

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Eric Carpenter, City Manager 

DATE: May 21, 2025

TITLE: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING RESOLUTION NO. 2023-32819, WHICH AUTHORIZED THE CITY MANAGER TO NEGOTIATE A USE AND OCCUPANCY AGREEMENT AND LEASE OF AIRSPACE OVER STATE ROAD A1A/MACARTHUR CAUSEWAY WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION ("FDOT") IN CONNECTION WITH THE CONSTRUCTION AND MAINTENANCE OF THE 5TH STREET PEDESTRIAN BRIDGE PROJECT; SAID AMENDMENT APPROVING, IN SUBSTANTIAL FORM, THE FOLLOWING AGREEMENTS: (1) A MODIFIED USE AND OCCUPANCY AGREEMENT, WHICH NOW REQUIRES THE CITY TO MAKE A MAINTENANCE DEPOSIT IN THE AMOUNT OF \$20,000.00, AS SECURITY FOR THE CITY'S ROUTINE MAINTENANCE AND REPAIR OBLIGATIONS OF THE PEDESTRIAN BRIDGES, SUBJECT TO CPI INCREASES EVERY FIVE YEARS; (2) THE FOLLOWING TWO (2) AGREEMENTS GOVERNING ANY CASH DEPOSIT TO BE HELD BY FDOT: (I) A LOCALLY FUNDED AGREEMENT, AND (II) A THREE PARTY ESCROW AGREEMENT; AND (3) A COMMUNITY AESTHETIC FEATURE AGREEMENT, WHICH MAY INCLUDE ANY RELATED MAINTENANCE BOND OR SECURITY DEPOSIT; AND FURTHER, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE ALL OF THE AGREEMENTS AND TAKE ANY ACTION AND EXECUTE ANY ADDITIONAL AGREEMENTS OR DOCUMENTS REQUIRED TO EFFECTUATE THE INTENT OF THE AGREEMENTS.

RECOMMENDATION

The Administration recommends that the Mayor and City Commission (City Commission) adopt the Resolution.

BACKGROUND/HISTORY

On November 6, 2018, Miami Beach residents approved three ballot questions authorizing the City to issue General Obligation Bonds (GOB) to fund capital projects within the City. Among other City projects, an allocation was made towards the creation of the 5th Street Pedestrian Bridge Project, to provide for a pedestrian bridge over and across 5th Street and West Avenue, to connect the Baywalk south of 5th Street with the area north of 5th Street (Project).

The Project is composed of two adjoining bridges, one which travels over and across 5th Street, which is a State of Florida road under the jurisdiction of the Florida Department of Transportation (FDOT) (State Road Connector), and one which travels over and across West Avenue, which is a City road (West Avenue Connector). Collectively, the Pedestrian Bridges.

Since the State Road Connector crosses over an FDOT Road and connects with the West Avenue Connector, a permit from FDOT is required to construct the Project.

Additionally, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above and/or below the highway's established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to a Right-of-way Use and Occupancy Agreement and Lease of Airspace in accordance with 23 CFR, Part 710 (Use and Occupancy Agreement).

ANALYSIS

On October 18, 2023, the City Commission adopted Resolution No. 2023-32819, authorizing the Administration to negotiate a Use and Occupancy Agreement and Lease of Airspace over State Road A1A/MacArthur Causeway (5th Street or State Road), based upon a template provided by FDOT, attached to the City Commission Memorandum.

The parties proceeded to negotiate the agreements based upon the initially approved template. However, the agreement was ultimately changed to a simplified Use and Occupancy Agreement which included the use of the air space above the State Road for the development of the Pedestrian Bridges and their related infrastructure.

During recent and final negotiations, FDOT advised that it is now requiring bonds to be secured in connection with the use of the airspace for the construction, maintenance and operation of a bridge, and would require the City to post a bond, in the amount of \$20,000.00, as security for the City's routine, maintenance and repair obligations under the Use and Occupancy Agreement (Attachment A) with the amount being subject to CPI increases every five years.

Since the posting of such bonds have not typically been required from governmental entities, and while the City investigated the requirements for posting such bonds or other forms of security which may be acceptable to FDOT, the City requested the option of providing such security in the form of the deposit. In connection with the payment of a deposit, FDOT requires the execution of the following two additional agreements: (i) a Locally Funded Agreement (Attachment B), and (ii) a Three Party Escrow Agreement (Attachment C). Drafts of those agreements were provided to the City on May 13, 2025, and are still subject to further review by FDOT's upper management.

Additionally, in connection with the signage that will be installed on the State Road Connector, FDOT has requested that the City sign a Community Aesthetic Feature (CAF) Agreement (Attachment D), which agreement may also include a requirement on the part of the City to post a maintenance bond or make a security deposit relating to the signage, in an amount to be determined, comparable to the security provided to FDOT in connection with the maintenance of the Pedestrian Bridges and within the City Manager's purchasing authority; and, in connection therewith, the City may also need to execute a Locally Funded Agreement and a Three Party Escrow Agreement in substantially the same form as proposed for the maintenance deposit relating to the Pedestrian Bridges.

The Project has gone through a lengthy permitting process which required several layers of review and received many comments from FDOT. The developer has addressed the comments and the FDOT permit is ready to be issued.

Due to the material changes to the essential terms of the Use & Occupancy Agreement, and the requirement that the City execute additional agreements in connection with the Project, the Administration recommends approving, in substantial form, the following agreements: (1) a Use and Occupancy Agreement; (2) the following two (2) agreements governing cash deposit to be held by FDOT: (i) a Locally Funded Agreement and (ii) a Three Party Escrow Agreement; and (3) a CAF agreement governing any signage to be placed on the State Road Connector.

FISCAL IMPACT STATEMENT

The FDOT Use and Occupancy Agreement requires a maintenance bond or deposit in the amount of \$20,000. The CAF Agreement may require a maintenance bond or deposit in an amount to be determined, within the City Manager's purchasing authority.

Does this Ordinance require a Business Impact Estimate? (FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:

See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

Subject to a future Capital Budget Amendment to FY 2025

CONCLUSION

The Administration recommends that the City Commission amend Resolution No. 2023-32819, approve the modified FDOT Use and Occupancy Agreement, the Community Aesthetic Feature Agreement and all associated agreements.

Applicable Area

South Beach

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

Yes

Is this item related to a G.O. Bond Project?

Yes

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

Capital Improvement Projects

Sponsor(s)

Click or tap here to enter text.

Co-sponsor(s)

Click or tap here to enter text.

Condensed Title

Pedestrian Bridge Amendment to FDOT Use and Occupancy Agreement. CIP

Previous Action (For City Clerk Use Only)

ATTACHMENT "A"

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION USE & OCCUPANCY AGREEMENT

ITEM/SEGMENT NO.:	415230-1
MANAGING DISTRICT:	Six
F.A.P. NO.:	N/A
STATE ROAD NO.:	A1A / 5th Street
COUNTY:	Miami-Dade
PARCEL NO.:	3250 and 7461

THIS USE AND OCCUPANCY AGREEMENT ("Agreement"), made this ____ day of _____ (the "Effective Date"), between CITY OF MIAMI BEACH (the "Permittee"), a municipality in Miami-Dade County, Florida, and the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION (the "Department"), an agency of the State of Florida (each, a "Party", collectively, the "Parties").

WITNESSETH:

WHEREAS, the Department has acquired sufficient legal right, title, and interest in: (1) the right-of-way of SR A1A / 5th Street (the "State Road") located in Miami Beach, Florida, which is part of a highway on a Federal Aid System, which includes the airspace above the State Road ("Parcel 7461"); and (2) two areas abutting the State Road, including the parcel of land identified by the Miami-Dade County Property Appraiser's Office as Folio Number 02-4204-006-0130 (collectively, "Parcel 3250"), as more fully described in Exhibit "A" attached hereto and made a part hereof (Parcel 7461 and Parcel 3250 shall be collectively referred to herein as the "Premises"); and

WHEREAS, Permittee owns or has a legal or equitable interest in the right-of-way known as West Avenue; and

WHEREAS, under a permit issued by the Department to MasTec Civil, LLC, Permit 2024-C-691-00008 (the "Permit"), MasTec Civil, LLC is to construct a pedestrian bridge spanning the airspace Parcel 7461 over the State Road (the "State Road Connector"), as more particularly and three dimensionally described in Exhibit "A", and another pedestrian bridge spanning over Parcel 3250 (on the north side of the State Road) and West Avenue (the "West Avenue Connector"), as more particularly and three dimensionally described in Exhibit "B", and each of their respective associated structural elements and appurtenant improvements and components, including, but not limited to, the sidewalks, elevator, and stairs (the State Road Connector and the West Avenue Connector are collectively referred to as the "Pedestrian Bridges," and the Pedestrian Bridges together with each of their respective associated structural elements and appurtenant improvements and components are collectively referred to as the "Project"); and

WHEREAS, the Department desires to permit the Permittee to use and occupy the Premises as part of the Project for the sole purpose of constructing, accessing, operating, maintaining, and repairing the components of the Project which will allow the general public to cross over the south side of the State Road to the north side of State Road and proceed to cross over West Avenue using the West Avenue Connector, and vice versa, continuously and without interruption, other than during emergencies or during temporary periods when the Pedestrian Bridges may need to be maintained or repaired (the "Permitted Use"); and

WHEREAS, the Permitted Use of the Premises will not impair the full use and safety of the State Road, require or permit vehicular access to such Premises directly from the established gradeline of the State Road, or interfere with the free flow of traffic on the State Road.

NOW, THEREFORE, in consideration of the covenants, promises, understandings, and agreements made by each Party to the other as set forth herein, the Department and the Permittee do hereby mutually agree as follows:

1. Recitals.

The above recitals are incorporated herein by reference and are made a part of this Agreement.

2. Term.

The Department does hereby permit the Permittee to use and occupy the Premises solely for the Permitted Use set forth herein for approximately twenty five (25) years beginning on the date of issuance of a temporary certificate of occupancy or on the date of issuance of a final certificate of occupancy, whichever occurs first (the "Commencement

Date”) and ending on the twenty-fifth (25th) anniversary of the Commencement Date (the “Expiration”), unless terminated earlier in accordance with Paragraph 7 of this Agreement.

This Agreement may not be renewed. Notwithstanding, upon Expiration, if the Department, in its sole discretion, and in accordance with the Department’s procedures, determines that the Premises is not needed for the present or future construction, operation, and maintenance or modification of a transportation facility, then the Parties may enter into a new Use and Occupancy Agreement for the Premises on terms acceptable to the Department in accordance with subparagraph 7.f. of this Agreement.

This Agreement creates a permissive use only, and no warranty of title shall be deemed to be given herewith. Nothing herein shall be construed to in any way grant, create, or vest any right, title, or interest in the Premises or in the State Road.

3. Use and Occupancy Fee.

a. Permittee shall not be required to pay a use and occupancy fee to the Department as long as the Premises is used for the Permitted Use described herein and so long as Permittee complies with all other obligations set forth in this Agreement. Except for temporary closures of the Pedestrian Bridges for emergencies or during temporary periods maintenance or repair, it is a condition of this Agreement that the Premises be used by Permittee solely for a public transportation use consistent with the Permitted Use that justifies Permittee’s occupancy of the Department’s Premises at no consideration.

b. In the event that Permittee changes its Permitted Use of the Premises from what is allowed under this Agreement with written consent by the Department’s District Six Secretary, then Permittee agrees to pay, at that time, a lump sum use and occupancy fee in an amount to be determined by an independent appraiser certified by the Department, or the Department may terminate this Agreement, at its election, pursuant to the terms set forth in Paragraph 7 herein.

c. Notwithstanding the above, the Permittee shall be responsible for all state, county, city, and local taxes that may be assessed, including real property taxes and special assessments.

