



# MIAMIBEACH

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

## COMMITTEE MEMORANDUM

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

FROM: Interim City Manager Kathie G. Brooks

DATE: January 24, 2013

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for January 24, 2013, at 3:00 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

### **OLD BUSINESS**

- 1. Discussion regarding to consider A Request for Rent Relief from Penn 17, LLC., regarding the retail space at the Pennsylvania Avenue parking garage (*December 12, 2012 Commission Item C4B*) (90)**

Anna Parekh – Real Estate, Housing & Community Development Director

### **NEW BUSINESS**

- 2. Discussion regarding a recommendation by the GLBT Committee to address the issue of benefits tax inequality for City Employees with registered domestic partners versus legally married spouses (*March 21, 2012 Commission Item C4L*) (50)**

Sue Radig – Human Resources Administrator

- 3a Discussion regarding water and sewer deposits; implementing rules and regulations and applications of rules similar to Miami-Dade water and sewer department (*October 24, 2012 Commission Item C4A*) (79)**

**3b Discussion Regarding Consideration of New Policy Establishing Criteria For The Reimbursement Of Guarantee Deposits For Those Customers Who Have Established A Positive Payment History On Their Water Bill** ([October 24, 2012 Commission Item C4C](#)) (81)

**3c Discussion Regarding The Creation Of Procedures To Provide A 24 To 48 Hour Notification To Homeowners Prior To Water Being Shut Off Due To Non-Payment** ([December 12, 2012 Commission Item R91](#)) (96)

Patricia Walker – Chief Financial Officer

**4. Discussion Regarding: Business Tax Receipt Renewal Notices; How We Handle Over Charges; Reasons For Miscalculations; And Corrective Action Plan** ([October 24, 2012 Commission Item C4B](#)) (80)

Patricia Walker – Chief Financial Officer

**5. Discussion Regarding Police Athletic league (PAL) Lease** ([December 12, 2012 Commission Item C4K](#)) (94)

Max Sklar — Acting Assistant City Manager

**6. Discussion Regarding The Jewish Community Center's Request For Reimbursement, In The Amount Of \$241,000, For Costs Associated With Reconstructing The Seawall Along The City-Owned Property Located At 4221 Pine Tree Drive** ([January 16, 2013 Commission Item C4A](#)) (98)

Anna Parekh – Real Estate, Housing & Community Development Director

**7. Discussion Of A Lease Amendment With Damian J. Gallo & Associates (D/B/A Permit Doctor)** ([January 16, 2013 Commission Item C4B](#)) (99)

Anna Parekh – Real Estate, Housing & Community Development Director

**8. Discussion Regarding Developing Parameters for the Gun Buyback Program** ([January 16, 2013 Commission Item C7E](#)) (105)

Raymond Martinez – Police Chief

**9. Discussion concerning the Lease for the Miami-Dade Gay and Lesbian Chamber of Commerce Foundation located at Historic City Hall at 1130 Washington Avenue (*November 14, 2012 Commission Item C4C*) (89)**

Anna Parekh – Real Estate, Housing & Community Development  
Director

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## COMMITTEE MEMORANDUM

TO: Finance & Citywide Projects Committee Members

FROM: Kathie G. Brooks, Interim City Manager

DATE: January 24, 2013

SUBJECT: **DISCUSSION REGARDING A RECOMMENDATION BY THE GLBT COMMITTEE TO ADDRESS THE ISSUE OF BENEFITS TAX INEQUALITY FOR CITY EMPLOYEES WITH REGISTERED DOMESTIC PARTNERS VERSUS LEGALLY MARRIED SPOUSES**

### BACKGROUND

At its June 12, 2012 meeting the Miami Beach GLBT Business Enhancement Committee ("BEC") members held a discussion regarding the heavier tax burden for City of Miami Beach ("the City") employees with domestic partners who elect to receive family medical and dental coverage through the City over that of their married counterparts. A motion was passed to refer the discussion to the Finance and Citywide Projects Committee regarding reimbursing employees who pay a heavier tax burden because they have enrolled their domestic partners in the City's health plans.

A referral to the Finance and Citywide Projects Committee for a discussion regarding a recommendation made by the BEC to address the issue of tax inequality for city employees with registered domestic partners versus legally married spouses was placed on the March 13, 2012 City Commission meeting agenda by the Mayor, Matti Herrera Bower.

On November 30, 2012, Commissioner Michael Gongorra made a similar referral to the same committee.

### ANALYSIS

Exclusions from taxable compensation for benefits provided by an employer are governed by the Internal Revenue Code. Those requirements provide that, to be excluded from paying said taxes on insurance benefits, the benefits have to be provided to an employee and dependents as defined by the Internal Revenue Service (IRS), which include the employee's legal spouse or children. For federal tax purposes, domestic partners (same or opposite sex) are not included in the definition of a "spouse" and therefore tax benefits at the federal level do not exist for domestic partners (except in rare instances where the domestic partner might qualify as the employee's dependent). Therefore (unless the domestic partner is the employee's dependent), the premium paid by an employer for health care benefits for an employee's domestic partner benefits is considered income and, therefore, must be included in the employee's taxable income.

The City offers health benefits coverage for domestic partners, both same and opposite sex. The City's contributed share of the premium cost of any health benefit provided to an employee and his or her domestic partner is considered income and is therefore subject to

tax withholding. This liability is considered imputed income and is reported on the employee's annual W-2 earnings statement. In addition, as the domestic partner is not considered a "spouse" under the IRS code, the contributions for the coverage provided the domestic partner is taken after-tax. Therefore, an employee who enrolls his or her domestic partner for health benefits has two (2) medical deductions, one for the employee's before-tax premium payment and one for the domestic partner's after-tax premium payment, which is the difference between the employee only contribution and the contribution for family coverage. This after-tax premium payment for their domestic partner's health care coverage is in addition to the income tax paid on the value of the City's premium payment for the domestic partner's coverage.

The City has five medical plans. The chart below reflects the monthly premium costs to the City and the monthly and annual taxable income to the employee who has elected to provide health coverage to a domestic partner (see Chart 1 below). This taxable income is referred to as imputed income and is calculated by deducting the total value of a single/employee only coverage from the total value of the family coverage (as the City currently has only two premium tiers, the premium for family coverage is used), the balance is the imputed income. The same formula applies for the dental insurance. (see Chart 2 below) For consideration, the employee's imputed income is based on the medical plan they have elected and the plan's associated premium cost to the employee and the City. Attached is a copy of the letter provided to City employees enrolling his or her domestic partner in the City's health insurance plans, explaining the tax liability (Exhibit A).

**Chart 1-City Medical Plans**

<b>Domestic Partner Imputed Income</b>					
Employee's tax liability for medical and/or dental coverage					
<b>Medical</b>					
<b>Plan</b>	<b>Coverage Tier</b>	<b>Medical Premium</b>	<b>Monthly Premium City Share</b>	<b>Imputed Income Taxable Amount Monthly</b>	<b>Imputed Income Taxable Amount Annually</b>
<b>Premium HMO</b>					
	Employee	\$763.47	\$381.74	\$564.66	\$6,775.92
	Family	\$1,892.80	\$946.40		
<b>Standard HMO</b>					
	Employee	\$464.55	\$329.83	\$349.76	\$4,197.12
	Family	\$1,151.85	\$679.59		
<b>Premium PPO</b>					
	Employee	\$1,527.79	\$763.90	\$1,110.55	\$13,326.60
	Family	\$3,748.90	\$1,874.45		
<b>Standard PPO</b>					
	Employee	\$902.42	\$640.72	\$665.92	\$7,991.04
	Family	\$2,214.64	\$1,306.64		
<b>POS</b>					
	Employee	\$850.10	\$425.05	\$629.82	\$7,557.84
	Family	\$2,109.73	\$1,054.87		
<b>Dental</b>					
<b>DHMO</b>	Employee	\$12.34	\$6.17	\$4.64	\$55.68

	Employee + 1	\$21.61	\$10.81		
	Family	\$33.95	\$16.98		
<b>PPO</b>	Employee	\$37.54	\$18.77		
	Employee + 1	\$72.35	\$36.18	\$17.41	\$208.92
	Family	\$110.95	\$55.48		

### Chart 2-Imputed Income Examples

Standard HMO		
Employee Only Coverage		
EE Pays	City Pays	Premium Total
\$ 67.36	\$ 164.92	\$ 232.28
Family Coverage		
EE Pays	City Pays	
\$ 236.13	\$ 339.80	\$ 575.93
<b>Imputed Income</b>		<b>\$ 343.65</b>

Dental PPO		
Employee Only Coverage		
EE Pays	City Pays	Premium Total
\$ 9.99	\$ 9.99	\$ 18.78
Employee Plus One Dependent		
EE Pays	City Pays	
\$ 18.09	\$ 18.09	\$ 36.18
<b>Imputed Income</b>		<b>\$ 17.40</b>

### ADMINISTRATION DUE DILIGENCE

A benefits attorney of the City's benefits consultant, Gallagher Benefits Services, was consulted regarding the "grossing up" (term used to reference the reimbursement of tax on domestic partner benefits) of income tax for the value of domestic partner coverage.

