



# MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: City Manager Jorge M. Gonzalez

DATE: October 29, 2009

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for October 29, 2009, at 2:30 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

### OLD BUSINESS

### NEW BUSINESS

- 1. Discussion regarding the potential garage project and joint venture in the Collins Park Neighborhood.**

Tim Hemstreet – Assistant City Manager  
Referred December 10, 2008

- 2. Discussion regarding the implementation of a Municipal Marketing (Corporate Sponsorship) program for the City.**

Hilda Fernandez – Assistant City Manager

- 3. Discussion regarding authorizing the City Manager, on behalf of the City, to enter into certain independent contractor agreements over \$25,000.**

Ramiro Inguanzo – Director of Human Resources

- 4. Recommendation to approve a Management and Operation Agreement with Miami Design Preservation League (MDPL) for the Miami Beach Ocean Front Auditorium at 1000 Ocean Drive in Lummus Park.**

Anna Parekh – Director of Real Estate Housing and Community Development

5. **Update on the City's offer to purchase an easement from the Housing Authority of the City of Miami Beach for the proposed West Avenue Bridge.**

Tim Hemstreet – Assistant City Manager

6. **A discussion regarding a new lease agreement with SoBe Music Institute for the Carl Fisher Clubhouse and Little Stage Theater**

Anna Parekh – Director of Real Estate Housing and Community Development

7. **Review and Discussion of the agreement for shared car service with the Hertz Corp - Update**

Saul Frances – Parking Director

**Finance and Citywide Projects Committee Meetings for 2009:**

**November 17, 2009**

**December 15, 2009**

JMG/PDW/rs/th

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Cc. Mayor and Members of the City Commission  
Management Team

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## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: October 29, 2009

SUBJECT: **Update on the Proposed Joint Venture for a Parking Garage in the Collins Park Neighborhood.**

At the September 3, 2009 meeting of the Finance and Citywide Projects Committee, the Administration provided a status update on the negotiations with American Riviera Real Estate Company (ARRE), for the development of a joint venture garage in the Collins Park neighborhood. At that meeting, the Committee:

- Authorized the expenditure of funds to hire an appraiser;
- Authorized staff to proceed with financial due diligence on American Riviera Real Estate Company and its principles to determine financial capacity;
- Appointed Commissioner Ed Tobin as liaison to the project;
- Requested an analysis be done between this project and other garage projects done by the City;
- Recommended that the item be brought back to the Finance and Citywide Projects Committee meeting on October 29, 2009.

The parties have agreed on an appraiser and the Administration has provided the Developer with a draft of appraisal instructions, and the City has begun the process of hiring Kroll to perform the financial due diligence of ARRE. However, as of October 23, 2009 the Administration has not received comments or changes to the draft appraiser instructions, nor authorization from the Developer to proceed with financial due diligence.

Additionally, the Administration has prepared a comparison of this project to the previous deals that have been done by the City, which is included as Attachment A. The first page of the attachment compares the proposal to the three projects which were developed as private projects through leases with the City, and in which the parking function is operated by the private party. The second page compares the proposal with those projects which are joint venture developments, and in which the parking component is operated by the City as a public parking garage.

The Committee Memorandum from the September 3, 2009 meeting is included as Attachment B. The Administration's concerns and reservations, as well as the key terms of the proposed deal have not changed at this time, pending the results of the financial due diligence and the appraisal.

JMG//kc

### Attachments (2)

Comparison of previous joint ventures  
September 3, 2009 FCWPC Memo

**Attachment A**

	Collins Park (CMB)	Collins Park (ARRE)
City land ownership	Yes	
Private land ownership	Yes	
Private land transferred to City	Yes	
City Land Purchase	Est. \$5,000,000	
Joint Venture Partner	ARRE	
Solicitation Type	Property Owner	
Main Permitted Use	Parking Garage	
<b>City Operates Garage</b>	<b>No</b>	
Parking Revenue goes to	Developer	
Parking Spaces	380	
Retail	18,000	
Office	0	
Cost	14,832,229	
Developer Funded Equity	3,708,057	
Developer Equity %	25%	
City Development Contribution	TBD	TBD
Lease Term	50	90
# of Extensions	0	
Length of Extension	N/A	
Fee to CMB at Execution	\$ -	
Building Permit	Within timeframe required by DRB (18 months plus 12 months Board-approved extension)	
Completion	Within 5 years of DRB approval	
Rent During Possession (annual)	\$ 75,000	
Base Rent	\$225,000	\$75,000 plus 2.5% of Parcel B purchase price
Base Rent Adjustments	Year 11, every 5th year Lesser of 13% or CPI	None
Percentage Rent	3% Net Retail; 10% Gross Garage >\$300K	8% Net Retail; 10% Gross Garage >\$300K
Percentage Rent Commencement	Retail: 90% Stabilization; Garage upon opening	
Reappraisals	N/A	
Parking Rates	TBD	TBD
Condominium	Leasehold condominium comprised of garage units and retail units	
Environmental	City assumes no liability; property leased 'as is'.	Developer assigns Chevron indemnification to City
Ownership Transfer Fee	10% of Net Profit	

10th Street Garage	Lincoln Place	The Lincoln
Yes	Yes	Yes
No	Yes	Yes
n/a	Yes	Yes
\$0	\$0	\$0
Pelican Development	16th Street Partners	Lincoln Plaza Partners
Request for Proposals	Request for Proposals	Request for Proposals
Parking Garage	Commercial (Office/Retail)	Commercial (Office/Retail)
<b>No</b>	<b>No</b>	<b>No</b>
Developer	Developer	Developer
270	604	711
5,000	43,424	34,510
-	111,975	106,000
\$ 4,177,000	\$ 32,424,507	\$ 30,644,340
\$ 1,044,250	\$ 10,555,389	\$ 7,661,085
25%	33%	25%
\$ -	\$ -	\$ -
40	50	50
1	2	2
10	20	20
\$ 45,000	\$ 50,000	\$ 50,000
8 weeks from DRB/HP Approval	32 weeks from DRB/HP approval	32 weeks from DRB/HP approval
20 months from Construction Commencement	2 years from Possession Date	2 years from Possession Date
\$42,000	\$175,000	\$175,000
\$75,000	\$250,000 (yr 1-5), \$300,000 (yr 6-10)	\$250,000 (yr 1-5), \$300,000 (yr 6-10)
Every 5th Year	Year 11, every 5th year	Year 11, every 5th year
Lesser of 12% or CPI	Lesser of 12% or CPI	Lesser of 12% or CPI
2.5% of Gross	2.5% of Gross	2.5% of Gross
Sale; or Year 9	Sale; or Year 9	Sale; or Year 9
Revenue > \$1,090,000; or		
Upon exercise of extension option	Upon exercise of extension option	Upon exercise of extension option
Not less than City; not greater than comparable in MB.	Not less than City; not higher than highest in Dade	Not less than City; not higher than highest in Dade. NO increase for special events
None	None	May create up to three condominium units
Leased 'as is'	Leased 'as is'	Leased 'as is'
None	None	None

Attachment A

	Collins Park (CMB)	Collins Park (ARRE)
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Private land transferred to City	Yes	
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Parking Rates	TBD	TBD
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Environmental	City assumes no liability; property leased 'as is'.	Developer assigns Chevron indemnification to City
Ownership Transfer Fee	10% of Net Profit	

	Fifth and Alton	7th Street Garage	Sunset Harbor
	No	No	No
	Yes	Yes	Yes
	Condominium	Land and Air Rights	Air Rights
	\$0	\$3,117,544	\$14,000,000
	AR&J Sobe	Goldman Properties	Scott Robins Companies
	Property Owner	Property Owner	Property Owner
	Retail	Parking Garage	Parking Garage
	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
	Shared by ownership ratio	City	City
	1,089	646	458
	179,000	19,674	31,000
	-	-	-
	\$ 70,000,000		\$10,000,000 estimate
			TBD
			TBD
	\$ 14,000,000	\$ 6,330,800	\$ 8,392,000
	n/a	n/a	n/a
	Within 32 weeks of Development Agreement approval	Within 90 days of closing on the City Property	City estimates construction commencement date.
	Within 24 months of Construction Commencement (60 days from permit)	365 days after the Construction Commencement Date	After Building Permit, proceed diligently and in good faith to achieve Project Completion.
	n/a	n/a	n/a
	As agreed to between City and Developer	City Operated Garage	Not Addressed
	City owns parking spaces as a separate condominium unit	None	Possibility of a condominium declaration rather than air rights
	Developer responsibility	City assumes NO liability or obligation through construction. Future liability based on responsibility.	All env.issues identified in the reports that require remediation shall be borne by Seller.
	n/a	n/a	n/a



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## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: September 3, 2009

SUBJECT: **Discussion Regarding a Proposed Joint Venture for a Parking Garage in the Collins Park Neighborhood.**

On November 18, 2008, the Finance and Citywide Projects Committee held a discussion regarding a proposed joint venture parking garage in the Collins Park Neighborhood. At that meeting, various options were provided, which included: 1) a joint venture with American Riviera Real Estate Company ("ARRE"), which is owned by Ron Bloomberg; 2) the construction of a traditional garage on the two City-owned surface lots and Liberty Avenue; and, 3) a joint venture with the Gansevoort Hotel.

At the meeting, ARRE presented the concept of selling its interest of (i) a parcel that it controls under a long-term sub-lease, and (ii) conveying the rights ARRE has to purchase the fee of said parcel to the City, followed by the City entering into a long-term ground lease to ARRE for the development of a parking garage with ground floor retail on the site encompassing both parcels. ARRE would be responsible for construction and operation of the project, and proposed a base rent along with percentage rent associated with parking and retail rental revenues. The Committee directed the Administration to bring the item back to the Committee to provide an update on negotiations.

