document, which amendments are intended to or have the effect, directly or indirectly, of diverting the Funding Entity from the exclusive objective of funding the development, maintenance, and operation of The Underline by the Manager, shall be subject to the approval of the Board of County Commissioners by a two-thirds vote of its membership. Any amendment to the articles of incorporation and/or by-laws of the Funding Entity, which amendment is intended to or has the effect, directly or indirectly, of modifying any of the requirements for the Funding Entity, as those requirements are described in this paragraph, shall be subject to the approval of the Board of County Commissioners by a two-thirds vote of its membership.
- (b) Requirements of Funding Agreement. A Funding Agreement shall be entered into between the Funding Entity and the Manager; no other entity shall be a party to the Funding Agreement. The Funding Agreement shall require the Funding Entity to devote itself exclusively to funding the Manager for the purposes of the development, maintenance, and operation of The Underline, and the Funding Entity shall be permitted to incur reasonable operating and administrative costs, including but not limited to salaries, for those purposes. The Funding Agreement shall provide that the County is an intended third-party beneficiary of any funds raised by the Funding Entity. The Funding Agreement will allow for the Funding Entity, to transfer funds to the Manager, so that the Manager may transfer those funds to the County, only for the limited purposes set forth in Section 8.02. The Funding Agreement shall further require the Funding Entity to provide reports to the Manager such that the Manager is able to comply with its obligations under Sections 8.03-8.05. Upon the expiration or earlier termination of this Agreement, the Funding Agreement shall provide that all funds in the possession of the Funding Entity shall become the property of the County to be used by the County (or its designated successor to the Manager) for the limited purpose of funding the development, maintenance, and operation of The Underline. The Funding Entity shall make best efforts to inform any donor making a gift, pledge, or commitment of \$25,000.00 or more to the Funding Entity or Manager that the gift, pledge, or commitment is assignable to the County upon the expiration or termination of this Agreement for its use by the County or the Manager's successor and that the expiration or termination of this Agreement shall not be cause for the withdrawal of the gift, pledge, or commitment. Any amendment to the

Funding Agreement, which amendment is intended to or has the effect, directly or indirectly, of modifying any of the requirements for the Funding Agreement, as those requirements are described in this paragraph, shall be subject to the approval of the Board of County Commissioners by a two-thirds vote of its membership.

8.02 Transfer of Funds Raised by Funding Entity. Upon written notice by the County to the Manager that (1) the County will commence development of a Phase of The Underline within thirty (30) calendar days or that (2) the Manager's deadline to replenish the Reserve Fund has passed without replenishment of the Reserve Fund as required by Section 7.12, the Manager shall cause the Funding Entity to transfer, either directly to the County or to the Manager, any legally available funds in excess of the Funding Entity's administrative and operating costs, eligible only to be used for the (1) development of that Phase or (2) replenishment of the Reserve Fund per Section 7.12. Unless required by a final, unappealable court order, the County shall not require the disclosure of the identity of the donors (whether individual or institutional) to the Funding Entity.

8.03 The Manager's Certification of Receipts. During the Term of this Agreement, the Manager shall submit to the County Contract Manager on or before the tenth (10th) business day following the end of each quarter and on or before the tenth (10th) business day following the expiration or earlier termination of this Agreement, a written statement, signed by the Manager and certified by it to be true and correct, showing the amount of Gross Revenues during the preceding quarter. With respect to the summary of the funds raised and expended by the Funding Entity, the Manager shall submit such summary to the County Contract Manager semi-annually, based on the Funding Entity's fiscal year. The Manager shall submit to the County on or before the sixtieth (60th) day following the end of each calendar year an annual written statement, signed by a financial officer of the Manager and certified by the Manager to be true and correct, setting forth the amount of Gross Revenues and a summary of the funds raised and expended by the Funding Entity during the preceding year. The statement referred to in this sub-paragraph shall be in such form and style and contain such details and breakdowns as the County may reasonably require, provided that the County may not require the disclosure of the identity of donors (whether individual or institutional) to the Funding Entity.

