



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

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

FROM: City Manager Jorge M. Gonzalez

DATE: October 14, 2010

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for October 14, 2010, at 3:30 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

OLD BUSINESS

1. Discussion regarding an amendment to a resolution regarding assignment of a police officer to the Police Athletic League (PAL)

Carlos Noriega – Police Chief

2. Request for approval to issue a Request for Proposals (RFP) to provide parking cashiers/attendants and supervisors for the City's parking garages.
 - a) criteria for evaluations
 - b) add a labor peace clause

Saul Frances – Parking Director

NEW BUSINESS

3. Discussion regarding a proposed lease agreement with Miami Police Federal Credit Union, for use of 196 square feet of office space within the Miami Beach Police Department building.

Anna Parekh – Director of Real Estate Housing and Community Development

4. Discussion of a request from ECOMB, Inc., for an amendment to its Lease

Anna Parekh – Director of Real Estate Housing and Community Development

5. Discussion of a request from Miami Beach Film Society, Inc., for an amendment to its lease agreement

Anna Parekh – Director of Real Estate Housing and Community Development

6. Discussion regarding the Miami Beach Festival of the Arts and potentially contracting with a professional art festival company to produce the Festival for the City

Max Sklar – Cultural Arts & Tourism Development Director

7. Discussion regarding parity for future sidewalk café fee increases

Fred Beckmann – Public Works Director

8. Discussion regarding recent billing of Parking Impact Fees and the possibility of a moratorium due to present economic market conditions

Richard Lorber – Acting Planning Director
Jorge Gomez – Assistant City Manager

9. Discussion of Lincoln Road/Washington Collins Median

Charlie Carreno – CIP Director

Finance and Citywide Projects Committee Meetings for 2010:

November 3, 2010

December 16, 2010

JMG/PDW/rs/th

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact 305-604-2489 (voice), 305-673-7524 (fax) or 305-673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Cc. Mayor and Members of the City Commission
Management Team

**I
T
E
M**

Discussion Item

**O
N
E**

**I
T
E
M**

**T
W
O**



MIAMI BEACH

OFFICE OF THE CITY MANAGER

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager *JMG*

DATE: September 30, 2010

SUBJECT: **REQUEST FOR APPROVAL TO ISSUE A REQUEST FOR PROPOSALS (RFP) TO PROVIDE PARKING CASHIERS/ATTENDANTS AND SUPERVISORS FOR THE CITY'S PARKING GARAGES - REVISED.**

On June 9, 2010, the Mayor and Commission referred this item to the City's Finance and Citywide Projects Committee (FCPC) for discussion. On July 8, 2010, the FCPC discussed the item and directed the Administration to meet with Commissioner Weithorn to discuss various questions related to the RFP's scope of services. The following represents a revised Scope of Services which resulted from the meeting between Commissioner Weithorn and staff; however, the following issues require further direction from the FCPC:

- Evaluation Criteria: Weight
 - Experience and Qualifications of the Proposer 10 pts
 - Experience and Qualifications of Management Team 10 pts
 - Annual Contract Cost for Guaranteed Hours and Hourly Billing Rates for Additional Hours 60 pts
 - Methodology and Approach 10 pts
 - Past Performance (due diligence) 10 pts
 - 100 pts**
- Living Wage related benefits, including health insurance and PTO (Paid Time Off).
- SEIU Peace Agreement

SCOPE OF SERVICES

The City of Miami Beach is actively seeking proposals from qualified parking companies/operators to supply trained parking cashiers, attendants, and supervisors for the City of Miami Beach Parking System, in accordance with the terms, conditions, and specifications contained in this Request for Proposals. The Proposer(s) should base their Price Proposal Form on the following guaranteed minimum number of hours annually:

Cashiers/Attendants:	64,000	80%
Supervisors:	16,000	20%
Total:	80,000	100%

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact 305-604-2489 (voice) or 305-673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

A. INTENT

It is the intent of the City to enter into a three (3) year Agreement with the successful Proposer to provide the necessary labor pool of cashiers, attendants, and supervisors for the City operated cashiered/attended parking facilities, with an option for an additional two (2) one-year renewal options, at the sole discretion of the City.

B. RESPONSIBILITY OF THE FIRM

The successful Proposer shall be responsible for the following:

1. To provide trained and uniformed parking cashiers, attendants, and supervisors at each of the designated parking facilities, Monday through Sunday, including holidays and during Special Events. The parking facilities are located at:
 - A. 7th Street & Collins Avenue Garage
 - B. 17th Street Garage
 - C. 13th Street Garage
 - D. 42nd Street Garage
 - E. 12th Street & Drexel Garage
 - F. City Hall Garage
 - G. "5th and Alton" Garage
 - H. Pennsylvania Avenue Garage
 - I. Preferred Parking Surface Lot (Convention Center Lot).
 - J. Anchor Garage - 16th Street and Collins Avenue.
 - K. Multiple municipal surface parking lots, including during special events and/or seasonally.

2. The parking cashiers, attendants, and supervisors must:
 - A. Maintain a neat, well-groomed appearance at all times.
 - B. Collect parking fees, validate tickets, and perform related duties.
 - C. Provide financial and ticket reports at the conclusion of each shift to the satisfaction of the City.
 - D. Submit monies representative of the shift's activity to the shift/facility supervisor, and assist in the recordation and deposit of the daily shift cash receipts.
 - E. Maintain a clean work area including the adjacent booth area and access control equipment. Each shift shall be responsible to maintain the fee computer as to cleanliness, dust, and appropriate use.

 - F. Provide directions and general information to the public.
 - G. Maintain a friendly, courteous and service-oriented attitude at all times.
 - H. Consistently demonstrate the ability to communicate effectively in the English language with the general public, supervisors, and City management.
 - I. All cashiers, attendants, and supervisors shall be qualified to complete all required cash and ticket reports. Such qualification shall be to ensure the accurate and complete recordation of such reports. Ability to add, subtract, multiply, and divide in a consistent and accurate manner is essential.
 - J. All cashiers, attendants, and supervisors must be trained in CPR and emergency procedures.
 - K. All cashiers, attendants, and supervisor are required to know City parking policies pertinent to:
 1. Monthly Parking Program
 2. City Decals and Permit Parkers
 3. Special Event Parking

4. iPark
 5. Hotel Hang-Tag Program; and
 6. All programs implemented by the City
- L. All cashiers, attendants, and supervisors must be familiar with the location, hours of operation, and rates of all City parking facilities.
- M. All cashiers, attendants, and supervisors will be trained in operating the City's gated parking revenue control equipment.
- N. Perform all other related duties as assigned by the City.
3. The successful Proposer shall provide and require its employees to wear a uniform:
- Sport/polo shirt or collared shirt (no t-shirts), dark pants, shorts or skirt. The Firm's employees will be issued official City of Miami Beach photo identifications and these shall be required to be worn daily as part of the employee's official uniform. The successful Proposer must include its name on the badge or uniform. The City reserves the right for final approval of the uniform selected by the Firm.
4. The Successful Proposer will provide one (1) trained working supervisor per location as requested on each shift. The responsibilities of the supervisors will be:
- a. Attendance verification: Verify at the beginning of each shift that all booths are staffed. If personnel are absent or call in sick, it is the responsibility of the supervisor to replace the parking cashier immediately. The supervisor shall issue a bank for each cashier/attendant per shift.
 - b. Scheduling of shift locations and replacements for daily and weekly schedule and scheduling for vacations and emergencies.
 - c. The shift supervisors shall be an employee of the successful Proposer and shall serve as the City contact for any problems or questions during each shift.
 - d. Provide required assistance to parking cashiers and attendants during shift closeout procedures. Prepare all deposits for shift cash receipts as required by the City.
 - e. Perform the duties of a parking cashier and/or attendant.
 - f. Perform related duties as requested by City staff.
5. If applicable, the successful Proposer shall make best efforts to transition employees of the existing service provider who choose to migrate to the selected Firm.
6. All contract employees must report any facility maintenance issues, including but not limited to graffiti; light bulb replacement; restriping, signage, etc. that needs to be addressed.
7. The successful Proposer shall schedule monthly performance meetings with City management to review performance issues.
8. The successful Proposer shall notify the City of a 24 hour contact via telephone and/or pager. A minimum of two contact names must remain on file with the City at all times.
9. The successful Proposer shall respond to any complaint received from the general public or the City of Miami Beach, in writing, within 24 hours of receipt of complaint.

10. All training is the responsibility of the Firm. The successful Proposer will provide written rules of conduct for its personnel. All rules of conduct for the successful Proposer must be approved by the City's Parking Director.
11. The successful Proposer must provide a Facilities Operation Manual to each employee and a permanent manual containing standard operating procedures shall be stored in each cashier booth and central facility office.
12. All employees of the successful Proposer shall be bonded and insured.
13. Smoking and/or eating on the job or in a parking facility is strictly prohibited.
14. The successful Proposer must supply a \$100.00 bank for each shift at each facility. The \$100.00 bank shall consist of sufficient variety of currency and/or coin to properly provide change. The City reserves the right to alter the composition of the \$100 bank; however, typically, eighty one-dollar bills and two rolls of quarters will be required.
15. The successful Proposer shall be responsible for all pay-on-foot stations, including but not limited to: providing all funds necessary for replenishing all cash for change bins (**two bins per pay on foot station and \$5,000.00 per bin is required**); balance all transactions at all pay-on-foot stations at applicable facilities; and perform all other related duties pertaining to pay-on-foot stations as assigned by the City. The successful proposer must have sufficient cash on hand to ensure that at no time any pay-on-foot stations are depleted of change (smaller bill denominations). **The successful Proposer must make best efforts to keep all pay on foot stations operational at all times, including but not limited to minor repairs such as misread tickets; bill jams; receipt rolls, etc.). The City shall be responsible for all preventive maintenance; regular maintenance; and repairs.**
16. The successful Proposer shall maintain a trained and courteous workforce.
17. The successful Proposer shall ensure that each cashier booth and facility office is equipped with the following:
 - A. City of Miami Beach Parking Guide
 - B. Chamber of Commerce Visitor Guide
 - C. Any other materials provided by the City.
18. The successful Proposer shall be responsible for any cash shortages or missing tickets. Missing tickets shall be calculated at the maximum daily parking rate. All shortages shall be delivered to the City of Miami Beach Parking Department c/o the Finance Manager within 72 hours of notice of the shortage by the City to the Firm.
19. The successful Proposer shall provide continuous and on-going procedural and equipment training to its employees assigned to the City of Miami Beach. The successful Proposer shall provide a roster of all trained employees to the City. Employees receiving training at the City's parking facilities must be scheduled to work at City parking facilities. Under no circumstances is the successful Proposer to train employees at City parking facilities and relocate the employee to another contract or client for any period of time without the expressed written consent of the City.
20. The successful Proposer shall provide sufficient vehicles, as determined by the City, for their employees to ensure the effective and efficient transport of cashiers, attendants, and supervisors to assigned locations throughout all shifts.

21. The successful Proposer shall perform a background check, firm/type of background check to be approved by the City, on all of its employees, as part of their employment process. The employee must agree to submit to the successful completion of these screening processes as a condition of their employment within the first thirty (30) days of said employment. The successful Proposer may also be required to conduct other screening and/or investigative measures, at the request of the City.

22. The successful Proposer **must** provide the following services outlined herein. The cost of said services must be identified and included as a component of the Total "Cost Plus" Annual Rate for up to 80,000 Hours found on the Price Proposal Form contained herein. Additionally, the cost of each service should be itemized in the space provided below. **The City reserves the right to select any service or combination thereof, including all or none; and deduct the cost of those services not selected.**

a. Project Management - The successful Proposer shall provide a full-time on-site Project Manager with experience handling the type of services requested by the City who will have full authority to act on behalf of the Firm. The Project Manager shall be scheduled at the sole and absolute discretion of the City and shall be available to respond to requests from the City, on an as needed basis. \$ _____

b. Human Resources Coordinator - The successful proposer shall provide an HRC to address and enhance the Firm's recruitment, retention, and training efforts. \$ _____

c. Motorist Assistance Program (MAP) - The successful proposer shall provide a motorist assistance program which includes but is not limited to flat tire assistance/repair, lock-out; fuel; battery jump start, and/or towing of the vehicle to a service facility. \$ _____

d. Cardio Pulmonary Resuscitation (CPR) Certification - The successful proposer shall have all contract personnel CPR certified. \$ _____

e. Training - The successful proposer shall provide training, including but is not limited to: Customer Service, Gated Revenue Control Equipment, and any other training the City deems relevant and appropriate in its sole discretion. \$ _____

f. Vehicles - The successful proposer must provide two (2) late model passenger vans or comparable vehicles to transport contract employees and/or equipment. \$ _____

g. Compensation for Contract Employees - The successful proposer must provide an Employee Recognition Program; Monthly Birthday Event (for all contract employees with a birthday in each respective month). \$ _____

- h. Mystery Shopper Reporting - The successful proposer shall contract an independent third party to perform a minimum of ten (10) "Shopper" reports per month, system-wide. A sample "Shopper" survey must be included in the Firm's proposal. Shopper reports must specify that these are actual customers and must be documented visits to one of the facilities where labor is provided. Telephone calls for information or visits/interaction with city staff is not permitted. \$ _____
- i. Uniforms: At a minimum, the successful proposer must provide the following set of uniforms for each employee: five (5) collared shirts or polos (or any combination thereof totaling five) and five (5) pants or shorts (or any combination thereof totaling five). All uniforms shall be approved in the sole and absolute discretion of the City. \$ _____
- j. The successful proposer will provide umbrellas for all facilities scheduled with contract employees and/or requested by the City. Any replacement umbrellas, due to wear and tear, needed after the initial inventory has been installed, must also be provided by the successful proposer. The type and design of all umbrellas shall be approved in the sole and absolute discretion of the City. \$ _____

C. RESPONSIBILITY OF THE CITY

The City shall be responsible for the following:

1. The City of Miami Beach will provide a clean and safe workplace.
2. The City has the right to refuse any personnel supplied by the Firm. Any person employed by the successful Proposer whom the Parking Director or his/her designee may deem temporarily or permanently incompetent or unfit to perform the work, shall be removed promptly from the job and such person shall not again be placed with the City.
3. The City shall make every effort to notify the successful Proposer of any special events and their specific parking requirements at least one week (seven calendar days) prior to commencement of the event.
4. The City shall provide the successful Proposer with a calendar of events at the City of Miami Beach Convention Center, The Fillmore at the Miami Beach Jackie Gleason, and Lincoln Theatre. The City shall also provide the successful Proposer with a copy of the City of Miami Beach annual calendar.
5. The City shall provide a comprehensive list of events requiring the staffing of surface parking lots.
6. The City shall continuously work with the successful Proposer to assure that residents and visitors are served in an efficient, professional, and courteous manner.
7. The City reserves the right to require the successful Proposer to conduct investigative measures, including, audits, and/or surveillance to ensure the integrity of the system and their employees.
8. The City will at no time be responsible for any and all overtime payroll expense incurred by the Firm.
9. The City shall be responsible for all preventive maintenance; regular maintenance; and repairs of all pay on foot stations.