The Administration has met with ARRE on a number of occasions to further negotiate the terms of a proposed venture.

The City staff has reservations regarding several of the proposed positions of ARRE. The staff position on these issues is outlined in a table below, following the summary of the proposed structure of the transaction. The table also summarizes the original offer by ARRE in November 2008, the City staff position, and ARRE's current offer to the City, respectively.

Essentially, Staff has concerns regarding the proposed Term of the Agreement, the amount of the Base Rent, a proposed Credit against the Base Rent for the City portion of property taxes, and the structure of the proposed City buy out.

As currently presented by ARRE, the staff is not prepared to recommend that the City move forward with the proposal. However, with certain modifications, the Project could still prove to be a viable option if the main City objective is to locate a Garage with public transient parking in the Collins Park area.

### **Current Proposed Structure of the Transaction**

The City currently owns a parcel of land ("Parcel A"), consisting of approximately 13,800 square feet.

ARRE currently controls a parcel of land ("Parcel B"), consisting of approximately 17,250 square feet.

Pursuant to rights under its purchase contract regarding Parcel B, ARRE will cause the conveyance directly to the City of good, marketable and insurable title to Parcel B. For this conveyance, the City shall pay to ARRE the appraised value of fee simple title to Parcel B. The Appraised Value shall be determined by an appraiser mutually agreed to by the parties.

The City, as ground lessor, and ARRE, as ground lessee, shall enter into a long-term ground lease, for the purpose of the development and operation of a parking facility with ground floor retail (the Project). ARRE is obligated to pay all costs of development and construction of the Project.

Parcel B actually consists of three parcels, all of which are consolidated under a single current owner, with which ARRE has a valid purchase contract. The current fee owner entered into three 99-year leases with Nadia M. Dallet, two of which expire on April 16, 2042, and the third of which expires on February 19, 2043. This lessee entered into a long-term sublease of the Parcel B, including all three parcels, to the Standard Oil Company, which expires on April 16, 2042, and which was subsequently assigned to ARRE.

It is important to note that, upon closing, the City will acquire fee ownership of Parcel B and will also be assigned the balance of the long-term Standard Oil sublease, currently controlled by ARRE. The Dallet lease will remain in place, and the City shall become the responsible party under the terms of the Standard Oil sublease. That sublease has a monthly rent payment in the amount of \$500, and the only default provision in the sublease is in the event of non-payment of rent.

The Administration is concerned about the impact of these leases on the ability of ARRE to secure financing, and requested that all leases and subleases be terminated prior to closing; however, ARRE has not agreed to this as a contractual requirement and does not have any rights to terminate the Dallet lease. ARRE has indicated that it will attempt, on a best efforts basis, to resolve this issue, and in the event the lease remains in place, ARRE shall provide assurance that is satisfactory to the City that institutional leasehold construction financing can be arranged.

### **The Project**

The proposal contemplates the development of an approximately 380-space parking garage with approximately 18,000 square feet of retail on the ground floor. The project will be operated and managed by ARRE. At least 50% of the parking spaces will be open and available for transient public parking at all times. The structure would be split into several separate condominiums, including one for the Retail unit, and one or more units for the Garage.

### **Credit Enhancement - "Put"**

During the negotiations, an additional concept emerged that involves a "put" to the City that involves the potential buyout of ARRE's interest by the City. This concept was discussed in order to provide both a credit-enhancement that will improve the ability to finance the Project, and create the potential for greater profitability due to the possible reduction in

operating expenses the credit enhancement might have on the project. This concept would technically result in the City's ownership of the garage portion of the project. This concept would also utilize RDA funding which may become available at some time after 2013.

The attached Term Sheet, which represents ARRE's latest offer to the City, reflects this concept. ARRE would have the ability to cause the City to purchase the garage unit(s) for a total purchase price of \$11,400,000, with this payment deferred and due either in a single lump sum on or before December 31, 2022, or in installments prior to that time, perhaps beginning in 2019. Under this schedule, the payments are structured in a manner that RDA funds should be available prior to the City Center RDA's termination in 2023.

ARRE has proposed that after the "Put" that it continue to have the exclusive right to manage and operate the Retail and Garage components of the Project. In return, ARRE has proposed that the City receive an annual return of 3.5% on the \$11.4 million once it is paid, or \$399,000. There are many scenarios that involve different buy down amounts and time frames that the City and ARRE could consider, if the concept of the "Put" is of interest to the Finance and Citywide Projects Committee. An alternative to this would be to place the "Put" on the City's side, as opposed to ARRE's, or have an agreement that the City would buy out the Project at some point, without a "Put" on either side.

The Staff recommendation in any event, is that if the City buys out ARRE's interest in the Project, that the City should at least gain the right to operate the Garage Unit(s). There would be a reduction in the Base Rent under this scenario as ARRE would potentially have the right to continue with a ground lease for the Retail Unit, but would be foregoing the right to operate the Garage.

#### **Proposed Ground Lease Structure**

ARRE has proposed the following lease structure, upon the earlier of either 2 years from TCO/PCO or 90% of the retail portion of the Project is open.

- A Term of 99 Years;
- A Base Rent of \$75,000 plus 2.5% of the Purchase Price for Parcel B;
- Percentage Rent of Retail Unit of 8% of Net Rents;
- Percentage Rent of Garage Unit of 10% of Gross Revenue in excess of \$300,000;
- A Transfer Fee of 10% of Net Profit if the Leasehold is transferred;
- A Credit against the Base Rent for Property Taxes paid to the City on the Garage Unit(s) until such time as the Put is exercised (estimated to be up to \$100,000);

#### **Proposed Timing**

ARRE and the City have agreed to the following proposed milestones for the Project.

- Final DRB Order shall be obtained within 12 months of Agreement execution
- A full Building Permit must be obtained within 30 months of Final DRB Approval
- A construction loan to fully fund the construction of the Project must be obtained within 27 months of Final DRB Approval
- A construction contract for the construction of the Project must be executed within 29 months of the Final DRB Approval
- Construction must be complete within 36 months of a full Building Permit

**Proposed Financial Terms**

	<b>ARRE's Nov 2008 presentation to Finance Committee</b>	<b>City Administration Preferred Terms provided to ARRE</b>	<b>Current ARRE Preferred Terms as of Sept 2009</b>
Term of Ground Lease	99 years	50 years	99 years
Ground Lease Base Rent	6% on retail portion of land value	\$225,000	\$75,000 plus 2.5% of amount paid for Parcel B.
Base rent escalation	None	Avg CPI or 13% over a 5-year period	None
Base rent reset	None	10 years	None
Percentage Rent (Retail)	8% Net Operating Income from retail areas	8% Net Operating Income from retail areas	8% Net Operating Income from retail areas
Percentage Rent (Retail) commencement	90% Stabilization	Earlier of 12 months from a CO or 90% Stabilization	Earlier of 24 months from a CO or 90% Stabilization
Percentage Rent (Garage)	10% of Gross Revenues in excess of \$500,000 in years 1-30 and 15% thereafter	10% of Gross Revenues in excess of \$300,000.	10% of Gross Revenues in excess of \$300,000.
Credit for Property Taxes on Garage Unit	None	None	Credit of City Portion of taxes paid on Garage Unit unless Put is exercised
Required Purchase by City of the Project	None	May be considered but should be within a specific window, preferably between 2019 to 2022. City should have full operating authority of Garage once fully owned by City. Reduction in Base Rent upon City ownership and operation of Garage. ARRE continues with lease of retail.	At Option of ARRE ("Put") in the 2019 to 2022 window. ARRE retains full operating rights following City purchasing Ownership interest. ARRE pays City 3.5% on purchase dollars.
Transfer Fee	10% of net profit	10% of net profit	10% of net profit

Conclusion

The Administration recommends against the current ARRE Term Sheet and is seeking guidance from the Finance and Citywide Projects Committee regarding this term sheet and potential joint venture.

If, however, the Committee desires staff to continue to negotiate, we recommend that staff be authorized to expend certain funds to pursue further due diligence, including, but not limited to, financial ability of ARRE to perform and appraisals.