8.04 County's Right to Audit and Inspect. The County, its auditors, or designee(s) shall have the right, once a year, at any time during the Term to enter into any locations which the Manager may use in connection with its operations pursuant to this Agreement in accordance with Generally Accepted Auditing Standards, Government Auditing Standards and Professional Internal Auditing Standards to audit, check, inspect and review all records pertaining to the operations for purposes of determining compliance with this Agreement, including but not limited to, the books of account, financial reports, contracts, operating statements, sales tax returns and working papers and records relating to this Agreement. At least thirty (30) business days prior written notice shall be provided to the Manager before the County physically enters any location to conduct an audit, and during the conduct of such audit, the County shall not unreasonably interfere with the conduct of the Manager's operations. Notwithstanding the foregoing, the County, its auditors or designee(s) shall have the right to enter any location which the Manager may use in connection with its operations pursuant to this Agreement in order to observe and inspect the operations. The County shall endeavor to perform such audit on a yearly basis, and except as noted below, the period for audit may never exceed three years. If during any audit, a discrepancy is

noted that may affect any unaudited years within a five-year audit period, then only for the discrepancy noted, the County shall have the right to audit those unaudited years. Notwithstanding the foregoing, in the event that the County is unable or fails to perform an audit in any given year, that shall not mean that the County has waived its rights to audit that year nor that the County has waived any claims it may have for non-compliance with this Agreement for such year.

8.05 Records and Reports. The Manager shall maintain, at a location within Miami-Dade County or in an electronic format readily accessible by the County, complete and accurate books and records of all receipts, disbursements, Service Contracts, and third-party contracts regarding its operations in a form consistent with generally accepted accounting principles for a minimum of five years. The Manager shall maintain any and all records that would normally be examined by an independent certified public accountant in performing an examination of the Manager's Gross Revenues and the Funding Entity's receipt and expenditure of funds in accordance with generally accepted auditing standards and the provisions of this Agreement. The Manager shall maintain any and all records that would normally be examined in assessing compliance with terms of this Agreement in accordance with generally accepted auditing standards, Government Auditing Standards, and/or professional internal auditing standards.

8.06 Maintenance of Effort Payment. In consideration of the Manager's assumption of the duties and responsibilities under this Agreement, including the Manager's obligation to operate The Underline and be solely responsible for all maintenance and repairs, the Manager shall receive from the County an annual fee in an amount equal to \$358,882.58 for all Phases of The Underline, except as adjusted as set forth in this Section (the "Maintenance of Effort Payment"). For each Phase(s), or subpart of a Phase(s) as designated by the County in accordance with Section 2.05, for which the County has issued a Management NTP, the Maintenance of Effort Payment shall be calculated on the basis of \$358,882.58 divided by the overall length of The Underline times the length of the Phase(s) or subpart for which the County has issued that Management NTP. On the second anniversary of the County's first issuance of a Maintenance of Effort Payment, and only upon the County's receipt of a written request for adjustment from the Manager, the Maintenance of Effort Payment shall be adjusted upwards on the basis of the Consumer Price Index for "All Urban Consumers (CPI-U): U.S. City Average," or any comparable successor index of the County's choosing. After the County's adjustment of the Maintenance of Effort Payment under the preceding sentence, further adjustments may be made following the same process set forth in the preceding sentence on the second anniversary of the previous adjustment. Adjustment shall be prospective only from the date of the County's receipt of the Manager's written request for adjustment. Any adjustment made pursuant to this paragraph shall be limited to the lesser of (i) CPI-U or (ii) four percent.

8.07 Maintenance of Effort Payment; When Due. At the commencement of each quarter (the quarters shall be October 1-December 31; January 1-March 31; April 1-June 30; and July 1-September 30), the Manager shall invoice the County for the prorated amount of the Maintenance of Effort Payment due for the Manager's services under this Agreement for the immediately preceding quarter. The County shall remit payment to the Manager of the amount of the Maintenance of Effort Payment due within forty-five (45) calendar days of the County's receipt of the invoice. If the Term ends or the Agreement is terminated before the expiration of the then-current quarter, then the County shall pay the final installment of the Maintenance of Effort Payment, prorated for the number of days within the then-current quarter, within forty-five (45)

business days after the end of the County's receipt of the invoice for the final quarter (or any part thereof).