D. PERFORMANCE STANDARDS

1. Uniforms/Name-tags:
All employees must be in full uniform with their respective name-tag at the start of their shift. Failure to do so may result in a request to replace said employee with one in full uniform/name-tag.
2. Customer Service/Conduct:
All employees must comport themselves in a respectful and courteous manner when addressing the public/customers. Conduct unbecoming shall include: rudeness, belligerence, hostility, quarrelsome, antagonistic, aggression, sarcasm, contempt, and mocking. All employees shall further refrain from smoking, eating, and/or drinking while on-duty. Complaints pertaining to customer service, including but not limited to the behavior outlined above shall be immediately addressed by the Firm.

The City reserves the right at its sole discretion to determine if the employee is unfit or incompetent to perform the duties and may require the immediate removal of the employee and replacement with another within one (1) hour of said request.

3. Most Favored Customer:
The successful Proposer warrants and represents that the prices, warranties, benefits and terms set forth in this Agreement are at least equal to or more favorable to the City than the prices, warranties, benefits and terms now charged or offered by the Firm, or that may be charged or offered during the term of this Agreement for the same or substantially similar services as defined in this Agreement.

If at a time during the term of this Agreement, the successful Proposer enters into an agreement on a basis that provides prices, warranties, benefits and terms more favorable than those provided the City hereunder, then the successful Proposer shall within thirty (30) calendar days thereafter notify the City of such fact, and regardless of whether such notice is sent by the successful Proposer or received by the successful Proposer or received by the City, this contract shall be deemed to be automatically amended, effective retroactively to the effective date of the more favorable agreement, to provide the same prices, warranties, benefits and terms to the City; provided that the City shall have the right and option to decline to accept any such change, in which event such amendment shall be deemed null and void.

If the successful Proposer is of the opinion that an apparently more favorable price, warranty, benefit or term of this Agreement is not in fact more favored treatment, the successful Proposer will promptly notify the City in writing, setting forth in detail the reasons that the successful Proposer believes said apparently more favored treatment is not in fact more favored treatment.

The City after due consideration of such written explanation may decline to accept such explanation and thereupon this Agreement shall be deemed to be automatically amended effective retroactively to the effective date of the more favorable agreement, provide the same prices, warranties, benefits and terms to the City. The provisions of this Article shall survive the closing and termination of this Agreement.

CRITERIA FOR EVALUATION

The Evaluation Committee shall base its recommendations on the following factors:

<u>Evaluation Criteria:</u>	<u>Weight</u>
Experience and Qualifications of the Proposer.....	10 pts
Experience and Qualifications of Management Team.....	10 pts
Annual Contract Cost for Guaranteed Hours and Hourly Billing Rates for Additional Hours.....	60 pts
Methodology and Approach.....	10 pts
Past Performance (based on surveys and the Administration’s due diligence).....	10 pts
Total:	100 pts

PRICE PROPOSAL FORM

The Proposer(s) should base their Price Proposal Form on the following guaranteed minimum number of hours annually:

Cashiers/Attendants:	64,000	80%
Supervisors:	16,000	20%
Total:	80,000	100%

Employee hourly rates (hourly rate paid to the employee) and related payroll taxes/costs shall be a pass through cost to the City. The following are the fixed costs which shall be considered a pass through to the City:

- Hourly rate paid to employees must be compliant with the City’s Living Wage Ordinance Requirement (LWOR). The hourly rate for Cashiers/Attendants must be in Year One: either \$10.16 which includes benefits or \$11.41 which does not include benefits (\$10.16 + \$1.25); in Year Two either: \$10.72 which includes benefits or \$12.17 (\$10.72 + \$1.45) which does not include benefits; and in Year 3 either: \$11.28 which includes benefits or \$12.92 which does not include benefits or as amended. The hourly rate for Supervisors must be at least living wage.

Any and all other costs, including unemployment insurance; workman’s compensation; operating costs; employee benefits; overhead; and profits shall be considered Additional Costs and must be itemized in the Price Proposal Form. **If there is additional space needed for itemization you must use additional sheets and attach it to the Price Proposal Form.** No additions, deletions, or revisions to your proposal, including the Price Proposal Form shall be permitted after the submission deadline. The Additional Costs shall be invoiced in biweekly periods (26 biweekly periods annually) based on the portion of the guaranteed number of annual hours (80,000) invoiced.

Each Proposer shall be evaluated on their Total Contract Cost for Guaranteed Hours and Hourly Billing Rates for Additional Cashier/Attendant and Supervisor Hours; therefore, each Proposer must fully complete the Price Proposal Form. The Total Annual Contract Cost for Guaranteed Hours must contain any and all costs to the City is comprised of the following categories:

The following categories which have an assigned fixed value(s) may not be altered by the Proposer. The Proposer may only submit values for the categories that are blank in Sections “B. Supervisors”; “C. Additional Costs”; D. Hourly Billing Rate for Additional Cashiers/Attendants hours”; and “E. Hourly Billing Rate for Additional Supervisor Hours”.

Cashiers/Attendants (Year 1):

The successful proposer shall pay the City's Living Wage Hourly Rate to their employees. The City's Living Wage Hourly Rate and their related payroll taxes (fixed costs) have been identified above.

		w/Benefits	w/o Benefits	ANNUAL COST
A. Cashier/Attendants:				
1.	Hourly Rate Paid to Employee (Year 1):	\$10.16	\$11.41	
2.	Minimum Health Benefits to Employee:	\$ 1.25	N/A	
3.	Itemized Employee Payroll Taxes/Cost			
	a. FICA* 6.20% Cost per hour:	\$ 0.71	\$ 0.71	
	b. MICA* 1.45% Cost per hour:	\$ <u>0.17</u>	\$ <u>0.17</u>	
4.	Cashier/Attendant Employee Hourly Rate (No. A1 + A2 + A3):	\$12.29	\$12.29	

Cashier/Attd Hours	x	Hourly Rate	=	Cashier/Attd Annual Cost
64,000	x	\$12.29	=	\$786,560

\$ _____ (A)

B. Supervisors:

1. Hourly Rate Paid to Employee (must be at least the living wage as above): (1) \$ _____
2. Itemized Employee Payroll Taxes/Cost
 - a. FICA* 6.20% Cost per hour: (2a) \$ _____
 - b. MICA* 1.45% Cost per hour: (2b) \$ _____
3. Employee Hourly Rate (No. B1 + B2 = B3): (3) \$ _____

Supervisor Hours	x	Hourly Rate	=	Cashier/Attd Annual Cost
16,000	x	\$ _____ (3)=	=	\$ _____ (B)

\$ _____ (B)

C. Additional Costs:

	Cost	Rate (%)
1. Unemployment Insurance (1)	\$ _____	
2. Workman's Compensation (2)	\$ _____	
3. Operating Expenses (3a-c)	\$ _____	
(a) _____	\$ _____	
(b) _____	\$ _____	
(c) _____	\$ _____	
4. Overhead (4a-c)	\$ _____	
(a) _____	\$ _____	
(b) _____	\$ _____	
(c) _____	\$ _____	
5. Employee Benefits (**Note Below) (5a-c)	\$ _____	
(a) _____	\$ _____	
(b) _____	\$ _____	
(c) _____	\$ _____	
6. Liability Insurance (6a-c)	\$ _____	
(a) Comp Gen Liability	\$ _____	
(b) Automobile Liability	\$ _____	
(c) Theft of Money/Surety	\$ _____	
7. Profit: (7)	\$ _____	

Annual Total of Additional Costs \$ _____ (C)

Price Proposal for Annual Contract Cost for Guaranteed Hours (80,000) \$ _____

TOTAL A+B+C

ADDITIONAL HOURS

D. Hourly Billing Rate for additional Cashier/Attendant Hours over 64,000:

1st Additional 6,000 hours (70,000 total)	\$ _____
2nd Additional 6,000 hours (76,000 total)	\$ _____
3rd Additional 6,000 hours (82,000 total)	\$ _____

E. Hourly Billing Rate for additional Supervisor Hours over 16,000:

1st Additional 2,000 hours (18,000 total) \$ _____
2nd Additional 2,000 hours (20,000 total) \$ _____

(SEE NOTES ON THE FOLLOWING PAGE)

Notes:

1. Any and all other expenses to the City above and beyond the fixed costs identified above, including unemployment insurance (must include percentage (%) rate; workman's compensation (must include percentage (%) rate)); operating expenses; overhead; additional employee benefits; and profit, must be identified as Additional Costs that will be invoiced bi-weekly based on the portion of the guaranteed number of annual hours (80,000) invoiced that period. **If there is additional itemization, please add additional lines and sheets as necessary, but do NOT alter the format of the Price Proposal format.** No revisions to your proposal, including the Price Proposal Form shall be permitted after the submission deadline.
2. FICA/MICA is reflected at current rates.
3. In the Employee Benefits Section (C5) of Additional Costs, please include each of the following, if applicable:
 - a) portion of health benefits that exceeds \$1.25 per hour for Cashiers/Attendants with benefits, if any (itemize and include costs on a separate line).
 - b) all health benefits for supervisors, if any (itemize and include costs on a separate line).
 - c) other non-health benefits for cashiers/attendants and supervisors, if any (itemize and include costs on a separate line for each).

MINIMUM REQUIREMENT/QUALIFICATION:

- A. The Proposers shall have a record of satisfactory performance in the past three consecutive years providing trained cashiers/attendants and supervisors with experience in self-parking operations at surface parking lots and garages with gated parking revenue control equipment to a public agency and/or private concern.
- B. The Proposers shall be fully licensed in the state of Florida to perform the work described herein.
- C. List the present contracts held and contracts previously held during the past three years, specifically listing any similar contracts held. Identify the firm/organization, type of labor furnished, contact person, address, phone number, length of time contract held and total dollar amount of the contracts listed.
- D. Describe in detail the daily oversight of your attendants/cashiers and supervisors; contract management best practices; how you measure your staff's performance; and how you hold staff (at each and every level) accountable.
- E. Each Proposer is required, before submitting a proposal, to examine carefully the requirements set forth in this document and to be familiar with all the terms and conditions that are contained within this RFP. The Proposer shall submit the following detailed information with the proposal:

1. Describe your approach to the project and your management plan for both regularly attended facilities/garages and special event staffing. Include your staffing strategies, implementation of the contract, training, supervision and continued support throughout the year. Describe your plan in detail for recruiting, training, and retaining cashiers/attendants and supervisors.
2. A brief history of the company, name(s) of owner and principal(s) and number of years in business. Include the location(s) of the offices.
3. The number of employees that are employed by your Firm /Company on a full-time and part-time basis. Describe your active trained work pool that can be immediately deployed.
4. Number of personnel on file for each type of work. Example: Clerical: 58, Manual labor: 37, etc.
5. Complete the price proposal form as provided.

The Administration is seeking further direction from the FCPC regarding the above scope of services and the issuance of the request for proposals for cashiers/attendants and supervisors for the City's Parking System.

C:

Hilda M. Fernandez, Assistant City Manager
Jorge Gomez, Assistant City Manager

**I
T
E
M**

**T
H
R
E
E**



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: 
Jorge M. Gonzalez, City Manager

DATE: October 14, 2010

SUBJECT: **DISCUSSION REGARDING A PROPOSED LEASE AGREEMENT WITH UNITED POLICE FEDERAL CREDIT UNION, FOR USE OF 196 SQUARE FEET OF OFFICE SPACE WITHIN THE MIAMI BEACH POLICE DEPARTMENT BUILDING**

BACKGROUND

On December 8, 2004, the Mayor and City Commission adopted Resolution No. 2204-25762, approving a lease agreement between the City of Miami Beach (City) and the Miami Police Federal Credit Union (MPFCU) for use of approximately 196 square feet of ground floor office space within the Miami Beach Police Department Building (Demised Premises), located at 1100 Washington Avenue, Rooms 110 and 111. This lease provided both the tenant and the tenant's customers (employee members of the MPFCU) with a location that offers convenient access to their services.

The initial term of the lease was for a period of thirty five (35) months, from November 1, 2004 through September 30, 2007. The lease agreement also provided for one additional three (3) year renewal term; this renewal term was exercised and the renewal period commenced on October 1, 2007. The lease, which expired on September 30, 2010, provided for a rent of one dollar (\$1.00) per year and additional rent of two hundred forty five dollars (\$245.00) per month.

In February 2006, the Miami Police Federal Credit Union was changed its name to the United Police Federal Credit Union (Credit Union).

PROPOSED LEASE

The Credit Union has expressed its desire to remain at its current location and enter into a new lease agreement. Consistent with the process approved for approval of leases shorter than ten years in duration, the proposed lease is presented to the Finance Committee and, should the proposed terms be approved, the proposed lease will be placed on the next City Commission agenda for public hearing and approval.

The attached proposed lease agreement (Exhibit A) contains all the terms and conditions contained in other commercial leases for use of City-owned property. A summary of the proposed lease terms are as follows:

TENANT: United Police Federal Credit Union, a federally chartered credit union.

DEMISED PREMISES: 196 SF on the ground floor of the Miami Beach Police Department Headquarter building, located at 1100 Washington Avenue, Rooms 110 and 111.

TERM: Initial term of three (3) years, with one (1) additional three (3) year renewal option, at the City's sole discretion.

LEASE COMMENCEMENT DATE: retroactive to October 1, 2010.

RENT COMMENCEMENT DATE: retroactive to October 1, 2010.

BASE RENT: \$1.20 annually, payable in monthly installments of \$0.10.

ADDITIONAL RENT: \$3,116.40 annually, payable in monthly installments of \$259.70. This additional rent covers operating expenses and insurance costs. Any increase in these costs will result in an increase to Tenant's proportionate share.

PARKING: Tenant may request, from the City's Parking Department, the use of parking spaces, if available, on a first come, first served basis. Rates for the spaces are subject to change, and are currently \$70 per month plus applicable sales tax.

SECURITY DEPOSIT: Upon execution of the Lease, the Tenant will furnish the City with a Security Deposit in the sum of \$519.60 (equal to two months Rent and Additional Rent costs).

USES: The Demised Premises shall be used by the Tenant as office space for a federally chartered credit union providing financial services to members comprised primarily of City of Miami Beach Police Department employees.

The Demised Premises will be open for operation in accordance with Federal Law.

Tenant shall also be permitted to operate and maintain an automated teller machine, subject to the terms and conditions of the Automated Teller Machine (ATM) Use Agreement, attached as Exhibit 7.3 to the lease agreement.

IMPROVEMENTS: None anticipated.