According to the Gallagher benefits attorney, adjusting an employee's earnings to offset the extra tax liability is not an issue as we (the City) would still be in compliance with the IRS code as we would continue to tax the employee for the value of the benefit. However, the adjusted earning amount is taxable to the employee as it would be considered income. The adjustment is just that, a taxable adjustment to the employee's pay – it is not a refund.

Since the imputed income is a fixed bi-weekly cost based on the selected medical insurance plan, the tax liability can be calculated for a dollar-to-dollar reimbursement.

### FINANCIAL IMPACT

As of January 17, 2012, the City has 1,938 active full-time and part-time employees, 68 employees which are registered with the City's Human Resources Department as having a Domestic Partner. Of the 68 registered employees, thirteen (13) active and two (2) retirees have elected to enroll in the City's medical and/or dental coverage and six (6) have elected coverage in the International Association of Fire Fighters (IAFF) Health Trust plan.

The following is the calculated fiscal impact of implementing a bi-weekly tax reimbursement to the aforementioned currently registered domestic partner receiving City health benefits.

<b>Current City registered domestic partners and annual tax liability</b>							
	<b>Status</b>	<b>Medical Election</b>	<b>Medical Imputed Income</b>	<b>Dental Election</b>	<b>Dental Imputed Income</b>	<b>Total Imputed Income</b>	<b>Federal Income Tax Liability*</b>
<b>1</b>	Active	N/A	\$0.00	PPO	\$208.92	\$208.92	\$27.16
<b>2</b>	Active	PHMO	\$6,775.92	PPO	\$208.92	\$6,831.60	\$888.11
<b>3</b>	Active	SHMO	\$4,197.12	DHMO	\$55.68	\$4,406.04	\$572.79
<b>4</b>	Active	SHMO	\$4,197.12	PPO	\$208.92	\$4,252.80	\$552.86
<b>5</b>	Active	SHMO	\$4,197.12	DHMO	\$55.68	\$4,252.80	\$552.86
<b>6</b>	Active	SHMO	\$4,197.12	DHMO	\$55.68	\$4,252.80	\$552.86
<b>7</b>	Active	SHMO	\$4,197.12	DHMO	\$55.68	\$4,252.80	\$552.86
<b>8</b>	Active	SHMO	\$4,197.12	DHMO	\$55.68	\$4,406.04	\$572.79
<b>9</b>	Active	SHMO	\$4,197.12	PPO	\$208.92	\$4,252.80	\$552.86
<b>10</b>	Active	SHMO	\$4,197.12	DHMO	\$55.68	\$4,252.80	\$552.86
<b>11</b>	Active	SHMO	\$4,197.12	DHMO	\$55.68	\$4,252.80	\$552.86
<b>12</b>	Active	SHMO	\$4,197.12	DHMO	\$55.68	\$4,406.04	\$572.79
<b>13</b>	Active	SHMO	\$4,197.12	PPO	\$208.92	\$4,406.04	\$572.79
<b>14</b>	Retiree	SHMO	\$4,197.12	PPO	\$208.92	\$4,406.04	\$572.79
<b>15</b>	Retiree	SHMO	\$4,197.12	PPO	\$208.92	\$4,197.12	\$545.63
<b>16</b>	Fire-Active	IAFF	\$18,267.36	N/A	\$0.00	\$18,267.36	\$2,374.76
<b>17</b>	Fire-Active	IAFF	\$1,839.36	N/A	\$0.00	\$1,839.36	\$239.12
<b>18</b>	Fire-Active	IAFF	\$1,839.36	N/A	\$0.00	\$1,839.36	\$239.12
<b>19</b>	Fire-Active	IAFF	\$9,120.48	N/A	\$0.00	\$9,120.48	\$1,185.66
<b>20</b>	Fire-Active	IAFF	\$9,120.48	N/A	\$0.00	\$9,120.48	\$1,185.66
<b>21</b>	Fire-Active	IAFF	\$1,839.36	N/A	\$0.00	\$3,747.24	\$487.14
<b>Total</b>			<b>\$103,364.88</b>		<b>\$1,907.88</b>	<b>\$106,971.72</b>	<b>\$13,906.32</b>

\*Based the Federal Income Tax liability currently withheld on the Citywide average annual earnings of \$57,042, creating a Tax liability withholding will be higher or lower based on the individual employee's actual annual earnings. Federal Income Tax withholding liability of 13% of individual Federal Income.

PHMO=Premium HMO

SHMO=Standard HMO

IAFF=International Association of Fire Fighters

Based on the above schedule, the City's total annual fiscal impact for grossing up the City's employee with domestic partner tax liability is \$13,906.32 Even if enrollment in domestic partner coverage increased by 40% as a result of the passage of this ordinance to create tax equality, the City's annual cost for the reimbursement would be under \$20,000, based on the current medical and dental premium costs.

**GOVERNMENT AGENCIES THAT ARE GROSSING UP**

According to the Legislative Counsel of the Human Rights Campaign, Cathryn Oakely, two other municipalities offer reimbursement of the employee's income tax liability for domestic partner coverage; Cambridge, Massachusetts and City of Hallandale Beach, Florida. Additionally, and most recently, the Palm Beach Property Appraiser's Office enacted a

"grossing up" policy, making it the first known county agency in Florida to adopt such a policy. Their adopted policies are as follows:

#### CAMBRIDGE, MA

Effective July 1, 2011, Cambridge, Mass. employees who have same-sex spouses received an additional payment to cover federal taxation of the benefits coverage the city provides those spouses.

The Cambridge action was in response to a Jan. 10, 2011 City Council resolution ordering a study of how the federal tax treatment of spousal benefits affects the benefits the city provides its employees and their spouses. It also ordered that the city find a way to ameliorate the effect of the different tax treatment on city employees with same-sex spouses.

On May 23, 2011, Cambridge City Manager, Robert W. Healy issued a letter stating that the city's remedy for the disparity was to provide a quarterly stipend that is equal to 20 percent of reported taxable income imputed to the employee for health and dental coverage. This program began July 1, 2011 for non-union and management employees; for employees who belong to unions, the city could implement the stipend as part of new contracts when they are negotiated.

#### CITY OF HALLANDALE BEACH, FLORIDA

At its November 7, 2012 City of Hallandale Beach Commission meeting, a resolution was adopted by the Mayor and City Commission, approving a tax equity reimbursement program for domestic partnerships, authorizing the City Manager to take the necessary action to implement the program. The tax equity solution offers City of Hallandale Beach employees who enroll their domestic partners under the City's health insurance plan a \$500 tax equity reimbursement to mitigate the impact of the additional imputed income tax. A tax equity reimbursement application is required to be filed with its Human Resources Department on May 1<sup>st</sup> of every year that that the additional tax was deducted.

City of Hallandale Beach was the first City on the State of Florida to implement a tax equity reimbursement program.

#### PALM BEACH COUNTY PROPERTY APPRAISER GARY R. NIKOLITS, FLORIDA

The Palm Beach Property Appraiser's Office implemented a policy to offset the additional taxes paid by employees who elect to provide health insurance to their domestic partners. The action was taken upon the request of the Palm Beach County Human Rights Council.

The policy, which went into effect in January 2013, provides employees who elect to insure their domestic partners with a tax equity reimbursement of \$20 on bi-weekly basis, aimed at mitigating the impact of the additional imputed income tax.

Palm Beach County Property Appraiser Gary R. Nikolits is the first elected constitutional officer in Florida to implement a tax equity program. His office has offered domestic partnership health insurance since 2004.

Currently no state agencies offer grossing up. However, two (2) other Florida government agencies are in the process of implementing grossing up policies, City of West Palm Beach and Palm Beach County Tax Collector's Office.

**PRIVATE SECTOR POLICIES**

As of December 2012, TD Bank announced that it will begin offsetting the tax burden that its employees pay for domestic-partner benefits. Other private employers who have implemented similar programs include American Express, Apple, Bank of America Corp., Cisco Systems Inc, Corning, Biogen Corp., Facebook, Goldman Sachs, Google, Kimpton Hotels, Microsoft, Morgan Stanley and Yahoo!.

**CONCLUSION**

Passing such an ordinance, correcting an inequality imposed by the Federal Government, will enhance our City's message of embracing and welcoming equality, diversity and no tolerance for discrimination. Employers who offer the reimbursement also do so to attract the most talented labor pool for their workforce. The estimated annual fiscal impact of grossing up is \$13,906.32 based on current enrollment and insurance premium costs.