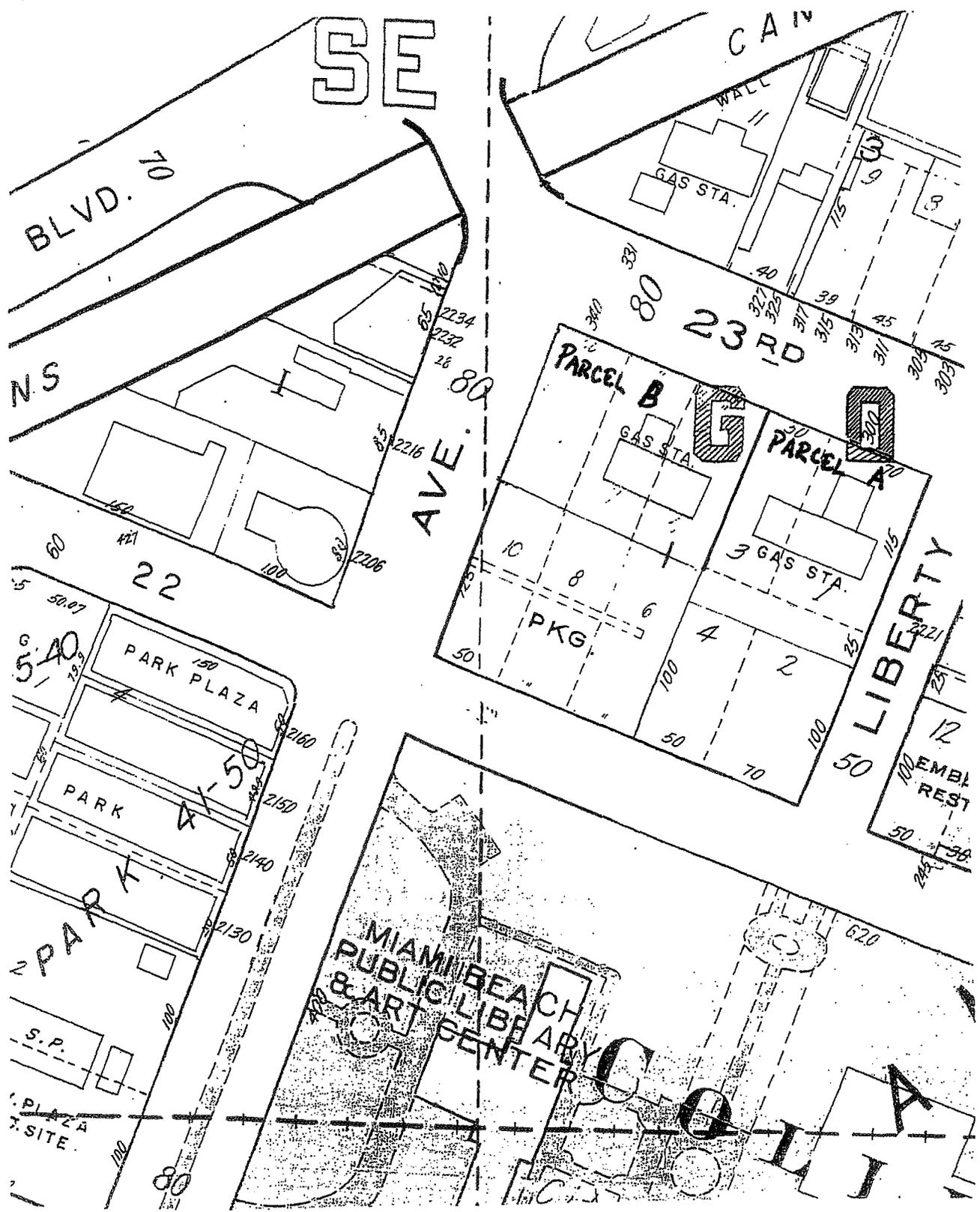
JMG/TH/kc

Attachment 1 – Site Map

Attachment 2 – ARRE Current Proposed Term Sheet

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# SITE MAP



**TERM SHEET**

This Term Sheet sets forth certain business terms that are being discussed between the City of Miami Beach ("City") and American Riviera Real Estate Company ("Developer") with respect to the proposed Project described below. This Term Sheet is prepared for discussion purposes only. It creates no binding rights or obligations.

1. **The Project.** Developer shall develop upon the Land described below (a) a parking garage containing **approximately 380 parking spaces** on four (4) levels, of which not less than 50% of the parking spaces shall **always** be available for transient parking; and (b) **approximately 18,000 square feet** of retail space located on the ground level (collectively, the "Project"). The parking garage shall be available for public parking. City and Developer shall enter into the City's standard form of Development Agreement describing the Project in detail and specifying the Developer's construction and other obligations, including a specific description of the Project and timing. The Project shall conform with all existing setback, height restrictions, design requirements, and other elements of the Miami Beach Code.
2. **The Land.** The land upon which the Project is to be built consists of two (2) contiguous parcels (collectively, the "Land"), as follows:
  - (a) a parcel of land ("Parcel A") consisting of approximately 13,800 square feet and legally described on Exhibit A hereto. Title to Parcel A is currently held by the City; and
  - (b) a parcel of land ("Parcel B") consisting of approximately 17,250 square feet and legally described on Exhibit B hereto. Title to Parcel B is complicated. It can be summarized as follows:
    - (i) fee title to Parcel B is currently held by Charlotte Staiger, John Staiger, and the heirs of Matilda Miller. Developer represents that Developer has a valid purchase contract ("Developer's Purchase Contract") that will entitle Developer to purchase the fee title from all of the current fee title holders of Parcel B;
    - (ii) the fee title holders entered into three (3) 99-year leases with Nadia M. Dallet. Those 99-year leases expire on April 16, 2042 (as to two of them) and February 19, 2043 (as to one of them). Accordingly, Nadia M. Dallet or her heirs or successors (collectively, "Ground Lessees") currently hold a long-term leasehold estate with respect to Parcel B. Developer does not have any right to purchase the leasehold estate of these Ground Lessees; and
    - (iii) the Ground Lessees entered into a long-term sublease of Parcel B to Standard Oil Company. That sublease expires on April 16, 2042. That sublease was assigned to Developer.

Accordingly, Developer holds the subleasehold estate to Parcel B pursuant to a sublease that expires in 2042; Developer also has a contract to purchase the fee title interest to Parcel B.

3. City's Purchase of Parcel B. By virtue of its rights under the Developer's Purchase Contract, Developer will cause the fee title holders of Parcel B to convey good, marketable and insurable title to Parcel B directly to the City. City will pay to Developer the Appraised Value of fee title to Parcel B, and Developer will simultaneously pay to the fee title holders the purchase price that Developer has agreed to pay them under the terms of Developer's Purchase Contract (which will be less than the Appraised Value and therefore Developer will realize a profit at this closing). The Appraised Value shall be determined by an appraiser approved by both the City and Developer. The appraisal shall assume that Parcel B shall be used to construct a portion of the Project (and therefore Parcel B and Parcel A will both be appraised for such land use). The Appraised Value shall also take into consideration the status of title to Parcel B, including the existing leases.

As a condition precedent to City's purchase of fee title to Parcel B, Developer shall either (a) cause all leases and subleases to be terminated, including those listed in 2(b)(ii) and (iii) above; or (b) assign to City all of Developer's interest under the leases and subleases referenced in paragraph 2(b) and provide assurance satisfactory to City that institutional leasehold construction financing can be arranged notwithstanding the existence of such leases and that City's interest shall not be adversely affected by the existence of such leases.

As to Parcel B, Developer shall be obligated to provide marketable title; eliminate any survey problems; deliver the Property **free of any hazardous substances**, etc. City shall be entitled to an inspection period to inspect and analyze Parcel B, to investigate financing alternatives, and otherwise evaluate the Project and shall have the option to terminate the transaction without cost for any reason during the inspection period.

4. Lease from City to Developer.

Simultaneously with City's purchase of Parcel B, City, as ground lessor, and Developer, as ground lessee, shall enter into a long-term ground lease (the "City-Developer Lease") with respect to the Land (for both Parcel A and Parcel B). The City-Developer Lease shall include all of the following basic terms:

- (a) the City-Developer Lease shall be a triple net lease, with Developer obligated to pay all costs of development and construction of the Project and all costs of the Land and all improvements thereon, including without limitation taxes, assessments, insurance, maintenance, environmental remediation and operation.
- (b) Developer shall be obligated to comply with the Development Agreement and complete the Project as and when required thereby. The Development

Agreement will be in the City's standard form but will additionally provide that Developer must (a) **obtain final DRB approval within one (1) year**; (b) obtain a full Building Permit for the Project within 30 months of final DRB approval; (c) obtain a construction loan from an institutional lender within 27 months of final DRB approval to build the Project; (d) obtain an executed construction contract to construct the Project within 29 months of DRB approval; (e) complete construction of the Project and obtain a certificate of occupancy within three (3) years of full Building Permit. **City shall have the right to terminate the City-Developer Lease and the Development Agreement if Developer defaults under either such agreement and such default continues beyond any applicable cure period.**

- (c) **the term of the City-Developer Lease shall be ninety-nine (99) years;**
- (d) the Project shall be developed as a leasehold condominium pursuant to a Declaration of Condominium approved by Developer and City. The leasehold condominium shall include two types of condominium units, as follows:
  - (i) Garage Unit(s). The garage portion of the Project will include one or more (up to 4) condominium units. If there are four units, then each of the four parking levels within the garage shall be a separate unit; and
  - (ii) Retail Units. The retail portion of the condominium shall include one single unit comprising the entire retail portion.
- (e) Developer shall be entitled to finance the construction of the Project with institutional financing secured by Developer's leasehold interest in the ground lease. City shall have no financial obligations with respect to such financing and City's fee simple interest in the Land shall not be encumbered as security for the financing.
- (f) Developer shall retain possession of Parcel B until commencement of construction activities (although City shall purchase Parcel B pursuant to a purchase and sale agreement with Developer that will provide details and timing of the purchase). Upon the City's acquisition of title to Parcel B, Developer shall pay to City an annual rent of \$75,000 until commencement of Base Rent as set forth below.
- (g) Developer shall pay annual base rent under the City-Developer Lease in an amount equal to \$75,000 plus 2.5% of the purchase price paid by the City for Parcel B.

Until such time as the Developer exercises the Put described below the City shall credit against the Base Rent an amount equal to the ad valorem taxes received by the City on the Garage Unit(s) but not on the retail unit.

- (h) In addition to Base Rent, Developer shall pay Percentage Rent

For the Retail Units - in an amount equal **eight percent (8%) of the "Net Rent"** received by Developer from all retail and commercial tenants and other users of space in the Retail Units. "Net Rent" shall be defined as gross rent minus the amounts received from such tenants for sales tax, real estate taxes, insurance and any other items typically included in retail leases as "pass through" operating costs. Retail percentage rent shall commence **two (2) years after a temporary or permanent certificate of occupancy has been issued for the shell of the Retail Units** or the date when ninety percent (90%) of the retail space is open for business, whichever occurs first.