INSURANCE: Tenant must comply with the following insurance requirements throughout the Term:

Comprehensive General Liability in the minimum amount of \$1,000,000 per occurrence for bodily injury and property damage. The City of Miami Beach must be named as additional insured parties on this policy, subject to adjustment for inflation.

Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Agreement) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant, subject to adjustment for inflation.

PROPERTY TAXES: Property taxes for Property Tax Year 2010 are estimated at Zero Dollars (\$0.00). Notwithstanding, the City makes no warranty or representation, that the Building, the Land, and/or the proposed leased premises will not be subject to ad valorem (or other) taxes in subsequent years. In the event Miami-Dade County assesses the property, Tenant shall pay its proportionate share of the property tax bill. Any property tax payment shall be payable by Tenant immediately upon receipt of notice from the City.

UTILITIES: Tenant retains sole responsibility for all utilities (not included as part of Operating Expenses) including internet and telephone services.

MAINTENANCE AND REPAIR: Tenant will be responsible for day-to-day maintenance and repairs of the Demised Premises, including, without limitation, all fixtures, appurtenances, equipment and furnishings, and janitorial services for the demised premises.

CONCLUSION

Section 82-37 of the Miami Beach City Code, governing the sale/lease of public property, as amended by the City Commission on September 15, 2010, provides that the lease of any City-owned property for a term of ten (10) years or less (including renewal option periods) requires the following:

- 1) the proposed lease shall be transmitted by the City Manager (without need for referral by the City Commission) to the Finance and Citywide Projects Committee (F&CPC), for review; and
- 2) City Commission approval accompanied by a public hearing, which may be set by the City Manager and shall be advertised not less than seven (7) days prior to said hearing in order to obtain citizen input into the proposed lease.

Sections 82-39 further provides for the waiver of the competitive bidding requirement, by 5/7th vote of the City Commission, upon a finding by the City Commission that the public interest would be served by waiving such condition.

The Administration deems that the proposed lease agreement with the Credit Union is in both the City's and its employee's best interest. Based on the aforementioned, the Administration recommends that the F&CPC approve the proposed lease agreement.

JMG/HMF/AP/rr

EXHIBIT A

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 27th day of October, 2010, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **UNITED POLICE FEDERAL CREDIT UNION**, a federally chartered credit union, (hereinafter referred to as "Tenant").

1. Demised Premises.

The City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises hereinafter referred to as the "Demised Premises" and more fully described as follows:

Approximately 196 square feet of City-owned property (the "Building" a.k.a. "Miami Beach Police Department Headquarters"), located at 1100 Washington Avenue, Rooms 110 and 111, Miami Beach, Florida, 33139, and as further delineated in Exhibit 1, attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of three (3) years, retroactively commencing on the 1st day of October, 2010 (the "Commencement Date"), and ending on the 30th day of September, 2013. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1st day of October, and ending on the 30th day of September.

2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for one (1) additional three (3) year renewal term. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

In the event that the City Manager determines, in his sole discretion, not to extend or renew this Lease Agreement, the City Manager shall notify Tenant of same in writing, which notice shall be provided to Tenant within fifteen (15) business days of the City Manager's receipt of Tenant's written notice.

3. Rent.

Tenant's payment of Rent, as defined in this Section 3, shall begin to accrue retroactively, commencing on October 1, 2010 (the "Rent Commencement Date") and, thereafter, on each first day of subsequent months.

3.1 Base Rent:

Throughout the Term herein, the Base Rent for the Demised Premises shall be One Dollar and 20/100 (\$1.20) per year, payable in monthly installments of 10/100 (\$0.10).

3.2 Additional Rent:

In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1 Operating Expenses:

Throughout the Term herein, the Operating Expenses for the Demised Premises shall be Two Thousand Nine Hundred Forty Dollars and 00/100 (\$2,940.00) per year, payable in monthly installments of Two Hundred Forty Five Dollars and 00/100 (\$245.00) per month, for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, electric service, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by

the City for the common or joint use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other invitees.

“Common Facilities” shall mean all Building areas, spaces, equipment, as well as certain services, available for use by or for the benefit of Tenant and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

3.2.2

Property Taxes:

The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The Property Tax Payment for Property Tax Year 2010 is estimated at Zero Dollars (\$0.00). Notwithstanding the preceding sentence, the City makes no warranty or representation, whether express or implied, that the Historic City Hall building, the Land, and/or the Demised Premises will not be subject to ad valorem (or other) taxes in subsequent years.

3.2.3

Insurance:

The Additional Rent shall also include Tenant’s pro-rata share toward estimated insurance costs incurred to insure the whole of the Building, in the amount of One Hundred Seventy Six Dollars and 40/100 (\$176.40) per year, payable in monthly installments of Fourteen Dollars and 70/100 (\$14.70) per month. This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant’s sole expense and responsibility.

3.3

Sales Taxes:

Concurrent with the payment of the Base Rent and Additional Rent as provide herein, Tenant shall also pay, if applicable, any and all sums for all required tax(es), including without limitation, sales and use taxes and Property Taxes, imposed, levied or assessed against the Demised Premises, or any other charge or payment required by any governmental authority having jurisdiction there over, even though the taxing statute or ordinance may purport to impose such tax against the City.

3.4

Enforcement.

Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the City may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4. Location for Payments.

All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach
Revenue Manager
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

5. Parking.

Tenant may request, from the City's Parking Department, the use of parking spaces, if available, on a first come, first served basis, at Municipal Parking Garage G-2 located at the intersection of 12th Street and Drexel Avenue. Rates for said spaces are subject to change, and are currently Seventy Dollars (\$70.00) per month, plus applicable sales and use tax per space.

6. Security Deposit.

Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Five Hundred Nineteen Dollars and 60/100 (\$519.60). Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

The parties agree and acknowledge that the foregoing condition is intended to be a condition subsequent to the City's approval of this Agreement. Accordingly, in the event that Tenant does not satisfy the aforesaid, then the City Manager or his designee may immediately, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

7. Use and Possession of Demised Premises.

7.1 The Demised Premises shall be used by the Tenant as office space for a federally chartered credit union providing financial services to members comprised primarily of City of Miami Beach Police Department employees. Said Premises shall be open for operation in accordance with Federal Law. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever.

Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

7.3 Automated Teller Machine (ATM):

Tenant shall also be permitted to install, operate and maintain an automatic teller machine (ATM), subject to the terms and conditions of the Automated Teller Machine Use Agreement (Use Agreement), attached hereto and incorporated herein as Exhibit 7.3. The Use Agreement shall run concurrent with, and shall not be renewed and/or extended beyond, the term of this Lease Agreement. In the event this Lease Agreement is terminated or otherwise expires prior to the term stated therein, then the Use Agreement shall automatically terminate.

8. Improvements.

8.1 Tenant accepts the Demised Premises in their present "AS IS" condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.

8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred (\$500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

9. City's Right of Entry.

9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.

9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:

10.1.1 Comprehensive General Liability, in the minimum amount of One Million (\$1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.

10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).

10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

11. Property Taxes and Assessments.

For the purposes of this Section and other provisions of this Agreement:

11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such

Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

12. Assignment and Subletting.

Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement.

13. Operation, Maintenance and Repair.

13.1 Tenant shall be solely responsible for the operation, maintenance and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the exterior of the Building, all heating/ventilation/air conditioning (HVAC) equipment servicing the Demised Premises, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises), the common areas and the chilled water supply system. The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.

13.2 All damage or injury of any kind to the Demised Premises, and including

without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.

- 13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.
- 13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.
- 13.5 It shall be Tenant's sole obligation and responsibility to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.
- 13.6 Tenant Responsibilities for Utilities (not included within Operating Expenses). Tenant is solely responsible for, and shall promptly pay when due, all charges and impact fees for any and all utilities for the Demised Premises **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 13.6) when due, the City may elect, at its sole discretion, to pay same, whereby Tenant agrees to promptly reimburse the City upon demand.

In no event, however, shall the City be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

- 13.7 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**

14. Governmental Regulations.

Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises, and shall also comply with and fulfill all rules, orders, and

regulations for the prevention of fire, all at Tenant's own expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

17.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding, excepting, however, Tenant shall have the right to claim and recover from the condemning authority, but not from the City, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss

which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant:

At the City's option, any of the following shall constitute an Event of Default under this Agreement:

- 18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;
- 18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;
- 18.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;
- 18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;
- 18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
- 18.1.6 Tenant shall become insolvent;
- 18.1.7 Tenant shall make an assignment for benefit of creditors;
- 18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 18.1.9 The leasehold interest is levied on under execution.

19. Rights on Default.

19.1 Rights on Default:

In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;

- 19.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.
- 19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.
- 19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.
- 19.1.4 Take possession of any personal property owned by Tenant on said

Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.

- 19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. In addition, there will be a late charge of Fifty (\$50.00) Dollars for any payments submitted after the due date.
- 19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.
- 19.1.7 The rights of the City under this Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.
- 19.2 Default by City:
The failure of the City to perform any of the covenants, conditions and agreements of this Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for Tenant, then such failure to perform (regardless of circumstances beyond

its control) as indicated above, shall constitute a default by the City.

19.3 Tenant's Rights on Default:

If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

20.1 Tenant shall be liable to the City for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

20.2 If Tenant shall at any time be in default hereunder, and if the City shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's obligations hereunder, Tenant will reimburse the City for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

21. Indemnification Against Claims.

21.1 Tenant shall indemnify and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

- 21.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;
- 21.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Agreement.
- 21.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.
22. Signs and Advertising.
Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State and Federal laws.
23. Effect of Conveyance.
The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.
24. Damage to the Demised Premises.
- 24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenable, as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises

tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

- 24.2 If the Demised Premises shall be rendered wholly untenable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenable, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.
- 24.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.
25. Quiet Enjoyment.
Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.
26. Waiver.
- 26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.
- 26.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

26.3 The receipt of any sum paid by Tenant to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as Rent, unless such breach be expressly waived in writing by the City.

27. Notices.

The addresses for all notices required under this Agreement shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD: City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

With copy to: Director
City of Miami Beach
Office of Real Estate, Housing & Community Development
1700 Convention Center Drive
Miami Beach, Florida 33139

TENANT: United Police Federal Credit Union
1100 Washington Avenue, Room 110-111
Miami Beach, Florida 33139

With copy to: United Police Federal Credit Union
400 NW 2nd Avenue, Suite 309
Miami, Florida 33128

All notices shall be hand delivered and a receipt requested, or by certified mail with Return receipt requested, and shall be effective upon receipt.

28. Entire and Binding Agreement.

This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

29. Provisions Severable.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be

enforced to the fullest extent permitted by law.

30. Captions.

The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

31. Number and Gender.

Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

32. Limitation of Liability.

The City desires to enter into this Agreement only if in so doing the City can place a limit on the 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 Ten Thousand (\$10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of \$10,000.00 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 Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

33. Surrender of the Demised Premises.

Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof,

and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.

Time is of the essence in every particular and particularly where the obligation to pay money is involved.

35. Venue:

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

CITY AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.

36. Radon is a naturally occurring radioactive gas that, when it is 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 Public Health Unit.

37. No Dangerous Materials.

Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest:

CITY OF MIAMI BEACH, FLORIDA

Robert Parcher, CITY CLERK

Matti Herrera Bower, MAYOR

Attest:

UNITED POLICE FEDERAL CREDIT UNION

WITNESS

Tabitha Redero, INTERIM PRESIDENT

(PRINT NAME)

EXHIBIT 1 (Demised Premises)

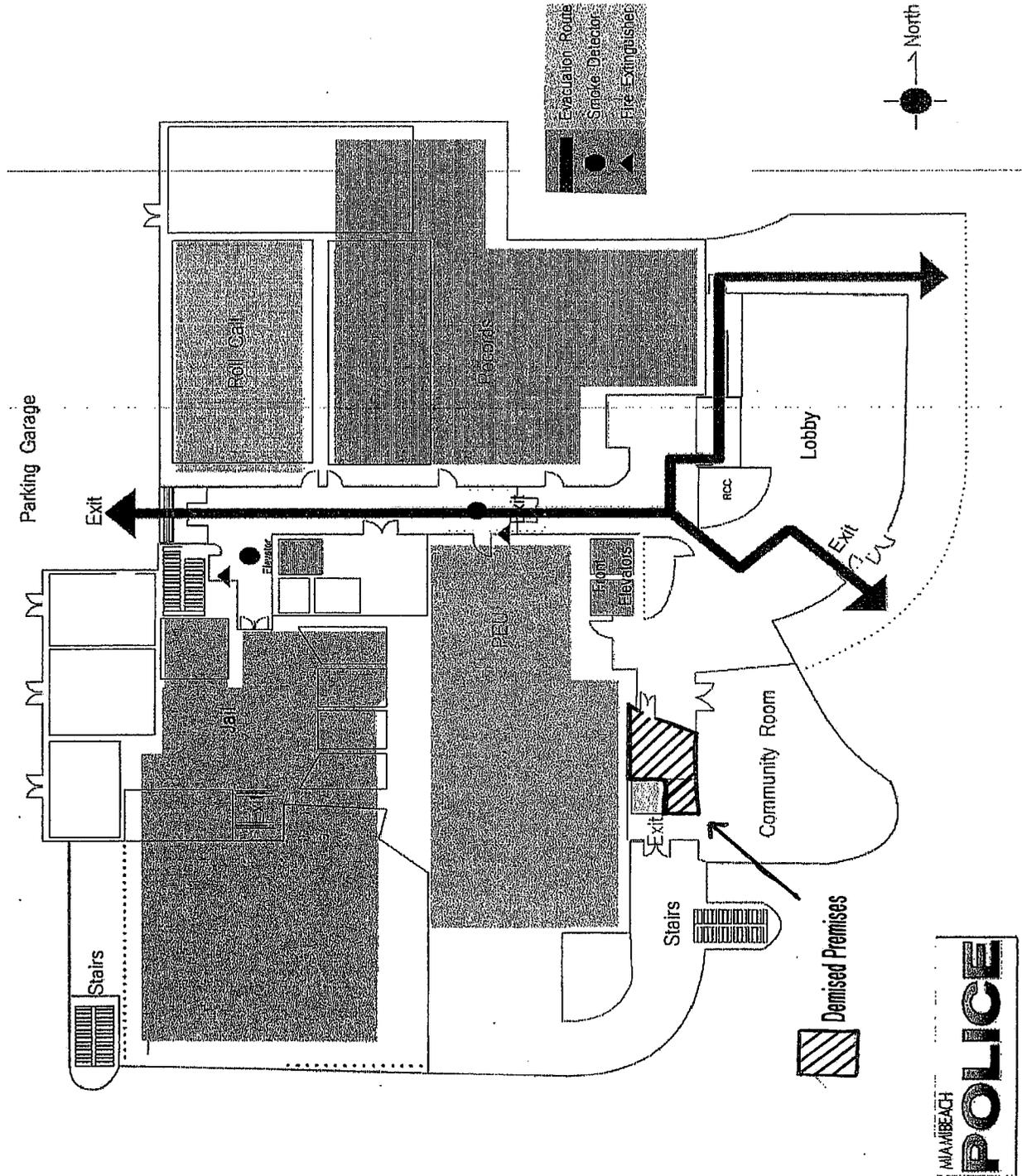


EXHIBIT 7.3

AUTOMATED TELLER MACHINE (ATM) USE AGREEMENT

THIS USE AGREEMENT (hereinafter referred to as the "Agreement") is made by and between the **UNITED POLICE FEDERAL CREDIT UNION** (hereinafter referred to as the "User"), a federally chartered credit union whose principal address is 400 NW 2nd Avenue, Suite 309, Miami, Florida 33128, and the **CITY OF MIAMI BEACH** (hereinafter referred to as the "City"), a Florida municipal corporation, having its principal office at 1700 Convention Center Drive, Miami Beach, Florida 33139.