4. Use, Occupancy, and Maintenance.

a. The Premises shall be used solely for the Permitted Use set forth herein in accordance with the general design/plan sheets dated September 1, 2023, and plan revisions approved by the Department in writing, retained by the Department (the “Plans”). No other uses are authorized under this Agreement.

b. Any change in the Permitted Use of the Premises or revision in the design or construction of the Pedestrian Bridges or its facilities as set forth in the Plans shall require prior written approval from the Department’s District Six Secretary. This Agreement shall not in any way serve as a permit for construction activities or any type of work within the State Road lying below the Premises. After construction of the Project is completed in accordance with the Permit issued by the Department, any improvements or enhancements to be made by the Permittee or on the Permittee’s behalf during the term of this Agreement, prior to their construction or installation, shall be approved in writing by the District Six Secretary of the Department and may be subject to a permit from the Department.

c. The Department and the Federal Highway Administration (“FHWA”), through their duly authorized agents, representatives, employees, and contractors, shall have the right, but not the obligation to enter upon and have full access to all components of the Project at any time for the purpose of inspection, maintenance, or reconstruction of the State Road and adjacent facilities, when necessary; or for any other action which is reasonable and necessary to maintain or repair the State Road, to address a public safety hazard, to conduct an environmental assessment or to abate an environmental hazard. In addition, the Department and FHWA, through their duly authorized agents, representatives, employees, and contractors, shall have the right, but not the obligation, to enter upon, and have full access to all features and components of the Project and any real property and improvements that are outside the boundaries of the Premises described in Exhibit “A” for the purpose of inspection, maintenance, repair, or removal of any components or features of the Project, including, but not limited to, structural supports, as deemed necessary to protect the public interest in the discretion of the Department. In addition, this right of entry grants the Department and FHWA and their duly authorized agents, representatives, employees, and contractors to enter upon and have full access to all components and features of the Project, regardless of whether such components or features are within real property owned by the Permittee, at any time for the purpose of closing the Pedestrian Bridges or the State Road Connector, if necessary, in the interest of public safety or in an emergency. Nothing in this right of entry shall be deemed to be an obligation on the part of the Department to maintain, repair or engage in any remedial action, but only a legal right reserved by the Department. Nothing in this paragraph shall relieve the Permittee of any maintenance obligations under this Agreement.

d. The design, occupancy, and use of the Premises shall not adversely affect the use, safety, appearance, or enjoyment of the State Road by lights, sounds, wireless frequencies, smoke, fumes, vapors, odors, droppings, or any other objectionable discharges, or emissions, or nuisances of any kind therefrom in violation of any present or future federal, state, or local laws, orders, directions, ordinances, standards, or regulations.

e. Maintenance. The structural integrity of all components and features of the Project is the sole responsibility of the Permittee. The Permittee, at the Permittee's sole cost and expense, shall be responsible for all maintenance and repairs of all components and features of the Project, including but not limited to maintenance and repairs necessary to assure that the structures and the area within the Department's right-of-way will be kept in good condition, both as to safety and appearance. In addition, the Permittee shall maintain, and repair as needed, all components and features of the Project, including, but not limited to, the Pedestrian Bridges and all their respective structural supports and all other associated or appurtenant improvements that are outside of the Department's right-of-way. To maintain means to perform, or have performed on the Permittee's behalf, all maintenance operations for the preservation and safe operation of the Project and shall include, among other things, removal of litter, painting, and removal of graffiti. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the use of the State Road except as expressly authorized by the Department by permit. The Permittee shall maintain the Project in such a manner as to protect and prevent any hazards from occurring to the public traveling on the State Road. The Permittee shall also be responsible for repairs, maintenance, and replacements of all utility systems, lighting, serving same and appurtenances thereto, and shall keep them neat, clean and in good repair, free from filth, overloading, danger of fire, explosion or any nuisance. The provision of all interior and exterior maintenance of the components and features of the Project is the sole and exclusive responsibility of the Permittee.

Except for non-invasive, routine maintenance or repair activities that are performed completely inside the enclosure of the Pedestrian Bridges, such as sweeping, any maintenance or repairs of any nature will require the Permittee to submit to the Department an application for a lane closure permit. If the Department determines that the proposed activity requires a lane closure permit or other permit for the activity, the Permittee shall not perform the maintenance or repair prior to the Department's issuance of the required permit. The Permittee shall submit a lane closure request to the Department through the District Six Lane Closure Information System and in accordance with the District Six Lane Closure Policy, as may be amended from time to time.

The Pedestrian Bridges will be inspected and maintained by the Permittee in accordance with the latest edition of the Department's procedure "Bridge and Other Structures Inspection and Reporting" Topic No. 850-010-030-k and all applicable federal, state, and local laws, standards, guidelines, and procedures. The Pedestrian Bridges inspection shall be completed by a prequalified Department consultant in the work type 5.3, Complex Bridge Inspection (as set forth in Fla. Admin. Code R. 14-75.003 (2006)). Qualified Inspectors are found at Bridge Inspection (fdot.gov). A signed and sealed copy of inspection reports, by a Florida Registered Professional Engineer, shall be submitted to the Department every two years, at a minimum to the Department's District 6 Structures Maintenance Office to D6-Structures-Inspection@dot.state.fl.us. The Permittee shall maintain a record of all maintenance operations, including but not limited to inspections and repairs, that sets forth the date of the activity, the location that was maintained, and the work performed, and shall make the records available to the Department at any time during the term of this Agreement, within a reasonable time upon the Department's request.

At all times during the term of this Agreement, the Department shall have the right, but not the obligation, to inspect the Pedestrian Bridges, and to require adjustment maintenance methods, or modifications to structures or improvements as necessary to maintain or repair the Pedestrian Bridges pursuant to the terms of this Agreement. In the event that the Permittee fails to maintain the Pedestrian Bridges after written notice and a sixty (60) day time period, the Department may require the Permittee to close the Pedestrian Bridges until the necessary maintenance is performed. In the event that the Permittee fails to maintain the Pedestrian Bridges during the aforementioned sixty (60) day time period, the Department and FHWA shall also have the right, but not the obligation, in its sole discretion, through its duly authorized representatives, employees, and contractors, to enter the Pedestrian Bridges and access any improvements outside of the Department's right-of-way that are features or components of the Pedestrian Bridges, to perform such maintenance, and pursuant to the terms of the Locally Funded Agreement, the Department shall have the right to withdraw and use the Maintenance Deposit mentioned in subparagraphs 6.c. to cover the cost thereof. Backup documentation for the invoice shall be provided to Permittee upon request.

The administrative fee shall be reasonable and commensurate with the direct and actual maintenance costs incurred by the Department and any other activities and administrative costs taken on by the Department relating to the maintenance (i.e., time spent by Department employees) and shall offer a detailed explanation of the amounts charged. Nothing in this paragraph shall relieve the Permittee of its maintenance obligations. If, at the Department's discretion, the Department deems it necessary to close the State Road and detour traffic until the necessary maintenance is completed, the Department shall charge the Permittee for all expenses incurred arising from the closure of the State Road and necessary detours.

Additionally, the Department may resort to other remedies available to it at law or in equity. The sixty (60) day period to cure will not apply if, in the Department's discretion, it is necessary to perform the maintenance or repair work

immediately, and this sixty (60) day period may be extended in the Department's discretion, if agreed to in writing by the District Secretary of District Six.

The Permittee, at Permittee's sole cost and expense, agrees to restore any damage to the State Road that is caused by or arises from the use and occupancy of the Premises.

The Department reserves the right to terminate this Agreement pursuant to Paragraph 7 in the event of the Permittee's failure to comply with the maintenance obligations set forth herein.

f. The Permittee shall not occupy, use, permit, or suffer the Premises to be occupied or used for any illegal business use or purpose, for the manufacture or storage of flammable, explosive, or hazardous material, or any other hazardous activity, or in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future federal, state, or local laws, orders, directions, ordinances, or regulations. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials affecting the Department's right-of-way is prohibited. The Permittee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary as a result of Permittee's use of the Premises, as determined by the Department. Similarly, if any contamination either spread to or was released onto adjoining property as a result of the Permittee's use of the Premises, the Permittee shall be held similarly responsible. To the extent allowable, and subject to the limitation on the Permittee's liability, as set forth in Section 768.28, Florida Statutes, the Permittee shall indemnify, defend, and hold harmless the Department and FHWA from any claim, loss, damage, cost, charge, or expense associated with such contamination arising from Permittee's use of the Premises. Notwithstanding the foregoing, Permittee shall not be responsible for loss or damages or to perform any environmental remediation caused by the Department, FHWA or their respective employees, agents, officers, contractors, or licensees.

g. When, for the Permitted Use of the Premises, the State Road requires additional highway facilities for the proper operation and maintenance of the State Road, such facilities shall be provided by the Permittee without cost to either the Department or FHWA and subject to both the Department and FHWA approval.

h. In the event that the Department determines that any of the Permittee's inspections, management, operation, repair, or maintenance activities interfere in any way with the safety or operation of the State Road, the Permittee shall immediately cease and desist any such activities upon notice from the Department. If, at any time during the term of this Agreement, the Department, in its sole discretion, deems it necessary to close one or both of the Pedestrian Bridges because of a threat to public safety or in an emergency, the Department shall have the right to unilaterally close the Pedestrian Bridge(s) and cease all operations within the Pedestrian Bridge(s). If the Permittee causes a threat to public safety resulting in closure of the Pedestrian Bridge(s), the Department, in addition to all other rights under this Agreement, is entitled to reimbursement of any costs incurred in connection with the closure.

i. This Agreement does not authorize advertising of any nature on the State Road Connector, inside the State Road Connector, or within the Premises. Any advertising is subject to a separate agreement with the Department. Signage is prohibited unless depicted in the Plans or approved by separate agreement with the Department.

j. The Permitted Use of the Premises shall not cause or allow any changes in the existing drainage under the State Road.

k. Existing utilities and all corresponding easements shall remain in place and the Permittee shall not disturb or interfere with the same.

l. The Permitted Use of the Premises is subject to all applicable permit requirements and any other required agreements or approvals, and concurrences.

5. Indemnification.

a. To the extent allowable, and subject to the limitation on Permittee's liability, as set forth in Section 768.28, Florida Statutes, the Permittee shall indemnify, defend, save, and hold harmless the Department and FHWA, and their respective agents, officers, and employees, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees (including regulatory and appellate fees), arising out of or because of any act, error, neglect, or omission by the Permittee, or its employees, agents or officers, or due to any accident, happening, or occurrence on the Premises, or arising in any manner from the exercise or attempted exercise of the Permittee's rights hereunder whether the same regards person or property of any nature whatsoever, except to the extent arising out of an act, error, omission or negligent act of the Department or FHWA, or their respective agents, officers, or employees. The Permittee's indemnification obligations set forth herein shall survive the expiration or termination of this Agreement.

The Permittee's obligation to indemnify, defend, and pay for the defense, or at the Department's option, to participate, and to associate with the Department in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Department's notice of claim for indemnification to the Permittee. The Permittee's inability to evaluate liability or its evaluation of liability shall not excuse the Permittee's duty to defend and indemnify within seven days after such notice by the Department is given by registered mail. The Department's failure to notify the Permittee of a claim shall not release the Permittee of the above duty to defend. The foregoing indemnification shall not constitute a waiver of the Department or the Permittee's sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

b. The Permittee shall require its contractors, subcontractors, consultants, and/or subconsultants (collectively, "Contractors") who will perform work on the Premises to indemnify, defend, save, and hold harmless the Permittee, the Department, and FHWA, and each of their respective officers, agents, and employees, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees (including regulatory and appellate fees), arising out of the negligent acts or omissions by the Contractors or its employees, agents, or officers, or due to any accident, happening, or occurrence on the Premises, or arising in any manner from the exercise or attempted exercise of the Contractors' obligations under their contracts with the Permittee whether the same regards person or property of any nature whatsoever. The Permittee's Contractors' indemnification obligations shall survive the expiration or termination of this Agreement. The foregoing indemnification shall not constitute a waiver of the Department or the Permittee's sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

6. Insurance; Performance Bonds/Deposit.

a. Insurance. The Permittee is self-insured under a risk management program adequate to provide coverage in a minimum amount of not less than Two Hundred Thousand and 00/100 Dollars (\$200,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than Two Hundred Thousand and 00/100 Dollars (\$200,000.00) for property damage, or a combined coverage of not less than Three Hundred Thousand and 00/100 Dollars (\$300,000.00). The Permittee represents that in compliance with and subject to limitations of Sections 768.28 and 440.09, Florida Statutes, provisions have been made by Permittee to process any liability claims that may arise during the term of this Agreement. Permittee's self-insurance shall be primary only up to the limits set forth in Section 768.28, Florida Statutes, and shall include a full waiver of subrogation. Such self-insurance obligation shall survive the expiration or earlier termination of this Agreement with respect to any claims which may result from incidents occurring during the term of this Agreement. Upon the request of the Department, Permittee shall provide the Department with a self-insurance letter setting forth the terms and conditions set forth herein.

b. The Permittee shall require its Contractors to maintain Commercial General Liability insurance providing continuous coverage for all maintenance, repairs, rehabilitation, removals, or other operations performed relating to or in connection with the Premises. Such insurance shall be carried in a minimum amount of not less than Two Million and 00/100 Dollars (\$2,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than Two Million and 00/100 Dollars (\$2,000,000.00) for property damage, or a combined coverage of not less than Five Million and 00/100 Dollars (\$5,000,000.00). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless the Permittee and the Department are given at least thirty (30) days prior written notice of such cancellation or modification. All such policies shall be primary and shall include a full waiver of subrogation. The Permittee shall further cause its Contractors to name the Permittee, the Department, and FHWA as named additional insureds on the Contractors' Commercial General Liability policies as to the Contractors' ongoing and completed operations. Prior to the commencement of any work on the Premises, and at all insurance renewal periods which may occur during the duration of this Agreement, the Permittee shall provide the Department with Certificates of Insurance and Additional Insured Endorsements showing such insurance to be in place and showing the Permittee, the Department, and FHWA as additional insureds under the Contractors' policies.

c. Maintenance Deposit. Within thirty (30) days after the Effective Date of this Agreement, and pursuant to the terms and conditions of the Locally Funded Agreement (the "LFA") and Three Party Escrow Agreement (to be executed by the Parties substantially in the form attached hereto as Exhibit "C" prior to the Permittee taking possession of the Premises), the Permittee shall deposit and continually maintain in escrow with the Department the total sum of Twenty Thousand Dollars (\$20,000.00) to ensure performance by the Permittee of all routine maintenance and repair obligations under the terms of this Agreement (the "Maintenance Deposit"). Notwithstanding anything to the contrary herein, if the Permittee defaults on the LFA pursuant to subparagraph 3.b. of the LFA, the Permittee shall also be in default of this Agreement.

7. Default and Termination.

a. Default. If the Permittee fails to observe or perform any covenant, obligation, condition, or agreement contained herein (hereinafter, a "Violation"), excepting the Violations expressly enumerated below in subparagraph 7.b., the Department shall provide the Permittee with a sixty (60) calendar day written notice to cure the Violation. If the

Permittee fails to cure any Violation within the sixty (60) calendar day notice period (or any other reasonable time period agreed to in writing by the Department's District Secretary of District Six as may reasonably be necessary by Permittee to cure the Violation), then the Permittee shall be in default of this Agreement.