For the Garage - 10% of all revenues generated from the parking garage (including valet parking) in excess of \$300,000 (net of all applicable sales or other such taxes) ("Breakpoint"). Developer shall use good faith efforts to maximize the parking garage revenues and, in any event, shall charge a fair market rate for the use of such spaces

- (i) Developer shall be required to maintain liability, property, and other insurance that meets or exceeds City's requirements;
- (j) Tenant shall indemnify and hold City harmless from all liability arising from or related to the Project or the Land.
- (k) Beginning with January 2 of the year 2019 and until December 31 of the year 2022, the Developer shall have the right to cause the City to purchase the Garage Units ("Put") for a total purchase price of an amount equal to the sum of \$30,000.00 multiplied by the total number of parking spaces in the Garage Units ("Garage Purchase Price"). Good, marketable, and insurable title to the Garage Units (free and clear of all mortgages) shall be transferred to City on the date that of the Garage Purchase Price payment. The Garage Purchase Payment shall be paid at City's election either (i) in a single lump sum payment made at any time on or before **December 31, 2022** ("Outside Date"); or (ii) **in installments at such times and in such amounts as City elects so long as the Garage Purchase Price is paid in full by the Outside Date**. Once the Garage Purchase Price is fully paid, the Developer shall pay the City a 3.5% per. annum. return on the full purchase price for the duration of the ground lease.

**At such time as City has paid the entire Garage Purchase Price, the Garage Units shall be managed by Developer or an entity owned and controlled by Developer (the "Garage Manager") pursuant to the City's standard form of third party garage management agreement. The garage**

management agreement shall provide that all revenue derived from the Garage Units shall be applied (a) first, to pay all operating costs, including insurance, employee costs, sales tax, ad valorem taxes (if any), maintenance, repair, etc.; (b) second, the sum of \$300,000 to Garage Manager as a management fee; and (c) third, ninety percent (90%) to Garage Manager and ten percent (10%) to City.

5. Transfers; Transfer Fee. All "Transfers" shall require City's approval based upon specified criteria. Upon any Transfer, City shall be entitled to a fee of ten (10%) percent of the net profit (as defined in the Lease) derived from the transfer. "Transfer" shall mean (a) any assignment of all or any part of Developer's leasehold interest; (b) **any long term sublease of all or any part of the leasehold premise; (excluding any occupancy leases)** (c) **any conveyance of any condominium unit located on the leasehold estate;** (d) any conveyance of any interest in Developer that results in any change in control of Developer (but transfers for estate planning purpose shall be exempted so long as **Ron Bloomberg** or his heirs or successors remains in control); or (e) any other transfer that effectively transfers to a third party the economic benefits or obligations with respect to the leasehold improvements. The Transferee Fee shall apply to all Transfers by Developer and to all subsequent Transfers.

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# MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: October 29, 2009

SUBJECT: INDEPENDENT CONTRACTOR AGREEMENTS FOR PROFESSIONAL AND OTHER SERVICES

At the September 24, 2009 Special City Commission meeting, the attached item pertaining to Independent Contractor Agreements for Professional and Other Services was referred to the Finance and Citywide Projects Committee for further discussion.

**Condensed Title:**

A Resolution authorizing the City Manager to enter into certain independent contractor agreements for professional and other services, subject to and contingent upon the following parameters: 1) the City Manager shall only enter into contracts to provide services and/or work related to vacant budgeted positions; 2) the amount of the fee and/or other compensation to be paid shall not exceed the authorized amount for the respective position/classification; 3) the term of any agreement authorized herein shall not extend beyond the end of FY 2009/2010; 4) at a minimum, the City Manager shall require that any agreement entered into pursuant to this Resolution shall utilize the City's standard form for independent contractors; and 5) providing that the Authority granted to the City Manager pursuant to this Resolution shall be brought to the City Commission for renewal annually as part of the annual operating budget approvals.

A Resolution authorizing the City Manager to enter into certain independent contractor agreements for the following services: Dance Instruction; Ice Skating Instruction; Athletics Instruction/Coaching; Aerobics Instruction; Fitness Instruction; Literacy, Math and S.A.T. Tutoring; School Liaison Officers; Television Production Services; Videographer Services; Graphic Designer Services; Program Monitor Services; and Auditors; subject to the following minimum parameters: 1) the amount of the fee and/or other compensation to be paid by the City under such agreement(s) shall not exceed the authorized amount for the respective services as set forth in the City's approved FY 2009/2010 Annual Budget; 2) the term of any agreement authorized herein shall not extend beyond the end of FY 2009/2010; 3) at a minimum, the City Manager shall require that any agreement entered into pursuant to this Resolution shall utilize the City's standard form for independent contractors; and 4) providing that the Authority granted to the City Manager pursuant to this Resolution shall be brought to the City Commission for renewal annually as part of the annual operating budget approvals.

**Key Intended Outcome Supported:**

Increase satisfaction with recreational programs; Enhance external and internal communications from and within the City; Increase resident rating of public safety services; Ensure expenditure trends are sustainable over the long term

**Supporting Data (Surveys, Environmental Scan, etc.):** 2009 Community Satisfaction survey

- 84.9% of residents rated Recreation Programs as excellent or good
- 79.3% of residents rated the amount of information they receive from the City as excellent or good
- 96.3% of residents suggested they feel "very safe" or "somewhat safe" in their neighborhood during the day

**Issue:**

Shall the City Manager be granted the authority to enter into certain Independent Contractor and Professional Services Agreements?

**Item Summary/Recommendation:**

Under the City Charter, the City Manager has the authority to appoint an employee into a vacant, budgeted position with a salary within the range established by the City Commission for the classification. Given recent financial realities, where the City has had to eliminate positions in its annual budget, it has been the City's practice to restrict hiring for vacant positions where practicable. In some instances where positions were held vacant, the City has retained independent contractors to provide the respective services and/or work. The Administration recommends that the City Commission authorize the City Manager to negotiate, enter into, and execute certain independent contractor agreements, including those having an amount which may exceed \$25,000, to provide services and/or work related to vacant, budgeted positions, subject to certain parameters. Additionally, the Administration recommends that the City Manager be authorized to negotiate, enter into, and execute independent contractor agreements, including those having an amount greater than \$25,000 to provide services related to certain activities typically retained on an annual basis as outlined in the City Commission Memorandum, subject to certain minimum parameters.

**Advisory Board Recommendation:**

N/A

**Financial Information:**

Source of Funds:		Amount	Account
	1		
	2		
OBPI	Total		

**Financial Impact Summary:** Funds are already included in the FY 2009/2010 Annual Operating Budget, in either Salaries or Professional Services line items in respective departments

**City Clerk's Office Legislative Tracking:**

Ramiro Inguanzo, Human Resources Director / Gus Lopez, Procurement Director

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
<i>R. Inguanzo</i>		<i>[Signature]</i>





# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 24, 2009

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER, ON BEHALF OF THE CITY, TO ENTER INTO CERTAIN INDEPENDENT CONTRACTOR AGREEMENTS FOR PROFESSIONAL AND OTHER SERVICES, AS REQUIRED AND AS THE CITY MANAGER DEEMS IN THE BEST INTEREST OF THE CITY, SUBJECT TO AND CONTINGENT UPON THE FOLLOWING PARAMETERS: 1) THE CITY MANAGER SHALL ONLY ENTER INTO CONTRACTS FOR SUCH PROFESSIONAL AND OTHER SERVICES TO PROVIDE SERVICES AND/OR WORK RELATED TO VACANT BUDGETED POSITIONS, AS IDENTIFIED IN THE CITY'S APPROVED FISCAL YEAR (FY) 2009/2010 ANNUAL BUDGET; 2) THE AMOUNT OF THE FEE AND/OR OTHER COMPENSATION TO BE PAID BY THE CITY UNDER SUCH CONTRACT(S) SHALL NOT EXCEED THE AUTHORIZED AMOUNT FOR THE RESPECTIVE POSITION/CLASSIFICATION, AS SET FORTH, RESPECTIVELY, IN THE CITY'S CLASSIFIED OR UNCLASSIFIED SALARY ORDINANCE (AS THE CASE MAY BE); 3) THE TERM OF ANY INDEPENDENT CONTRACTOR AGREEMENT AUTHORIZED HEREIN SHALL NOT EXTEND BEYOND THE END OF FY 2009/2010 (SEPTEMBER 30, 2010); 4) AT A MINIMUM, THE CITY MANAGER SHALL REQUIRE THAT ANY INDEPENDENT CONTRACTOR AGREEMENT ENTERED INTO PURSUANT TO THIS RESOLUTION SHALL UTILIZE THE CITY'S STANDARD FORM FOR INDEPENDENT CONTRACTORS (AS ATTACHED TO THIS RESOLUTION), PROVIDED THAT THE CITY MANAGER MAY INCORPORATE ADDITIONAL TERMS, WHICH MAY BE MORE STRINGENT THAN THE CITY'S FORM, BUT NOT MORE LENIENT; AND 5) PROVIDING THAT THE AUTHORITY GRANTED TO THE CITY MANAGER PURSUANT TO THIS RESOLUTION SHALL BE BROUGHT TO THE CITY COMMISSION FOR RENEWAL ANNUALLY AS PART OF THE ANNUAL OPERATING BUDGET APPROVALS.**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER, ON BEHALF OF THE CITY, TO ENTER INTO CERTAIN INDEPENDENT CONTRACTOR AGREEMENTS FOR THE FOLLOWING SERVICES, AS REQUIRED AND AS THE CITY MANAGER DEEMS IN THE BEST INTEREST OF THE CITY: DANCE INSTRUCTION; ICE SKATING INSTRUCTION; ATHLETICS INSTRUCTION/COACHING; AEROBICS INSTRUCTION; FITNESS INSTRUCTION; LITERACY, MATH AND S.A.T. TUTORING; SCHOOL LIAISON OFFICERS; TELEVISION PRODUCTION SERVICES; VIDEOGRAPHER SERVICES; GRAPHIC DESIGNER SERVICES; PROGRAM MONITOR SERVICES; AND AUDITORS; PROVIDED FURTHER THAT THE CITY MANAGER SHALL BE AUTHORIZED TO NEGOTIATE, ENTER INTO, AND EXECUTE THE AFORESTATED AGREEMENTS SUBJECT TO THE FOLLOWING**