In consideration of the terms, covenants and conditions hereinafter set forth, City hereby authorizes User to use certain space in the City-owned premises, located at 1100 Washington Avenue, Miami Beach, Florida, 33139, as identified in Exhibit A of this Agreement (Use Location), for the term of this Agreement, in accordance with the following terms and provisions.

1. Use.
User shall use and occupy the Use Location for the sole purpose of installing, operating, and maintaining thereon, an automated teller machine (ATM) in accordance with the terms and provisions of this Agreement.
2. Term.
The initial term of this Agreement shall be for a period of three (3) years, retroactively commencing on the 1st day of October, 2010 (Commencement Date), and ending on the 30th day of September, 2013.
3. Renewal Option.
Provided that the Tenant is not in default, the term of this Agreement shall automatically extend for one additional period of three (3) years, and without the Landlord and/or Tenant being required to take any additional action to extend same. Notwithstanding the preceding sentence, this Agreement shall run concurrent with, and shall not be renewed and/or extended beyond, the term of that certain Lease Agreement, dated October 27, 2010, between the City of Miami Beach and the United Police Credit Union. In the event the aforesaid Lease Agreement is terminated or otherwise expires prior to the term stated therein, then this Use Agreement shall automatically terminate, and the City and User shall have no further obligation with regard to same, except for any and all monies that may be due and payable by User as of the date of termination and User's obligation to restore the ATM Location, as provided herein.

4. Installation and Operation of the ATM.

- 4.1 City herein allows User to install and operate an ATM. Any and all costs associated with the design, permitting and any required approvals, construction, and maintenance shall be at the sole cost and expense of the User.
- 4.2 User shall be solely responsible for obtaining all approvals from the City and any other regulatory agencies, including approvals by the City in its regulatory capacity.
- 4.3 User shall submit to City, acting in its proprietary capacity as owner of the property, plans and specifications for the ATM, to be submitted to the City Manager or his designee for his review and approval.
- 4.4 Following review and approval of the plans and specifications, User shall seek and obtain any and all necessary approvals and permits, including but not limited to, a building permit for construction of the proposed improvements within the Use Location including, without limitation, the ATM.
- 4.5 User shall not commence construction until all necessary permits and approvals for installation of the ATM are issued, and, following commencement shall thereafter continue to prosecute installation of the ATM with diligence and continuity to completion.
- 4.6 Complete installation of the ATM shall be completed no later than two (2) months from the issuance of a building permit for same.
- 4.7 User herein acknowledges, represents and warrants that any and all cost associated with the purchase and installation of the aforesated ATM shall be the sole responsibility of the User.

5. Maintenance and Service of the ATM.

- 5.1 User shall operate, maintain, service, and repair, as necessary, the ATM, and shall be solely responsible for any and all costs and expenses related to such operation, maintenance, service, and repair of the ATM.
- 5.2 User shall supply, install and replace, as necessary, paper for transaction receipts and printer ribbons, at its sole cost and expense.
- 5.3 User shall be responsible for providing, at its sole cost and expense, all necessary improvements, to install, operate and maintain the ATM. User shall pay before delinquency any and all charges for utilities used by, for, or on behalf of the activities contemplated herein, including but not limited to, electricity and telephone.

- 5.4 User shall be responsible for providing a dedicated leased data circuit. User, at its sole cost and expense, shall be responsible for all costs, including but not limited to installation, maintenance and monthly charges relating to the leased data circuit.
- 5.5 User shall provide support to the City, its employees, and its customers, by providing a dedicated phone line, which shall be reached by dialing the following number 305-329-1400.
- 5.6 Maintenance services will be performed by the User, and/or by the party designated in Exhibit 5.6. Any changes to said party designation shall only occur with the prior written consent of the City.
- 5.7 User shall handle customer complaints, Reg E claims, and any and all other related operational issues as they arise and in a timely manner.

6. Title / Insurance / Indemnification.

6.1 The ATM shall remain the property of User. Notwithstanding the preceding sentence, in no event shall City be responsible or liable for any damage, destruction, or theft to all or a portion of the ATM, nor be responsible for any stolen or damaged personal property of any patrons, guests, invitees, and/or any other third parties utilizing the ATM. User shall indemnify and hold harmless the City.

6.2 Insurance.

User shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the term of this Agreement.

- (i) 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.
- (ii) Workers Compensation Insurance shall be required under the Laws of the State of Florida.

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date of this Agreement, User shall provide City with a Certificate of Insurance for each such policy. ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH AS AN ADDITIONAL NAMED INSURED. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk

Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager. Should User fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by User to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If User fails to repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid and such failure shall be deemed an event of default hereunder.

6.3 Indemnification.

User agrees to indemnify and hold harmless the City of Miami Beach, its officers, employees and agents, from and against any and all actions, claims, liabilities, losses, and expenses, including, but not limited to, attorneys' 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, errors, omissions or other wrongful conduct of the User, its employees, agents, officers, patrons, guests, invitees, or any other person or entity acting under User's control, in connection with this Agreement; and to that extent, the User shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals.

This Subsection 6.3 shall survive the termination or expiration of this Agreement. Subsection 6.3 shall not apply, however, to any liability that arises as a result of the willful misconduct or gross negligence of the City, its agents, servants or employees.

7. Taxes and Liens.

User shall at all times keep the ATM free of all liens and encumbrances that may be imposed by anyone on the ATM and/or the ATM Location. User agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon User by reason of this Agreement or by reason of the activities of User under this Agreement. User shall also pay for any fees imposed by law for licenses or permits for any business or activities of User under this Agreement.

If ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser, User shall be solely responsible for payment of same.

8. Payment Obligations.

City and User agree to divide surcharge fees during the term of this Agreement, as set forth in Exhibit 8.1.

- 8.1 If permitted by law and by network regulations, User will surcharge its clients (i.e. non-members) a convenience fee on a per transaction basis, as shown in Exhibit 8.1.
 - 8.2 User shall monitor the ATM on a daily basis.
 - 8.3 User shall provide City with an Executive Monthly Report showing all ATM activity for the month and shall ensure that accurate settlements are deposited to the City, monthly.
 - 8.4 User shall pay any amount due to City by the 30th day of the following month.
9. Termination for Convenience.
Notwithstanding any other provision of this Agreement, the City may, at its sole discretion, and for its convenience and without cause, terminate this Agreement at any time during the term hereof, without any penalty or liability to City, by giving written notice to User of such termination, which shall become effective thirty (30) days following receipt by the User of the written termination notice.
10. User's Right to Terminate.
User may terminate this Agreement at any time if the ATM fails to break even or produce a profit for User, without any penalty or liability to User (other than fees owed to City under this Agreement) by giving City written notice at least thirty (30) days prior to such termination.
11. Surrender of ATM Location.
At the expiration of this Agreement, or in the event of a termination, or in the event this Agreement is otherwise declared null and void and of no further force or effect, User shall surrender the ATM Location in the same condition as said Location was prior to the commencement of this Agreement, reasonable wear and tear excepted. User shall restore the ATM Location to a satisfactory condition, as shall be determined solely by the City in its reasonable discretion and judgment. User's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the ATM Location after termination of the Agreement shall constitute trespass by the User, and may be prosecuted as such. In addition, the User shall pay to the City One Thousand (\$1,000) Dollars per day as liquidated damages for such trespass and holding over.
12. Entire Agreement.
This Agreement and the exhibits attached hereto constitute the entire Agreement between User and City with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. This Agreement may not be modified in any manner except by an instrument in writing signed by a duly authorized officer or representative of both User and City.

13. Notices.

All notices from the City to the User shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt, or hand delivered, to the User at the following address:

United Police Federal Credit Union
1100 Washington Avenue, Room 110-111
Miami Beach, Florida 33139

With copy to: United Police Federal Credit Union
400 NW 2nd Avenue, Suite 309
Miami, Florida 33128

All notices from the User to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail return receipt requested, or hand delivered, to the City at the following addresses:

City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

With copy to: Director
City of Miami Beach
Office of Real Estate, Housing & Community Development
1700 Convention Center Drive
Miami Beach, Florida 33139

User and City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

14. Binding Effect: Successors and Assignments.

This Agreement is binding on the Parties and their respective successors and assigns. User may not assign this Agreement without the prior written consent of City.

15. Relationship of the Parties.

It is expressly understood and acknowledged that it is not the intention or purpose of this Agreement to create, nor shall the same be construed as creating, any type of partnership, relationship or joint venture.

16. Governing Law and Exclusive 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 USER 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.

17. Laws.

17.1 Compliance.

User shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations, including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations.

17.2 Equal Employment Opportunity.

Neither User nor any affiliate of User performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, sexual orientation, and disability, as defined in Title I of ADA. User will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

17.3 No Discrimination.

User agrees that there shall be no discrimination as to race, sex, sexual orientation, color, creed, national origin, familial status, religion or handicap, in its employment practice or in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation within the area. All services offered within the area shall be made available to the public, subject to the right of the User and the City to establish and enforce rules and regulations to provide for the safety, orderly operation and security of the area.

Pursuant to Sections 62-90 and 62-91, of Chapter 62, of the Miami Beach City Code entitled "Human Relations", User, by executing this Agreement, certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap.

18. Miscellaneous.

18.1 No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the User and City.

18.2 Modifications.

This Agreement cannot be changed or modified except by agreement in

writing executed by all parties hereto.

18.3 Headings.

The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

18.4 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18.5 Clauses.

The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

18.6 Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement as so modified shall remain in full force and effect.

18.7 Right of Entry.

City, in response to emergency situations, said emergency situations to be determined in the City's sole and reasonable judgment and discretion, shall have the right to enter into and upon any and all parts of the Use Location.

18.8 Signage.

Any signage posted by User on its facilities and equipment shall be subject to the prior approval of the City as to size, shape and placement of same. Any advertising, signage and postings shall be approved by the City, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations.

18.9 No Waiver.

No waiver of any covenant or condition of this Agreement by either party shall be deemed to imply or constitute a waiver in the future of the same covenant or condition or of any other covenant or condition of this Agreement.

18.10 No Third Party Beneficiary.

Nothing in this Agreement shall confer upon any person or entity, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

18.11 Attorneys' Fees.

If it becomes necessary for User or City to enforce their respective rights under this Agreement or any part hereof through litigation, User and City agree that the prevailing party shall be entitled to recover from the other party all costs and expenses of such litigation, including a reasonable attorneys' fee and costs, for all trial and appellate proceedings.

19. Limitation of Liability.

City desires to enter into this Agreement placing the operation and management of the area(s) in the hands of a private management entity only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000.00. User hereby expresses its willingness to enter into this Agreement with a \$10,000.00 limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of \$10,000.00, the receipt of which is hereby acknowledged, the City shall not be liable to User for damages to User in an amount in excess of Ten Thousand (\$10,000.00) Dollars, for any action 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 paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

ATTEST:

CITY OF MIAMI BEACH, FLORIDA

Robert Parcher, CITY CLERK

Jorge M. Gonzalez, CITY MANAGER

**ATTEST:
UNION**

UNITED POLICE FEDERAL CREDIT

SECRETARY

Tabitha Redero, INTERIM PRESIDENT

(Print Name)

EXHIBIT A (ATM Use Location)

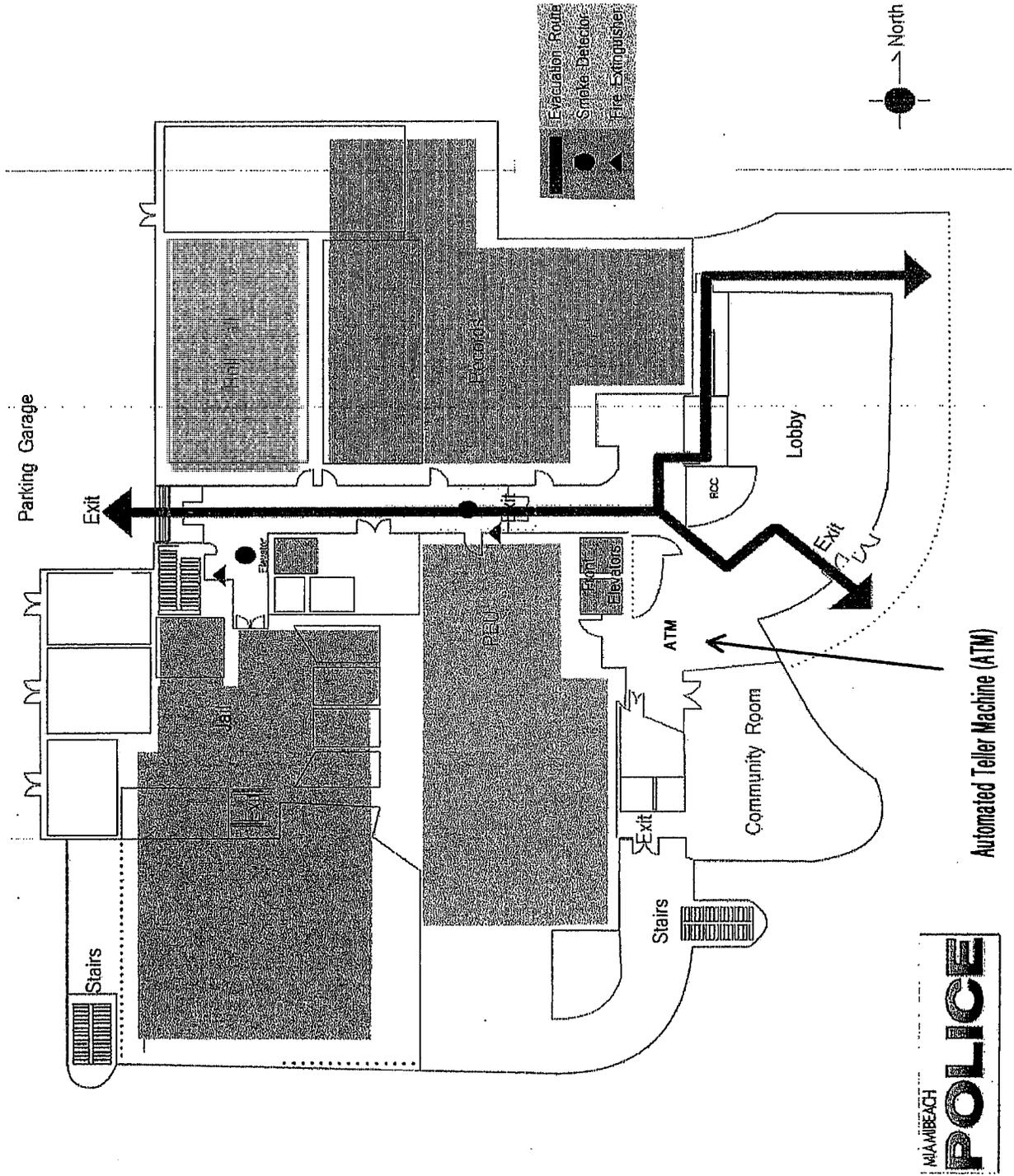


EXHIBIT 5.6



QUALITY CARE MAINTENANCE AGREEMENT

Agreement No: P031910 Commencement Date: 07/01/2010 Initial Term: 1 Year(s)

Name of Subscriber: United Police Federal Credit Union

Address: 400 NW 2nd Ave STE 309

City: MIAMI

State: FL

Zip: 33128

This Agreement is made and entered into by and between Diebold, Incorporated of 5995 Mayfair Road, North Canton, Ohio 44720, an Ohio corporation (hereinafter "Diebold") and the Subscriber, whose name and address is set forth above (hereinafter "Subscriber").