8.08 Inspector General and Independent Private Sector Inspector General.

(a) Office of Inspector General. Section 2-1076 of County Code establishes the Miami-Dade County Office of the Inspector General, which has the authority and power to investigate County affairs and review past, present and proposed County programs, accounts, projects, contracts and transactions. According to Section 2-1076 of the Code of Miami-Dade County, as amended, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below.

(b) The Inspector General shall have the power and authority to perform audits on all County contracts. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Agreement. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Manager, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

(c) Upon written notice to the Manager from the Inspector General or an IPSIG retained by the Inspector General, the Manager shall make all requested records and documents available to the Inspector General or the IPSIG for inspection and copying. The Inspector General and the IPSIG shall have the right to inspect and copy all documents and records in the Manager's possession, custody or control which, in the Inspector General's or the IPSIG's sole judgment, pertain to performance of the contract.

(d) Independent Private Sector Inspector General. Pursuant to Board Resolution No. R-516-96 and Administrative Order 3-20, the County may authorize, retain and coordinate the services of an independent private sector inspector general ("IPSIG") for construction, capital development, procurement, retail, concession, lease and management agreements and/or contracts and other agreements exceeding \$1 million. The IPSIG may audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Manager and the County in connection with project design and construction matters under this Agreement. The scope of services performed by the IPSIG may include, but are not limited to, monitoring and investigating compliance with contract specifications; project costs; and investigating and preventing corruption and fraud.

(e) The IPSIG may perform its services at all levels of the construction contracting and procurement process under this Agreement, including but not limited to, project design, establishment of bid specifications, bid submittals, activities of the Manager and their officers, agents and employees, lobbyists and the County staff and elected officials. Upon fifteen (15) days' written notice to the Manager from the IPSIG, the Manager shall make all requested non-proprietary project-related records and documents available to the IPSIG for inspection and copying.

(f) The IPSIG shall have the right to examine all documents and records in the Manager's possession, custody or control which, in the IPSIG's reasonable judgment, pertain to the project design and performance of construction matters under this Agreement, including but not limited to, original estimate files; change order estimate files; worksheets; proposals and agreements from and with subcontractors and suppliers; all project related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents; back-charge documents; 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.

(g) The provisions in this Section shall apply to the Manager and its officers, agents and employees. The Manager shall incorporate the provisions in this Section in all subcontracts executed by the Manager in connection with the performance of this Agreement.

(h) Nothing in this Section shall impair any independent right that the Manager may grant to the County to conduct audit or investigative activities. The provisions in this Section are neither intended nor shall they be construed to impose any liability on the County, the Manager or third parties.

ARTICLE IX

EVENTS OF DEFAULT

9.01 Default by the Manager. The Manager shall be in default and breach of this Agreement if the Manager fails to observe or perform any material covenant, condition, or agreement contained herein which the Manager is otherwise required to observe and/or perform for a period of more than thirty (30) calendar days after receipt by the Manager of written notice of such default, unless the County agrees in writing to an extension of such time prior to its expiration or, in the case of any such default which cannot be cured with due diligence within such thirty-day period, the Manager promptly begins to cure the same and thereafter prosecute the prospective curing of such default with due diligence. The time within which the Manager is to cure any default not susceptible of being prospectively cured with due diligence within thirty (30) days will be extended for such additional periods which are necessary to complete the curing of the same with all such due diligence. However, with respect to any default by the Manager that involves health or safety issues, the County shall have the right upon written notice to the Manager to take such reasonable actions as may be necessary to remedy such defaults as same relates to such health or safety issues and the Manager agrees to reimburse the County for the County's cost of so remedying such default(s). At its sole and exclusive discretion, the County may elect to cure any default by the Manager by (i) offsetting the actual cost of curing the default from any

Maintenance of Effort Payment due to the Manager or (ii) utilizing the Reserve Fund in accordance with Section 7.12.