**MINIMUM PARAMETERS: 1) THE AMOUNT OF THE FEE AND/OR OTHER COMPENSATION TO BE PAID BY THE CITY UNDER SUCH AGREEMENT(S) SHALL NOT EXCEED THE AUTHORIZED AMOUNT FOR THE RESPECTIVE SERVICES, AS SET FORTH IN THE CITY'S APPROVED FISCAL YEAR (FY) 2009/2010 ANNUAL BUDGET; 2) THE TERM OF ANY SERVICES AGREEMENT AUTHORIZED HEREIN SHALL NOT EXTEND BEYOND THE END OF FY 2009/2010 (SEPTEMBER 30, 2010); 3) AT A MINIMUM, THE CITY MANAGER SHALL REQUIRE THAT ANY AGREEMENT ENTERED INTO PURSUANT TO THIS RESOLUTION SHALL UTILIZE THE CITY'S STANDARD FORM INDEPENDENT CONTRACTOR AGREEMENT (AS ATTACHED TO THIS RESOLUTION), PROVIDED THAT THE CITY MANAGER MAY INCORPORATE ADDITIONAL TERMS, WHICH MAY BE MORE STRINGENT THAN THE CITY'S FORM, BUT NOT MORE LENIENT; AND 4) PROVIDING THAT THE AUTHORITY GRANTED TO THE CITY MANAGER PURSUANT TO THIS RESOLUTION SHALL BE BROUGHT TO THE CITY COMMISSION FOR RENEWAL ANNUALLY AS PART OF THE ANNUAL OPERATING BUDGET APPROVALS.**

#### **ADMINISTRATION RECOMMENDATION**

Adopt both Resolutions.

#### **BACKGROUND / ANALYSIS**

Under the City Charter, the City Manager has the authority to appoint an employee into a vacant, budgeted position with a salary within the range established by the City Commission for the classification.

Given recent financial realities, where the City has had to eliminate positions in its annual budget for each of the last two (2) fiscal years and again for the fiscal year starting on October 1, 2009, it has been the City's practice to restrict hiring for vacant positions where practicable. All vacant positions identified to be filled are carefully analyzed. Positions that were deemed mission critical have been filled, but others have been held vacant. This has been done to try to place employees whose positions may have been eliminated, and also to avoid hiring an employee and then possibly having to lay them off at the end of the fiscal year if their position is eliminated.

In some instances where positions were held vacant, the City has retained independent contractors to provide the respective services and/or work. Because the City Code requires contracts in excess \$25,000 to be approved by the City Commission, these agreements have typically been limited to that maximum amount. On rare occasions, independent contractor agreements for amounts over \$25,000 have been brought to the City Commission for approval.

In an effort to save on both short-term and long-term costs, such as pension and health benefits, the Administration is recommending that the City Commission authorize the City Manager to negotiate, enter into, and execute certain independent contractor agreements, including those having an amount which may exceed \$25,000, subject to the following parameters:

- the independent contract agreements authorized under this Resolution will be limited to services and/or work related to a vacant, budgeted position, as approved in the City's Fiscal Year (FY) 2009/2010 annual operating budget;
- the value of the agreement will not exceed the amount already authorized in the City's Classified and Unclassified Salary Ordinances (as applicable), and will not extend beyond September 30, 2010; and
- any agreement entered into will contain, at a minimum, the provisions outlined in the City's standard form independent contractor agreement.

The first Resolution pertains to independent contractor agreements, which are for individuals hired to perform a specific function for a temporary period. These individuals are usually compensated at an hourly or project specific rate.

The second Resolution also pertains to independent contractors who will be providing certain specific services and/or work and which were otherwise budgeted in each of the respective departmental budgets. Some of the services budgeted include: Dance Instruction, Ice Skating Instruction, Athletics Instruction/Coaching, Aerobics Instruction, Fitness Instruction, and Literacy, Math and S.A.T. Tutoring for the Parks and Recreation Department; School Liaison Officers for the Police Department; Television Production Services, Videographer Services, and Graphic Designer Services for the Office of Communications; Program Monitor Services for the Office of Real Estate, Housing and Community Development; and Auditor Services for the Office of Budget and Performance Improvement.

In an effort to coordinate the execution of agreements for the kind of services and/or work referenced in the second Resolution, the Administration also recommends that the City Manager be authorized to negotiate, enter into, and execute such agreements, including those having an amount greater than \$25,000, subject to the following parameters:

- the agreements will only be limited to the services and/or work specifically listed in the second Resolution;
- the value of the agreement will not exceed the authorized amount for the respective services and/or work, as set forth in the City's Approved FY 2009/2010 Annual Budget;
- the term of the agreement shall not extend beyond the end of FY 2009/2010 (September 30, 2010); and
- any agreement entered into will contain, at a minimum, the provisions outlined in the City's standard form agreement for independent contractors.

It is the intention of the Administration that both Resolutions herein, granting the specific Authority to the City Manager to enter into these Independent Contractor Agreements, will be brought to the City Commission for renewal annually as part of the annual operating budget approvals.

**CONCLUSION**

The Administration recommends adopting the Resolutions.

**Attachment**

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**ATTACHMENT A**

**CITY'S STANDARD FORM  
FOR INDEPENDENT CONTRACTORS**

## INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, between **[ENTER FULL NAME OF CONTRACTOR]** (Contractor), and the City of Miami Beach, Florida (City), for a period of **[ENTER DURATION/TERM OF AGREEMENT]**, with an effective starting date of [\_\_\_\_\_] and an end date of [\_\_\_\_\_] (the Term).

### 1. Scope of Work/Services.

This Agreement is for the purpose of providing **[PROVIDE BRIEF DESCRIPTION/SUMMARY OF WHAT CONTRACTOR WILL DO]** to the City's [\_\_\_\_\_] Department. Specifically, throughout the Term of this Agreement, Contractor shall provide and/or perform the following minimum services:

**[INSERT DETAILED AND/OR ITEMIZED DESCRIPTION OF WORK AND/OR SERVICES CONTRACTOR WILL PROVIDE]**

### 2. Fee.

In consideration of the work and/or services to be provided pursuant to this Agreement, the City agrees to pay Contractor a fee, in the not to exceed amount of **[ FILL IN TOTAL \$AMOUNT]**, which shall be paid as follows:

**[INSERT, IN DETAIL, HOW FEE WILL BE PAID. INCLUDE WHETHER FEE WILL BE PAID HOURLY, WEEKLY, MONTHLY, ETC.; WHETHER IT'S SUBJECT TO CONTRACTOR PROVIDING TIME SHEETS, OR WORK SCHEDULE, ETC.]**

The total fee paid to Contractor pursuant to this Agreement shall not exceed **[FILL IN A NOT TO EXCEED AMOUNT]** for the Term provided herein.

### 3. Work Schedule.

During the Term of the Agreement, Contractor shall provide the work and/or services in accordance with the following minimum work schedule:

**[INSERT WORK SCHEDULE (EXAMPLE: MON – FRI, 9 AM TO 5PM, EXCLUDING RECOGNIZED CITY HOLIDAYS). IF IT'S ANOTHER TYPE OF SCHEDULE SUCH AS ON AN HOURLY BASIS OR ONLY ON SPECIFIC DAYS, BE SPECIFIC AS TO MINIMUM HOURS OR DAYS CONTRACTOR IS EXPECTED TO WORK IN ORDER TO GET PAID THE FEE SET FORTH HERE.]**

Contractor's work and/or services shall be overseen by the following City Department/Individual: **[INSERT TITLE, DEPARTMENT OF CITY (INDIVIDUAL OVERSEEING SERVICES).]**

### 4. Termination.

This Agreement may be terminated for convenience of either party, with or without cause, by giving written notice to the other party of such termination, which shall become effective upon fourteen (14) days following receipt by the other party of the written termination notice. Upon termination in accordance with this paragraph, the Contractor shall be paid a sum equal to all payments due to

him/her up to the date of termination; provided Contractor is satisfactorily continuing to satisfactorily perform all work and/or services up to the date of termination. Thereafter, the City shall be fully discharged from any further liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

**5. Indemnification/Hold Harmless.**

Contractor agrees to indemnify, defend, and hold harmless the City of Miami Beach and its officers, employees and agents, from and against any and all actions, claims, liabilities, losses and expenses, including but not limited to, attorney's fees, for personal economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from the negligent acts or omissions or other wrongful conduct of Contractor, and/or any and all subcontractors, employees, agents, or any other person or entity acting under Contractor's control, in connection with the Contractor's performance of the work and/or services pursuant to this Agreement. Contractor shall pay all such claims and losses and shall pay all costs and judgments which may arise from any lawsuit arising from such claims and losses, and shall pay all costs and attorney's fees expanded by the City in defense of such claims and losses, including appeals. The parties agree that one percent (1%) of the total compensation to Contractor for performance of the work and/or services under this Agreement is the specific consideration from the City to Contractor for the Contractor's agreement to indemnify and hold the City harmless, as provided herein. Contractor and the City hereby agree and acknowledge that this indemnity provision is intended to and shall survive the termination (or earlier expiration) of this Agreement.