Notwithstanding the above, if the Violation is of a material nature and it is a continuing or similar subsequent Violation, occurring within a twelve (12) month period from the date of a previous written warning provided by the Department to the Permittee, then the Permittee shall be in default of this Agreement.

b. It is understood and agreed to by the Permittee that the Department reserves the right to terminate this Agreement with thirty (30) days prior written notice to the Permittee, upon the occurrence of any of the following events:

- i. If the Permittee is in default of this Agreement; or
- ii. The Premises ceases to be used by Permittee for the Permitted Use set forth this Agreement; or
- iii. The Premises is abandoned for a period of ninety (90) days; provided that non-use of the Premises as a result of maintenance or repair activities shall not be considered abandonment; or
- iv. If the Permittee causes destruction or damage to the Premises not otherwise permitted by the Permitted Use by intentional act; or
- v. If the Parties do not execute a new Use and Occupancy Agreement within three (3) months (or such longer period of time if agreed by the Parties in writing) from the Expiration of this Agreement pursuant to subparagraph 7.f.

c. This Agreement is terminable by the Department upon two (2) years prior written notice to the Permittee if use of the Premises or any part hereof is required by the Department for construction, operation, and maintenance or modification of a transportation facility.

d. In the event the Agreement is terminated, as permitted in this Paragraph 7, and removal of the State Road Connector, or any part thereof, or any part of the West Avenue Connector located on the Premises, is requested by the Department, the removal shall be accomplished by the Permittee in a manner prescribed by the Department at no cost to the Department or FHWA within six (6) months (or other reasonable time agreed to in writing by the Parties) from the date of termination of this Agreement; and unless otherwise specified by the Department, the Department's right-of-way shall be restored by the Permittee and delivered to the Department, or its agents, in the condition existing at the commencement of this Agreement, ordinary wear and tear excepted. In the event that Permittee, at its sole option, determines that Permittee would like to preserve the use of the West Avenue Connector, independent of the State Road Connector, the Department agrees to use commercially reasonable efforts to approve a permit for the Permittee's proposed realignment of the West Avenue Connector. Any realignment of the West Avenue Connector shall be at the sole cost and expense of Permittee.

e. This Agreement shall automatically terminate upon its Expiration.

f. Upon Expiration of this Agreement, the Pedestrian Bridge(s) shall be permitted to remain in place, subject to the Parties successfully negotiating and executing a new Use and Occupancy Agreement within three (3) months (or such longer period of time if agreed by the Parties in writing) from the Expiration of this Agreement. Notwithstanding the foregoing, Permittee's continued use and occupancy during the time period between Expiration and execution of a new Use and Occupancy Agreement shall be subject to the same terms and conditions as herein contained in this Agreement.

g. Should the Department elect not to have the State Road Connector, or any part thereof, or any part of the West Avenue Connector located on the Premises removed following the termination or Expiration of this Agreement, ownership of the State Road Connector, or any part thereof, or any part of the West Avenue Connector located on the Premises will be transferred to the Department through a bill of sale from the Permittee, and unless otherwise agreed upon by the Parties, the Department shall assume all responsibility for the operation, maintenance and repair of the State Road Connector, or any part thereof, or any part of the West Avenue Connector located on the Premises that is conveyed to the Department.

8. Eminent Domain.

The Permittee acknowledges and agrees that its relationship with the Department under this Agreement is one of permittor and permittee and no other relationship either expressed or implied shall be deemed to apply to the Parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any

eminent domain or other law so as to entitle the Permittee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

The Permittee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from the Permittee's loss of occupancy of the Premises, or any such rights, claims, or damages flowing from adjacent properties owned or leased by the Permittee as a result of the Permittee's loss of occupancy of the Premises. The Permittee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of the Permittee's loss of occupancy of the Premises, when any or all adjacent properties owned or leased by the Permittee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto. Notwithstanding the above, nothing in this Paragraph 8 shall be construed as a waiver by the Permittee to any legal rights and claims which it may have as a result of a breach of this Agreement by the Department.

9. Miscellaneous.

a. The Permittee shall not assign or transfer the right to use the Premises or any part thereof, nor assign this Agreement, without the prior consent in writing of the Department and subject to concurrence by FHWA. Moreover, any permitted assignment by the Permittee shall not release the Permittee from its liabilities or obligations under this Agreement. This Agreement is being executed by the Department upon the credit and reputation of the Permittee. Permittee shall not allow any liens or other encumbrances to attach to the Premises.

b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and 49 CFR Part 21, the Permittee agrees as follows:

- i. That as a part of the consideration hereof, the Permittee does hereby covenant and agree as a covenant running with the land that (1) no person, on the grounds of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said property and facility; (2) that in connection with the construction of any improvements on said property and facility and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Permittee shall use the Premises in compliance with all other requirements imposed pursuant to 49 CFR part 21.
- ii. That in the event of breach of any of the above covenants, the Department shall have the right to terminate this Agreement and to re-enter and repossess the Premises and hold the same as if this Agreement had never been made or issued.

c. During the term of this Agreement the Permittee shall, at the Permittee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of Florida, county or local governments, or other lawful authority whatsoever, affecting the Premises.

d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

f. The Permittee acknowledges that it has reviewed this Agreement, is familiar with its terms, and has had adequate opportunity to review this Agreement with legal counsel of the Permittee's choosing. The Permittee has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the Parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the Parties are merged in this Agreement, which alone, fully, and completely express the agreement between Permittee and the Department with respect to the subject matter hereof. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon the Department or the Permittee unless in writing and signed by both Parties.

g. The Permittee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the Project.

h. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

i. All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by email as follows:

To the Department: State of Florida, Department of Transportation
ATTN: Right of Way Manager
1000 NW 111 Avenue
Miami, Florida 33172
Heidi.Solaun@dot.state.fl.us (or alternatively, the email address of any subsequent District Six Right of Way Manager)

To the Permittee: City of Miami Beach, Florida
ATTN: Public Works Department Director
1700 Convention Center Drive
Miami Beach, Florida 33139
BradfordKaine@miamibeachfl.gov (or alternatively, the email address of any subsequent Public Works Director)

Notices shall be deemed to have been received the same day the notice was sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

Notwithstanding the foregoing, default notices shall be sent in writing via certified mail with return receipt requested or via overnight carrier, once received by the receiving party, and with respect to Permittee, an additional copy will be sent to the following address:

City of Miami Beach
Attention: City Attorney
1700 Convention Center Drive
Miami Beach, Florida 33139

j. The Parties to this Agreement hereby understand and agree that the venue for any action that may arise as a result of this Agreement shall be in Leon County, Florida.

k. If the Permittee is a "contractor" for the purposes of Section 119.0701, Florida Statutes, the Permittee shall comply with public records laws and specifically shall:

- i. Keep and maintain the public records that ordinarily and necessarily would be required to be kept and maintained by the Department in order to perform the services identified herein.
- ii. Provide the public with access to those public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- iv. Meet all requirements for retaining the public records and transfer, at no cost, to the Department all the public records in possession of the Permittee upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All such public records (if any) stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

If the Permittee fails during such times to comply with a public records request, the Department shall enforce this section in accordance with this Agreement.

The Permittee shall otherwise allow public access to all documents, papers, letters, or other materials, made or received by the Permittee in connection with this Agreement and the use of the Premises, to the extent such access is required because such documents, papers, letters or other materials are subject to the provisions of s. 24(a) of the State Constitution or Chapter 119, Florida Statutes.

l. Section 287.133(3)(a), Florida Statutes, requires that the Permittee be informed of the following provisions of Section 287.133 (2)(a), Florida Statutes: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list."

m. The Department shall consider the employment knowingly by the Permittee of unauthorized aliens a violation of Section 274(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement.

n. This Agreement shall not create any third-party beneficiary hereunder, nor shall this Agreement authorize anyone not a party hereto to maintain a suit against the Department pursuant to the terms of this Agreement.

o. This Agreement shall be binding upon the successors, assigns and legal representatives of the Permittee and the Department.

p. All Exhibits attached to this Agreement are made a part hereof as if fully copied herein. All submittals required to be submitted by the Permittee that are approved by the Department are by reference made a part of this Agreement as if fully copied herein.

q. Nothing in this Agreement or in any documents executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by the Department or Permittee of its sovereign immunity in tort under the Constitution and laws of the State of Florida.

r. "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

s. The Permittee does not qualify for relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. Section 4601 et seq.).

[REMAINDER IS INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed, the day and year first above written.

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION:

By: _____

Name: _____

LEGAL REVIEW:

By: _____

Name: _____

CITY OF MIAMI BEACH:

By: _____

Name: Eric T. Carpenter, P.E., City Manager

LEGAL REVIEW:

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

By: _____

Name: _____

EXHIBIT "A"
PREMISES

DRAFT

EXHIBIT "A"
CERTIFICATION, NOTES AND LEGEND
TO ACCOMPANY LEGAL DESCRIPTION
PEDESTRIAN BRIDGE AT 5TH STREET

Notes:

1. Data shown hereon does not constitute a field survey as such.
2. The legal description shown hereon was prepared by the surveyor.
3. Bearings shown hereon are based on the Station 245+00 to 248+00, as shown on Florida Department of Transportation Right-of-Way Control Survey Section 87060 for State Road A1A sheet 17 of 18. Said line bears N 88°00'53" E.
4. Elevations shown hereon are based on the North American Vertical Datum of 1988.
5. Airspace limits described hereon based on proposed bridge location (Reference document: BCC Engineering, LLC, Project Id: 450761-3-61-01, Dated:02-2022).

Legend:

CKD	Checked by
DWN	Drawn by
FB/PG	Field Book and Page
POB	Point of Beginning
POC	Point of Commencement
P.B.	Plat Book
M/D.C.R.	Miami/Dade County Records
POT	Point of Termination
R/W	Right of Way
(C)	Calculated Dimension
--- ---	Limited Access Right-of-Way Line
L/A	Limited Access
FDOT	Florida Department of Transportation
CL	Center Line

I hereby certify that this SKETCH TO ACCOMPANY LEGAL DESCRIPTION is in compliance with the Standards of Practice as set forth by the Florida Board of Professional Land Surveyors and Mappers as referenced in Rule 5J-17 Florida Administrative Code pursuant to Section 472-027 Florida Statutes.

For the firm by: _____
Richard E. Cousins
Professional Surveyor and Mapper
Florida Registration No. 4188

This document consist of 5 sheets and neither shall be considered full, valid and complete without the other.

Section 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
Miami Beach, Florida 33132
Project Number: 6844-12
Client: Miami Beach Capital Improvement
COUSINS SURVEYORS & ASSOCIATES, INC.
3921 SW 47TH Avenue, Suite 1011
Davie, Florida 33314
Certificate of Authorization: LB # 6448
Phone (954) 689-7766 Email: office@csasurvey.net

THIS IS NOT A SURVEY

Parcel No.: 7461
Florida Department of Transportation, District VI
SR No: A-1-A / 5th Street (Macarthur Causeway)
Section No. 87060
F.M. Number: 415230-1
County: Miami-Dade

Sheet 1 of 5

EXHIBIT "A"
SKETCH AND LEGAL DESCRIPTION
PEDESTRIAN BRIDGE AT 5TH STREET

Legal Description Parcel 7461

An airspace parcel lying within a portion of the Florida Department of Transportation Public Right-of-Way for State Road A1A, Miami-Dade County, Florida as shown on Florida Department of Transportation Public Right-of-Way Map Project 87660-2202 sheet 2 of 2 dated August 1957, being more particularly described as follows:

Having as its Lower Boundary a Horizontal Plane at elevation 26.73 feet (North American Vertical Datum of 1988), and having as its Upper Boundary a Horizontal Plane at elevation 50.32 feet (North American Vertical Datum of 1988);

The perimetrical boundaries of which are more particularly described as follows:

A portion of the Florida Department of Transportation Public Right-of-Way for State Road A1A, Miami-Dade County, Florida as shown on Florida Department of Transportation Public Right-of-Way Map Project 87660-2202 sheet 2 of 2 dated August 1957, being more particularly described as follows:

Commencing at the intersection of the center line of State Road 907 also known as Alton Road and the baseline of survey for State Road A1A also being Station 247+98.50;

Thence South 88°00'53" West, along said Baseline of Survey, a distance of 316.10 Feet to a tangent curve concave to the South;

Thence along the Arc of said curve, having a Radius of 981.47 feet, a Central Angle of 01°39'50" and an Arc distance of 28.50 feet to the Point of Beginning;

Thence South 04°18'45" East, a distance of 48.38 feet;

Thence South 85°41'15" West, a distance of 26.00 feet;

Thence North 04°18'45" West, a distance of 96.41 feet;

Thence North 83°37'57" East, a distance of 51.91 feet to a point on a non-tangent curve, concave to the Northwest (A radial line through said point bears North 24°48'47" West);

Thence northeasterly along the arc of said curve, having a Radius of 29.33 feet, a Central Angle of 12°17'51" and an Arc distance of 6.30 feet;

Thence North 86°20'01" East, a distance of 20.19 feet;

Thence South 77°27'18" West, a distance of 43.95 feet;

Thence South 85°41'15" West, a distance of 8.18 feet;

Thence South 04°18'45" East, a distance of 46.23 feet to the point of beginning.

Said lands lying and being in Miami/Dade County, Florida; Containing 2,623 square feet more or less.

This document consist of 5 sheets and neither shall be considered full, valid and complete without the other.