1. Equipment Schedules

No maintenance or other services are ordered by execution of this Agreement alone. For equipment to be covered hereby or services ordered, an Equipment Schedule (Diebold Form 2892-K) or similar document shall be completed by Diebold and provided to Subscriber. Such Equipment Schedule shall further define the service plan or services being provided. Each such Schedule is deemed a part of this Agreement. In the event of conflict between an Equipment Schedule and the provisions hereof, the provisions of the Equipment Schedule shall control, except with respect to Sections 6 and 7 hereof, which shall govern in the event of any conflict with any other provision.

2. Service

For the fee set forth in a given Equipment Schedule, Diebold will, by its authorized representatives, inspect and repair the equipment itemized on such Equipment Schedule, or provide such other services as described on the Equipment Schedule. If the service plan described on an Equipment Schedule includes preventive maintenance, such preventive maintenance which Diebold deems necessary to maintain the equipment in reasonable operating condition will be provided. Diebold may provide any preventive maintenance at the same time as Diebold is providing other service on the covered equipment. Subscriber shall request service by contacting Diebold at 1-800-Diebold.

3. Fees

The initial annual fee for services shall be as set forth on the Equipment Schedule, or, with respect to the price for service performed on a "time and material" basis, at Diebold's then current rates therefor. For annual periods after the initial annual invoice period, the annual service fee shall be at Diebold's then current rates. Diebold will advise Subscriber of its current rates upon the request of Subscriber. Should Subscriber request service and Subscriber has amounts past due for annual service fees or time and material fees due hereunder, Subscriber shall be deemed to have requested service pursuant to Section 12.

4. Taxes

In addition to the charges for the services, Subscriber shall additionally pay any and all sales, use, excise, gross receipts, value added or other taxes or fees imposed by any federal, state or local governmental authority, associated with Diebold's performance, excluding only taxes based on Diebold's net income or the employment by Diebold of Diebold's employees.

5. Terms of Payment

Unless an Equipment Schedule provides otherwise, Subscriber will be invoiced annually in advance. All invoices for periodic fees are due prior to the commencement date for the applicable fee period. For Equipment Schedules added subsequent to the date hereof, Diebold may prorate its invoice to provide for a common invoice date for all equipment covered. All invoices for work performed on a time and material basis will be due upon receipt. All invoices not paid within thirty (30) days of the date due shall

bear interest at the rate of one and one-half percent (1-1/2%) per month on the unpaid balance or the highest rate permitted by law, whichever is less. In the event Subscriber fails to pay any invoice when due, Diebold may, in addition to any other rights and remedies available to Diebold, suspend service under this Agreement and any or all Equipment Schedules until Subscriber's account has no amounts more than thirty (30) days past due.

5. Limited/Warranty

a) With respect to services provided for an annual service fee, Diebold warrants that it will re-perform such services, during the hours of coverage set forth in the Equipment Schedule, if such services prove defective during the term hereof, provided Subscriber notifies Diebold during the term in the same manner as the Subscriber otherwise notifies Diebold of the need for service on the covered equipment.

b) With respect to parts and services provided on a time and material basis, Diebold warrants the same to be free of defects in materials or workmanship for a period of thirty (30) days from the date service was performed or from installation in the case of parts. Subscriber shall notify Diebold within ten (10) days of the end of such thirty (30) day period of any failure to satisfy such warranty, and a failure to notify within such period waives any claim related thereto.

c) In the event of a breach of the foregoing warranty in (a) and/or (b) of this Section 5, the sole liability of Diebold and the sole remedy of Subscriber shall be the repair or replacement of the part, or re-performance of the service, which proved to be defective. Subscriber acknowledges and agrees that limiting Diebold's liability to this remedy does not cause this Agreement to fail of its essential purpose or otherwise render this Agreement invalid or unenforceable.

d) THE FOREGOING WARRANTY CONSTITUTES THE SOLE LIABILITY OF DIEBOLD AND THE SOLE REMEDY OF SUBSCRIBER FOR DEFECTIVE MATERIALS OR WORKMANSHIP, WHETHER ARISING UNDER CONTRACT, TORT, STRICT LIABILITY OR OTHER FORM OF ACTION, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

7. LIMITATION OF LIABILITY

a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES ACKNOWLEDGE AND AGREE:

i) DIEBOLD IS NOT AN INSURER;

ii) THE PAYMENTS PROVIDED FOR HEREIN ARE BASED SOLELY ON THE VALUE OF THE GOODS AND SERVICES PROVIDED AND ARE UNRELATED TO THE VALUE OF SUBSCRIBER'S PROPERTY OR THE PROPERTY OF OTHERS LOCATED ON SUBSCRIBER'S PREMISES OR WITHIN THE EQUIPMENT;

iii) THE PROVIDING OF SERVICE AND/OR PREVENTIVE MAINTENANCE DOES NOT GUARANTEE THE CONTINUED OR UNINTERRUPTED OPERATION OF THE EQUIPMENT OR CONNECTED SYSTEMS; AND

EXHIBIT 5.6

- iv) IN NO EVENT SHALL DIEBOLD BE LIABLE FOR LOSSES OR DAMAGE THAT SUBSCRIBER SUSTAINS DUE TO BURGLARY, ROBBERY, ILLEGAL ACTIVITY, FIRE, FLOOD, OR OTHER CAUSE, OR AS A RESULT OF LOSS OR COMPROMISE OF DATA, SYSTEMS OR FACILITIES, OR FOR THE MISDISPENSING OR LOSS OF FUNDS, DOCUMENTS, CURRENCY OR OTHER ITEMS OF VALUE. DIEBOLD SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, OR FOR LOSS OF PROFITS, INCOME OR BUSINESS OPPORTUNITY, WHETHER ANY OF SUCH DAMAGES OR LOSSES ARISE UNDER CONTRACT, TORT, STRICT LIABILITY, OR OTHER FORM OF ACTION, AND WHETHER OR NOT DIEBOLD HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.
- b) AS A MATERIAL CONSIDERATION FOR DIEBOLD ENTERING INTO THIS AGREEMENT THE PARTIES AGREE THAT IF, NOTWITHSTANDING THE FOREGOING LIMITATIONS, DIEBOLD HAS ANY LIABILITY TO SUBSCRIBER, SUCH LIABILITY SHALL IN NO EVENT EXCEED THE ANNUAL FEE SPECIFIED IN THE EQUIPMENT SCHEDULE FOR THE EQUIPMENT OR SERVICE RELATED TO THE EVENT GIVING RISE TO THE LIABILITY OR FIFTEEN THOUSAND DOLLARS (\$15,000.00), WHICHEVER IS GREATER. SUBSCRIBER MAY OBTAIN A GREATER LIMITATION OF LIABILITY, IF DESIRED, BY THE PAYMENT OF AN INCREASED ANNUAL FEE, WHICH SHALL BE NEGOTIATED BY THE PARTIES SUBSEQUENT TO DIEBOLD'S RECEIPT OF SUBSCRIBER'S WRITTEN REQUEST THEREFOR. THIS SUBSECTION 7(b) SHALL NOT APPLY TO CAUSES OR CLAIMS FOR WHICH DIEBOLD HAS INDEMNITY OBLIGATIONS PURSUANT TO SECTION 14.
- c) THE PROVISIONS OF THIS SECTION 7 CONSTITUTE AN ALLOCATION OF RISK BETWEEN THE PARTIES AND THE PRICE CHARGED TO SUBSCRIBER IS BASED ON SUCH ALLOCATION OF RISK.
8. Term
The term of this Agreement shall be for the initial term set forth above with Diebold providing services starting on the commencement date. Unless terminated earlier due to a default, this Agreement shall automatically renew for renewal terms of one (1) year each unless either Subscriber or Diebold gives notice of cancellation in writing to the other at least ninety (90) days prior to the end of the then current term. The provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18, 19 and 20 shall survive termination.
9. Exclusions
The services to be provided for an annual service fee do not include:
- a) service required as a result of abuse, misuse, electrical storms, power failures or fluctuations, glass breakage or damage, failure to follow user maintenance and operating instructions, or the failure or results of failure of interconnected equipment, software or data not specified on an Equipment Schedule, including, but not limited to, wiring, conduit, or voice or data transmission equipment or facilities;
 - b) consumable items including, but not limited to, media, film, audit tapes, ribbons, carrier bodies, light bulbs, customer account cards, envelopes or video cassettes;
 - c) lockouts or damages caused by war, public disorder, vandalism, illegal activity, fire, water or other liquids, burglary, blasting, mining, settling of foundations, expansion of doors or walls, loss of combinations or by imperfect changing of combinations or time locks;
 - d) services required because of contact, modification, service, inspection, or tampering with equipment by non-Diebold designated personnel, relocation of equipment, changes to configuration, software or data, installation of additional features, options or functions; major overhauls, or refurbishing the equipment;
 - e) automatic teller machine cassettes or pneumatic tube carriers, unless specified on an Equipment Schedule;
 - f) the changing of any locks or combinations, or the replacement of keys unless specified on an Equipment Schedule;
- g) service outside the hours of coverage set forth on the Equipment Schedule, or waiting time in excess of fifteen (15) minutes. If no hours are set forth, coverage shall be from 8:00 a.m. to 8:00 p.m., prevailing local time at the site of the equipment, exclusive of Saturdays, Sundays, or holidays generally observed by state or local governments in the area where the equipment is located;
- h) malfunctions resulting from the use of software, media, supplies, and/or consumables which are not furnished by Diebold or which do not meet standards set by the equipment manufacturer;
- i) service on equipment, components or other items that are no longer supported by Diebold or the manufacturer, or setting, changing, securing or managing passwords or codes that can be used to access equipment, software, devices or facilities.
- If Diebold determines that the service requested by Subscriber is excluded pursuant to the above, and Subscriber requests Diebold to perform such service, the service will be provided pursuant to Section 12 hereof.
10. Parts
Unless an Equipment Schedule indicates that parts are included, Subscriber will pay Diebold's then current list price for any replacement parts necessary for the performance of service on equipment, subject to a minimum parts charge of \$25.00 on any service call wherein the replacement of parts occurs. The parts used by Diebold to perform maintenance and repair services hereunder may be new, rebuilt or refurbished. Title to parts shall pass to Subscriber when the same are installed by Diebold. Title to parts that are removed and replaced by Diebold may, at Diebold's option, vest in Diebold at the time of removal. Subscriber shall be on notice that parts may not be exported or re-exported to restricted geographies. Diebold shall have no obligations related to the proper disposal or destruction of parts removed from Subscriber's equipment in course of providing services, and this exclusion from responsibility applies without limitation, to data storage devices that contain Subscriber's or consumer's confidential or nonpublic personal information. No title to any computer programs included in parts shall ever pass to Subscriber. With respect to such parts that include computer programs, Diebold grants to Subscriber a personal, nontransferable, nonexclusive right to use such computer programs in conjunction with the equipment while Subscriber is the rightful possessor of the equipment. Such license extends only to the use of the computer programs in conjunction with specific equipment on which the same are installed by Diebold. Such computer programs are protected by the copyright and other laws of the United States. Subscriber agrees not to copy, disclose, transfer, decompile, reverse assemble, reverse engineer, or otherwise modify such computer programs. Computer programs for which a separate charge is normally required by Diebold are licensed only pursuant to a separate license agreement. Diebold is granted the right to operate copies of Diebold computer programs in Subscriber's equipment to facilitate service activities, and Diebold may remove and disable such programs at any time either during or after termination of the Agreement.
11. Duties of Subscriber
During the term of this Agreement, Subscriber shall at all times provide a suitable operating environment, as specified by the manufacturer of the equipment and operate the equipment in accordance with the manufacturer's recommendations. If any equipment covered by an Equipment Schedule or software operating therein has been furnished by other than Diebold, Subscriber shall have the ultimate responsibility for obtaining and providing to Diebold any necessary schematic drawings, wiring diagrams, computer software, documentation, authorizations and/or replacement parts that may be necessary for Diebold to access, operate and service the equipment, and to backup and restore computer programs that operate therein; and Subscriber shall defend and hold Diebold harmless from and against any claims made against Diebold as a result of Diebold performing

EXHIBIT 5.6

maintenance or other services on or with respect to such equipment under the terms hereof. Subscriber shall provide free, clear and safe access to the equipment and a safe and hazard free work area for Diebold and its personnel hereunder.

12. Other Services

Subscriber may from time to time request that Diebold provide other services not included in the service plan for equipment described on a specific Equipment Schedule, or for which no Equipment Schedule has been completed. Diebold will use reasonable efforts to provide such services at Diebold's then current "time and material" rates. Any such service shall be subject to the provisions of this Agreement. Absent a separate signed agreement under which Diebold has agreed to provide documented disposal or destruction for an additional charge, Diebold shall have no obligation for the disposal or destruction of any components removed from Subscriber's equipment in the course of providing services. Subscriber may request service or additional services pursuant to this provision by contacting Diebold.