**6. Limitation of Liability.**

The City desires to enter into this Agreement only if in so doing the City can place a limit on City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of the compensation/fee to be paid to Contractor pursuant to this Agreement, less any amounts actually paid by the City as of the date of the alleged breach. Contractor hereby expresses his willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract to be limited to a maximum amount equal to the compensation/fee to be paid to Contractor pursuant to this Agreement, less any amounts actually paid by the City as of the date of the alleged breach. Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in the amount in excess of the compensation/fee to be paid to Contractor pursuant to this Agreement, less any amounts actually paid by the City as of the date of the alleged breach, for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

**7. Notices.**

All notices and communications in writing required or permitted hereunder may be delivered personally to the representatives of the Contractor and the City listed below or may be mailed by registered mail, postage prepaid (or airmailed if addressed to an address outside of the city of dispatch).

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

CONTRACTOR: [INSERT NAME OF CONTRACTOR]

**[INSERT ADDRESS OF CONTRACTOR]  
[INSERT PHONE NUMBER]**

**CITY: [INSERT DEPARTMENT DIRECTOR]  
City of Miami Beach  
[INSERT DEPARTMENT NAME]  
1700 Convention Center Drive  
Miami Beach, FL 33139  
(305) \_\_\_\_\_**

Notices hereunder shall be effective:

If delivered personally, on delivery; if mailed to an address in the city of dispatch, on the day following the date mailed; and if mailed to an address outside the city of dispatch on the seventh day following the date mailed.

**8. Venue.**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND CONTRACTOR EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

**9. Duty of Care/Compliance with Applicable Laws.**

With respect to the performance of the work and/or service contemplated herein, Contractor shall exercise that degree of skill, care, efficiency and diligence normally exercised by reasonable persons and/or recognized professionals with respect to the performance of comparable work and/or services.

In its performance of the work and/or services, Contractor shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, the State of Florida, and the federal government, as applicable.

The Contractor agrees to adhere to and be governed by the Metropolitan Miami-Dade County Conflict of Interest Ordinance, as same may be amended from time to time; and by any and all ethics/standards of conducts as referenced in Chapter 2 of the City of Miami Beach Code (as may be amended from time to time).

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirectly which should conflict in any manner or degree with the performance of the work and/or services. Contractor further covenants that in the performance of work and/or services under this Agreement, no person having any such interest shall knowingly be employed by the Contractor. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising there from.

**10. Ownership of Documents/Patents and Copyrights.**

Any and all documents prepared by Contractor pursuant to this Agreement are related exclusively to

the work and/or services described herein, and are intended or represented for ownership by the City. Any re-use distribution, or dissemination of same by Contractor, other than to the City, shall first be approved in writing by the City Manager, which approval, if granted at all, shall be at the City Manager's sole and absolute discretion.

Any patentable and/or copyrightable result arising out of this Agreement, as well as all information, specifications, processes, data and findings, shall be made available to the City, in perpetuity, for public use.

No reports, other documents, articles or devices produced in whole or in part under this Agreement shall be the subject of any application for patent or copyright by or on behalf of the Contractor (or its employees or sub-contractors, (if any) without the prior written consent of the City Manager, which consent, if given at all, shall be at the Manager's sole and absolute discretion.

**11. No Assignment/Transfer.**

Contractor shall not subcontract, assign, or transfer any work and/or services under this Agreement.

**12. Liability for Sub-contractors.**

Contractor shall be liable for its work and/or services, responsibilities and liabilities under this Agreement and the services, responsibilities and liabilities of any sub-contractors (if any), and any other person or entity acting under the direction or control of Contractor (if any). When the term "Contractor" is used in this Agreement, it shall be deemed to include any sub-contractors (if any) and/or any other person or entity acting under the direction or control of Contractor (if any). All sub-contractors (if any) must be approved in writing by the City Manager prior to their engagement by Contractor, which approval, if granted at all, shall be at the City Manager's sole and absolute discretion.

**13. Independent Contractor/No Joint Venture.**

**THIS AGREEMENT SHALL NOT CONSTITUTE OR MAKE THE PARTIES A PARTNERSHIP OR JOINT VENTURE. FOR THE PURPOSES OF THIS AGREEMENT, THE CONTRACTOR SHALL BE DEEMED TO BE AN INDEPENDENT CONTRACTOR, AND NOT AN AGENT OR EMPLOYEE OF THE CITY, AND SHALL NOT ATTAIN ANY RIGHTS OR BENEFITS UNDER THE CIVIL SERVICE OR PENSION ORDINANCE OF THE CITY, OR ANY RIGHT GENERALLY AFFORDED CLASSIFIED OR UNCLASSIFIED EMPLOYEES INCLUDING ANNUAL AND SICK DAY ACCRUAL. FURTHER, THE CONTRACTOR SHALL NOT BE DEEMED ENTITLED TO FLORIDA WORKER'S COMPENSATION BENEFITS AS AN EMPLOYEE OF THE CITY OR ACCUMULATION OF SICK OR ANNUAL LEAVE.**

**14. Waiver of Breach.**

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A party's waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**15. Severance.**

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City elects to terminate this Agreement.

**16. Joint Preparation.**

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

**17. Entire Agreement.**

This writing and any exhibits and/or attachments incorporated (and/or otherwise referenced for incorporation herein) embody the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superceded hereby.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by the respective officials thereunto duly authorized, this date and year first above written.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

FOR CONTRACTOR:

[INSERT CONTRACTOR NAME]

WITNESS:

By: \_\_\_\_\_  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name / Title

Approved:

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Department Director

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# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: October 29, 2009

SUBJECT: **Status of a land easement purchase agreement with the Miami Beach Housing Authority for the proposed West Avenue Bridge.**

### **Background**

In 1999, the City Commission approved the Municipal Mobility Plan (MMP). The West Avenue Bridge Project (the Project) was developed from the MMP Project #30, which envisioned corridor improvements to the intersection of Dade Boulevard at 17<sup>th</sup> Street/Bay Road to be combined with a connection between Dade Boulevard and West Avenue through the construction of a new bridge. The MMP suggested that, this crossing could serve to relieve congestion at nearby intersections. Given the passage of time, and recent experience with the 23<sup>rd</sup> Street bridge, before proceeding with the expense of design for the West Avenue Bridge, the Administration would like to determine that this project still enjoys Community and City Commission support.

The implementation of the project requires that the City acquire right-of-way, either via easement or fee, through a parcel presently owned by the Housing Authority of the City of Miami Beach (HACOMB). Current funding for the West Avenue Bridge consists primarily of federal funds, the use of which requires an environmental impact study (EIS) of the project. The estimated cost of the project including land acquisition and the EIS, is approximately \$6.5-7 million.

At the June 25, 2008 City Commission meeting, the City Commission agreed to refer item C4E "Discussion Regarding the Proposed West Avenue Bridge Project" to the Finance and Citywide Projects Committee (FCWPC) for further review. The FCWPC discussed the project at its meeting of July 10, 2008, and directed the Administration to try to negotiate the purchase of the land needed, as an easement, and offer \$2.5 million as payment.

### **Appraisal**

As part of the preparation to negotiate the purchase of the easement, the Administration engaged Quinlivan Appraisal to estimate the market value for a partial acquisition via permanent easements of the subject property as of December 21, 2008. For the appraisal, the property was divided into three parcels; Parcels A, B, and C. The appraiser was requested to value permanent surface easements across Parcels A and B. Based on the inspection of the property and the investigation and analyses undertaken, the appraiser formed the opinion that, as of December 21, 2008, the property had market value of \$6,100,000 (full site fee simple), and of \$1,635,000 for a permanent easement for Parcels A and B.

For over two years, the City and the HACOMB have been negotiating the purchase of either all, or a portion, of the triangular property located on 17<sup>th</sup> Street. The City has offered to pay the appraised value of the easement, which is approximately \$1.635 million. An easement was chosen (rather than fee) because it allows the Floor Area Ratio (FAR) of the entire parcel to be utilized on that portion of the property that is not subject to the easement.

**Potential Site Development**

On November 10, 2008, the Administration prepared a preliminary site analysis to determine the impact of the proposed easement on the development rights of the property, and to determine if, the buildable area allowable pursuant to the Floor Area Ratio (FAR) of the full site could be constructed on the remaining parcel. This analysis was revised on January 6, 2009, and while this analysis is preliminary, it indicated that Parcel C could be developed with approximately 55,664 square feet, including the required parking. This would represent 94% of the property's total buildable area of 59,025 square feet (at an FAR of 1.5).

Subsequently, the Administration met with representatives of the HACOMB and their architect to further discuss the development options regarding Parcel C, in the event Parcels A and B were granted to the City through a permanent easement. A subsequent meeting was held to discuss the draft layouts prepared by the architect. This draft indicated that a five-story, 55,910 square foot project with 43 residential units could be constructed on parcel C, however, only 48 parking spaces could be provided within this scenario.

On March 27, 2009, the Administration attended a development workshop of the HACOMB Board to discuss their affordable housing projects, including the subject site. The Administration presented the background of the City's position on the proposal.