KGB/PDW/RA/CD/SR

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## EXHIBIT A



# MIAMIBEACH

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

HUMAN RESOURCES AND RISK MANAGEMENT DEPARTMENT

Tel: (305) 673-7000 ext. 6542, Fax: (305) 604-2452

Date

Addressee's Name

Address

City, State, Zip

RE: Domestic Partner Health Coverage  
Your Tax Liability

Dear Addressee,

When employers provide health care benefits for the employee's spouse and/or dependents, the Internal Revenue Code allows the premium paid by the employer for these benefits to be excluded from the employee's gross income. No such exclusion exists for benefits given to an employee for their domestic partner. Therefore, the premium paid by an employer for health care benefits for an employee's domestic partner is considered income and therefore taxable by the IRS.

### **Who is responsible for paying the tax?**

The employee who has elected domestic partner coverage is responsible for paying the tax on these benefit premiums. To the extent the law requires the employer to withhold tax on the income paid to employees, the tax on domestic partner benefit premiums must also be withheld.

### **How is this tax calculated?**

Private letter rulings issued by the IRS require that an employer withhold income and Medicare taxes from their employee's income for the fair market value of the health benefit paid in excess of the amount paid by the employee and the amount paid by the employer for the benefit.

The "fair market value" of domestic partner medical and/or dental coverage is considered taxable to you as income by the Internal Revenue Service. This taxable amount is reported on you payroll check as imputed income. The "imputed income" is the premium paid by the City and the employee for the domestic partner coverage.

EXHIBIT A

For example, City employee Parks Beach has enrolled in the Premium HMO with coverage for himself and his domestic partner. He pays the bi-weekly family premium of \$238.89 before tax.

• Employee cost - bi-weekly family coverage	\$
• City cost - bi-weekly family coverage	\$
• <b>Total bi-weekly cost – family coverage</b>	<b>\$</b>
<b>Less</b>	
• Employee cost - employee only	-\$
• City cost - employee only	-\$
• <b>Total bi-weekly cost – employee only coverage</b>	<b>-\$</b>
<b>Equals Imputed Income amount</b>	
The bi-weekly “fair market value” of domestic partner coverage considered taxable income by the IRS. This is the amount to be reported on each payroll check as taxable income.	<b>\$</b>

Beginning with your payroll check dated DATE ; a taxable amount of \$xxxxx will be reflected on your payroll check as “imputed income domestic partner”. This amount will increase or decrease at the beginning of each plan year, based your healthcare election and the bi-weekly premium costs for the new plan year.

We understand these tax liabilities may have significant impact on your take home pay. Should you wish to cancel your domestic partner healthcare coverage, please contact Employee Benefits at ext. 7456 to arrange an appointment to make the appropriate changes to your healthcare coverage.

Should you have questions regarding your tax liability for your domestic partner coverage, please contact Sue Radig at ext. 6542.

Sincerely,

Name of Sender

Title of Sender

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## FINANCE & CITYWIDE PROJECTS COMMITTEE MEMORANDUM

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

FROM: Kathie Brooks, Interim City Manager

DATE: January 24, 2013

SUBJECT: Discussion regarding utility deposits, shut offs and payment plans.

At the October 24, 2012 City of Miami Beach Commission meeting, two discussion items regarding customer deposits and the implementation of rules and regulations for utility accounts were referred to the Finance and Citywide Projects Committee (F&CWPC) for discussion.

Both referrals requested staff review current procedures for deposits and explore deposit policies by other entities such as Miami-Dade County Water and Sewer.

The City of Miami Beach Commission, at their December 12, 2012 meeting, additionally referred an item regarding shut-off procedures for delinquent accounts.

Over the course of the last few years, the Finance and Citywide Projects Committee and City Commission have endorsed various initiatives to assist residents and businesses with their utility accounts. Some of these initiatives included:

1. **Condominium Association Assistance Program:** provided for payment arrangements to those associations that are currently past due on their utility bills and can document that at least 15% of their units are in foreclosure.
2. **Utility Bill Due Dates:** increased the days allowed for payment of a utility bill from 15 to 21 days, to be consistent with other utility companies.
3. **Utility Bill Late Penalties:** removed the one-time 10% penalty on the current portion of a utility bill and adopted a recurring monthly charge of 1.5% on any portion of the account balance that is past due.

### **Utility Deposit Policy**

Currently, the City Code requires UTB customers to have a cash deposit of up to four times the amount of any previous monthly bill. The City's current practice is to request a deposit equivalent to the three months of average service. Per the City Code, this deposit is held until such time as the account holder services are discontinued. At that point, the guarantee of payment deposit shall be refunded less outstanding charges for service. No interest is paid on the deposit.

Administration has surveyed neighboring communities and utility companies for a comparison of deposit practices and policies. Listed for your review on the next page, is a chart summarizing these deposit policies. The Administration is seeking your input for any proposed Ordinance changes to the deposit policy.

## City of Miami Beach Utility Billing Deposit Analysis for New Accounts

<u>Entity Name</u>	<u>Residential Customer Deposit Amount</u>	<u>Interest Paid On Deposit</u>	<u>Residential Deposit Refund/Credit Policy</u>	<u>Commercial Deposit Amount</u>	<u>Interest Paid On Deposit</u>	<u>Commercial Deposit Refund/Credit Policy</u>
City of Miami Beach	3.0 x monthly billing	0%	Account is closed	3.0 x monthly billing	0%	Account is closed
Miami-Dade Water and Sewer Department	\$100.00	3%	Two years of good credit history	2.5 x monthly billing	3%	Two years of good credit history
Broward County - Public Works Dept.	Flat fee based on meter size	2.50%	Account is closed	> 2" meter = 2 x monthly billing	2.50%	Account is closed
City of Miramar	\$150.00	0.50%	Account is closed	Flat fee based on meter size	0.50%	Account is closed
City of Fort Lauderdale	Flat fee based on meter size	4%	One year of good credit history	Flat fee based on meter size	4%	One year of good credit history
Florida Power and Light	2.0 x monthly billing **	6% after 6 months	23 months of good credit history	2.0 x monthly billing	6% after 6 months, 7% after 23 months	Account is closed
TECO - Peoples Gas	3.0 x monthly billing	1.50%	Two years of good credit history	3.0 x monthly billing	1.50%	Account is closed

### Utility Billing Collections and Shut-Off Procedures

The City reviews utility billing accounts on a monthly basis per an average 30 day cycle. Bills are generated and mailed within one week after the read date. This is done after service orders are created for re-reads for extraordinary high or low reads. Utility customers are billed on a monthly basis and have twenty-one (21) days to make payment for a utility invoice.

Customers currently have several options available for making their monthly payments. These options include payments via:

- On-line via the City's web portal;
- Through the City's lock-box with their bills enclosed envelope;
- In person at the City's cashier's window; and,
- Via "Auto-Pay," an automatic ACH or Credit/Debit card charge.

The City has two processes for collections and shut-offs; one process for residential and commercial accounts, and another process for apartments and condominiums. Listed below is a summary outline of our procedures collections and shut-offs.

**Process for Residential and Commercial Accounts:**

- If not paid a within twenty-one (21) days a 1.5% penalty is added to the past due balance on the account and a courtesy "Late Notice" is generated and sent to the customer. The account is then "Past Due" which allows for an additional seven (7) days to pay otherwise service will be subject to disconnection.
- If the past due balances are still not paid and no payment arrangement has been made:
  - Residential/Commercial service is cut for all water monies owed. This includes all past due funds with any additional billings that have been generated (current billing).
- If no payments are made and no calls have been received to make payment arrangements, service is scheduled to be cut.
- Once the account is scheduled to be cut, the customer will receive a phone call (placed to the account's main contact number) before the scheduled cut. The phone call outlines the date the account is scheduled to be cut (48 hours) and the process as to how to resolve the issue. The phone call also includes the final day/time payment can be received (24 hours) to prevent the cut order from being executed.
- Service cuts are performed on Tuesday, Wednesday, and Thursday, based on Public Works staff availability.
- If the utility account is paid, or a payment arrangement is made, on the day of the service cut, the account will be reconnected the same day if the payment/arrangement is made before 3pm. A \$40 disconnect/reconnect charge is billed to the customer.
- If the utility account is paid, or a payment arrangement is made, on the day of the service cut, after 3:00 PM, the service will be reconnected the next business day.
- If customer wants service reconnected after normal working hours, the Public Works Department is contacted in order to verify there are available personnel to reinstall service. If staff is available for an afterhours turn-on, a \$50 afterhours charge is billed to the customer.
- For those customers that have had their utility service cut and no payment has been made, a service order is created to verify that the service is still off and no tampering/illegal use has occurred. If an illegal connection has been made, the Public Works Department will remove the meter and a Lien letter is sent to the customer. A \$100 tampering/illegal use fee is charged to the account. For a second offense a \$200 fee is imposed and \$300 fee for a third violation.
- If the service has been disconnected and no payment arrangements have been made, a thirty (30) day "Lien Letter" is sent to the property owner. If after thirty (30)

days no response or payment is made, the Lien is then sent to Miami-Dade County to be officially recorded.