9.02 Default for Bankruptcy and Reorganization. Upon written notice by the County, this Agreement shall be automatically terminated for (i) institution of proceedings in voluntary bankruptcy or reorganization by the Manager; (ii) institution of proceedings in involuntary bankruptcy against the Manager if such proceedings continue for a period of ninety (90) days; or (iii) assignment by the Manager for the benefit of creditors.

9.03 Default by County. The County shall be in default and breach of this Agreement if the County fails to observe or perform any material covenant or condition contained herein which the County is otherwise required to observe or perform for a period of more than thirty (30) days after receipt of written notice, specifying such default. However, the Manager may agree in writing to an extension of such thirty (30) day cure period or, in the case of any such default which cannot reasonably be cured with due diligence within such thirty (30) day period, then such thirty (30) day period shall be extended for such additional periods which are necessary to complete the curing of the default with all such due diligence. The County's failure to pay the Maintenance of Effort Payment to the Manager pursuant to Sections 8.06 and 8.07 is considered a default and breach under this provision.

9.04 No Waiver. No termination of this Agreement pursuant to this Article shall constitute a waiver by the terminating Party of any of its other rights or remedies with respect to any Event of Default which created the right to so terminate this Agreement.

ARTICLE X **TERMINATION**

10.01 Termination Right. Upon the occurrence of any default by the County or by the Manager, then the Party which is not in default shall have the right to terminate this Agreement by giving the defaulting Party written notice of its intention to terminate this Agreement which notice shall not become effective until at least ten (10) business days after receipt thereof, and thereafter may pursue any rights available at law or in equity.

10.02 Effect of Termination. Upon the termination of this Agreement, no Party shall have any further liability or obligation to any other Party except as expressly set forth in this Agreement; provided that no Party shall be relieved of any liability for breach of this Agreement related to events or obligations arising prior to such termination.

10.03 Limitation of Liability. Notwithstanding anything else in this Agreement, in no event shall any Party be liable under any provision of this Agreement for any lost profits, special, indirect, incidental, consequential, exemplary, treble or punitive damages, in contract, tort or otherwise, whether or not provided by statute and whether or not caused by or resulting from the sole or concurrent negligence or intentional acts of such Party or any of its affiliates or related parties. This provision shall survive the expiration or earlier termination of this Agreement.

10.04 Cumulative Remedies. No termination of this Agreement pursuant to this Article shall constitute a waiver by the terminating Party of any of its other rights or remedies with respect to any Event of Default which created the right to so terminate this Agreement.

ARTICLE XI INSURANCE

11.01 Coverage Requirement (Types). The Manager shall be required to purchase insurance in the amounts and for the coverages reasonably required by the County Contract Manager. The required coverages shall, at a minimum, include (1) Worker's Compensation Insurance for all employees of the Manager as required by Florida Statute 440; (2) Commercial General Liability Insurance including products and completed operations, host liquor, advertising liability, personal injury and athletic participants; (3) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work; and (4) Liquor Liability (if applicable). For the Commercial General Liability, and Liquor Liability Insurance coverages, the County must be shown as an additional insured; the Manager shall require all entities providing service to the Manager in connection with this Agreement to name Miami-Dade County as an additional insured on their General Liability Insurance policies. Any required limits concerning the Commercial General Liability and Automobile Liability coverages may be met with Umbrella and Excess Liability Insurance. For any insurance coverage obtained, all deductibles will be the responsibility of the Manager. Any losses that would ordinarily be covered through property insurance, including named windstorm and flood insurance, shall be covered for The Underline through any insurance procured by the County for that purpose.

11.02 Coverage Requirement (Amounts). For each of the coverage types listed in Section 11.01, the Manager shall purchase coverage in the amount required by the County. The County shall determine the amount of coverage necessary for each Phase on a Phase-by-Phase basis, except in those cases in which the amount of coverage is not dependent on the development of a particular Phase (e.g., Worker's Compensation Insurance and Automobile Liability Insurance). Within thirty (30) business days of the County's issuance of notice to the Manager that a certain amount of coverage is required for any of the coverages listed in Section 11.01, the Manager shall furnish to Miami Dade County, c/o DTPW, 701 Northwest 1st Court, 17th Floor, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the County's requirements. The furnishing of the requested Certificate(s) of Insurance shall be a condition precedent to the issuance of a Management NTP.