13. Termination

a) This Agreement may be terminated by a party without liability as follows:

- i) upon a material breach hereof by the other party if such other party has failed to correct, or commence and diligently pursue the correction of such breach within thirty (30) days after notice to such breaching party;
- ii) if the other party is insolvent, makes a general assignment for the benefit of creditors, or commences voluntarily a petition under bankruptcy or similar laws or allows an involuntary petition to continue more than forty-five (45) days after filing; or
- iii) in the case of Diebold, if Subscriber fails to make a payment when due.

b) In addition to the provisions of (a) above, Subscriber may by the payment of a cancellation fee, remove any equipment covered by an annual service fee from coverage, upon ninety (90) days prior written notice. The cancellation fee shall be forty percent (40%) of the annual fee associated with service of the relevant equipment from the commencement date to the expiration of the then current term of the agreement. Additionally, Diebold may adjust the fee for any equipment remaining subject to service based on Diebold's then current standard volume price adjustments. Any special provisions of any Equipment Schedule remaining shall be adjusted in a manner that Diebold in its reasonable discretion deems equitable. However, Subscriber will not be required to pay the cancellation fee specified in this Section 13(b) if the equipment being removed from service has been taken out of customer service and has not been replaced with other equipment which performs at least some of the same functions and which is not subject to Diebold service under this Agreement or if the branch or other location of such equipment has been closed.

14. Diebold's Responsibility

Diebold will indemnify and hold harmless the Subscriber for any judgments obtained by third parties based on claims of bodily injury to third parties, or direct damage to the tangible property of third parties, to the extent caused by the wrongful or negligent acts of Diebold, its officers, directors, agents or employees and occurring while Diebold employees are performing service on equipment at Subscriber's site. Diebold will also be responsible for the theft of Subscriber's funds or tangible property by Diebold employees while they are performing service, to a maximum cumulative limit for any and all such claims of Seventy-Five Thousand Dollars (\$75,000).

15. Service by Others

With respect to any Equipment Schedule covering equipment that is installed, de-installed, relocated, altered, or serviced by other than Diebold representatives, Diebold may require, as a condition to accepting or continuing the equipment for service coverage,

that the Subscriber have Diebold inspect the equipment (pursuant to Section 12) for damage and to assure that all manufacturer-recommended changes have been made and that the equipment is otherwise in good working order. Subscriber shall have Diebold perform any required servicing or repairs recommended by Diebold prior to the acceptance of the equipment for service coverage. Diebold may also require that service be performed pursuant to Section 12 for a specified period of time to assure that the equipment is, in fact, in good working order.

16. Delay in Performance and/or Increase in Expenses

- a) Diebold will not be liable for any delay in providing service that is caused by fire or flood, strikes, labor disturbances, riots, war, insurrection, acts of any governmental entity or the public enemy, delays in transportation, delays in procuring materials from third parties, unavailability of fuel or other supplies, or any other cause beyond the reasonable control of Diebold. In the event of such occurrence, Diebold's time for performance shall be equitably adjusted or cancelled if in Diebold's reasonable judgment performance has been rendered not economically reasonable.
- b) Should Diebold's cost of fuel or other materials and/or supplies increase more than ten percent (10%) from the prices in effect on the Commencement Date hereof, as verified by published indexes that encompass such fuel, materials and/or supplies, the annual service price shall be increased by Diebold based on the increase in the most applicable published index.
- c) If at any time during the term of this Agreement, Diebold is required to obtain any title specific or any other license, permit, certification or authorization to perform the services for Subscriber, not already held by Diebold, or if there is any change in applicable law, ordinance or regulation that materially increases Diebold's cost to perform the services, then, upon giving Subscriber reasonable notice of such increase in costs and/or expenses, Subscriber shall be responsible to reimburse Diebold therefor or otherwise to pay such increased costs and expenses.

17. Modification of Agreement

Except as provided herein, this Agreement may be waived or modified only by a writing executed by both parties. In the event of the addition or deletion of equipment from service coverage under this Agreement, or other modifications of Equipment Schedule(s) contemplated by this Agreement, Diebold shall provide a new Equipment Schedule or other appropriate notice of a change to Subscriber. The provisions of such new Equipment Schedule or notice of change shall be deemed a part of this Agreement and legally binding upon Subscriber, unless Subscriber objects to Diebold in writing within thirty (30) days of the issuance of the new Equipment Schedule or notice of change.

18. Obsolete Equipment

At any time during the term of this Agreement or any renewal or extended term hereof, Diebold may reasonably determine that equipment being serviced hereunder is obsolete or not otherwise reasonably capable of being maintained in an operable condition as a result of age, volume of use, unavailability of necessary replacement parts or other reason or condition, which Diebold may identify as extraordinary. Upon receipt of written notice or such determination from Diebold, Subscriber shall either replace the obsolete equipment with new equipment, remove the equipment from the scope of coverage of this Agreement, or agree in writing that such equipment will continue to be serviced hereunder by Diebold on a time and materials basis.

19. Electronic Signature/Governing Law

The parties acknowledge and agree that this Agreement may be executed or accepted using electronic, stamped or facsimile signatures, and that such a signature shall be legally binding to the same extent as a written cursive signature by a party's authorized representative. Each party waives any legal requirement that this Agreement be embodied, stored or reproduced in tangible media, and agrees that an electronic reproduction shall be given the same legal force and effect as a

EXHIBIT 5.6

signed writing. Customer agrees that any terms delivered with or notified to Subscriber by Diebold regarding software items shall apply to and govern the use of such items. This Agreement shall not be binding upon Diebold until accepted thereby, and shall be considered to have been entered into in North Canton, Ohio. This Agreement shall be governed by the laws of the State of Ohio without regard to any conflicts of the laws' provisions thereof. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any action arising or resulting, directly or indirectly, from the performance or accrued nonperformance by Diebold of this Agreement, shall be commenced by Subscriber within two (2) years after the cause of action first accrued or be forever barred.

20. General

a) This Agreement and Equipment Schedule(s) constitute the entire agreement between the parties concerning any service provided by Diebold to Subscriber, and no representation, inducement, promises or agreements not embodied herein shall be of any force or effect. Any purchase order or similar document issued by Subscriber shall be deemed issued only for Subscriber's internal administrative convenience and shall not become a part of this Agreement. This Agreement shall be binding in

accordance with its terms upon the parties hereto, may not be assigned in whole or in part without the express prior written consent of the other party and any unauthorized assignment is void; however, Diebold may assign or subcontract its duties under this Agreement without first obtaining Subscriber's prior consent thereto.

- b) No waiver of any right of any party shall be or constitute a waiver of any other right of such party, nor a waiver of any future breach by the other party.
- c) Notices to be provided from one party to another shall be deemed effective upon receipt and will be given by overnight courier or other method that provides evidence of delivery. Notice shall be delivered to the address of such party as reflected herein, or such other address as a party may identify by formal notice to the other party.
- d) If for any reason any provision of this Agreement shall be held unenforceable or invalid by a court or administrative body having jurisdiction, such provision shall be reformed so as to most closely effectuate the intent thereof in a valid and enforceable manner. The headings and titles contained in this Agreement are included solely for the convenience of the parties and shall not be used in construing the intent of the text hereof.

SUBSCRIBER ACKNOWLEDGES HAVING READ AND UNDERSTOOD ALL PAGES OF THIS AGREEMENT.

SUBSCRIBER

By: *Mark Lesnau*
(Authorized Signature)

Name: Mark Lesnau
(Printed/Typed Name)

Title: President/CEO

Date: 03/19/2010

DIEBOLD, INCORPORATED

By: *Denise Bonner*
(Authorized Signature)

Name: Denise Bonner
(Printed/Typed Name) Administrator

Title: Service

Date: 6-22-10

EXHIBIT 8.1

User will surcharge the non United Police Federal Credit Union Members a minimum of three dollars and 00/100 (\$3.00) per transaction and City shall receive one dollar and 50/100 (\$1.50) from each transaction from a non United Police Federal Credit Union member. User shall pay any amount due to City as set forth in Section 8, entitled "Payment Obligations" of this Agreement.

Should User increase its surcharge fee, at any time during the Term of this Agreement, for United Police Federal Credit Union non-members, User agrees that City shall be entitled, and continue to receive, the same percentage of said surcharge during the Term of this Agreement, including any renewals and extensions thereof.

For purposes of this Agreement, the City's percentage shall be set at fifty percent (50%) and City shall receive said percentage of any surcharge fees collected pursuant to this Agreement.

**I
T
E
M**

**F
O
U
R**



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: 
Jorge M. Gonzalez, City Manager

DATE: October 14, 2010

SUBJECT: **DISCUSSION REGARDING REQUEST FROM ECOMB, INC. FOR AN AMENDMENT TO ITS LEASE AGREEMENT**

BACKGROUND

On December 9, 2009, the Mayor and City Commission adopted Resolution No. 2009-27283, approving a Lease Agreement between the City of Miami Beach (City) and ECOMB, Inc. (ECOMB) for use of approximately 1,251 square feet (comprised of 209 SF of office space and 1041 SF of exterior covered space) of City-owned property (the Demised Premises), located at 210 Second Street, Miami Beach, Florida. The approved Lease Agreement was for an initial term of three years and sixteen days, commencing on December 15, 2009, with one additional three year renewal term at the City's sole discretion.

The current Lease Agreement requires ECOMB to pay Rent, in the amount of \$1.20 annually, as well as requires ECOMB to reimburse the City a flat fee for water and sewer costs, in the amount \$200.00 per month. Additionally, ECOMB is solely responsible for the payment of electricity costs and any other utility service charges provided to the Demised Premises.

ECOMB requested an amendment to its current Lease Agreement to address the flat fee for water and sewer. On September 15, 2010, the Mayor and City Commission referred ECOMB's request to the Finance and Citywide Projects Committee for discussion.

ANALYSIS

The flat fee for water and sewer was calculated at the time of the lease negotiation, and was agreed to by ECOMB. Because the Demised Premises was vacant at the time, and the Water and Sewer service for the space to be leased by ECOMB was tied to the service for the adjacent dog park, this flat fee was developed as a proportionate cost.

ECOMB recently informed the City that it believed it was paying more than its proportionate share of costs for water and sewer, and requested that City staff look into the matter. In response to ECOMB's request, staff has again reviewed ECOMB's water and sewer costs and determined that ECOMB's consumption appears to be less than the costs previously estimated for lease negotiation purposes.

Due to the fact that no dedicated water meter exists for the Demised Premises, for this new analysis City staff utilized a national consumption average of 25 gallons per person per day (as determined separately by the EPA and John Hopkins University) for water consumption calculations. ECOMB presently has three employees. Utilizing that average resulted in calculations that ECOMB's operations consume an estimated 2,281 gallons monthly. The City bills a minimum monthly water service charge of \$47.96 for any consumption up to 11,000 gallons. Additionally, the City charges a sewer rate of \$6.04 per every 1,000 gallons consumed,

but does not have a minimum charge for sewer service. Therefore, utilizing the estimated average monthly consumption of 2,281 gallons, at the City's rate of \$6.04 per every 1,000 gallons consumed, the monthly cost for sewer service would be \$13.78.

The \$47.96 minimum charge for water combined with the \$13.78 for sewer service based on average use calculations results in a monthly estimated cost of \$61.74. This would represent a \$138.26 monthly reduction in ECOMB's reimbursement costs to the City.

In consideration of this information, the Administration has placed for discussion before the Finance and Citywide Projects Committee whether to amend the lease amendment to reflect a reduced fee relating to the water and sewer costs for the leased premises. In all other respects, the lease agreement would remain unchanged.

JMG/HF/AP/tr

**I
T
E
M**

**F
I
V
E**

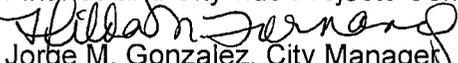


MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: 
Jorge M. Gonzalez, City Manager

DATE: October 14, 2010

SUBJECT: **DISCUSSION REGARDING REQUEST FROM MIAMI BEACH FILM SOCIETY, INC.
FOR AN AMENDMENT TO ITS LEASE AGREEMENT**

BACKGROUND

On September 3, 2009, the Finance and Citywide Projects Committee considered, approved and forwarded to the full Commission for consideration a proposed lease agreement between the City of Miami Beach (City) and the Miami Beach Film Society, Inc., d/b/a Miami Beach Cinematheque (Cinematheque), for use of approximately 2,523 square feet of City-owned property (the Demised Premises), located at 1130 Washington Avenue, 1st Floor South, Miami Beach, Florida. The Committee recommended a \$20 per square foot rent, an amount lower than market rents, but recommended because of the non-profit nature of the organization, as well as the type of activation to the space and area that this business will provide. The Cinematheque's proposed use requires significant build-out to meet their operational needs.

After much discussion regarding the lease, the Committee members recommended a lease commencement date of March 1, 2010 to allow the Cinematheque sufficient time to prepare build-out plans to submit for permitting (at least five months from the date of lease approval at Committee). Recognizing that the Cinematheque would then require build out time, it was also recommended by staff that a two-month rent abatement be provided. However, the Committee recommended an additional month of tenant improvement credit in lieu of the City assuming the costs and responsibility of certain demolition in the space; the Cinematheque was agreeable with assuming demolition in exchange for the additional month tenant improvement credit. As such, the proposed rent commencement was June 1, 2010. At that time, the Cinematheque's estimated construction costs were \$150,000.

On December 9, 2009, the Mayor and City Commission adopted Resolution No. 2009-27282, approving on second reading the Lease Agreement between the City and the Cinematheque. As per the Commission's approval of the lease, the Cinematheque provided half of the required security deposit subsequent to lease execution, (\$4,205, equal to one months rent) and the second half on June 1, 2010. This second half was to be applied toward rent after the completion of the tenant improvements, with the expectation that those improvements would be completed by the rent commencement date of June 1st - or nine months from Committee approval (six months from lease approval).

On September 15, 2010 the Mayor and City Commission approved a referral to the Finance and Citywide Projects Committee a discussion of the Cinematheque's request to consider an amendment to their lease to provide for additional rent abatement.

ANALYSIS

The Cinematheque has been paying its monthly rent (\$4,205) since June 1, 2010 as required pursuant to their Lease (June, July, August, September and October). However, the Cinematheque has not completed its build-out as originally anticipated and the Cinematheque has advised staff that the projected build-out costs (interior demolition and reconstruction of the Demised Premises) have doubled to approximately \$300,000. The permit plans and application were submitted to the City's Building Department on April 23, 2010 and the Cinematheque advised the City that due to unforeseen permitting delays, a building permit was not obtained until August 17, 2010.

In light of the delay in completing the build-out, the estimated costs of the build-out (not yet confirmed by the City) and the inability to operate in the leased space to generate revenue (originally anticipated by the Cinematheque to have begun by August 1, 2010, but now anticipated to begin December 1, 2010), the Cinematheque approached City staff about the possibility of obtaining an additional rent abatement or tenant improvement credit equivalent to five (5) months rent, as well as a credit of half of the security deposit.