### **Process for Apartments and Condominiums:**

- If not paid a within twenty-one (21) days a 1.5% penalty is added to the past due balance on the account and a courtesy "Late Notice" is generated and sent to the customer. The account is then "Past Due" which allows for an additional seven (7) days to pay otherwise service will be subject to disconnection.
- If the past due balances are still not paid and no payment arrangement has been made:
  - A three day notice is placed on the premises by Public Works for all monies owed. This includes all past due funds with any additional billings that have been generated (current billing).
- If no payments are made and no calls have been received to make payment arrangements, service is scheduled to be cut.
- Once the account is scheduled to be cut, the customer will receive a phone call (placed to the account's main contact number) before the scheduled cut. The phone call outlines the date the account is scheduled to be cut (48 hours) and the process as to how to resolve the issue. The phone call also includes the final day/time payment can be received (24 hours) to prevent the cut order from being executed.
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- If the utility account is paid, or a payment arrangement is made, on the day of the service cut, after 3:00 PM, the service will be reconnected the next business day.
- If customer wants service reconnected after normal working hours, the Public Works Department is contacted in order to verify there are available personnel to reinstall service. If staff is available for an afterhours turn-on, a \$50 afterhours charge is billed to the customer.
- For those customers that have had their utility service cut and no payment has been made, a service order is created to verify that the service is still off and no tampering/illegal use has occurred. If an illegal connection has been made, the Public Works Department will remove the meter and a Lien letter is sent to the customer. A \$100 tampering/illegal use fee is charged to the account. For a second offense a \$200 fee is imposed and \$300 fee for a third violation.
- If the service has been disconnected and no payment arrangements have been made, a thirty (30) day "Lien Letter" is sent to the property owner. If after thirty (30) days no response or payment is made, the Lien is then sent to Miami-Dade County to be officially recorded.

Below is a summary of the City's normal billing and collections cycle, hi-lighting key dates in the process.

**City of Miami Beach  
Utility Billing Collections Summary**

Description	Utility Account Type			
	Residential	Commercial	Apartments	Condominiums
Cycle	30 days	30 days	30 days	30 days
Due Date	21 days	21 days	21 days	21 days
Penalty	1.5% on past due balance			
Late Notice	22 days	22 days	22 days	22 days
3 Day Notice	N/A	N/A	Yes	Yes
Auto-Call - 48 HR before service disconnection	24 HR to make payment			

**Payment Plan Policy**

Payment arrangements are offered to customers that cannot make full payments on their utility accounts in an effort to avoid turn-offs and bring the account back into current status. Plans are offered to all types of accounts: residential, commercial, apartments and condominiums.

Payment plans require that the customer make a payment on a go-forward basis of their entire current portion of their bill, plus an additional payment to bring down the balance that is in arrears. The traditional payment arrangement requires that 50% of the bill be paid up-front and the rest is paid within a three-month period. There have been instances where a plan has been extended beyond the three months, due to extenuating circumstances, such as a large utility bill where a leak is suspected. Failure to make payments as arranged cancels the plan and payment of all moneys are due immediately. If full payment is not received, service is shut-off and deposit is applied to the account.

**Conclusion**

The Administration is also seeking the Committee's input regarding their views on deposits, collections and payment plans. Any recommended changes by the Committee will be brought forth as an Ordinance Amendment First Reading to the entire Commission.

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# MIAMI BEACH

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

## FINANCE & CITYWIDE PROJECTS COMMITTEE MEMORANDUM

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

FROM: Kathie Brooks, Interim City Manager

DATE: January 24, 2013

SUBJECT: Discussion regarding the FY 2012/13 Business Tax Receipt Renewals

At the October 24, 2012 City of Miami Beach Commission meeting, an item regarding Business Tax Receipts (BTR) was referred to the Finance and Citywide Projects Committee (F&CWPC) for discussion.

Business Tax Receipts (BTRs) are issued annually in accordance with Florida Statutes Chapter 205, as well as, locally governed by Article V, Section 102 of the Code of the City of Miami Beach. Chapter 205 states that BTRs are due and payable on or before September 30 of each year, and expire on September 30 of the succeeding year.

The City began sending out the Fiscal Year (FY) 2012/13 renewal notices in early July of 2012 reminding customers to renew their BTR by September 30<sup>th</sup>, 2012. The City has traditionally given customers the month of October as a grace period to pay their renewals before charging late fees. A total of 7,100 renewal notices were mailed out in the summer of 2012.

As of January 18, 2013, the following is a summary on the status FY 2012/13 BTR renewals:

- 7,100 renewal notices were mailed out;
- 4,790 have renewed and paid;
- 879 renewal notices remain unpaid; and
- 1,431 renewals have been paid, but remain in pending status.

Once payment for the renewal has been received, City staff review the accounts of each customer to determine if they are current on all obligations to the City in accordance with Article V, Section 102-374 of the City Code.

If the customer is current, the City mails out the actual BTR document to the customer. If the customer is delinquent on City obligations and payment for a BTR renewal has been received, pursuant to Article V, Section 102-374 of the City Code, the City withholds the BTR document and sends a letter to the customer stating the amount due and that the delinquencies must be resolved before receiving their BTR. This has proven to be a valuable tool in assisting the City with collections of delinquent utility bills, resort tax obligations, special assessments, liens, and other payments due to the City.

Of the 7,100 renewal notices processed, 52 individual notices were identified as having a miscalculation as a result of a permanent bug in the EDEN Licensing Module, the City's BTR database. The 52 businesses are apartment rental buildings which are charged a tax for

their apartment use, but in addition are also billed a line item for their approved hotel rooms within their building. These businesses were charged the correct tax for their apartment category, but also inadvertently billed a hotel category tax of \$244.00. This is because the City's current database is automatically programmed to bill the hotel tax category for any business conducting having hotel rooms. Because of this problem, we have had to manually adjust these 52 calculations annually..

The Eden System has not been able to correct this calculation error. However, this calculation bug will be remedied with the implementation of the new ACCELA Automation Licensing module. All renewals for FY 2013/14 will be processed in this new system.

JMG/PDW/mm

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## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: Kathie G. Brooks, Interim City Manager 

DATE: January 24, 2013

SUBJECT: **REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE, A DISCUSSION REGARDING POLICE ATHLETIC LEAGUE (PAL) LEASE.**

### INTRODUCTION

This matter was referred by the Mayor and Members of the City Commission at the request of the Administration at the December 12, 2012 Commission meeting.

### BACKGROUND

The Miami Beach Police Athletic League (PAL) was founded in 1958 and is the oldest in the State of Florida. This non-profit 501(c)3 organization offers the community's youth an array of recreational, athletic and educational activities. However, its primary focus is educational due to the shortage of nearby available outdoor field space.

Resolution No. 73-13924 authorized a five year lease agreement between PAL and the City on 02/21/73 for the use of a parcel of land on Flamingo Park for the benefit of the youth of the community and to enable our youth to participate in healthful sport and recreational activity. The Lease agreement's terms were extended with the adoption of Resolution No. 77-15471 and then again until 06/30/96 with the passage of Resolution No. 93-20868. Next, it was extended for a five year period ending 06/30/01 through the passage of Resolution No. 96-21987.

PAL raised monies in 1997 through donations, grants, etc. with the City's assistance to construct a new facility in Flamingo Park. Accordingly, Resolution No. 98-227 41 was passed granting PAL a twenty-five year lease to operate on the premises through June 30, 2023. Compliance with the stated lease terms is monitored by the City's Office of Asset Management. PAL is presently located at 999 11<sup>th</sup> Street in Flamingo Park. The 13,000 square foot facility opened in January 2001 and contains a computer lab; classrooms; fitness center; meeting, conference, library/reading room; offices; and wrestling, martial arts and workout rooms. Its programs are designed to create better relations between law enforcement officers and youth, as well as to prevent juvenile delinquency.

The Lease provides for shared use of the PAL facility between the City's Parks and Recreation Department and PAL. Resolution No. 96-21987 requires PAL to maintain the facility and pay all utilities throughout the term of the lease agreement. Meanwhile, section 2 of PAL's corresponding lease agreement states "*Lessor {City} agrees to pay for all utilities used within the premises including, but not limited to, electric, water, gas, telephone and garbage disposal.*" These two statements are contradictory, resulting in uncertainty as to which organization is responsible for paying for the building's utilities. The City's Legal Department opined that a scrivener's error occurred and that PAL has always been responsible for the utilities of the building. In reality, the City pays the water and sewer charges, while PAL pays the electric and telephone charges. However, the City's use of the facility is significant and PAL believes that they should not bear the responsibility for the share of these costs as there is no requirement in the lease to provide space to the City free of charge.