11.03 County Not Responsible for the Manager's Property. The Manager will be responsible for insuring all the Manager's personal property and equipment used in connection with this Agreement. The County will not be responsible for repair or replacement of the Manager-owned property.

11.04 Failure to Procure Insurance. If the Manager fails to purchase, in any given year, the insurance required in this Agreement, then the County shall have the right to purchase the required insurance using any source of funds due to the Manager and available to the County, including by offsetting any Maintenance of Effort Payment due to the Manager. The County may also utilize the funds deposited by the Manager into the Reserve Fund. The Manager shall thereafter and immediately be required to replenish the Reserve Fund in the amount disbursed from such fund and used to purchase the required insurance. If the Maintenance of Effort Payment due to the Manager is insufficient to purchase the required insurance and there are insufficient funds in the Reserve Fund to purchase the required insurance, or if the Manager fails to replenish the Reserve Fund as required in this Section, then the Manager shall be in breach of this Agreement.

11.05 Insurer's Minimum Ratings. 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 the latest edition of 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. The County agrees that it shall not unreasonably withhold, delay or condition its approval of any insurance coverage which the Manager is required to obtain under this Agreement. The Parties acknowledge that from time to time the Manager may seek to obtain insurance from reputable London-based or other non-United States carriers, which carriers may not have been rated by A.M. Best Company; in such cases the County shall act reasonably in determining if such policies are "equivalent."

11.06 Cancellation Notice. The Manager shall promptly notify the County of any material change or cancellation of the insurance coverage required to be maintained by the Manager under this Agreement.

11.07 Coverage Limits Are Not a Limit of Liability. Compliance with the foregoing requirements shall not relieve the Manager of liability and obligation under this section or under any other section of this Agreement.

ARTICLE XII **INDEMNIFICATION**

12.01 By the Manager. The Manager shall 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 Manager or its employees, agents, servants, partners principals or subcontractors. The Manager shall 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 Manager expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Manager 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.

12.02 By County. The County does hereby agree to indemnify and hold harmless the Manager to the extent and within the limitations of Fla. Stat. § 768.28, 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, or any claim or judgments of portions thereof, which, when totaled with all other occurrences, exceeds the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses, and causes of action which may arise solely as a result of the negligence of the County. However, nothing

herein shall be deemed to indemnify the Manager from any liability or claim arising out of the negligent performance or failure of performance of the Manager, its affiliates, licensees, contractors, subcontractors, agents or any other unrelated third party. Further, the County shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including reasonable attorneys' fees and expenses) arising from or in connection with any loss or liability due to a force majeure.

12.03 Additional Limitation on County's Liability. Notwithstanding anything to the contrary in this Agreement, the County shall not be held liable by the Manager or its agents, servants, partners principals, employees, or subcontractors for any and all liability, losses, or damages, including any damages to persons, vehicles, equipment, or improvements resulting from particulate matter sediments caused by the operation of the Metrorail system. The Manager shall include this limitation of liability in any event contract permitted by Section 5.03, license issued in accordance with Section 5.04, Service Contract permitted by Section 5.05, or marketing agreement permitted under Article VI of this Agreement.

ARTICLE XIII **WAIVER AND ASSIGNMENT**

13.01 Waiver. No waiver by either the Manager or the County, whether express or implied, of any of the provisions of this Agreement or of any breach or default under this Agreement shall constitute a continuing waiver of such provision or any other provisions of this Agreement.

13.02 Assignment. The Manager shall not sell, assign, convey, transfer, pledge, encumber or otherwise dispose of voluntarily or involuntarily this Agreement or any of its rights under this Agreement without the prior written consent of the County. The transferee shall assume all of the Manager's obligations under this Agreement arising after the effective date of the assignment and the Manager shall be relieved from any obligations under this Agreement arising after the effective date of the assignment.