While the Finance Committee discussed the issue thoroughly prior to approval of the lease and recommended lease commencement and rent commencement dates that they deemed would be sufficient to allow for the Cinematheque to obtain the necessary permits and complete construction in order to open and generate revenue (a total of nine months from Committee approval to the rent commencement date; six months from Commission approval to rent commencement date), any additional rent relief for the tenant requires a lease amendment that must be approved by the City Commission.

The total value of the Cinematheque's request for an additional five month rent abatement and credit of half of the security deposit paid (equivalent to one month's rent) is \$21,205 for the additional rent abatement, and a credit of \$4,205 to be applied to the first rent payment (total of \$25,230); this is in addition to the value of the three month rent abatement of \$12,615 already provided for in the lease. If the additional rent abatement is approved, commencing in November 2010 and including the application of the credit of one month's rent, the Cinematheque would not recommence paying rent until May 2011.

CONCLUSION

Staff has yet to review in detail the revised build-out costs. While the Cinematheque has been paying their required rent since the rent commencement date in spite of no revenues being generated at this location, as previously noted and as discussed at length by the Committee prior to recommendation for approval more than a year ago, the per-square-foot rent charged to the Cinematheque is below market rent for comparable space. As you are aware, rent abatements and tenant improvement credits have been provided to other tenants; however, those tenants have been charged market or near-market competitive per-square-foot rents.

The Cinematheque's request is submitted to the Finance and Citywide Projects Committee for direction.

JMG/HF/AP/rr

**I
T
E
M**

S

I

X



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager 

DATE: September 15, 2010

SUBJECT: **A REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE A DISCUSSION REGARDING THE MIAMI BEACH FESTIVAL OF THE ARTS AND POTENTIALLY CONTRACTING WITH A PROFESSIONAL ART FESTIVAL COMPANY TO PRODUCE THE FESTIVAL FOR THE CITY.**

ADMINISTRATION RECOMMENDATION

Refer discussion to Finance/Citywide Projects Committees as recommended by staff.

BACKGROUND

The Music and Fine Arts Board was originally created in 1962 to encourage and develop cultural programs with the objective of making our Community a recognized leader in the State of Florida in the field of fine arts. Subsequently, in 1974 the resolution was amended renaming the board the Fine Arts Board. This board's new mission was to "promote the work of contemporary visual and cultural artists, to enhance the appreciation for the arts in the community at large, and to provide economic stimulation to underserved neighborhoods." The annual Miami Beach Festival of the Arts was created to fulfill this task and was produced by the City of Miami Beach from 1975 through 2002.

Taking over production of the Festival from the Parks and Recreation Department in 1999, the Office of Arts, Culture and Entertainment relocated the 2000 Festival to Ocean Terrace in North Beach. In seeking a partnership with the North Beach Development Corporation (NBDC) for promotion and marketing, a Quality of Life grant in the amount of \$15,000 was awarded in 2000 for the 2001 event. This grant was increased to \$45,000 for the 2002 event. Fiduciary responsibility and production of Festival of the Arts event was transferred to the NBDC in 2004. NBDC produced the Festival of the Arts for four (4) years with the help of an annual allocation from the City of \$75,000. During this time, the Fine Arts Board continued to jury the Festival with regard to the poster artist selection, the exhibiting artist applications, the local artist program, the children's art display and the City's portable collection.

In 2008 the City once again assumed all production responsibilities for the Festival of the Arts. The Tourism and Cultural Development Department (formerly Arts, Culture and Entertainment), which staffs the Fine Arts Board, managed a professional services agreement with an event coordinator for assistance in coordinating the production of the Festival of the Arts since 2004. In 2009, City funding for the Festival of the Arts was reduced to \$55,000 annually. This appropriation was offset by any revenue generated from the event. Since 2008, the offset has ranged from a high of \$39,026 in 2010, to a low of \$10,500 in 2009.

Agenda Item C4B

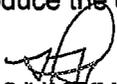
Date 9-15-10

Over the years the Festival's quality, prestige, attendance and artist participation has steadily dwindled. Since 2008, the Fine Arts Board has spent countless hours looking at alternative ideas and formats to raise the caliber of the Festival of the Arts. Additionally, the Board also spent much time tweaking the entertainment, children's area and other aspects of the event. Recently the Administration met with Mr. Howard Alan, whose company, Howard Alan Events, produces art festivals all across the country including the Las Olas festivals and the Key Biscayne festival. Based on the current economic market, the festival industry and the performance of our event, it was his professional recommendation that we reposition the festival to include crafts, food, flowers and some art, but not necessarily high-end art. He also suggested moving the date to mid-April when it fits more into the calendar for arts and crafts events.

The Fine Arts Board discussed this at their July and August 2010 meetings and unanimously recommended in favor of these changes. Additionally, they recommended that the City contract with an experienced art festival producer to produce the Festival for the City. In speaking with Mr. Alan about the concept of the City contracting with an entity such as his to produce this event, he indicated that his company, like others, would require complete control of the event and would assume all risk, responsibility and reward. If the City were to decide to hire an outside producer who assumes all risk in producing the event, the City would no longer have to appropriate \$55,000 annually for the Festival of the Arts.

CONCLUSION

The Administration recommends referral to the Finance and Citywide Projects Committee for further discussion and consideration of a Request for Proposals (RFP) for a company to produce the event on behalf of the City.



JMG/HMF/MAS/gf

T:\AGENDA\2010\September 15\Consent\Festival of the Arts Referral Memorandum (2).doc

**I
T
E
M**

Under Separate Cover

**S
E
V
E
N**

**I
T
E
M**

**E
I
G
H
T**



MIAMI BEACH

MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager 

DATE: October 14, 2010

SUBJECT: **Discussion regarding recent billing of Parking Impact Fees and the possibility of a moratorium due to present economic market conditions.**

BACKGROUND

A discussion regarding the City's most recent billing of Parking Impact Fees, and the possibility of a moratorium due to present economic market conditions, was held by the City Commission on September 15, 2010, at the request of Commissioner Wolfson. After briefly discussing the matter, the issue was referred to the Finance and Citywide Projects Committee. The Commission also expressed their desire for the City to hold off on sending collection letters until the item is discussed at committee.

ANALYSIS

In certain specific cases a parking impact fee may be paid to the city in lieu of providing required parking. Rather than a traditional "impact fee", it is really a "fee-in-lieu", which means that one has the option to either provide the required parking either on-site or within a specified distance, or, pay a fee in lieu of providing that parking.

The fee is set by the City based upon the estimated cost of constructing one parking space in a typical structured parking garage, and is adjusted from time to time to reflect changes in the cost of land and construction. In 2006, the City increased the fee to \$35,000 per space, which was estimated to be the amount it would cost the City to construct one space; subsequent analysis of the parking garage projects reviewed by the City has proven that amount to be justified, as the costs reflect an average cost per space very close to this figure.

The rationale for the fee-in-lieu of parking is that where a developer cannot provide parking on site, and is unable to obtain off-site parking to satisfy the parking requirements, the funds generated by the parking impact fees can be used by the City to provide public parking garages. The City is divided into three districts, north, middle and south, and funds generated are segregated into three accounts according to the district they are in.

In South Beach, the City has used these fees to help fund the Municipal Multipurpose Center garage at 17th Street and Meridian Avenue. The Sunset Harbour garage, which is located in the Mid-Beach parking impact fee district, is funded partially with parking impact fees. The proposed garage on 23rd Street is also located in the Mid-Beach account area. There are funds in the account for North Beach which are expected to help fund the future North Beach Town Center garage.

New construction of buildings must pay a one-time parking impact fee at the time of building permit approval. However, for the intensification of an existing building from a less intense use such as office or retail to a more intensive use such as restaurant, which requires additional parking, a yearly fee payment option is offered, which is 3% of the one-time fee, payable per year. The full fee is currently \$35,000, so the yearly fee is 3% of that, or \$1,050 per year. The yearly fee is also an option for outdoor cafés associated with an indoor restaurant use.

Intensification of existing buildings in our historic districts does not trigger any parking requirements, so within historic districts there are very few yearly parking impact fee accounts. The majority of yearly accounts are located in areas that are not in historic district, and are not in areas of the City which have special parking reductions or parking districts. (Lincoln Road, 41st Street, and 71st Street are "parking districts" which have no parking requirements for retail or restaurant uses.) The attached graphic shows that there are concentrations of yearly parking impact fee accounts along Alton Road, in Sunset Harbour, in South Pointe, and in North Beach either along Collins Avenue south of 71st Street or clustered around the Normandy fountain. These concentrations are in areas that are neither considered "parking districts" nor are designated as local historic districts. As such, the intensification of uses within the existing buildings in these areas have required the payment of the yearly parking impact fees, when adequate parking was not available on-site to accommodate the increased parking requirements.

On August 9, 2010 invoices were sent out for fiscal year 2009/2010 parking impact fees. Approximately 68 invoices were sent out totaling \$582,750. The median amount was \$5,250 or 5 spaces; 18 accounts were greater than \$10,000; 13 accounts were for one space only, \$1,050. After the invoices began arriving, City staff fielded questions from those being billed, since some of the people receiving the bills did not know what they were for. Since that time, staff has closed out eight (8) accounts, which were now located in new historic districts or had gone out of business or changed uses. A few more accounts were able to be reduced by adjusting the number of seats they were licensed for, when that was possible. To date, six accounts have been paid for this billing cycle.

Since businesses were receiving the PIF invoices for the first time in quite some time, many may not have realized what they were being billed for. Several expressed an understanding of the billing, but requested that they be allowed to pay over time, or on a payment plan. Of course, some recipients of the invoices complained that they were now facing difficult economic times as the recession had been worsening, and felt hardship at having to pay the required amount. These are the conditions that led to this discussion.

The Planning Department has been looking at various potential policy solutions to address the concerns of small businesses with respect to the parking impact fees. For example, in one case brought to the Department's attention, a business that was on Alton Road at 41st Street was required to pay parking impact fees several years ago when they created a restaurant and later added more seats in what was once a real estate office. While parking is normally required for this type of intensification, all properties fronting on 41st Street are part of "parking district #3" and as such, have no parking requirements for retail or restaurants. However, this property, since was on the curved portion of Alton Road just adjacent to the south from 41st Street, wasn't technically included in the parking district. Staff suggests that the definition of this parking district could be easily amended to include

all properties zoned CD-3 commercial high-intensity, located within one block of 41st Street, and thereby include the five or six lots that are left out of the parking district as currently defined. This would be very logical from a planning standpoint and would not have a significant impact on the 41st Street area.

Similar changes could be contemplated in the North Beach area, where 71st Street is a parking district, but the areas around Normandy Fountain or south of 71st Street are not. The concept of the parking district is linked to the presence of adequate public parking, and as a public parking garage project is contemplated, the extension of the parking district could also be explored. (The North Beach Town Center plan includes a modest increase of the parking district #4). Currently, a new parking district #5 is being contemplated for the Alton Road corridor as part of the package of ordinances addressing the buffer zone between the commercial corridor and the Flamingo Park historic neighborhood. Finally, the Commission directed staff to explore revisions to the parking requirements to the Sunset Harbour neighborhood, once the City's new parking garage project is open and operating in that neighborhood.

Another possibility is to consider a small business exemption similar to the one currently in place for concurrency fees. Several years ago in response to complaints about concurrency or traffic impact fees, the City implemented a small business exemption. It exempts businesses which generate only a very small amount of traffic from paying concurrency fees. A similar approach could be applied to parking impact fees if it was desired, waiving yearly impact fees for those expansions or intensifications that generated the requirement for only one or two parking spaces.

This approach could be supported as the impact upon the City would be minimal. However, in the past two or three years, a small number of projects were approved with the requirement for a large yearly impact fee, some up to 60 or more parking spaces. Projects on a scale such as this should not be exempted from parking impact fee payments, as the negative impact upon the City would be very significant. Projects which were planned and opened based on the payment of large parking impact fees should not be rewarded for this choice, as the decision to agree to yearly payment of large fees was an individual business decision that was made freely. The decision to pay impact fees is solely up to the individual applicant, and the option to pay these fees is offered by the City in order to give applicants another option, so that they can open a new business without the mandatory requirement to provide the appropriate amount of parking which the City's zoning code normally requires.

CONCLUSION AND RECOMMENDATIONS

The Administration recommends that the Finance and Citywide Projects Committee advise staff as to the policy direction they wish to take, including the preparation of any ordinances required to effectuate the desired goals. Staff also suggests examining a maximum limit on the use of parking impact fees, so that very large projects which may have a significant impact on surrounding neighborhoods are not permitted to go forward without providing some level of adequate parking.

JMG/JGG/RGL

F:\PLAN\ALL\LandUseCommittee\PIF memo to Finance Committee-MEM.docx

Parking Impact Fee – Yearly Billing

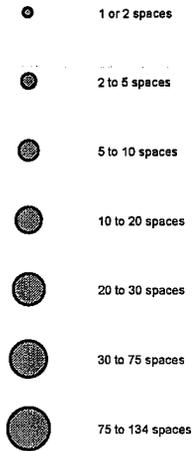
- The yearly fee is 3% of the one-time fee of \$35,000 per space:
 - Yearly fee = \$1,050 per space.
- Last fee adjustment was in 2006, and is based upon cost of construction of parking.
- August 9, 2010 bills were sent out for FY 09/2010 – 65 bills sent out totaling \$582,750.
- The median amount was \$5,250 or 5 spaces;
- 18 accounts were greater than \$10,000; 13 accounts were for one space only, \$1,050.
- After receiving returned mail and inquiries from customers, 8 accounts were further researched and able to be closed out, and staff worked with 3 other accounts to reduce the amount owed (by reducing the number of restaurant seats, reconfiguring parking, etc.)