In an attempt to resolve this issue, the City Manager and PAL Board President signed a Memorandum of Understanding on 11/05/07 which contained a paragraph stating *"The Parties have also discussed the payment of utility bills associated with the operation of the Building. The City of Miami Beach has agreed on a one-time payment of \$50,000 to assist with previous utility bills associated with the property. This payment is with the understanding that in the future the Police Athletic League may utilize an Off-Duty Police Surcharge Fund created to assist the Police Athletic League for whatever portion of future utility bills the Police Athletic League determines is necessary. The fund has been created to assist in the eligible operational expenses of the Police Athletic League by adding one dollar per hour to the off duty police rate. This amount shall be forwarded to the Police Athletic League upon receipt of a quarterly request from the Police Athletic League. In the event the surcharge rate is altered in the future, the parties agree to meet and discuss alternate funding mechanisms as necessary. The City will have no future responsibility to pay utility bills beyond this one-time payment per terms indicated in the Lease Agreement."*

The City made the \$50,000 payment on 07/27/07. In addition, the City's Finance Department has made quarterly wire transfers to PAL since December 2007 for the off-duty surcharge. The terms above of this Memorandum of Understanding were followed until, during the FY 2010/11 budget process, at the direction of the City Commission, payment of the surcharge to PAL ceased.

## **ANALYSIS**

PAL continued discussions with the Administration to address ongoing concerns with facility maintenance and shared used of space between PAL and Parks & Recreation. At this time, PAL continues to have concerns with the allocation of utility costs between PAL and the Parks & Recreation Department. A lease amendment is required in order to address this matter to ensure responsibility is based upon calculated usage of the building.

- **Space Usage Allocation Estimate**

In order to ascertain what a fair and equitable cost sharing plan might look like, the Administration requested the Parks and Recreation Department to prepare an estimate of the time and space they are utilizing the facilities in the PAL building for recreational programming year round. To obtain a realistic assessment the staff separated the After School and Summer program usage. The table below reflects the estimated usage by Parks and Recreation. It is important to remember that the City's Recreation Division only utilizes select rooms in the building, not the entire facility. Based on the assessment it has been mutually agreed upon between the City and the PAL that there is a 50%-50% use of the facility between the two organizations on a year round basis.

- **Utilities/Cost Sharing Estimate**

It is estimated that the annual cost of the utilities (electric, telephone, cable & water) for the PAL building is as follows:

- Electric – FPL-(11/1/10 - 11-29-12) \$54,263.60/\$2,170.54 monthly/ \$1,085.27 Each
- Cable - Broad Band (11/1/10 – 9/24/12) \$1,138.96/ \$51.77 monthly/ \$25.88 Each
- Water - (Domestic & Irrigation) Average monthly \$401.81/ \$200.91 Each
- Telephone-AT&T (11/1/10 – 9/24/12) \$5,462.71/ \$248.30 monthly/ \$124.15 Each

Based on the above information it is estimated that the cost shared expense for the City and the PAL if divided equally would be approximately \$1,436.21 monthly or \$17,234.52 annually. Please note that the City currently pays the costs for Water usage (Domestic & Irrigation), PAL pays for all other utilities.

- **Annual Estimate of Property Management Expenses**

Based on information provided by the City's Public Works, Property Management Division it is estimated that the City has expended an average of \$60,700 per year, based on a 5 year assessment to maintain the interior and exterior of the PAL building.

## **CONCLUSION**

Before proceeding with negotiations of an amended Lease Agreement, the City Administration is seeking direction from the Mayor and City Commission.

The amended agreement will require the approval of the City Commission and the PAL Board. It will be submitted to both entities for review and approval upon its completion.

Attachments  
KGB/MAS

# Parks and Recreation Usage at PAL

## *After School Program and Classes (August - June)*

## *Summer Camp Program (June - August)*

### **Community Room**

Size 1436 sq' Usage 95%

### **Wrestling Room**

Size 1240 sq' Usage 90%

### **Kitchen**

Size 540 sq' Usage 50%

### **RPS Office**

Size 225 sq' Usage 100%

### **Playtime Room**

Size 240 sq' Usage 100%

### **Arts and Crafts Room**

Size 247 sq' Usage 100%

### **Class Room 2**

Size 209 sq' Usage 50%

### **Class Room 3**

Size 209 sq' Usage 50%

### **Computer Lab 1**

Size 375 sq' Usage 50%

### **Computer Lab 2**

Size 440 sq' Usage 10%

### **Library**

Size 432 sq' Usage 50%

### **Boys Bathroom**

Size 200 sq' Usage 100%

### **Girls Bathroom**

Size 200 sq' Usage 100%

### **Community Room**

Size 1436 sq' Usage 95%

### **Wrestling Room**

Size 1240 sq' Usage 95%

### **Kitchen**

Size 540 sq' Usage 80%

### **RPS Office**

Size 225 sq' Usage 100%

### **Playtime Room**

Size 240 sq' Usage 100%

### **Arts and Crafts Room**

Size 247 sq' Usage 100%

### **Class Room 2**

Size 209 sq' Usage 100%

### **Class Room 3**

Size 209 sq' Usage 100%

### **Computer Lab 1**

Size 375 sq' Usage 100%

### **Computer Lab 2**

Size 440 sq' Usage 0

### **Library**

Size 432 sq' Usage 100%

### **Boys Bathroom**

Size 200 sq' Usage 100%

### **Girls Bathroom**

Size 200 sq' Usage 100%

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# 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: Kathie G. Brooks, Interim City Manager

DATE: January 24, 2013

SUBJECT: **DISCUSSION REGARDING THE JEWISH COMMUNITY CENTER'S REQUEST FOR REIMBURSEMENT IN THE AMOUNT OF \$241,000 FOR COSTS ASSOCIATED WITH RECONSTRUCTING THE SEAWALL ALONG THE CITY-OWNED PROPERTY LOCATED AT 4221 PINE TREE DRIVE.**

### BACKGROUND

On June 3, 1981, the City first leased to the Jewish Community Centers of South Florida (JCC), City property located at 4221 Pine Tree Drive as illustrated in *Exhibit A* to this memorandum. The purpose of the lease was to allow the JCC to use the City's property for construction of a community-recreation center. The original Lease was amended and extended on three occasions, such that the Lease term extended through to October 31, 2015, with two additional ten-year options, and was assigned to Miami Beach Jewish Community Center, Inc. On July 12, 2000, the Mayor and City Commission adopted Resolution No. 2000-23994 approving an Amended and Restated/Consolidated Lease Agreement, subject to referendum (subsequently approved on November 7, 2000 in a Special Election under Miami-Dade County Charter §6.02, by a majority of voters residing in voting precincts located within one mile of the property), generally incorporating, but not limited to, the following provisions:

1. extending the term for 99 years, to 2099;
2. establishing rent at \$10.00 per year;
3. defining "Permitted Uses" to include recreational, cultural, educational, social service and minor and incidental religious uses;
4. providing for payment of fair market rent (to be determined by market appraisal), in connection with any area/room, limited to 2,000 square feet in size, that may be used for religious services, limited to a maximum of 10 holidays per year;
5. setting forth construction parameters, specifically addressing review requirements (including Design Review Board review and approval), construction commencement and completion deadlines, and required a minimum investment of \$2 million in improvements for which a building permit must be issued within five (5) years from the commencement of the Amended and Restated/Consolidated Lease, subject to reasonable extensions; and
6. extending the construction area, previously restricted to two (2) lots to all three (3) lots comprising the City's property, in accordance with the concept plan;

### ANALYSIS

JCC's new 36,000 square foot facility received its Temporary Certificate of Occupancy (TCO) on September 25, 2012 and opened its doors on October 2. The \$10.4 Million Project includes a 4,200 sq. ft. pool, cycling studio, art studio, racquetball court, sports field, gymnasium and a 3,100 sq.ft. fitness room. The JCC is currently working on remaining punch-list items to close out the Project and obtain its full Certificate of Occupancy (CO).

On November 19, 2012, correspondence was received from JCC's President, Jerry Sokol, asking the City to reimburse the JCC for the unforeseen expense of having to rebuild the entire seawall of the City's property fronting Indian Creek, totaling \$241,000 and exceeding JCC's available project contingency. A copy of this correspondence is included as *Exhibit B* to this memorandum.

Although the seawall is technically not within the JCC's leasehold boundary and consequently never contemplated as part of the project's scope or budget, according to the JCC, the reconstruction of the seawall became a necessity in order to stabilize the property and more specifically, support the new swimming pool located on the east side of the Premises. The need to replace the aging seawall was determined during the initial engineering assessment of the Premises, which consequently resulted in having to obtain permitting approvals from Miami-Dade County, Florida Department of Environmental Protection (FDEP) and the US Army Corps of Engineers (ACOE). In order to avoid further delays to the Project, JCC proceeded in good faith to undertake the work, which was funded in part from available contingency funds. Consequently, JCC is now seeking reimbursement from the City, which based upon a review of the survey, is the defined upland owner of the seawall.