On April 23, 2009, the Administration received a letter from the HACOMB, stating that on April 14, 2009, the Board of Commissioners discussed the proposed easement and determined that the proposal was not in the best interest of the HACOMB. The Board further directed that the sale of the property be taken off the market, and that HACOMB staff prepare an affordable housing development for the property. At the June 25, 2009 Finance Committee meeting, Housing Authority staff informed the Committee that while the letter submitted to the City indicated that the HACOMB would proceed with development of the site, the HACOMB Board desired a written offer from the City. The Committee directed the Administration to submit a written offer for the easement in the amount of \$1.635 million. Said written offer was submitted to the HACOMB on June 30, 2009.

On September 8, 2009, the HACOMB Board met to consider the offer of June 30, for the purchase of the easement. The HACOMB Board voted to reject the offer and directed the Housing Authority Administration to continue with plans to develop the entire property, as described in the attached letter.

**Conclusion**

Direction from the Committee on whether to continue to pursue the bridge project is desired. Other options for acquiring the necessary portion of this property need to be considered if the City intends to construct the West Avenue Bridge.

JMG/TM/kc

Attachment

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THE HOUSING AUTHORITY  
OF THE  
CITY OF MIAMI BEACH



BOARD OF COMMISSIONERS

MILLI MEMBIELA  
CHAIRPERSON  
YAMILE JIMENEZ-SOTO  
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VICE CHAIRPERSON

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MIAMI BEACH, FL 33139-6742  
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MICHAEL BAND  
COMMISSIONER  
ADA LLERANDI  
COMMISSIONER  
MIGUELL DEL CAMPILLO  
EXECUTIVE DIRECTOR

September 25, 2009

Jorge Gonzalez, City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

Re: 1231-1251 17<sup>th</sup> Street, Miami Beach

Dear Mr. Gonzalez:

On September 8, 2009, the Board of Commissioners of the Housing Authority of the City of Miami Beach (HACMB) met to consider the offer of June 30, 2009 from the City of Miami Beach to purchase an easement through a portion of the above referenced property. The Board of Commissioners voted to reject the offer. During the meeting, they also directed the Administration to continue with plans to develop the entire property.

The HACMB looks forward to working with the CMB on its efforts to provide additional affordable housing to the community.

Sincerely,

Miguell Del Campillo  
Executive Director

cc: Tim Hemstreet, Assistant City Manager, CMB  
Kevin Crowder, Director, Economic Development, CMB ✓  
Jorge Gomez, Director, Planning and Zoning, CMB  
Fred Beckmann, Director, Public Works, CMB  
Raul Aguilar, Assistant City Attorney, CMB  
Eve Boutsis, General Counsel, HACMB

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# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: October 29, 2009

SUBJECT: **REVIEW AND DISCUSSION OF THE AGREEMENT FOR SHARED CAR SERVICE WITH THE HERTZ CORP – UPDATE**

On September 10, 2008, the Mayor and City Commission approved the issuance of Request for Proposals (RFP) No. 42-07/08, for a concession agreement for a shared-car program for residents and visitors of the City of Miami Beach, (the "RFP"). On December 10, 2008, the Mayor and Commission selected the Hertz Corporation (single respondent) as highest ranked proposer and directed the Administration to negotiate an agreement with Hertz for said service.

As you may recall, the goal of the Miami Beach Shared-Car Service is to combine Transportation Demand Management (TDM) strategies and measures, which aim to reduce automobile travel demand, with support from a menu of alternative and multimodal transportation arrangements. TDM strategies include bicycling, walking, electronic substitute for travel such as telecommuting, and a variety of shared and public transportation strategies.

The Shared-Car Program may be a component in the City's overall effort to promote multimodal transportation options, which will help to facilitate mobility throughout the City. The shared-car model is a membership based program which operates with a distributed fleet of private motor vehicles parked at varying reserved locations, initially at our municipal parking garages and if successful at other locations throughout the City. Shared-Cars are made available to members primarily for hourly or other short term use through a self-service, fully automated system not requiring a separate contract for each use. The operation generally is to take pods of cars and place them at the City's six (6) parking garages so the user can walk from their home, condominium, or business to get the car, use it and bring it back.

On June 25, 2009, the Finance Committee directed the Administration to: (1) further negotiate the financial return to the City which at the time was \$107,825 over a five year term and (2) Hertz was directed to pursue potential shared car locations at privately owned and/or operated parking garages in the City.

Initially, Hertz proposed that the parking spaces contemplated for Shared Car use in the City's garages be placed on the ground level in high traffic areas. The City's position is that these are the most convenient parking spaces and highest utilized. Hertz has since agreed to utilize the parking spaces at the rooftop or one level below the rooftop for the Shared Car Program at all City garages. The loss of parking revenue from parking spaces that are lower

in demand and/or utilization is comparable to the revenue generated by our monthly parking rates of \$70. Therefore, the baseline for Hertz' financial return to the City is based on the monthly parking rate of \$75 per space and Hertz will pay to the City an average annual commission of 0.45% over the five year term (0% in Year One; 0% in Year Two; 0.5% in Year Three; 0.75% in Year Four; and 1% in Year Five).

The following is estimated to be the financial return to the City utilizing Hertz' projections:

	2009	2010	2011	2012	2013	Total
<b>Connect by Hertz Revenue</b>	\$36,303	\$415,822	\$741,949	\$1,045,398	\$1,392,000	\$3,630,472
<b>Commission %</b>	0%*	0%	0.5%	0.75%	1%	
<b>Commission</b>	\$0*	\$0	\$3,709	\$7,840	\$13,920	\$25,469
<b>Space Rental (Monthly Rate)</b>	\$0*	\$14,700**	\$31,500**	\$45,000**	\$56,700**	\$147,900**
<b>Total to CMB</b>	\$0*	\$14,700	\$35,209	\$52,840	\$70,620	\$173,369
<b>No. of Spaces</b>	20	23	35	50	63	
<b>Rev p/space</b>	\$0	\$53.26	\$83.83	\$88.06	\$93.41	\$63.71***

Notes:

\*No payment to the City in first six months of operations

\*\*\$75 per space after the initial six months

\*\*\*Includes \$0 in 2009

The City has expected some level of subsidy may be necessary to support the Shared Car Program. The newly negotiated terms and financial return to the City are more in line with the expected subsidy. The average revenue per space equates to \$63.71, annually. Based on the City's monthly parking rate of \$70, this equates to a 9% subsidy by the City. Excluding Year One of the program, where the City receives no revenue, the average revenue per space is projected at \$79.48, annually, a 12% increase over the current monthly rate of \$70.

Pursuant to the second directive from the FCPC to have Hertz pursue negotiations with private parking garage owners/operators to provide a Shared Car Program, the Administration provided Hertz with contact information for the private parking garage owners/and/or operators on Miami Beach.

The level of City subsidy is a key point for which the Administration would like direction from the Finance Committee.

The key business terms negotiated with the Hertz Corporation are contained in the appendix A (see attachment).

## **APPENDIX A**

### **SHARED CAR SERVICE – HERTZ CORPORATION**

1. Term: Term shall be for an initial term of five (5) years with one five (5) year option.
2. Concession Locations – The Request for Proposals (RFP) and Agreement allow up to 100 vehicles, initially commencing with 20 vehicles distributed among the City's six (6) parking garages. Additional locations shall come online at surface parking lots and on-street spaces as membership and usage increases.
3. Concessionaire Responsibilities - The Concessionaire shall commence operation of the Car Sharing program within sixty (60) days of the execution of the agreement.
4. Condition - As of the Commencement Date of this Agreement, no less than twenty (20) vehicles will be available pursuant to this Concession Agreement and shall be new (i.e. previously unused except for standard industry testing required to ensure proper operation at conclusion of manufacturing process). The Concessionaire shall provide the following types of vehicles or comparables:
  1. Make & Model
  2. Make & Model
  3. Make & Model
  4. Make & Model
5. Car Sharing Members - The Concessionaire will provide each member accepted into the Car Sharing program with a monthly invoice that includes details of that member's use of Cars. In addition, the Concessionaire will provide the City with monthly reports summarizing the revenue and utilization earned by each Car. This monthly report will also display the aggregate total number of registered Car Sharing members who rented a vehicle from a Concession Location during the month being reported on.
6. Delivery and Replacement of Vehicles - The Concessionaire shall deliver \_\_\_ vehicles to the City's Concession Locations. The Concessionaire shall be responsible for vehicles while in transit to or from the Concession Locations for inclusion in or removal from Concessionaire's fleet dedicated to the Car Sharing program at the City. The Concessionaire shall replace each vehicle every three (3) years or 36,000 miles, whichever comes first.
7. Web Access - The Concessionaire shall establish a link on the City's webpage to Concessionaire's webpage, which will provide the information needed for eligible participants to join and use the Car Sharing Service.
8. Concessionaire Marketing Responsibilities - The Concessionaire shall provide marketing material for the official launch of the Shared Car Service at the City and ongoing marketing efforts shall include; Public Relations (PR) generating news stories in the local media; Transit advertising; Newspaper ads: local newspapers;

alternative weeklies; Posters; Internet links (e.g. promotional offers through various sources; Brochures; Postcards; and Email messages

9. **City's Marketing Responsibilities:** The City's responsibilities shall include: marketing efforts such as; Press Releases; Newsletters; Marketing to Business; Residential, and Civic Organizations; Advertisements in local newspapers; City news/information television; Direct mail and postcards sent to residents, businesses, and/or civic organizations. The City will integrate the Concessionaire's information into employment, housing, and economic development initiatives, encouraging new residents and businesses to join the Concessionaire's Car Sharing program.
10. **Quality and Cleanliness of Vehicles -** Quality of vehicles offered at City Locations will be comparable to the quality of vehicles provided by privately owned businesses providing like services within the City of Miami Beach. In addition to Concessionaire's general maintenance obligations for the vehicles and the Concession Locations, all vehicles and areas, retrospectively, shall at all times be maintained and cleaned on a regular basis.
11. **Operation Schedule -** Shared Car Service shall be operable during the days and hours of operation set forth at each Concession Location.
12. **Condition of Vehicles -** The condition and quality of Concessionaire's vehicles shall at all times be maintained in a manner that is consistent with the condition and quality of similar Car Sharing locations in first class Concession Locations. Accordingly, Concessionaire shall not only, at a minimum, ensure that all vehicles placed in the Concession Locations are well maintained and in usable condition.
13. **Pricing and Availability of Services -** Prices and fees for the Shared Car Service shall be in accordance with the schedule below. Any subsequent changes proposed by Concessionaire to said prices must be submitted in writing to the City Manager or his designee, and prior written approval must be secured from the City before implementing any changes to same.