ARTICLE XIV **MISCELLANEOUS PROVISIONS**

14.01 Applicable Law. The Manager agrees to abide by Applicable Laws, including but not limited to, the laws of the State of Florida and the ordinances of Miami-Dade County, and to obtain all required regulatory approvals thereunder, in the conduct and operation of all activities conducted and/or undertaken by the Manager under this Agreement or otherwise in connection with its operations concerning The Underline. The Manager shall specifically comply with (1) 49 CFR 26.7, binding the Manager not to discriminate based on race, color, national origin, or sex; (2) 49 CFR 27.7, 27.9(b), and 37, binding the Manager not to discriminate based on disability and binding the Manager to compliance with the Americans with Disabilities Act (ADA) with regard to any improvements constructed; (3) the Federal Transit Administration Master Agreement, which is updated annually, relating to conflicts of interest, debarment, and suspension; (4) the latest version of the Transit Adjacent Construction Manual; and (5) the prohibition against the placement of liens on County property. In the event of breach of any nondiscrimination covenant contained in this Agreement, the County shall have the right to terminate this Agreement.

14.02 No Liens or Mortgages. The Manager shall not have the authority to and shall not cause any liens to be recorded on County property, including The Underline. In addition, the Manager shall not have the authority to or cause County property, including The Underline, to be mortgaged.

14.03 Intellectual Property. The Manager acknowledges that the County has and will continue to spend considerable resources in the development of The Underline into a County landmark. The Manager shall grant or secure, at no cost to the County, a perpetual license for the County in intellectual property concerning The Underline, including its name, logo and image, for the limited purpose to inform the public of The Underline through maps (digital or printed), marketing materials, and in any means of way finding. This provision will survive the termination of this Agreement. The County agrees and acknowledges that Friends owns the legal rights to “The Underline” mark and that Friends may use the name, “The Underline,” as a source of revenue for the organization. The Manager, together with Friends, shall have exclusive rights to use “The Underline” name, image, and likeness, including for such things as merchandising, apparel, and other goods.

14.04 Public Records. The Manager shall comply with Florida’s public records law, including Fla. Stat. § 119.0701. The Manager shall specifically: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Manager upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If the Manager does not comply with a public records request, and notwithstanding any of the alternative dispute resolution provisions set forth in Article XV of this Agreement, the County may pursue seek a Court order compelling the Manager to comply with the public records request and/or issue notices of default and/or termination under this Agreement.

IF THE MANAGER HAS QUESTIONS CONCERNING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE MANAGER’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

PARKS, RECREATION AND OPEN SPACES DEPARTMENT
275 NORTHWEST 2ND STREET, MIAMI, FLORIDA 33128
(305) 755-7800
MDPROSCOM@MIAMIDADE.GOV

OR

DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS

701 NORTHWEST 1ST COURT, SUITE 1700, MIAMI, FLORIDA 33136
(786) 469-5675
DTPW@MIAMIDADE.GOV

OR

DIALING 3-1-1

14.05 Non-Discrimination. The Manager shall abide by all applicable federal, state, and local mandates with regard to their employment hiring practices, promotions, use, or rental of The Underline, or in any other respect; must provide equal access and equal opportunity in employment and services; and will not discriminate on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity, gender expression, physical ability, or status as a victim of domestic violence, dating violence, or stalking, all in accordance with Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 as amended (42 U.S.C. 2000d et seq.), the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and Chapter 11A of the County Code.

14.06 Significance of Headings. The headings and captions of this Agreement are for the convenience of the Parties and are not to be used to interpret or construe this Agreement. Accordingly, in the event of any question with respect to the construction of this Agreement, it is to be construed as though such article or section headings have been omitted.

14.07 Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The Manager and the County agree that Miami-Dade County, Florida is the appropriate venue in connection with any litigation between the Parties with respect to this Agreement.

14.08 Approvals. Except where otherwise specifically provided to the contrary in this Agreement, any approvals by either Party to this Agreement shall not be unreasonably withheld, delayed or conditioned.

14.09 Delegation of Authority. Any right, duty, or obligation of the "County" in this Agreement may be exercised or performed by the County Contract Manager, except where expressly reserved unto the Board of County Commissioners in this Agreement or where as a matter of Applicable Law action by the Board of County Commissioners is required.