Section 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
Miami Beach, Florida 33132

Project Number: 6844-12
Client: Miami Beach Capital Improvement

COUSINS SURVEYORS & ASSOCIATES, INC.
3921 SW 47TH Avenue, Suite 1011
Davie, Florida 33314
Certificate of Authorization: LB # 6448
Phone (954) 689-7766 Email: office@csasurvey.net

THIS IS NOT A SURVEY

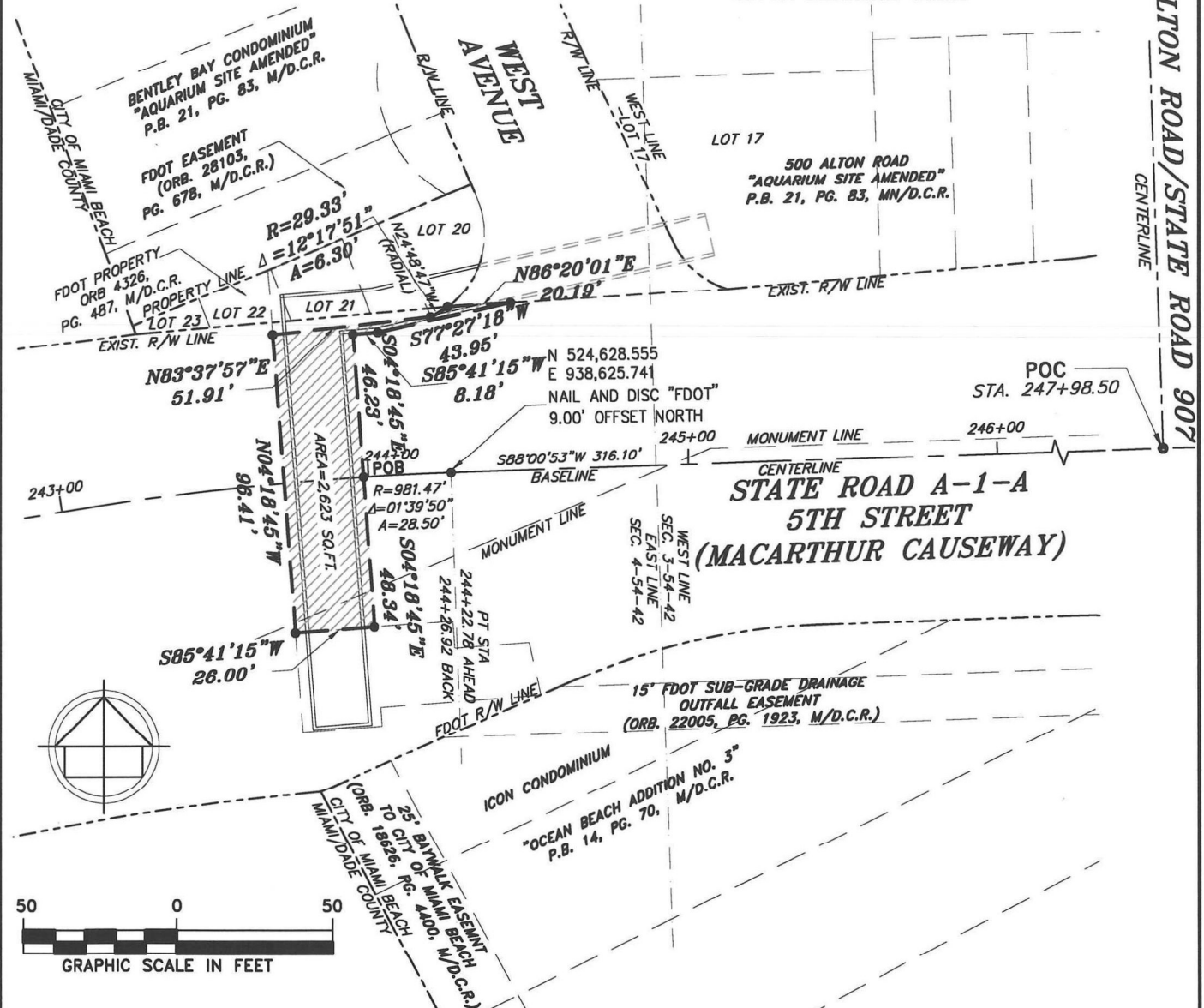
Parcel No.: 7461
Florida Department of Transportation, District VI
SR No: A-1-A / 5th Street (Macarthur Causeway)
Section No. 87060
F.M. Number: 415230-1
County: Miami-Dade

Sheet 2 of 5

EXHIBIT "A"
SKETCH TO ACCOMPANY LEGAL DESCRIPTION
PEDESTRIAN BRIDGE AT 5TH STREET

NOTE:
 SEC. 4, TWP. 54 SOUTH, RGE. 42 EAST.

ELEVATION LIMITS:
 LOWER ELEVATION=26.73'
 UPPER ELEVATION=50.32'



This document consist of 5 sheets and neither shall be considered full, valid and complete without the other.

Section 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
 Miami Beach, Florida 33132
 Project Number: 6844-12
 Client: Miami Beach Capital Improvement
COUSINS SURVEYORS & ASSOCIATES, INC.
 3921 SW 47TH Avenue, Suite 1011
 Davie, Florida 33314
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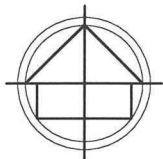
THIS IS NOT A SURVEY

Parcel No.: 7461
 Florida Department of Transportation, District VI
 SR No: A-1-A / 5th Street (MacArthur Causeway)
 Section No. 87060
 F.M. Number: 415230-1
 County: Miami-Dade

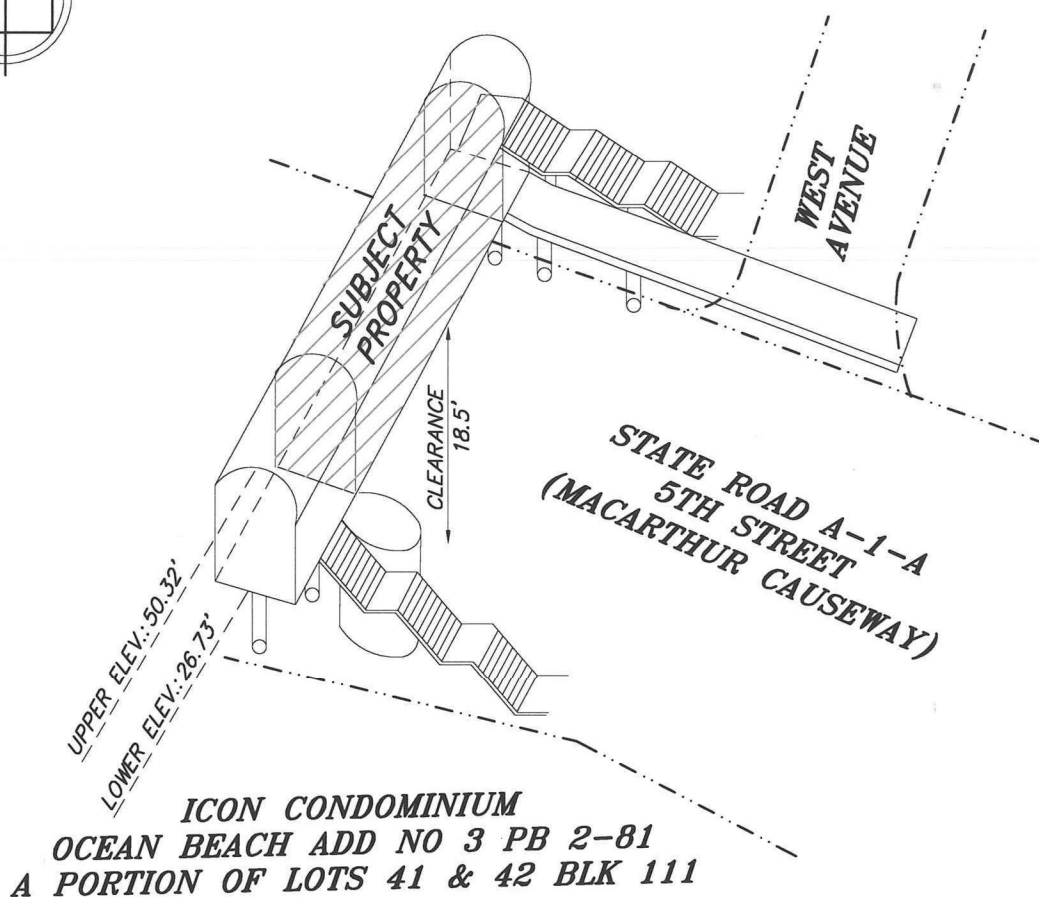
Sheet 3 of 5

EXHIBIT "A"
SKETCH TO ACCOMPANY LEGAL DESCRIPTION
PEDESTRIAN BRIDGE AT 5TH STREET

NOT TO SCALE



AQUARIUM SITE
AMD PB 21-83
LOTS 20 THRU 23



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Section 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
 Miami Beach, Florida 33132
COUSINS SURVEYORS & ASSOCIATES, INC.
 3921 SW 47TH Avenue, Suite 1011
 Davie, Florida 33314
 Certificate of Authorization: LB # 6448
 Phone (954) 689-7766 Email: office@csasurvey.net

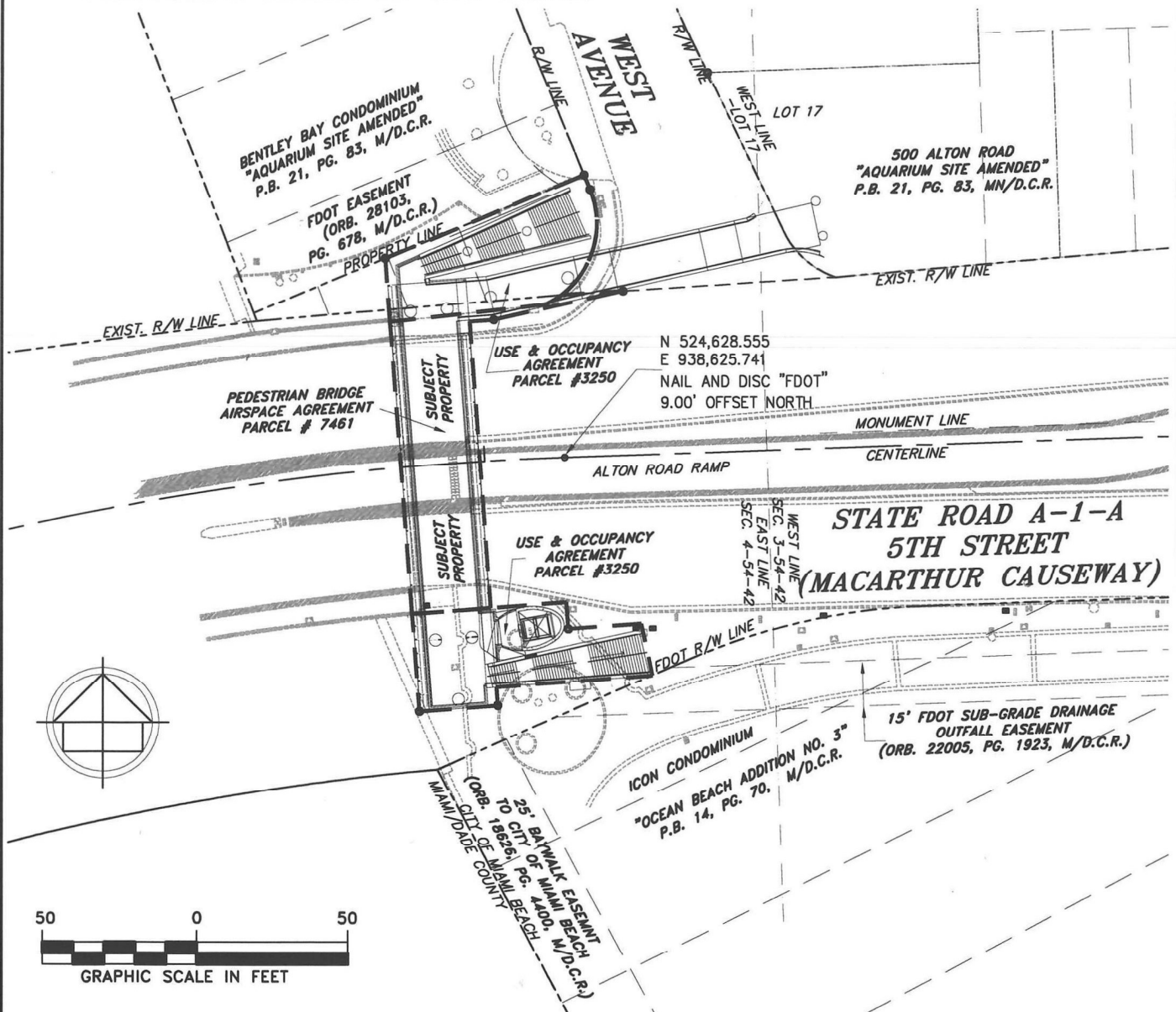
Project Number: 6844-12
 Client: Miami Beach Capital Improvement

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Parcel No.: 7461
 Florida Department of Transportation, District VI
 SR No: A-1-A / 5th Street (Macarthur Causeway)
 Section No. 87060
 F.M. Number: 415230-1
 County: Miami-Dade

Sheet 4 of 5

EXHIBIT "A"
SKETCH TO ACCOMPANY LEGAL DESCRIPTION
PEDESTRIAN BRIDGE AT 5TH STREET



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Section 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
 Miami Beach, Florida 33132
COUSINS SURVEYORS & ASSOCIATES, INC.
 3921 SW 47TH Avenue, Suite 1011
 Davie, Florida 33314
 Certificate of Authorization: LB # 6448
 Phone (954) 689-7766 Email: office@csasurvey.net

Project Number: 6844-12
 Client: Miami Beach Capital Improvement

THIS IS NOT A SURVEY

Parcel No.: 7461
 Florida Department of Transportation, District VI
 SR No: A-1-A / 5th Street (MacArthur Causeway)
 Section No. 87060
 F.M. Number: 415230-1
 County: Miami-Dade

Sheet 5 of 5

EXHIBIT "A"
CERTIFICATION, NOTES AND LEGEND
TO ACCOMPANY LEGAL DESCRIPTION
USE & OCCUPANCY AGREEMENT

Notes:

1. Data shown hereon does not constitute a field survey as such.
2. The legal description shown hereon was prepared by the surveyor.
3. Bearings shown hereon are based on the Station 245+00 to 248+00, as shown on Florida Department of Transportation Right-of-Way Control Survey Section 87060 for State Road A1A sheet 17 of 18. Said line bears N 88°00'53" E.
4. Elevations shown hereon are based on the North American Vertical Datum of 1988.
5. Description is based on proposed bridge location (Reference document: BCC Engineering, LLC, Project Id: 450761-3-61-01, Dated:02-2022).