		Week			Week End	
		Week Day	Day Daily			Weekend
Car Class	Hourly Rate	Rate	Car Class	Hourly Rate	Daily Rate	
<b>Connect</b>						
	"Personal"	\$11.00	\$62.00	"Personal"	\$11.00	\$77.00
	"Social"	\$12.00	\$68.00	"Social"	\$12.00	\$85.00
	"Jet Set"	\$13.00	\$70.00	"Jet Set"	\$13.00	\$93.00

14. **Signage -** Concessionaire shall provide, at its sole cost and expense, any required signs at its concessions. All advertising, signage and postings shall be approved, in writing, by the City in its proprietary capacity, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by Concessionaire within each Concession Location shall be subject to the prior approval of the City as to size, shape and placement of same.
15. **Removal of Concession Locations. -** Concessionaire acknowledges that there may be circumstances under which the City shall require the removal of a Concession Location. As such, Concessionaire agrees that all its vehicles used at the

Concession Location will be removed upon fifteen (15) days written notice to Concessionaire and said removal shall be done in compliance with the applicable section(s) as set forth herein; and without liability to the City.

16. Hurricane Evacuation Plan - Concessionaire agrees that upon the issuance of a Hurricane Warning by the Miami-Dade County Office of Emergency Management, it shall ensure that all vehicles and any and all other items used in the concession operations shall be secured.
17. City Parking Spaced for Shared Car Use - Secure up to one hundred (100) dedicated parking spaces for vehicles allocated to the Shared Car Service at the Concession Locations. The location of said parking spaces at a Concession Location shall be in the sole and absolute discretion of the City
18. Exclusive Shared Car Service – The City shall not enter into a business agreement with any other company during the term of this agreement to provide a Shared Car Service to the City.
19. Concession Fees (Financial Return to the City) - The Concessionaire shall pay to the City the following fee schedule:

Monthly Parking Rate:

\$75 per parking space (fee is waived for the initial six months of operation for 20 parking spaces).

Commission paid by Hertz to the City:

Year One:	0% of Gross Revenues
Year Two:	0% of Gross Revenues
Year Three:	0.50% of Gross Revenues
Year Four:	0.75% of Gross Revenues
Year Five:	1% of Gross Revenues

“Gross Revenues” are defined as funds received by Concessionaire for rental time and additional mileage charges, if any, for rentals from the Shared Car Service originating at a Concession Location, and shall not include any other charges, taxes, costs, fees, etc.

20. Maintenance/Examination of Records - Concessionaire shall maintain current, accurate, and complete financial records on an accrual basis of accounting related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit, but not photocopying, by the City Manager or his designee upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of gross receipts, expenses, and profit and loss statements, and such records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles. A monthly report of vehicle utilization, in a format to be agreed upon by the parties, must be submitted to the City, through the Parking Director, to be received no later than thirty (30) days after the close of each month.

21. **Inspection and Audit** - Concessionaire shall maintain its financial records pertaining to its operations of the Shared Car Service at Concession Locations for a period of three (3) years after the conclusion of the initial term, or (if approved) the last renewal term, and such records shall be open and available to the City Manager or his designee during reasonable business hours, as deemed necessary by the City Manager or his designee, and pursuant to the provisions set forth below. The City Manager or his designee shall be entitled, during normal business hours, to audit Concessionaire's records pertaining to its operation of the Shared Car Service at Concession Locations as often as it deems reasonably necessary throughout the Term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement, regardless of whether such termination results from the natural expiration of the Term or for any other reason. Concessionaire shall submit at the end of the initial term (and, if approved, any renewal term), a certified audited annual statement of Gross Revenue, in a form consistent with generally accepted accounting principles.
22. **Concessionaire's Performance** - It is Concessionaire's intent to stay informed of comments and suggestions by the City regarding Concessionaire's performance under the Agreement. Within thirty (30) days after the end of the initial term (and, if approved, each renewal term), Concessionaire and City may meet to review Concessionaire's performance under the Agreement. At the meeting, Concessionaire and City may discuss quality, operational, maintenance and any other issues regarding Concessionaire's performance under the Agreement.
23. **Utilities** - No utilities other than those currently being provided at Concession Locations (e.g., lighting) will be provided by the City in connection with the operation of the Shared Car Service under this Concession Agreement.
24. **Schedule of Operation** - The Shared Car Service shall be made available to patrons twenty four (24) hours a day, seven days a week, based on the particular hours of operation of each individual Concession Location, events of force majeure permitting. Any change in the days or hours of operation shall require the prior written consent of the City Manager, which consent shall not be unreasonably withheld.
25. **Orderly Operation** - The Concessionaire shall have a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services to properly maintain the vehicles and portion of the Concession Locations allocated to the Shared Car Service. The Concessionaire shall make available upon reasonable notice so as not to interfere with the Shared Car Service all vehicles at Concession Locations for examination during days and hours of operation by the City Manager or his authorized representative.
26. **Security** - The Concessionaire shall be responsible for and provide reasonable security measures which may be required to protect the vehicles at all Concession Locations. Unless resulting from the negligent, willful, or intentional act(s) of the City, its agents, servants or employees, the City shall not have any responsibility for any stolen or damaged goods, facilities, materials and/or other equipment, including but not limited to the vehicles, nor shall City be responsible for any stolen or damaged personal property of Concessionaire's employees, vendors, patrons, guests, invitees, and/or other third parties.

27. Maintenance Vehicles - Concessionaire shall not permit the use of any vehicle, in any way that violates any Municipal, County, State or Federal Laws. Vehicles may only be driven and/or parked in areas designated for such purposes and as provided for by applicable law.

28. Insurance - Concessionaire shall maintain, at its sole cost and expense, the following types of insurance coverage or equivalent self-insurance coverage at all times throughout the term of this Agreement. It is understood and agreed that the following types of insurance coverage or equivalent self-insurance coverage shall not apply to the use of vehicles by members of the Shared Car Service. Such use of vehicles will be covered by insurance as provided in the Terms and Conditions of Concessionaire's car sharing program, Connect by Hertz. This Agreement shall not be construed to modify said Terms and Conditions, which may be modified from time-to-time.

- Comprehensive General Liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. This policy must also contain coverage for premises operations, products and contractual liability.
- Workers Compensation Insurance shall be provided as required under the Laws of the State of Florida.
- Automobile Insurance for any vehicles used for, or associated with concessionaire's operations shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

29. Indemnity - In consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of Concessionaire, and/or its vendors, agents, servants, employees and/or subcontractors and/or sub-concessionaires in the performance of services under this Agreement. In addition, in consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its agents, servants or employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Concessionaire, and/or its vendors, agents, servants, employees and/or subcontractors and/or sub-concessionaires, not included in the paragraph in the Subsection above and for which the City, its agents, servants or employees are alleged to be liable.

30. Penalties and Fees – The following penalties and fees shall apply to users:

- a. Connect Card Reissued - \$20 to issue a Connect card replacement.
- b. Phone Reservation - \$3.50 per call to change or cancel a reservation.
- c. Fuel below ¼ tank - \$25 for returning vehicle with ¼ tank or less at the end of the reservation.

- d. Ignition Key Replacement - \$200 for losing or taking an ignition key. Keys can cost upward of \$200 to replace. If you take or lose the key, be prepared to pay the full cost.
- e. Fuel card replacement - \$50 if a member takes or loses a fuel card.
- f. Garage Pass Replacement - \$50 if a member takes or loses a garage access card.
- g. Car Documents Replacement (e.g., registration, insurance, etc.) - Actual replacement cost plus an administrative fee of \$20.
- h. Late Return - \$50 charge if a member returns a vehicle late.
- i. Processing Fee-Tickets/Violations - \$20 fee will be charged for tickets and violations that have not been resolved on time.
- j. Incorrect Parking - \$45 fee if the vehicle is not parked in its home parking location at the end of the reservation.
- k. Vehicle cleaning - \$45 additional fee can be incurred for cleaning services.
- l. Additional Mileage Fee - 45 cents per mile (after the first 180 miles) – per day fee.
- m. The hourly rate for 18-20 year old drivers unaffiliated with a university or corporate account? - Drivers 18-20 who are not affiliated with a university or corporate account are charged an age differential charge that is currently up to \$7.00 per hour and \$51.00 per day in addition to the hourly rental rate. Please contact our Member Care Center for additional information.

A draft concession agreement is currently being reviewed by both the City Attorney's Office and Hertz legal counsel. As aforementioned, the Administration is seeking direction from the Finance Committee regarding the proposed terms of the Agreement, including the City's annual subsidy of \$75,000 or \$375,000 over the five (5) year term of the agreement. If the subsidy amount is acceptable, the contract can be finalized and presented for City Commission action in July. If this amount, which represents the final and best offer by Hertz is too large, a recommendation to the full City Commission to reject the proposal would be appropriate.

JMG\JGG\SF

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