14.10 Independent Contractor/No Partnership. Both the Manager and the County acknowledge that they are entering into this Agreement as independent contractors and that neither the Manager nor the County is a partner or agent of the other, nor shall this Agreement in any way constitute a partnership agreement or joint venture between them. Neither Party hereto shall have the right to bind the other Party.

14.11 Absence of Third-Party Beneficiaries. Except where otherwise expressly noted, nothing in this Agreement is intended to (a) confer upon any Person other than the Parties and their

permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement.

14.12 Controlling Agreement. This Agreement sets forth the entire agreement and understanding between the Parties relating in any way to the subject matter contained in this Agreement and merges all prior discussions between the Manager and the County. Neither Party shall be bound by any agreement, condition, warranty or representation other than as expressly stated in this Agreement and this Agreement may not be amended or modified except by written instrument signed by both Parties.

14.13 Savings. If any term or provision of this Agreement is determined by an arbitration panel, or appropriate judicial authority, to any extent, to be illegal, unenforceable or otherwise invalid, such provision will be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement will be construed to be in full force and effect.

14.14 County's Sovereign Rights. The County retains all of its sovereign prerogatives and rights as a county under State law with respect to the planning, design, construction, development and operation of The Underline. It is expressly understood that notwithstanding any provisions of this Agreement and any development agreement subsequently entered into by the County for the development of any of the improvements to The Underline or any other improvements to The Underline and the County's status under this Agreement or any other agreement: (1) the County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State law and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations whatever nature of general applicability which is applicable to the planning, design, construction and development of The Underline, or the operation thereof, or be liable for the same, including any approvals needed under a Government Facilities hearing; (2) the County shall not by virtue of this Agreement or any development agreement be obligated to grant any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature of general applicability which is applicable to the planning, design, construction, development and/or operation of The Underline, including any necessary Governmental Facilities hearing; and (3) notwithstanding and prevailing over any contrary provision in this Agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the Board of County Commissioners, the County's Planning and Zoning Department, RER, or any other County, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power. Further, notwithstanding and prevailing over any contrary provision in this Agreement or any development agreement, any County covenant or obligation that may be contained in this Agreement shall not bind the County Mayor, Board of County Commissioners or Elections Department to hold any future elections.

ARTICLE XV
ALTERNATIVE DISPUTE RESOLUTION

15.01 Voluntary Trial Resolution. Any dispute or claim between the Parties under this Agreement shall be submitted to voluntary trial resolution by a retired Miami-Dade County judge and otherwise in accordance with Fla. Stat. § 44.104 (“ADR”). Either Party may initiate ADR by written notice to the other Party, identifying the claim or dispute and the specific sections of this Agreement under which it arises (“an ADR Election Notice”).

15.02 ADR Procedure. The Parties agree that: (i) the speedy resolution of any disputes or claims between them pursuant to this Section 15.02 is a mutual and material inducement to enter into this Agreement; (ii) the Party initiating and filing for voluntary trial resolution shall pay all filing fees associated therewith; (iii) each Party shall pay one-half of the cost of the trial resolution judge and court reporter required for the proceedings; (iv) each Party, in any such proceedings, shall pay for its own costs and expenses incurred in the prosecution and defense, as applicable, of any dispute or claim filed hereunder, including attorneys’ fees and costs; and (v) voluntary trial resolution pursuant to this Section 15.02 is intended to be the sole and exclusive dispute resolution mechanism of the Parties with respect to disputes or claims between them under this Agreement. The Parties’ sole avenue for equitable or monetary relief shall be through the ADR process described in this Section 15.02. Without limiting the foregoing:

(a) With respect to any voluntary trial resolution hereunder and regardless of any contrary provision of law, (i) such trial shall be conducted by a retired Miami-Dade County judge having no less than 5 years’ Civil Division experience in such judge’s final 10 years of his/her tenure; (ii) the Parties hereby expressly retain all appeal rights afforded by law; and (iii) if the Parties are unable to agree upon and appoint a retired judge within 30 days from the effective date of ADR Election Notice, then either Party may submit a request to the court for the appointment of the voluntary trial resolution judge pursuant to Fla. Stat. § 44.104(4). Pending the appointment of voluntary trial judge under ADR, either Party, where warranted under the circumstances, may petition the appropriate court sitting in Miami-Dade County Florida for injunctive relief until the matter can be resolved pursuant to the ADR procedures described above.