Legend:

CKD	Checked by
DWN	Drawn by
FB/PG	Field Book and Page
POB	Point of Beginning
POC	Point of Commencement
P.B.	Plat Book
M/D.C.R.	Miami/Dade County Records
POT	Point of Termination
R/W	Right of Way
(C)	Calculated Dimension
—//—	Limited Access Right-of-Way Line
L/A	Limited Access
FDOT	Florida Department of Transportation
⊙	Center Line

I hereby certify that this SKETCH TO ACCOMPANY LEGAL DESCRIPTION is in compliance with the Standards of Practice as set forth by the Florida Board of Professional Land Surveyors and Mappers as referenced in Rule 5J-17 Florida Administrative Code pursuant to Section 472-027 Florida Statutes.

For the firm by: _____
Richard E. Cousins
Professional Surveyor and Mapper
Florida Registration No. 4188

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Section 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
Miami Beach, Florida 33132
Project Number: 6844-12
Client: Miami Beach Capital Improvement
COUSINS SURVEYORS & ASSOCIATES, INC.
3921 SW 47TH Avenue, Suite 1011
Davie, Florida 33314
Certificate of Authorization: LB # 6448
Phone (954) 689-7766 Email: office@csasurvey.net

THIS IS NOT A SURVEY

Parcel No.: 3250
Florida Department of Transportation, District VI
SR No: A-1-A / 5th Street (Macarthur Causeway)
Section No. 87060
F.M. Number: 415230-1
County: Miami-Dade

Sheet 1 of 5

EXHIBIT "A"**SKETCH AND LEGAL DESCRIPTION
USE & OCCUPANCY AGREEMENT**

Legal Description (USE & OCCUPANCY AGREEMENT) Parcel 3250

The perimetrical boundaries of which are more particularly described as follows:

A portion of the Florida Department of Transportation Public Right-of-Way for State Road A1A, Miami-Dade County, Florida as shown on Florida Department of Transportation Public Right-of-Way Map Project 87660-2202 sheet 2 of 2 dated August 1957, being more particularly described as follows:

Commencing at the intersection of the center line of State Road 907 also known as Alton Road and the baseline of survey for State Road A1A also being Station 247+98.50;

Thence South 88°00'53" West, along said Baseline of Survey, a distance of 316.10 Feet to a tangent curve concave to the South;

Thence along the Arc of said curve and along said Baseline, having a Radius of 981.47 feet, a Central Angle of 00°15'41" and an Arc distance of 4.48 feet;

Thence North 02°14'48" West, a distance of 50.53 feet to the Point of Beginning;

Thence South 83°37'57" West, a distance of 51.91 feet;

Thence North 04°18'45" West, a distance of 21.00 feet;

Thence North 67°24'25" East along the North line of lots 22, 21 and 20 of "Amended Plat of Aquarium Site Resubdivision", according to the plat thereof, as recorded in Plat Book 21, page 83, of the Public Records of Miami-Dade County, Florida, a distance of 71.45 feet;

Thence South 22°34'52" East along the easterly line of said lot 20, a distance of 5.14 feet to a point on a tangent curve concave to the West;

Thence Southwesterly along the arc of said curve, having a Radius of 29.33 feet, a central angle of 87°46'00" and an arc distance of 44.93 feet to the Point of Beginning.

Containing 2,076 square feet more or less.

Together with:

A portion of the Florida Department of Transportation Public Right-of-Way for State Road A1A, Miami-Dade County, Florida as shown on Florida Department of Transportation Public Right-of-Way Map Project 87660-2202 sheet 2 of 2 dated August 1957, being more particularly described as follows:

Commencing at the intersection of the center line of State Road 907 also known as Alton Road and the baseline of survey for State Road A1A also being Station 247+98.50;

Thence South 88°00'53" West, along said Baseline of Survey, a distance of 316.10 Feet to a tangent curve concave to the South;

Thence along the Arc of said curve, having a Radius of 981.47 feet, a Central Angle of 03°13'33" and an Arc distance of 55.26 feet;

Land Description Continued...

This document consist of 5 sheets and neither shall be considered full, valid and complete without the other.

Section 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
Miami Beach, Florida 33132
COUSINS SURVEYORS & ASSOCIATES, INC.
3921 SW 47TH Avenue, Suite 1011
Davie, Florida 33314
Certificate of Authorization: LB # 6448
Phone (954) 689-7766 Email: office@csasurvey.net

Project Number: 6844-12
Client: Miami Beach Capital Improvement

THIS IS NOT A SURVEY

Parcel No.: 3250
Florida Department of Transportation, District VI
SR No: A-1-A / 5th Street (Macarthur Causeway)
Section No. 87060
F.M. Number: 415230-1
County: Miami-Dade

Sheet 2 of 5

EXHIBIT "A"
SKETCH AND LEGAL DESCRIPTION
USE & OCCUPANCY AGREEMENT

Land Description Continued...

Thence South 05°12'40" East, a distance of 48.29 feet to the Point of Beginning;

Thence North 85°41'15" East, a distance of 51.41 feet;

Thence South 04°18'45" East, a distance of 8.78 feet;

Thence North 85°41'15" East, a distance of 23.96 feet;

Thence South 12°11'46" East, a distance of 17.34 feet;

Thence South 66°23'26" West along the South Right of Way line of said State Road A-1-A, a distance of 0.44 feet;

Thence South 85°41'15" West, a distance of 51.33 feet;

Thence South 04°18'45" East, a distance of 6.04 feet;

Thence South 85°41'15" West, a distance of 26.00 feet;

Thence North 04°18'45" West, a distance of 32.14 feet to the Point of Beginning.

Containing 1,935 square feet more or less.

Said lands lying and being in Miami/Dade County, Florida; Containing a combined area of 4,011 square feet more or less.

This document consist of 5 sheets and neither shall be considered full,
valid and complete without the other.

Section 4, Township 54 South, Range 42 East

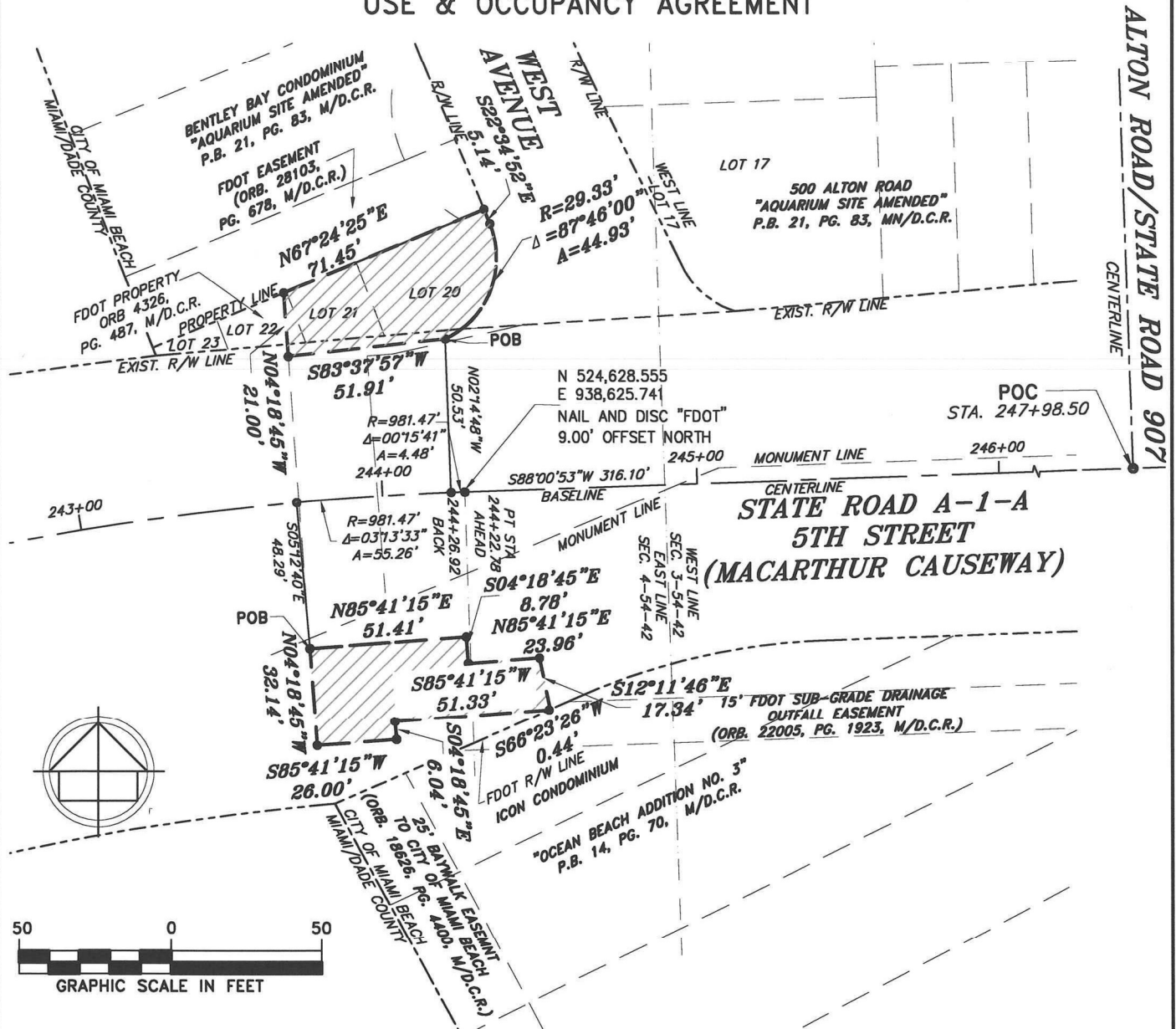
Project Address: Project Number: 6844-12
5th Street Bridge Project Client: Miami Beach Capital
Miami Beach, Florida 33132 Improvement
COUSINS SURVEYORS & ASSOCIATES, INC.
3921 SW 47TH Avenue, Suite 1011
Davie, Florida 33314
Certificate of Authorization: LB # 6448
Phone (954) 689-7766 Email: office@csasurvey.net

THIS IS NOT A SURVEY

Parcel No.: 3250
Florida Department of Transportation, District VI
SR No: A-1-A / 5th Street (Macarthur Causeway)
Section No. 87060
F.M. Number: 415230-1
County: Miami-Dade

Sheet 3 of 5

EXHIBIT "A"
SKETCH TO ACCOMPANY LEGAL DESCRIPTION
USE & OCCUPANCY AGREEMENT



This document consist of 5 sheets and neither shall be considered full, valid and complete without the other.