**CONCLUSION**

The Administration is therefore requesting input and direction from the City's Finance and Citywide Projects Committee as to the Tenant's request for reimbursement, for which, if approved, a funding source will need to be identified and appropriated accordingly.

KGB/MS/AP/KOB  
Attachments

Exhibit A

4221 Pine Tree Drive



**PRESIDENT**  
Jerry Sokol

November 19, 2012

**OFFICERS**

Jennifer Bernstein  
*Vice President*  
David Filler  
*Vice President*  
Tara Katz  
*Vice President*  
Randi Lawrence  
*Vice President*  
Debbie Serbin  
*Vice President*  
Carrie Wiesenfeld  
*Vice President*  
Steven Klein  
*Secretary*  
Robert Glick  
*Co-Treasurer*  
Ricky Stokes  
*Co-Treasurer*  
Allison Sokol  
*Member at Large*  
Claudia Brod  
*Immediate Past President*  
Stacey Gumenick  
*Immediate Past President*

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

Dear Madame Manager,

Since 1981, the Miami Beach Jewish Community Center has occupied the City-owned property at 4221 Pine Tree Drive. In 2000, a new lease was crafted, subject to referendum, which extended the lease until 2099 provided the JCC invest, at a minimum, \$2,000,000 in upgrades to the facilities.

The JCC embarked on an ambitious building program, culminating in the grand opening last month of the new Galbut Family JCC, located on the Simkins Campus. It was the commitment of these two families, along with the contributions of thousands of individual donors, as well as the unwavering support of the City that allowed this project to move forward.

If you have not had the opportunity to visit the magnificent facility that is open to all, I hope that you will take an opportunity in the next few days to stop by. You will see for yourself that the building exceeds the minimum investment requirements. We strived to complete a first class, family-friendly community center, and we believe we achieved that goal and more!

However, there were many unexpected expenses with this project. One item we did not anticipate was the need to rebuild the entire seawall of the property. This was done not only to protect the new building, but to stabilize the navigable Indian Creek Waterway.

The cost of this portion of our project exceeded our contingency budget and we are asking the City reimburse the JCC for this \$241,000 cost. I have attached a copy of the contract for the construction of the seawall as well as the plans so you can see, as we believe, this infrastructure should have been the responsibility of the City.

If we are required to contain the cost of this seawall in our budget, scholarships and other specialty programs will have to be limited. We strongly believe that the resources of the JCC should be devoted to the children of our community, not the infrastructure of Indian Creek.

Please advise us on what procedures or additional documentation we need to follow to have our request met.

Take care,

Jerry Sokol, President

**PAST PRESIDENTS**

Gerald K. Schwartz  
Dr. Ronald Shane  
Dr. Doug Miller  
Peter Perkel  
Robert Goldstein  
David Smith  
Gary Epstein  
Robin Jacobs  
Joy Spill\*  
Elise Lipoff Mayer  
Allison Sokol

\*Served two terms as president

Jay R. Roth  
*Executive Director*



You belong here



cc: Honorable Mayor Matti Herrera Bower

City of Miami Beach Commissioners:

Commissioner Jerry Libbin  
Commissioner Jorge Exposito  
Commissioner Michael Gongora  
Commissioner Jonah Wolfson  
Commissioner Edward Tobin  
Commissioner Deede Weithorn

MBJCC Board of Directors:

Hinda Alder  
Alan Amdur  
Neal Berman  
Jennifer Bernstein  
Claudia Brod  
Stuart Cohen  
Robert Danial  
Ron Denman  
David Filler  
Joi Fiske  
Robert Glick  
Eric Gould  
Stacey Gumenick  
Dan Hoffman  
Tara Katz  
Steven Klein  
Vanessa Krelstein  
Randi Lawrence  
Elisheva Levin  
Elise Lipoff Mayer  
Brad Meltzer  
Robert Newman  
Allyson Papunen  
Allison Sokol  
Linda Schechter  
Adam Schimel  
Leni Sender  
Debbie Serbin  
Mike Simkins  
Andy Sklawer  
Ricky Stokes  
Joy Spill  
Aaron Tandy  
Leslie Tobin  
Carrie Wiesenfeld



# KM • PLAZA



THE GALBUT FAMILY JEWISH COMMUNITY CENTER  
4221 PINETREE DRIVE  
MIAMI BEACH, FLORIDA 33140

TRADE SUBCONTRACT  
"SEAWALL CONSTRUCTION WORK"

BK MARINE CONSTRUCTION, INC.  
3500 S.W. 14<sup>TH</sup> STREET  
DEERFIELD BEACH, FLORIDA 33442

**SUBMITTED TO:** BK MARINE CONSTRUCTION, INC.  
MATT WOONTON

**SUBMITTED BY:** KM • PLAZA, A JOINT VENTURE  
MICHAEL METCALFE

**DATE:** SEPTEMBER 28, 2011

Vendor Code No.: \_\_\_\_\_  
Project: \_\_\_\_\_  
Permit No.: \_\_\_\_\_

### SUBCONTRACT AGREEMENT

Subcontractor License No.: CGC 052820 Expiration Date: 8-31-12

THIS SUBCONTRACT AGREEMENT (the "Agreement"), is hereby made this 28<sup>th</sup> day of September, 2011 by and between **KM/PLAZA, A JOINT VENTURE OF KATZ MELTZER CONSTRUCTION COMPANY AND PLAZA CONTRACTING COMPANY LLC**, a Florida Corporation d/b/a hereinafter called "Contractor" and **BK MARINE CONSTRUCTION, INC.**, hereinafter called "Subcontractor".

#### Recitals

WHEREAS, the Contractor is the general contractor the following project: **The Galbut Family Jewish Community Center** (the "Project"), consisting of the **New Community Center, located at 4221 Pinetree Drive, Miami Beach, Florida 33140** (the "Jobsite") pursuant to the contract between the Contractor and **Miami Beach Jewish Federation** (the "Owner"); and

WHEREAS, the Contractor desires to engage the Subcontractor to perform Work for the project, as set forth in the drawings and specifications set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (collectively, the "Drawings"), and with such additional scope set forth in **Exhibit B**, attached hereto and incorporated herein by this reference;

NOW, THEREFORE, the Contractor and the Subcontractor, for the considerations hereinafter specified, agree as follows:

1. The Work.

1.1. The Subcontractor agrees to furnish all of the labor, materials, supervision, services and equipment necessary to pass final inspection for all work, set forth on or reasonably inferable from the Drawings identified in **Exhibit A** as well as such additional scope identified in **Exhibit B (General Requirements)**, hereinafter collectively called the "Work", all of which exhibits are incorporated herein by this reference. This Agreement, together with the Drawings, and the Exhibits incorporated into this Agreement, shall be referred to herein as the "Contract Documents". In the event that there is a conflict between the terms of this Agreement and Exhibits A and B, the terms of this Agreement shall govern first, then, the more strict requirement shall apply among the exhibits. The Drawings are part of this Agreement, as well as being part of the contract between the Owner and the Contractor. The Subcontractor acknowledges and agrees that the Work shall include all labor, materials, supervision, services and equipment made necessary to bring the Work, or any portion thereof, in compliance with applicable laws, including but not limited to additional work necessary for the Work, or any portion thereof, to pass inspection by building or zoning officials making reasonable interpretation of applicable law.

1.2. The Subcontractor agrees to be bound to the Contractor for the Subcontractor's Work to the extent that the Contractor is bound to the Owner under the contract between the Contractor and the Owner.