(b) The voluntary trial judge shall be bound by the provisions of this Agreement and shall not have the power to add to, subtract from or otherwise modify such provisions, and shall consider only the specific issues submitted to him/her for resolution.

(c) Within ten (10) calendar days of the selection of a trial resolution judge, the trial resolution judge shall be required to consult with the Parties and issue a trial schedule setting forth deadlines for discovery, dispositive motions and the final hearing, which final hearing shall occur no later than 180 days after the selection of the trial resolution judge. Unless otherwise agreed to by both Parties in advance and in writing, the final hearing shall not exceed two days in length, with one day allotted to each Party to present its case, including any opening and closing arguments.

(d) The trial resolution judge shall issue written findings and conclusions of law within thirty (30) calendar days after the trial resolution hearing.

15.03 Venue; Waiver of Jury Trial. If any claim or dispute between the Parties under this Agreement is found not to be subject to ADR, then each Party submits to the exclusive jurisdiction of any court of competent jurisdiction sitting in Miami-Dade County. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection to venue in Miami-Dade County, including objections based on lack of personal jurisdiction or the doctrine of forum non conveniens. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT WHICH ANY PARTY MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY DISPUTE OR CLAIM SUBJECT TO ADR UNDER AGREEMENT.

ARTICLE XVI
NOTICES

16.01 Any notice, demand, request, consent or other communication under this Agreement shall be in writing and shall be considered given when delivered in person, one (1) business day after being sent by reputable overnight carrier, or three (3) business days after being mailed by certified mail, return receipt requested, to the Parties at the addresses set forth below (or at such other address as a Party may specify by notice given pursuant to this Section to the other Party):

If to the County:

To the attention of:

County Mayor
111 NW 1st Street, Suite 2900
Miami, Florida 33128
Attention: Michael Spring

With a copy to:

County Attorney
111 NW 1st Street, Suite 2810
Miami, Florida 33128
Attention: Miguel A. Gonzalez

If to the Manager:

To the attention of:

The Underline Management Organization, Inc.
1172 South Dixie Highway, #559
Coral Gables, Florida 33146

With a copy to:

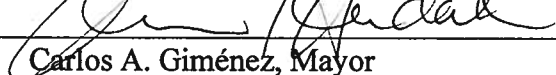
Hogan Lovells US LLP
600 Brickell Avenue,
Suite 2700
Miami, Florida 33131
Attention: Parker D. Thomson

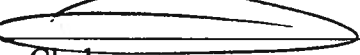
Notwithstanding the foregoing, periodic and ordinary course notices, deliveries and communications between the Manager and the County Contract Manager may be given (and shall be considered given when provided) by any of the means set forth above, and to the address provided by the County Contract Manager to the Manager for such purposes.

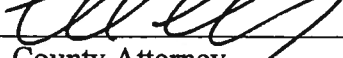
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by appropriate officials of each of them, as of the date first above written.

“COUNTY”

MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS

By: 
Carlos A. Giménez, Mayor

By: 
Clerk

By: 
County Attorney
(As to Form and Legal Sufficiency)



“MANAGER”

The Underline Management Organization, Inc., a Florida not-for-profit corporation

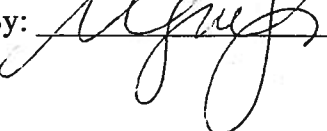
By: 

EXHIBIT A

(James Corner Field Operations Framework Plan, including other ancillary documents)

EXHIBIT B

(Promotional Materials and/or Photographs Depicting the Condition of Comparable First-Class Trails)

EXHIBIT C

(Preliminary Maintenance and Operations Memorandum)

EXHIBIT D

(FTA Incidental Use Permit)