Section 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
 Miami Beach, Florida 33132
COUSINS SURVEYORS & ASSOCIATES, INC.
 3921 SW 47TH Avenue, Suite 1011
 Davie, Florida 33314
 Certificate of Authorization: LB # 6448
 Phone (954) 689-7766 Email: office@csasurvey.net

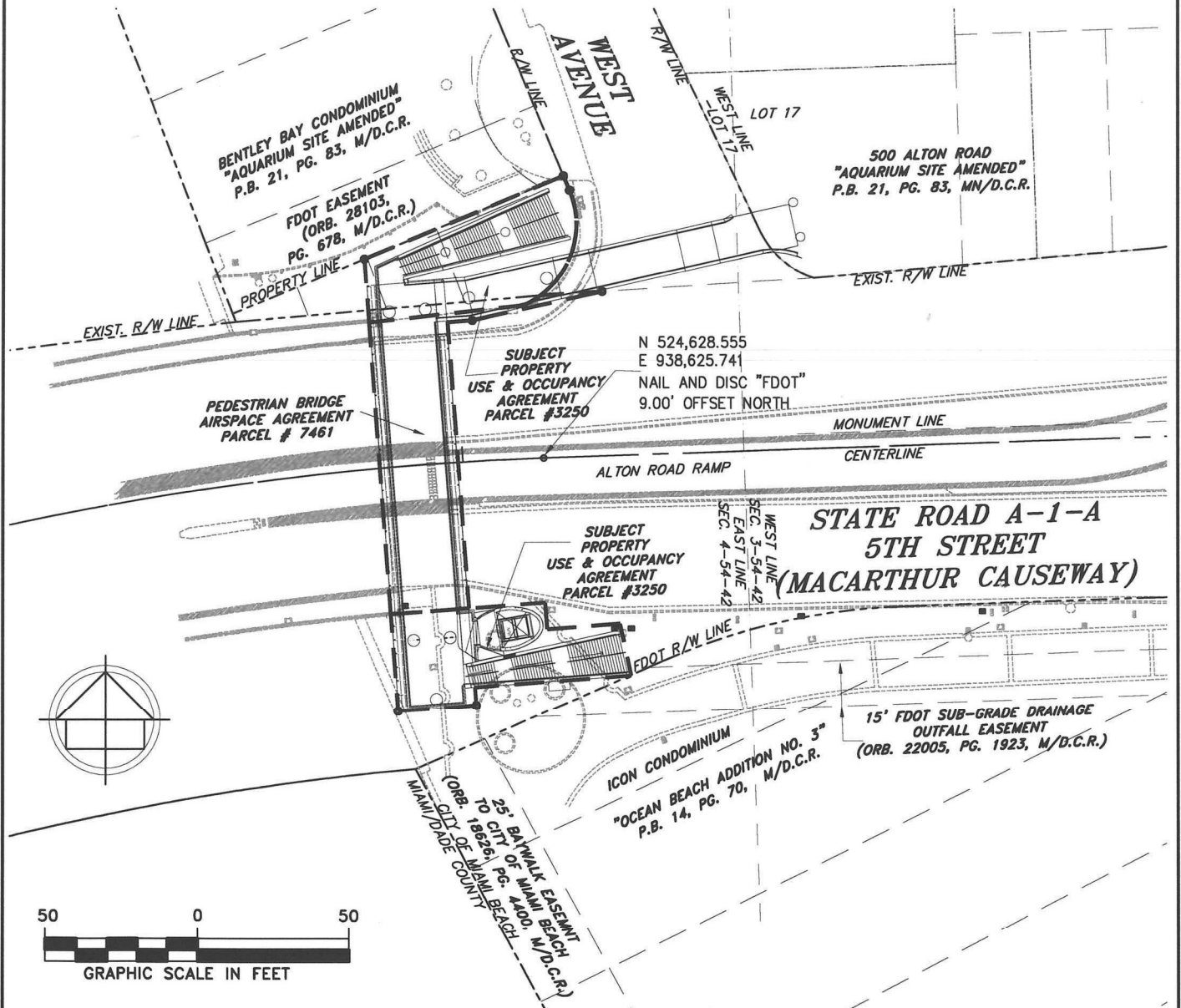
Project Number: 6844-12
 Client: Miami Beach Capital Improvement

THIS IS NOT A SURVEY

Parcel No.: 3250
 Florida Department of Transportation, District VI
 SR No: A-1-A / 5th Street (MacArthur Causeway)
 Section No. 87060
 F.M. Number: 415230-1
 County: Miami-Dade

Sheet 4 of 5

EXHIBIT "A"
SKETCH TO ACCOMPANY LEGAL DESCRIPTION
USE & OCCUPANCY AGREEMENT



This document consist of 5 sheets and neither shall be considered full, valid and complete without the other.

Section 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
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COUSINS SURVEYORS & ASSOCIATES, INC.
 3921 SW 47TH Avenue, Suite 1011
 Davie, Florida 33314
 Certificate of Authorization: LB # 6448
 Phone (954) 689-7766 Email: office@csasurvey.net

Project Number: 6844-12
 Client: Miami Beach Capital Improvement

THIS IS NOT A SURVEY

Parcel No.: 3250
 Florida Department of Transportation, District VI
 SR No: A-1-A / 5th Street (MacArthur Causeway)
 Section No. 87060
 F.M. Number: 415230-1
 County: Miami-Dade

Sheet 5 of 5

EXHIBIT "B"
WEST AVENUE CONNECTOR

DRAFT

EXHIBIT "B"
CERTIFICATION, NOTES AND LEGEND
TO ACCOMPANY LEGAL DESCRIPTION
PEDESTRIAN BRIDGE AT 5TH STREET

Notes:

1. Data shown hereon does not constitute a field survey as such.
2. The legal description shown hereon was prepared by the surveyor.
3. Bearings shown hereon are based on the Baseline of State Road A-1-A, between Stations 245+00 to 246+00, as shown on FDOT Right of Way Map Section 87060 for State Road No A-1-A, sheet 17 of 17. Said line bears N88°00'53"E.
4. Elevations shown hereon are based on the North American Vertical Datum of 1988.
5. Airspace limits described hereon based on proposed bridge location (Reference document: BCC Engineering, LLC, Project Id: 450761-3-61-01, Dated:02-2022).

Legend:

CKD	Checked by
DWN	Drawn by
FB/PG	Field Book and Page
POB	Point of Beginning
POC	Point of Commencement
P.B.	Plat Book
M/D.C.R.	Miami/Dade County Records
POT	Point of Termination
R/W	Right of Way
(C)	Calculated Dimension
—//—	Limited Access Right-of-Way Line
L/A	Limited Access
FDOT	Florida Department of Transportation
Ⓢ	Center Line

I hereby certify that this SKETCH TO ACCOMPANY LEGAL DESCRIPTION is in compliance with the Standards of Practice as set forth by the Florida Board of Professional Land Surveyors and Mappers as referenced in Rule 5J-17 Florida Administrative Code pursuant to Section 472-027 Florida Statutes.

For the firm by: _____
Richard E. Cousins
Professional Surveyor and Mapper
Florida Registration No. 4188

This document consist of 4 sheets and neither shall be considered full, valid and complete without the other.

Sections 3 and 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
Miami Beach, Florida 33132
Project Number: 6844-12
Client: Miami Beach Capital Improvement
COUSINS SURVEYORS & ASSOCIATES, INC.
3921 SW 47TH Avenue, Suite 1011
Davie, Florida 33314
Certificate of Authorization: LB # 6448
Phone (954) 689-7766 Email: office@csasurvey.net

THIS IS NOT A SURVEY

Parcel No.: West Avenue Portion of Bridge
SR No:
Section No. 87060
F.M. Number:
County: Miami-Dade

Sheet 1 of 4

EXHIBIT "B"
SKETCH AND LEGAL DESCRIPTION
PEDESTRIAN BRIDGE AT 5TH STREET

Legal Description (5th Street Pedestrian Bridge) (West Avenue portion)

An airspace parcel lying within West Avenue, as shown on Florida Department of Transportation Public Right-Of-Way for State Road A-1-A, Miami-Dade County, Florida, as shown on Right-of-Way Map, Section 87060, Sheet No. 17 of 17, having as its Lower Boundary a Horizontal Plane at elevation 20.44 feet (North American Vertical Datum of 1988), and having as its Upper Boundary a Horizontal Plane at elevation 49.44 feet (North American Vertical Datum of 1988);

The perimetrical boundaries of which are more particularly described as follows:

A portion of a Public Right-Of-Way for West Avenue, Miami-Dade County, Florida, as shown on Right-of-Way Map, Section 87060, Sheet No. 17 of 17, Final Date 12/06, being more particularly described as follows:

Commence at the Northwest corner of Lot 17 of "Amended Plat of Aquarium Site Resubdivision", according to the plat thereof, as recorded in Plat Book 21, Page 83, of the Public Records of Miami-Dade County, Florida;

Thence South 25°56'51" East along the West line of said Lot 17, a distance of 50.49 feet to the Point of Beginning;

Thence continue South 25°56'51" East along said West line, a distance of 7.61 feet to a point on a non-tangent curve concave to the Northeast, (A Radial line through said point bears North 64°03'09" East);

Thence Southeasterly along the arc of said curve, having a radius of 29.30 feet, a central angle of 16°00'41" and an arc distance of 8.19 feet;

Thence South 77°27'18" West, a distance of 59.01 feet;

Thence South 86°20'01" West, a distance of 20.19 feet to a point on a non-tangent curve concave to the Northwest, (A Radial line through said point bears North 37°07'24" West);

Thence Northeasterly along the arc of said curve, having a radius of 29.33 feet, a central angle of 35°08'33" and an arc distance of 17.99 feet;

Thence North 77°27'18" East, a distance of 61.08 feet to the Point of Beginning.

Said lands lying and being in Miami/Dade County, Florida; Containing 1,018 square feet more or less.

This document consist of 4 sheets and neither shall be considered full,
valid and complete without the other.

Sections 3 and 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
Miami Beach, Florida 33132
Project Number: 6844-12
Client: Miami Beach Capital Improvement
COUSINS SURVEYORS & ASSOCIATES, INC.
3921 SW 47TH Avenue, Suite 1011
Davie, Florida 33314
Certificate of Authorization: LB # 6448
Phone (954) 689-7766 Email: office@csasurvey.net

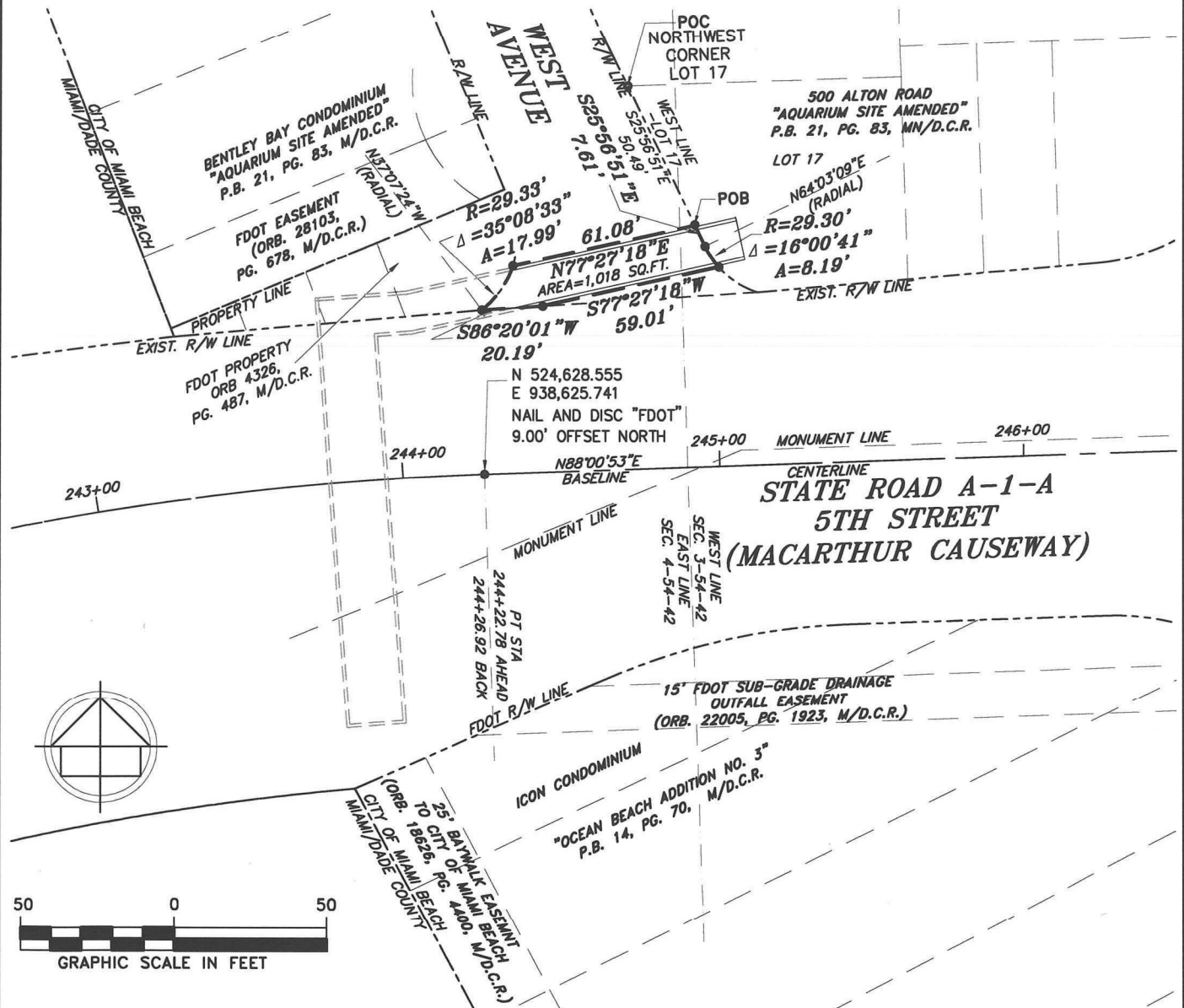
THIS IS NOT A SURVEY

Parcel No.: West Avenue Portion of Bridge
SR No:
Section No. 87060
F.M. Number:
County: Miami-Dade

Sheet 2 of 4

EXHIBIT "B"
SKETCH TO ACCOMPANY LEGAL DESCRIPTION
PEDESTRIAN BRIDGE AT 5TH STREET

NOTE:
 SEC. 3 & 4, TWP. 54 SOUTH, RGE. 42 EAST.
 ELEVATION LIMITS:
 LOWER ELEVATION=20.44'



This document consist of 4 sheets and neither shall be considered full, valid and complete without the other.