	
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- 1.3. Subcontractor shall keep the premises clean from waste materials and rubbish. At the completion of the Work, Subcontractor shall remove from the Jobsite all rubbish and any other surplus materials and leave the premises broom clean.
- 1.4. All labor employed by the Subcontractor at the Jobsite shall be subject to the Contractor's approval and in the event the Contractor finds fault with any employee or sub-subcontractor for any reason whatsoever, said employee or sub-subcontractor shall immediately be removed from the Jobsite and replaced. Any sub-subcontract entered into by the Subcontractor for the Work shall preserve and protect the rights of the Contractor and the Owner under this Agreement, so that the sub-subcontracting thereof will not prejudice such rights, and shall require sufficient insurance, and lien releases for partial and final payments on the same terms set forth in this Agreement.
- 1.5. The Subcontractor agrees to have an acceptable representative (an officer, if requested by the Contractor) present at all job meetings and to submit weekly progress reports in writing, if requested by the Contractor. Any job progress schedules are hereby made part of this Agreement and are incorporated herein by reference.
- 1.6. All materials, fixtures, and construction items set in place and made part of the Work shall immediately become the property of the Owner, except for tools and materials not incorporated into or made part of the Work.
- 1.7. All Work shall be done subject to the final approval of Owner, Contractor and Architect, and their decisions as to the whether or not the Work has been performed in accordance with the Drawings and Specifications and the quality of construction, shall be final.
- 1.8. Subcontractor shall comply with the provisions of the Florida Industrial Commission Safety Regulations and all other applicable laws of the State of Florida, as well as the city and county where the Project is located as well as the Safety and Health Guidelines attached herein as **Exhibit H**.
- 1.9. Subcontractor acknowledges that he is familiar with the Williams-Seiger Occupational Safety and Health Act of 1970 and all amendments thereto as well as all other U.S., state and local safety requirements. Accordingly, Subcontractor shall provide all necessary and required safety measures for this work and shall ensure that his personnel comply with all applicable laws, rules and regulations.
- 1.10. At the discretion of the Contractor the Subcontractor will work on Saturdays at no additional cost.
- 1.11. The Subcontractor shall fire proof any penetrations to a rated fire wall with an approved Fire Rating Sealant.
- 1.12. Unless otherwise specified, the Subcontractor shall submit twelve (12) sets of blueline prints and one set of CAD drawings where required for the work of various trades requiring Shop Drawings. The Shop Drawings shall be prepared by skilled draftsmen and presented in clear and thorough manner. Where brochures are applicable, not less than twelve (12) sets of brochures shall be submitted.
- 1.13. If Miami-Dade County product Control approval is required for any element of the Work, it shall be the Subcontractor sole and exclusive responsibility to submit and obtain the necessary approval, permits, etc.
- 1.14. Included in the scope of Work is the complete coordination of the Work with the work of other trades and the complete integration of the various systems furnished and installed as part of this Agreement with the systems provided by others. As part of the coordination procedure this Subcontractor shall attend meetings as required by the Owner, Architect and Contractor and provide information for review by other trade subcontractors, as well as review information provided by others which cancellation shall be done in such a manner as to be expeditious and in no way causing delay to other trades or the Project in general. Coordination and integration of systems and/or equipment

will also include the development of composite drawings, and includes but is not limited to, the following:

- 1.14.1. Location and/or relocation of equipment within the confines of a given space or general area prior to installation to maximize accessibility, serviceability and improve operation as well as resolve conflicts between trades.
  - 1.14.2. Provide adequate qualified personnel to install, check out and/or verify operation of equipment and/or systems which require the involvement of the Subcontractor as defined in the Contract Documents. This includes testing by representatives of the engineers, Architects or Owner's agents.
  - 1.14.3. Provide all necessary preparatory work to permit attachment, connection and/or integration of any kind for and/or with the work of other trades. No additional costs will be accepted for any relocations or equipment or appurtenances due to conflicts with existing or new systems.
- 1.15. If any Work has been covered contrary to this Agreement, or instructions of the Contractor or Architect before it has been observed by the Architect or Contractor, such Work must, if required by the Contractor or Architect, be uncovered for its observation and replaced and recovered, at the expense of the Subcontractor at fault and without reimbursement under the Subcontract. If any questioned Work has been covered up which has not been specifically required to be observed by the Architect or Contractor prior to being covered, the Architect or Contractor may request to see the Work in question and it shall be uncovered by the Subcontractor as directed. If such Work is found to be in accordance with the requirements of the Contract Documents, the Contractor shall reimburse the Subcontractor for the cost of such uncovering and recovering, when reimbursed by the Owner. If such Work is found to be not in accordance with the Contract Documents, the cost of uncovering, replacement and recovering shall be borne by the Subcontractor without reimbursement.
- 1.16. If after the commencement of the Work the Contractor or the Architect determines that any Work requires special inspection, testing or approval, he will, instruct the Subcontractor to order such special inspection, testing or approval. If such special inspection or testing reveals a failure of the Work to comply (1) with the requirements of the Contract Documents, or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Subcontractor at fault shall bear all costs thereof, including the Architect's and Contractor's additional services made necessary by such failure; otherwise the Owner shall bear such costs and an appropriate Change Order shall be issued.
- 1.17. Hazardous Materials.
- 1.17.1. In the event the Subcontractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), lead or other hazardous substance (hereinafter called "Hazardous Material") which has not been rendered harmless, the Subcontractor shall immediately stop Work in the area affected and report the condition to the Contractor and the Owner in writing. The Work in the affected area shall not thereafter be resumed except at the direction of the Owner and when the Hazardous Material has been rendered harmless.
  - 1.17.2. Prior to commencement of the Work, the Subcontractor shall require manufacturers of all materials and equipment for the Work to provide certifications, warranties or statements that such materials or equipment (1) are free of Hazardous Materials, or (2) contains specific amounts of Hazardous Materials and recommendations regarding handling such. Such certifications, warranties or statements shall be in writing in a form acceptable to the Contractor and Owner, and shall be forwarded by the Subcontractor to the Contractor and Architect. If the Manufacturer states that a material or equipment contains Hazardous Materials, the Owner shall be afforded adequate and timely opportunity to order that other materials be substituted without causing delay to the Project.

**2. The Subcontract Sum.**

- 2.1. The Contractor agrees to pay the Subcontractor for the Work provided for in Section 1 hereof, the sum of TWO HUNDRED FORTY ONE THOUSAND dollars (\$241,000.00) (the "Subcontract Sum") in current funds, which includes any applicable taxes, subject to additions and deductions for agreed upon changes.
- 2.2. On or before the 15<sup>th</sup> day of each month required by the Contractor, the Subcontractor shall submit to the Contractor, in the required set forth hereto as in **Exhibit C**, a written requisition for payment showing the proportionate value of the work installed to date, from which the amount of said requisition is approved by the Contractor, the Subcontractor should be paid on or about the 30<sup>th</sup> day after the final acceptable submission of the requisition. At the time of each progress payment made by the Contractor to the Subcontractor, the Subcontractor shall produce and deliver to the Contractor a full and complete release to date from all persons who have furnished materials or labor in connection with the Work and shall also execute any affidavit which the Contractor may require relating to the right of any party or parties to have or maintain a lien upon said Work, or the land upon which the same is situated, in connection with any materials or labor furnished during performance of the Work. Retainage will be withheld from progress payments in the same proportion that it is withheld from payments from the Owner to the Contractor. Retainage will be released in amounts and at times determined by the Contractor in its sole discretion. Payments otherwise due may be withheld on account of defective work which has not been remedied, liens which have been filed and not discharged, unadjusted damage done by Subcontractor to others, for failure to make proper payments for materials, labor and/or other subcontractors, or for those reasons set forth in Section 2.11 hereto.
- 2.3. Receipt of payment by the Contractor from the Owner for the Subcontractor's Work is a condition precedent to Contractor's obligations to make payment to the Subcontractor, regardless of the reason for Owner's nonpayment, whether attributable to fault of the Owner, the Contractor, the Subcontractor, or any other cause. Payment as used in this clause shall include retainage, progress payments, payment for change orders and extra work, and final payment.
- 2.4. Any work which is not a part of the Drawings are not contained in the scope of this Subcontract Agreement, must have written approval prior to the work being started. The Subcontractor waives any additional compensation for additional work performed without an executed change order.
- 2.5. Upon execution of this Subcontract Agreement, the Subcontractor will deliver to the Contractor for the Contractor's approval, a schedule of values substantially in the form of AIA Document G702/G703, listing the line item description of work and their corresponding labor and material costs. In the event that the Contractor disapproves the schedule of values, the Subcontractor shall revise it until it meets the approval of the Contractor. Proposed Requisitions will not be accepted for processing without the approved schedule of values attached thereto.
- 2.6. The Subcontractor agrees, in addition to payment of all wages to the Subcontractor's employees as provided herein, that the Subcontractor will promptly pay to, for or on behalf of, the Subcontractor's employees, all fringe benefits, dues, assessments or other payments required to be paid by the Subcontractor under the terms of any agreements, oral or written, with any labor organization or person. Failure on the part of the Subcontractor to abide by and perform under the terms of the Paragraph shall give the Contractor the right to terminate the Subcontract and to withhold all further payments from the Subcontractor.
- 2.7. In the event any employee of the Subcontractor files any mechanic's lien or serves any Notice to Owner because of the Subcontractor's failure to promptly pay to, for or on behalf of, any employee any wages, fringe benefits, dues or assessments, then, within ten (10) days, the Subcontractor shall obtain from the person filing or serving such notice or lien, a complete release and waiver of any mechanic's lien and deliver such release and waiver to the Owner and

Contractor. If any such release of mechanic's lien is not delivered to the Owner and Contractor shall have the right to terminate the Subcontract and to withhold all further payments from the Subcontractor.