Top 10 Accounts 2009	Amount	Spaces
FOGO DE CHAO BRAZLIAN STKHSE	\$63,000.00	60
W HOTEL	\$53,550.00	51
TAVERNA OPA	\$44,100.00	42
GOLD'S GYM	\$28,350.00	27
UNO RESTAURANT ASSOC INC	\$24,150.00	23
CLEVELANDER	\$16,800.00	16
SMITH AND WOLLENSKY	\$16,800.00	16
1052 OCEAN DRIVE, LLC	\$15,750.00	15
RED THE STEAKHOUSE /OD	\$15,750.00	15
BROWNS HOTEL LLC	\$14,700.00	14

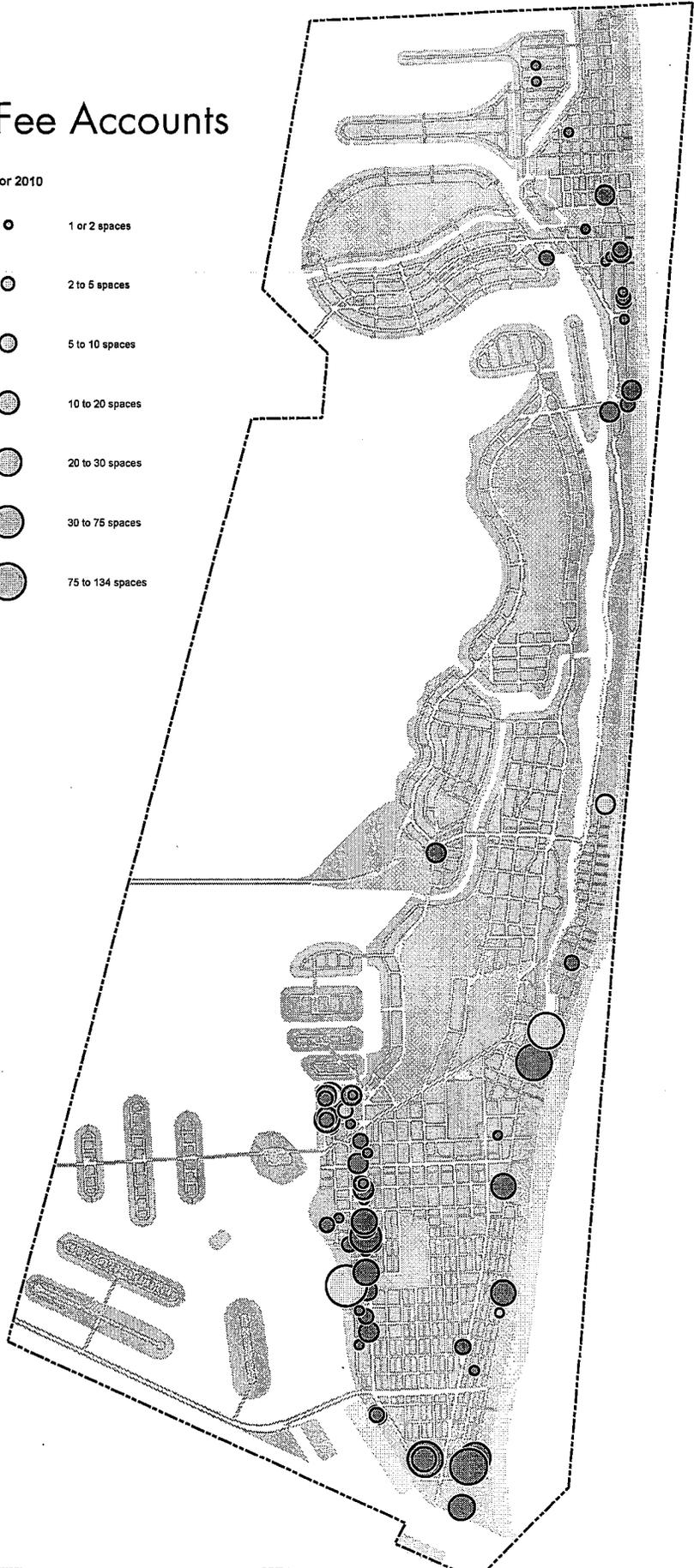
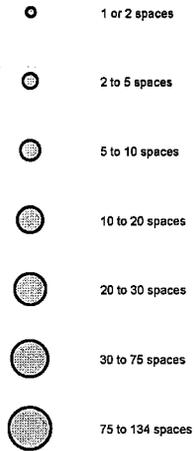
Customer name	Customer address	Date initiated	# of Spaces	Total Bill
FOGO DE CHAO BRAZILIAN STKHSE	834-836 1 ST	January 31, 2008	60	\$63,000.00
W HOTEL	2201 COLLINS AVE	May 1, 2009	51	\$53,550.00
TAVERNA OPA	36 OCEAN DR	June 11, 2002	42	\$44,100.00
GOLD'S GYM	1400 ALTON RD	March 29, 2000	27	\$28,350.00
UNO RESTAURANT ASSOC INC	101 OCEAN DR	December 21, 2007	23	\$24,150.00
CLEVELANDER	1020 OCEAN DR	April 13, 2009	16	\$16,800.00
SMITH AND WOLLENSKY RESTURANT	1 WASHINGTON AVE	July 9, 1997	16	\$16,800.00
1052 OCEAN DRIVE, LLC	1052 OCEAN DR	April 21, 2006	15	\$15,750.00
RED THE STEAKHOUSE /OD	119 WASHINGTON AVE	June 19, 2008	15	\$15,750.00
BROWNS HOTEL LLC	100 OCEAN DR	November 9, 2007	14	\$14,700.00
GANSEVOORT LOUNGE	2301 COLLINS AVE	June 6, 2008	14	\$14,700.00
SARDINIA ENOTECA RISTORANTE	1801 PURDY AVE	January 26, 2001	12	\$12,600.00
SEAROCK	1400 20 ST	February 10, 2009	12	\$12,600.00
LIQUOR LOUNGE CAFE INC	1560 COLLINS AVE	June 15, 2001	11	\$11,550.00
PERSONALITY & SALT LLC	840 1 ST	March 19, 2003	11	\$11,550.00
SOHO BEACH HOUSE	4385 COLLINS AVE	August 24, 2009	10	\$10,500.00
SYLVANO ITALIAN REST AND BAR	820 ALTON RD	June 14, 2005	10	\$10,500.00
PURDY LOUNGE/BAR BROTHERS INC	1811 PURDY AVE	April 5, 2000	9	\$9,450.00
THE NEW HOTEL	7337 HARDING AVE	June 18, 2008	9	\$9,450.00
1080 ALTON RD LLC	1080 ALTON RD	December 1, 2003	8	\$8,400.00
BAGEL TIME INC.	3915 ALTON RD	September 30, 1997	8	\$8,400.00
BARTOLOME GRILL & RESTAURANT	1422 20 ST	September 28, 2007	8	\$8,400.00
LINDSAY HOLDINGS LLC	1935 WEST AVE	July 14, 2003	7	\$7,350.00
FIFI'S SEAFOOD	6932-6934 COLLINS AVE	March 6, 2009	6	\$6,300.00
KING KONE FOOD INC	1570 ALTON ROAD	June 18, 2009	6	\$6,300.00
L.A. CAFE ONE LLC	1570 ALTON RD - UNIT B	December 30, 2003	6	\$6,300.00
ALTAMAR RESTAURANT	1223 LINCOLN RD	February 14, 2002	5	\$5,250.00
AMERICAN SUPPLY IMPORT/EXPORT	400 ALTON RD	April 22, 2005	5	\$5,250.00
AZUL SPIRITS & WINES	1414 20 ST	September 26, 2007	5	\$5,250.00
GO-GO FRESH FOOD FAST	926 ALTON RD	June 17, 2004	5	\$5,250.00
GRAND FLAMINGO	1500 BAY RD	February 8, 2008	5	\$5,250.00
JOE ALLEN MIAMI BEACH LLC	1787 PURDY AVE	February 6, 1998	5	\$5,250.00
CASA TUA	1700 JAMES AVE	March 14, 2000	4	\$4,200.00
LIVE REALTY INC	1330 WEST AVE CU-101	July 22, 2005	4	\$4,200.00
KAWA CAPITAL MGMT LLC	400 ALTON RD	April 22, 2005	3	\$3,150.00
NORMAN'S TAVERN	6770 COLLINS AVE	September 29, 1987	3	\$3,150.00
PIZZA HUT #710704	1606 ALTON RD	October 19, 1990	3	\$3,150.00
SENTRY MINI STORAGE	331-69th ST	April 4, 1986	3	\$3,150.00
WHITE COFFEE CORP	6954 COLLINS AVE	February 12, 1988	3	\$3,150.00
CASTING FASHIONS INC	1445 BAY RD	December 7, 2005	2	\$2,100.00
GOURMET CARROT SOUTH BCH INC	959 WEST AVE	January 9, 2007	2	\$2,100.00
KINDERLAND 4 KIDZ LLC	7830 CARLYLE AVE	October 20, 1992	2	\$2,100.00
OFFICE DEPOT	1771 WEST AVE	April 1, 2004	2	\$2,100.00
RICE HOUSE OF KABOB	1318 ALTON RD	January 8, 2007	2	\$2,100.00
EL TABLAZO RESTAURANT	6780 COLLINS AVE	December 13, 1996	1	\$1,050.00
DUNKIN DONUTS	1606 ALTON RD	June 1, 2005	1	\$1,050.00
HAPPY KIDS	7118 BYRON AVE	February 22, 1999	1	\$1,050.00
HARDING GARDENS CONDO	6920 HARDING AVE	January 6, 2003	1	\$1,050.00
JBI ANTIQUES AND CONSIGNMENT	1420 20 ST	September 14, 2009	1	\$1,050.00
NATURAL HARVESTER INC.	1534 ALTON RD	April 27, 1995	1	\$1,050.00
PROPER FORM LLC	1935 WEST AVE #208	October 27, 2004	1	\$1,050.00
SPANKY'S 8 INC	6640 COLLNS AVE	July 23, 2004	1	\$1,050.00
STARBUCKS	1570 ALTON RD	June 18, 2009	1	\$1,050.00
TALULA RESTAURANT & BAR	210 - 23RD STREET	May 8, 2003	1	\$1,050.00
TOMMY HILFIGER	614-616 COLLINS AVE	December 19, 2007	1	\$1,050.00
TONY FORTE PROPERTY	748-750 82 ST	July 16, 2004	1	\$1,050.00
VIVI'S DAYCARE	757 83 ST		1	\$1,050.00

Yearly Parking Impact Fee Accounts

Billed 2009



New for 2010



MIAMI BEACH

Prepared by the Planning Department, October 2010



CLOSED ACCOUNTS and INVOICES

MIAMI BEACH MEDICAL GROUP	1200 ALTON RD MIAMI BEACH, FL 33139	\$15,750.00
HARRY AND JEANETTE WINEBERG	757 WEST AVE MIAMI BEACH, FL 33139	\$1,050.00
ABB FASHION LLC	1259 NORMANDY AVE MIAMI BEACH, FL 33141	\$3,150.00
TROPICAL BEACH CAFE	2891 COLLINS AVE MIAMI BEACH, FL 33140	\$4,200.00
OPTIMA HOSPITALITY ASSOC LLC	6060 INDIAN CREEK MIAMI BEACH, FL 33140	\$6,300.00
GILIA'S RESTAURANT	6345 COLLINS AVE MIAMI BEACH, FL 33141	\$6,300.00
CAFE AVANTI	730-732 ARTHUR GODFREY RD MIAMI BEACH, FL 33140	\$7,350.00
PIZZA FIORE	703 71 ST MIAMI BEACH, FL 33139	\$8,400.00
RED THE STEAKHOUSE /OD	119 WASHINGTON AVE	\$15,750.00

**I
T
E
M**

**N
I
N
E**



MIAMI BEACH

MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager 

DATE: October 14, 2010

SUBJECT: **DISCUSSION REGARDING LINCOLN ROAD MEDIAN**

BACKGROUND

On February 16, 2010, the Neighborhoods Committee discussed the City Center Neighborhood improvements, including the proposal for a new, raised median from Collins to Washington Avenue. The scope of work comprises the installation of a new six-foot wide landscaped median along the center of Lincoln Road, new sidewalks, bump-outs at the intersections to facilitate pedestrian crossings, roadway repaving, landscape, irrigation, lighting, and brick paver crosswalks. The use of Piedra Portuguesa cobblestone for the sidewalk surface was eliminated from the scope of work.

The Basis of Design Report (BODR) for the City Center Neighborhood identified two design options for this portion of Lincoln Road and a number of meetings with the community were held as noted below:

September 15, 2005	Lincoln Road Public Meeting
April 26, 2006	Visioning Session
May 22, 2006	Community Design Workshop No. 1
July 11, 2006	Community Design Workshop No. 2

Consensus was reached during these community design workshops for design option 2, which included a landscaped median between Collins and Washington Avenues. The design team noted that the new medians would enhance pedestrian safety by providing a "refuge" area and mid-street crossing points for pedestrians.

Although the Project has no General Obligation (GO) Bond funding, the Administration presented the Project Draft BODR as an informational item during the September 12, 2005 General Obligation Bond Oversight Committee meeting. The BODR was also presented to the Historic Preservation Board (HPB) on October 11, 2005. The City Commission during its October 19, 2005 meeting, adopted Resolution 2005-26035, approving the final BODR. The Project received final approval from the HPB on January 9, 2007.

The project plans have been completed and permitted. The Neighborhoods Committee approved the request to move forward with the Invitation to Bid by a 4-0 vote.

On February 3, 2010 the City Commission discussed the feasibility of removing the landscaped median from the scope of work. In order for the project to be modified in such a manner, the City Code required the review and approval of the Historic Preservation Board. The City Commission directed the Administration to make application to the Historic Preservation Board for a

Certificate of Appropriateness for right-of-way improvements, including the removal of the median.

On June 8, 2010, the Historic Preservation Board denied the request to remove the medians, and re-approved the project, inclusive of the medians.

The City Commission discussed the Historic Preservation Board's action on July 14, 2010, and directed the Administration to proceed with the project inclusive of the median. On September 20, 2010, during the adoption of the Capital Budget And Capital Improvement Plan for fiscal year 2010/11, the City Commission voted to refer the issue to the Finance and Citywide Projects Committee.

ANALYSIS

It is important to note that the right-of-way improvements in the larger City Center Area are the product of several years of planning involving public input from several community design workshops. Further, the streetscape improvements for this portion of Lincoln Road have been approved by the Historic Preservation Board as part of the Streetscape Improvements for the City Center area.

Bids for this project were opened on September 28, 2010 and the City received eight (8) responses. A Technical Review Panel has been identified to review the various bid packages and rank the bidders. The Technical Review Panel met on October 7, 2010 and shortlisted the proposals down to five firms. Interviews have been scheduled for late October 2010, where a final selection will be made.

The Administration anticipates bringing the contract award to the City Commission at its November 17, 2010 meeting and construction will be initiated in April 2011 to mitigate impacts to the adjacent businesses during the peak tourist season.

CONCLUSION

The Administration recommends the Finance Committee consider the following with regard to the design and construction of raised medians on Lincoln Road between Collins and Washington Avenues:

1. The project Invitation to Bid (ITB) has been approved by the Neighborhoods Committee.
2. The project is fully approved and permitted; any redesign would incur additional costs and delay the commencement of the long awaited improvements.
3. In order to move the project into the construction phase, a final determination on the Median needs to be made.
4. Further delays will affect the construction schedule possibly affecting the businesses as we run into the peak of the 2011 season.

JMG\JGG\rgl

F:\cmg\\$\ALL\JGG\Lincoln Road Median\Oct 2010 Lincoln Road Median Finance Memo.docx