Sections 3 and 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
 Miami Beach, Florida 33132
 Project Number: 6844-12
 Client: Miami Beach Capital Improvement
COUSINS SURVEYORS & ASSOCIATES, INC.
 3921 SW 47TH Avenue, Suite 1011
 Davie, Florida 33314
 Certificate of Authorization: LB # 6448
 Phone (954) 689-7766 Email: office@csasurvey.net

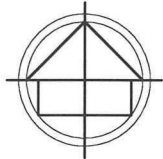
THIS IS NOT A SURVEY

Parcel No.: West Avenue Portion of Bridge
 SR No:
 Section No. 87060
 F.M. Number:
 County: Miami-Dade

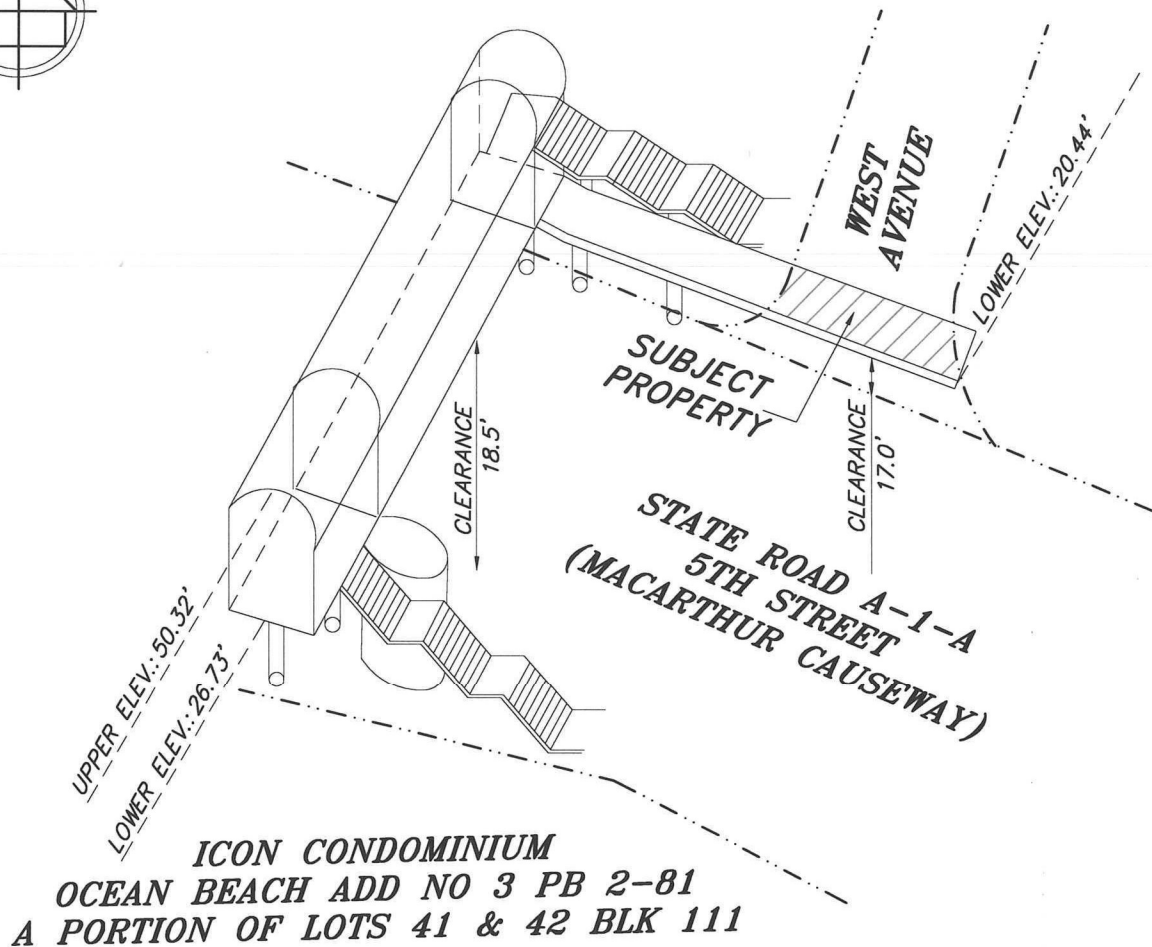
Sheet 3 of 4

EXHIBIT "B"
SKETCH TO ACCOMPANY LEGAL DESCRIPTION
PEDESTRIAN BRIDGE AT 5TH STREET

NOT TO SCALE



AQUARIUM SITE
AMD PB 21-83
LOTS 20 THRU 23



This document consist of 4 sheets and neither shall be considered full,
 valid and complete without the other.

Sections 3 and 4, Township 54 South, Range 42 East

Project Address: 5th Street Bridge Project
 Miami Beach, Florida 33132
COUSINS SURVEYORS & ASSOCIATES, INC.
 3921 SW 47TH Avenue, Suite 1011
 Davie, Florida 33314
 Certificate of Authorization: LB # 6448
 Phone (954) 689-7766 Email: office@csasurvey.net

Project Number: 6844-12
 Client: Miami Beach Capital
 Improvement

THIS IS NOT A SURVEY

Parcel No.: West Avenue Portion of Bridge
 SR No:
 Section No. 87060
 F.M. Number:
 County: Miami-Dade

Sheet 4 of 4

EXHIBIT "C"
LOCALLY FUNDED AGREEMENT AND
THREE PARTY ESCROW AGREEMENT

DRAFT

ATTACHMENT "B"

ITEM/SEGMENT NO.:	415230-1
MANAGING DISTRICT:	Six
F.A.P. NO.:	N/A
STATE ROAD NO.:	A1A / 5th Street
COUNTY:	Miami-Dade
PARCEL NO.:	3250 and 7461

THIS LOCALLY FUNDED AGREEMENT (the "Agreement") made this ____ day of _____, 2025 (the "Effective Date"), between the State of Florida, Department of Transportation (the "Department") and City of Miami Beach, Florida (the "Permittee") (the Department and the Permittee individually, each a "Party", and collectively, the "Parties").

RECITALS

WHEREAS, pursuant to a Use and Occupancy Agreement entered into between the Permittee and the Department dated _____, 2025, the Department has permitted the Permittee to use and occupy Parcel 7461 and Parcel 3250 for the sole purpose of constructing, accessing, operating, maintaining, and repairing a pedestrian bridge spanning over SR A1A / 5th Street (the "State Road Connector"), and another pedestrian bridge spanning over West Avenue (the "West Avenue Connector"), and each of their respective associated structural elements and appurtenant improvements and components, including, but not limited to, the sidewalks, elevator, and stairs (the State Road Connector and the West Avenue Connector, each a "Pedestrian Bridge", and are collectively referred to as the "Pedestrian Bridges"); and

WHEREAS, the Permittee shall deposit funds in escrow with the State of Florida Department of Financial Services, Division of Treasury, in the amounts set forth in this Agreement to ensure Permittee's performance of all routine maintenance and repair obligations as to the Pedestrian Bridges ("Maintenance Deposit") under the terms of the Use and Occupancy Agreement; and

WHEREAS, the Parties hereto mutually recognize the need for entering into this Agreement, designating and setting forth the responsibilities of the Parties; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to Sections 337.251, 334.175(2), and 334.044(7), Florida Statutes.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, and other valuable consideration contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS

The foregoing recitals are true and correct and are incorporated into the body of this Agreement, as if fully set forth herein.

2. GENERAL REQUIREMENTS

- a. Within thirty (30) calendar days after the Effective Date of this Agreement (which shall also be the effective date of the Use and Occupancy Agreement), the Permittee shall deposit and continually maintain in escrow with the Department, a Maintenance Deposit in the amount of Twenty Thousand Dollars and No Cents (\$20,000.00); and
- b. The amount of the Maintenance Deposit shall be subject to increase every five years in accordance with the most recently published Consumer Price Index.
- c. The payment of funds under this Agreement will be made directly to the Department for deposit and as provided in the Three Party Escrow Agreement between Permittee, Department, and the State of Florida, Department of Financial Services, Division of Treasury attached hereto as Exhibit "A."
- d. The term of this Agreement runs concurrently with and is coterminous with the term of the Use and Occupancy Agreement.

3. FINANCIAL PROVISIONS

- a. Pursuant to subparagraph 4.e. of the Use and Occupancy Agreement, in the event that the Permittee fails to maintain the Pedestrian Bridges after written notice is given by the Department and a sixty (60) day time period to cure, the Department shall have the right, but not the obligation, in its sole discretion, through its duly authorized representatives, employees, and contractors, to access the Pedestrian Bridges to perform such maintenance, and the Department shall have the right to withdraw and use the Maintenance Deposit to cover the costs thereof.
- b. If at any time during the term of the Use and Occupancy Agreement, the Maintenance Deposit falls below the Maintenance Deposit amount required by this Agreement and the Use and Occupancy Agreement ("Deposit Shortage"), the Department shall notify Permittee and provide Permittee with backup documentation in support of the Deposit Shortage. Within ten (10) days from receipt of notification from the Department, Permittee may request any reasonable additional backup documentation in support of the Deposit Shortage ("Additional Documentation"). The Permittee shall, within thirty (30) calendar days (or any other reasonable time period agreed to by the Parties in writing) from the date notice was given by the Department or receipt of the Additional Documentation, whichever occurs later, deposit additional funds to bring the amount back up to the required Maintenance Deposit amount taking into account any increases to the Maintenance

Deposit as permitted in this Agreement. However, failure of the Department to so notify the Permittee shall not relieve the Permittee from its obligation to deposit additional funds as required herein. Notwithstanding anything to the contrary herein, if the Permittee fails to deposit additional funds within thirty (30) calendar days (or any other reasonable time period agreed to by the Parties in writing) from the date notice was given by the Department or receipt of the Additional Documentation, whichever occurs later, then the Permittee shall be in default of this Agreement.

- c. The Department intends to have its final and complete accounting of all costs in connection with any repairs, routine maintenance, or work, within three hundred and sixty (360) days of expiration or termination of the Use and Occupancy ("Final Accounting"). The Permittee will be notified of the final costs. All cost records and accounts shall be subject to audit by a representative of the Permittee for a period of three (3) years after expiration or termination of the Use and Occupancy Agreement. If, once Final Accounting is completed and after all the Department's contractors have been paid in full; however, not to exceed thirty (30) days from completion of the Final Accounting, any unused deposit funds remaining in escrow, including unused interest, will be refunded by the Department to the Permittee.

4. PROVISIONS SEPARABLE

The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

5. AMENDMENT OF AGREEMENT

This Agreement may only be amended by mutual agreement of the Department and the Permittee, expressed in writing, and executed and delivered by each.

6. NOTICES

All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered (personally, by courier service such as Federal Express, or by other messenger) against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

If to the Permittee:

City of Miami Beach, Florida
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: BradfordKaine@miamibeachfl.gov

If to the Department:

Florida Department of Transportation
1000 NW 111th Avenue
Miami, Florida 33172
ATTN: District Maintenance Engineer
Telephone: (305) 470-5369 (District Six Maintenance Office)
Email: Renato.Marrero@dot.state.fl.us

Any Party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this paragraph for the giving of notice.

7. ENTIRE AGREEMENT

This Agreement, including its attached exhibits, contain the sole and entire Agreement between the Parties with respect to such subject matter and supersede any and all other prior written or oral agreements between them with respect to such subject matter.

8. BINDING EFFECT

This Agreement shall be binding upon the Parties and their respective representatives, successors, and assigns.

9. WAIVER

Waiver by either Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

10. CAPTIONS

The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

11. ABSENCE OF THIRD-PARTY BENEFICIARIES

Nothing in this Agreement, express or implied, is intended to (a) confer upon any entity or 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.

12. OTHER DOCUMENTS

The Parties shall take all such actions and execute all such documents which may be reasonably necessary to carry out the purposes of this Agreement, whether or not specifically provided for in this Agreement.

13. GOVERNING LAW

This Agreement and the interpretation of its terms shall be governed by the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative, or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall lie exclusively in Leon County, Florida.

[Remainder is intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed, the day and year first above written.

On behalf of Permittee

CITY OF MIAMI BEACH, FLORIDA

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

Address: _____

On behalf of the Department

**STATE OF FLORIDA, DEPARTMENT
OF TRANSPORTATION**

By: _____
District Six Secretary

Name: Daniel Iglesias, P.E.

Attest: _____

Name/Title: _____
Assistant to the District Six Secretary

LEGAL REVIEW:

By: _____

Name: _____

EXHIBIT "A"

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), _____ ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name:

Project
County:

#:

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.

5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

DRAFT

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCALLY FUNDED AGREEMENT

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)

For PARTICIPANT (signature)

Name and Title

Name and Title

59-3024028

Federal Employer I.D. Number

Federal Employer I.D. Number

Date

Date

FDOT Legal Review:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
LOCALLY FUNDED AGREEMENT

For Escrow Agent (signature)

Name and Title

Date

DRAFT

ATTACHMENT "C"

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), _____ ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name:
Project #:
County:

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)

For PARTICIPANT (signature)

Name and Title

Name and Title

59-3024028
Federal Employer I.D. Number

Federal Employer I.D. Number

Date

Date

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date

ATTACHMENT "D"
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
COMMUNITY AESTHETIC FEATURE AGREEMENT

625-010-10
ROADWAY DESIGN
OGC - 08/17
Page 1 of 12

State Road/Local Road _____ Section No. _____ CAFA No. _____

This Community Aesthetic Feature Agreement ("Agreement") is entered into this _____ day of _____, between the State of Florida, Department of Transportation ("Department") and _____ ("Agency"). The Department and the Agency are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

- A. The Agency has requested permission from the Department to install a **[CHOOSE ONE: ☐ Public Art, ☐ Local Identification Marker]** community aesthetic feature on that certain right-of-way owned by the Department which is located on State Road/Local Road _____ at MP _____ in _____ County, Florida ("Project").
- B. The Department agrees that transportation facilities enhanced by community aesthetic features can benefit the public, result in positive economic development, and increase tourism both locally and throughout Florida.
- C. The Parties agree to the installation and maintenance of the Project, subject to the terms and conditions in this Agreement.

AGREEMENT

1. **TERM.** The term of this Agreement shall commence upon full execution of this Agreement ("Effective Date") and continue through _____, which is determined as the lifespan of the Project, unless terminated at an earlier date as provided in this Agreement. If the Agency does not complete the installation of the Project within _____ (_____) days of the Effective Date of this Agreement, the Department may immediately terminate this Agreement. This Agreement may only be renewed for a term no longer than the original term of this Agreement upon a writing executed by both Parties to this Agreement.

2. **PROJECT DESCRIPTION.** This Project is a **[CHOOSE ONE: ☐ Public Art, ☐ Local Identification Marker]**, as more fully described in the plans in Exhibit "A" attached and incorporated in this Agreement.

3. **FUNDING OF THE PROJECT.** The Agency has agreed by resolution to approve the Project and to fund all costs for the design, installation, and maintenance of the Project, and such resolution is attached and incorporated in this Agreement as Exhibit "D". The Department shall not be responsible for any costs associated with the Project. All improvements funded, constructed, and installed by the Agency shall remain the Agency's property. However, this permissive use of the Department's right-of-way where the Project is located does not vest any property right, title, or interest in or to the Agency for the Department's right-of-way.

4. **DESIGN AND CONSTRUCTION STANDARDS AND REQUIRED APPROVALS.**

- a. The Agency is responsible for the design, construction, and maintenance of the Project in accordance with all applicable federal, state and local statutes, rules and regulations, including the Department standards and specifications. A professional engineer, registered in Florida, shall provide the certification that all design and construction for the Project meets the minimum construction standards established by the Department and applicable Florida Building Code construction standards. The Agency shall submit all plans or related construction documents, cost estimates, project schedule, and applicable third party agreements to the Department for review and approval prior to installation of the Project. The Agency is responsible for the preparation of all design plans for the Project, suitable for reproduction on 11 inch by 17 inch sheets, together with a complete set of specifications covering all construction requirements for the Project. A copy of the design plans shall be provided to the Department's District Design Engineer, located at _____.
- The Department will review the plans for conformance to the Department's requirements and feasibility. The Department review shall not be considered an adoption of the plans nor a substitution for the engineer's responsibility for the plans. By review of the plans, the Department signifies only that such plans and improvements satisfies the Department's requirements, and the Department expressly

disclaims all other representations and warranties in connection with the plans, including, but not limited to the integrity, suitability, or fitness for the intended purpose or whether the improvements are constructed in accordance with the plans. The Department's review of the plans does not relieve the Agency, its consultants or contractors of any professional or other liability for the plans. All changes required by the Department shall be made by the Agency and final corrected plans shall be provided to the Department within thirty (30) days.

- b. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility. Section 337.403, Florida Statutes, shall determine whether the utility bears the costs of utility work. The Agency shall bear the costs of utility work not required to be borne by the utility by Section 337.403, Florida Statutes.
- c. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the Project in accordance with the latest edition of FDOT Standard Specifications, Section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of FDOT Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from FDOT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- d. The Agency is responsible for obtaining all permits that may be required by any federal, state, or local agency.
- e. Prior to commencing the Project, the Agency shall request a Notice to Proceed from the Department's Construction Project Manager, _____ at (_____) _____ or from an appointed designee.
- f. The Agency is authorized subject to the conditions in this Agreement, to enter Department's right-of-way to install the Project (see attached Exhibit "B" Special Provisions). The Parties agree that this Agreement creates a permissive use only. Neither the granting of permission to use Department's right-of-way nor the placing of facilities upon Department's right-of-way shall operate to create or vest any property right in or to the Agency. The Agency shall not acquire any right, title, interest, or estate in the Department's right-of-way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of the Department's right-of-way.
- g. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction and throughout the maintenance term of the Project. If the Department determines that a condition exists which threatens the public's safety, the Department may, at its discretion, cause the Project to cease and/or immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. Should the Agency fail to remove the safety hazard within thirty (30) days, the Department may remove the safety hazard at the Agency's sole cost, expense, and effort.
- h. The Agency shall be responsible to ensure that construction of the Project is performed in accordance with the approved construction documents, and that it will meet all applicable federal, state, and local standards and that the work is performed in accord with the Terms and Conditions contained in Exhibit "C".
- i. The Agency shall notify the Department a minimum of forty eight (48) hours before beginning the Project within the Department's right-of-way. The Agency shall notify the Department should installation be suspended for more than five (5) working days.
- j. Upon completion of the Project, the Agency shall notify the Department in writing of the completion of the installation of the Project. For all design work that originally required certification by a Professional Engineer, the notification shall contain a Responsible Professional's Certification of Compliance, signed and sealed by the responsible professional for the project, the form of which is attached to this

Agreement as Exhibit "E". The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation. The Agency and its contractors shall remove their presence, including, but not limited to, all of the Agency or its contractor's/ subcontractor's/ consultant's/ subconsultant's property, machinery, and equipment from the Department's right-of-way and shall restore those portions of the Department's right-of-way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project, at Agency's sole cost and expense.

- k. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department's written notice to complete the Project and provide the Department with written notice of the same ("Notice of Completion"). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department may: 1) provide the Agency with written authorization granting additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense, without Department liability to the Agency for any resulting loss or damage to property, including but not limited to machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.

- l. Upon completion of the Project, the Agency shall be responsible for the perpetual maintenance of the Project, including all costs. The maintenance schedule shall include initial defect, instantaneous damage and deterioration components. The initial defect maintenance inspection should be conducted, and any required repairs performed during the construction phase. The instantaneous damage maintenance inspection should be conducted sixty (60) to ninety (90) days after placement and is intended to identify short term damage that does not develop over longer time periods. The deterioration maintenance inspection shall be conducted on regular, longer term intervals and is intended to identify defects and damages that occur by naturally occurring chemical, physical or biological actions, repeated actions such as those causing fatigues, normal or severe environmental influences, abuse or damage due to other causes. Deterioration maintenance shall include, but is not limited to, the following services:
- _____
- _____
- _____

- m. The Agency shall, within thirty (30) days after expiration or termination of this Agreement, remove the Project and restore the right-of-way to its original condition prior to the Project. The Agency shall secure its obligation to remove the Project and restore the right-of-way by providing a removal and restoration deposit, letter of credit, or performance bond in the amount of \$ _____. The removal and restoration deposit, letter of credit, or bond shall be maintained by the Agency at all times during the term of this Agreement and evidence of the deposit, letter of credit, or bond shall be submitted to the Department on an annual basis. A waiver of the deposit, letter of credit, or bond requirement is permitted with approval from the District Maintenance Engineer for those installations with estimated restoration/removal costs less than or equal to \$2000.00.

District Maintenance Engineer, _____ Date: _____

- n. The Department reserves its right to cause the Agency to relocate or remove the Project, in the Department's sole discretion, and at the Agency's sole cost.

5. **INDEMNITY AND INSURANCE.**

- a. The Agency agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

"The contractor/ subcontractor/ consultant/ subconsultant shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/ subcontractor/ consultant/ subconsultant, its officers, agents or employees."

- b. The Agency shall carry or cause its contractor/ subcontractor/ consultant/ subconsultant to carry and keep in force during the period of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$1,000,000 per person and \$5,000,000 each occurrence, and property damage insurance of at least \$100,000 each occurrence, for the services to be rendered in accordance with this Agreement. Additionally, the Agency or its contractor/ subcontractor/ consultant/subconsultant shall cause the Department to be an additional insured party on the policy or policies, and shall provide the Department with certificates documenting that the required insurance coverage is in place and effective. In addition to any other forms of insurance or bonds required under the terms of the Agreement, when it includes construction within the limits of a railroad right-of-way, the Agency must provide or cause its contractor to obtain the appropriate rail permits and provide insurance coverage in accordance with Section 7-13 of the Department's current Standard Specifications for Road and Bridge Construction, as amended.

- c. The Agency shall also carry or cause its contractor/ subcontractor/ consultant/ subconsultant to carry and keep in force Worker's Compensation insurance as required by the State of Florida under the Worker's Compensation Law.

6. **NOTICES.** All notices pertaining to this Agreement are in effect upon receipt by either Party, shall be in writing, and shall be transmitted either by personal hand delivery; United States Post Office, return receipt requested; or, overnight express mail delivery. E-mail and facsimile may be used if the notice is also transmitted by one of the preceding forms of delivery. The addresses set forth below for the respective parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
DISTRICT _____ PROGRAM MANAGER

Phone: _____
Fax: _____

_____ COUNTY [OR CITY], FLORIDA

Phone: _____
Fax: _____

7. **TERMINATION OF AGREEMENT.** The Department may terminate this Agreement upon no less than thirty (30) days notice in writing delivered by certified mail, return receipt requested, or in person with proof of delivery. The Agency waives any equitable claims or defenses in connection with termination of the Agreement by the Department pursuant to this Paragraph 7.

8. **LEGAL REQUIREMENTS.**

- a. This Agreement is executed and entered into in the State of Florida and will be construed, performed, and enforced in all respects in strict conformity with local, state, and federal laws, rules, and regulations. Any and all litigation arising under this Agreement shall be brought in a state court of appropriate jurisdiction in Leon County, Florida, applying Florida law.
- b. If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement will remain in full force and effect and such term or provision will be deemed stricken.
- c. The Agency shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Agency in conjunction with this Agreement. Failure by the Agency to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department.
- d. The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. The Agency shall not cause any injury or encroachances to any portion of the Department's right-of-way.

9. **PUBLIC ENTITY CRIME.** The Agency is aware of the provisions of Section 287.133(2)(a), Florida Statutes. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list. The Agency agrees that it shall not violate Section 287.133(2)(a), Florida Statutes, and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement.

10. **UNAUTHORIZED ALIENS.** The Department will consider the employment of unauthorized aliens, by any contractor or subcontractor, as described by Section 274A(e) of the Immigration and Nationalization Act, cause for termination of this Agreement.

11. **NON-DISCRIMINATION.** The Agency will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. The Agency shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The Agency shall insert similar provisions in all contracts and subcontracts for services by this Agreement.

12. **DISCRIMINATORY VENDOR LIST.** The Agency affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity. The Agency further agrees

that it shall not violate Section 287.134(2)(a), Florida Statutes, and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.

13. **ATTORNEY FEES.** Each Party shall bear its own attorney's fees and costs.

14. **TRAVEL.** There shall be no reimbursement for travel expenses under this Agreement.

15. **PRESERVATION OF REMEDIES.** No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default.

16. **MODIFICATION.** This Agreement may not be modified unless done so in a writing executed by both Parties to this Agreement.

17. **NON-ASSIGNMENT.** The Agency may not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the Department. Any assignment, sublicense, or transfer occurring without the required prior written approval of the Department will be null and void. The Department will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to the Agency. In the event that the Department approves transfer of the Agency's obligations, the Agency remains responsible for all work performed and all expenses incurred in connection with this Agreement.

18. **BINDING AGREEMENT.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations, or remedies upon any other person or entity except as expressly provided for in this Agreement.

19. **INTERPRETATION.** No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

20. **ENTIRE AGREEMENT.** This Agreement, together with the attached exhibits and documents made a part by reference, embodies the entire agreement of the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement. This Agreement supersedes all previous communication, representation, or agreement, either verbal or written, between the Parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the Agency and the authorized officer of the Department or his/her delegate.

21. **DUPLICATE ORIGINALS.** This Agreement may be executed in duplicate originals.

The remainder of this page is intentionally left blank.

Section No. _____ CAFA No. _____

AGENCY

By: _____

Print Name: _____

Title: _____

As approved by the Council, Board, or

Commission on: _____

Attest: _____

Legal Review:

City or County Attorney

DEPARTMENT

State of Florida, Department of Transportation

By: _____

Print Name: _____

Title: _____

Date: _____

Legal Review:

DRAFT

Section No. _____ CAFA No. _____

EXHIBIT "A"

PROJECT DESCRIPTION

I. SCOPE OF SERVICES

[Provide a description of the improvements proposed within the Department's right-of-way]

II. PROJECT PLANS

The Agency is authorized to install the Project in accordance with the attached plans prepared by _____,
P.E./R.L.A./Architect and dated _____. Any revisions to these plans must be approved by the Department in
writing.

DRAFT

Section No. _____ CAFA No. _____

EXHIBIT "B"

SPECIAL PROVISIONS

DRAFT

Section No. _____ CAFA No. _____

EXHIBIT "C"

TERMS AND CONDITIONS FOR INSTALLATION OF THE PROJECT

DRAFT

Section No. _____ CAFA No. _____

EXHIBIT "D"

AGENCY RESOLUTION

DRAFT

Section No. _____ CAFA No. _____

EXHIBIT "E"

NOTICE OF COMPLETION AND RESPONSIBLE PROFESSIONAL'S
CERTIFICATE OF COMPLIANCE

NOTICE OF COMPLETION

COMMUNITY AESTHETIC FEATURE AGREEMENT
Between
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and _____

PROJECT DESCRIPTION: _____

In accordance with the Terms and Conditions of the Community Aesthetic Feature Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of _____, 20____.

By: _____

Name: _____

Title: _____

DRAFT

RESPONSIBLE PROFESSIONAL'S CERTIFICATE OF COMPLIANCE

In accordance with the Terms and Conditions of the Community Aesthetic Feature Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish the Department a set of "as-built" plans certified by the Engineer of Record.

By: _____

SEAL:

Name: _____

Date: _____