- 2.8. The Subcontractor hereby acknowledges that it relies solely and exclusively on the credit of the Owner, not the Contractor, for payment of the work.
- 2.9. The Subcontractor shall be responsible for compliance with all Prevailing Wage Rate Schedule and Equal Opportunity of Employment requirements, if they are applicable to the Project.
- 2.10. Subcontractor shall pay for all applicable federal, state and local taxes on all materials, labor or services furnished by him, and all taxes arising out of his operations under the Contract Documents, which may be imposed upon or collectible from the Owner or Contractor or become a lien against his property. Such taxes shall include, but not be limited to, occupational, sales, use, excise, old age, employee, lease, benefit and unemployment taxes, customs duties and all income taxes and other taxes now in force or hereafter enacted prior to Final Acceptance of the Work.
- 2.11. Payment may be withheld if the Architect or the Contractor declines to approve an Application for Payment, or if the Architect withholds his certification, in whole or in part, for anyone or more of the following reasons, or if the Contractor or the Architect declines to approve any Application for Payment because of subsequently discovered evidence of the following or for other good and sufficient reason:
- 2.11.1. defective work or material not remedied;
  - 2.11.2. claims filed or reasonable evidence indicating probable filing of claims;
  - 2.11.3. failure of Subcontractor to make payments properly to sub-subcontractor or for labor, services, materials or equipment;
  - 2.11.4. reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the Completion Date;
  - 2.11.5. damage to another subcontractor;
  - 2.11.6. unsatisfactory prosecution of the Work by the Subcontractor;
  - 2.11.7. erroneous estimates by the Subcontractor of the value of the Work performed;
  - 2.11.8. unauthorized deviations from the Contract Documents; or
  - 2.11.9. failure or refusal to provide any documentation required herein.
- 2.12. Final payments shall be due thirty (30) days after final completion of the Work; provided, however, that said Work meet with Owner's approval. The Application for Final Payment shall be accompanied by the same details as set forth hereinabove for the application of partial payments except, however, final payment shall further be contingent on the following:
- 2.12.1. A full and final waiver of all liens in connection with the Work shall be submitted by Subcontractor and its sub-subcontractors, which waiver of lien shall be in a form as approved by Contractor. In the event that any such release or waiver of lien is not or cannot be furnished, then there shall be furnished to Owner a bond or other security reasonably satisfactory to Owner to indemnify him against any such lien.
  - 2.12.2. Subcontractor shall have made, or caused to have been made, all corrections in his portion of the Work which are required to remedy any defects therein or violations thereon or obtain compliance with the applicable drawings and specifications or any requirements of applicable codes and ordinances or to fulfill any of the proper orders or directions of the Owner, Contractor or Architect required under his Subcontract.

- 2.12.3. Subcontractor, through Contractor, shall have assigned and delivered to the Owner all written guarantees, warranties, statements of Application and bonds required by the Contract Documents for the Work or any portion thereof.
- 2.12.4. Subcontractor shall have furnished to the Contractor and Owner a detailed sworn Statement of all liens, claims and demands, just or unjust, of sub-subcontractors, materialmen and others then outstanding or which the Subcontractor has reason to believe may hereafter be made on account of the Subcontract Work or the performance thereof.
- 2.12.5. Subcontractor shall have delivered to the Owner and Contractor a general release of liens, claims and demands, and an affidavit to the effect that insofar as Subcontractor has knowledge or information such releases and receipts include all the labor, materials, supplies, equipment and other services or items for which a lien, claim or demand could be filed or asserted. In lieu of such affidavit, the Subcontractor may, if the Owner consents, furnish a bond satisfactory to the Owner indemnifying the Owner against any such lien or demand.
- 2.12.6. Subcontractor shall have furnished to Contractor any and all other documentation, approvals, sign-offs or records required herein.
- 2.12.7. The Architect shall have issued a final certificate for payment.

**3. Subcontract Time.**

- 3.1. The Subcontractor agrees to begin Work within three days after written notice to the Subcontractor by the Contractor and shall adhere to the project schedule attached hereto and incorporated herein by this reference as **Exhibit D** (the "Project Schedule"), as amended from time to time, and shall substantially complete the Work within the time set forth in the Project Schedule, or at such other date required by any amendment to the Contractor's schedule after the date hereof (the "Subcontract Time"). Time is of the essence for the Subcontractor's obligations in this Agreement.
- 3.2. The Work shall be considered "substantially complete" when it is complete (except for punch list items), can be used for its intended purpose, and has passed any required governmental inspections. The Work shall be finally complete when the punch list items have been completed to the Contractor's satisfaction.
- 3.3. The Subcontractor shall not be entitled to any additional Subcontract Time unless there is an excusable delay, as set forth in this Section 3.3. An excusable delay is a delay for which the Subcontractor, in the exercise of reasonable diligence, is unable to prevent or provide against, such as war, riot, civil strife, terrorist attack, natural or nuclear disasters, or other similar acts of God, or by the neglect of the Owner or the Contractor. The Subcontractor shall notify the Contractor, in writing, within five (5) days of the event giving rise to the excusable delay, or shall be deemed to have waived any claim for additional Subcontract Time. The Subcontractor's sole remedy for an excusable delay shall be an extension of the Subcontract Time.
- 3.4. The Subcontractor shall carry on said Work promptly, efficiently and speed that will no cause delay in the progress of Contractor's work or the work of other subcontractors. If, in the opinion of the Contractor, the Subcontractor falls behind in the progress of the Work, the Contractor may direct the Subcontractor to take such steps as the Contractor deems necessary to improve the rate of progress, including, without limitation, requiring the Subcontractor to increase the number of shifts, personnel, plant, or other remedies and to submit to the Contractor for the Contractor's approval a schedule demonstrating the manner in which the required rate of progress will be attained, without additional cost to the Owner and/or the Contractor. The Contractor may require the Subcontractor to perform in preference to other parts of the Work, such part or parts of the Work as required by the Project Schedule prepared by the Contractor, as it may be

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amended from time to time. The progress schedule may be reviewed in the office of the Contractor and the sequence of construction will be as directed by the Contractor.

- 3.5. The Subcontractor shall schedule its Work, the presence of its employees and its sub-subcontractors at the Jobsite and any of its deliveries of supplies or materials to the Jobsite, on those days and times that the Contractor specifies.
- 3.6. Unless a delay in the Work is an excusable delay as set forth in Section 3.3 hereto, the Subcontractor shall be liable to the Contractor for any damages for delay incurred by reason of the Subcontractor's Work. In the event that the Contractor's contract with the Owner contains a liquidated damages clause for delay, the Subcontractor shall be liable as liquidated and agreed damages, and not as a penalty, for the portion of the liquidated damages attributable to the Subcontractor.

#### 4. Changes.

- 4.1. The Contractor may, without invalidating this Agreement, order changes to the Work. Before any additional Work is performed, the Contractor and the Subcontractor shall enter into a written change order, and provide a complete breakdown of labor and materials and adhere to the unit prices set forth in **Exhibit E** (Unit Prices and Labor Rates), provided by the Subcontractor and approved in writing by the Contractor, and the Owner if the change constitutes a change in the Contractor's scope of work. Any adjustment to the Subcontract Sum or the Subcontract Time shall be agreed by the parties in the change order.
- 4.2. If the Subcontractor wishes to request a change order, the Subcontractor shall give the Contractor written notice thereof, not more than five (5) days after the occurrence of the event giving rise to such claim, or shall have waived any claim for additional compensation related to the change. This notice shall be given by the Subcontractor before proceeding to execute any additional Work, except in an emergency endangering life or property. The Subcontractor hereby waives any entitlement to additional compensation or additional time for Work performed without an executed change order.
- 4.3. In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by Subcontractor or any dispute as to whether or not Subcontractor is entitled to an extra compensation for any Work requested of him, the Subcontractor shall continue to proceed diligently with the performance as required by the Contractor and the resolution with respect to whether or not the Subcontractor shall be paid therefor shall be determined by the parties with reasonable promptness, but in no event shall delay in such determination excuse prompt performance of the Work requested.
- 4.4. An extra or credit resulting from a change in the Work, if any, shall be determined in one or more of the following ways as applicable to a specific situation.
- 4.4.1. By mutual acceptance of a lump sum properly itemized;
- 4.4.2. By unit prices stated in the Contract Documents or subsequently agreed upon (all unit prices shall be deemed to include overhead and profit). If a change based on unit prices includes the deletion and addition of like items of work (i.e. moving a door by the deletion from one location and the addition in another location) before the deleted item has been installed, the net charge resulting directly from such change shall be zero. Ancillary items associated with such like change which are in addition to work previously required, and not themselves a like change, shall be charged at their unit price amounts;
- 4.4.3. By actual cost plus a fixed or percentage fee for overhead and profit, etc. (including both Subcontractor and sub-subcontractors), as set forth in the Subcontract. The actual cost is defined as the verified costs of any and all materials and equipment plus the base labor wage rate with any and all benefits, insurance, welfare or other fringes included;

- 4.5. If none of the methods set forth in Section 4.4 above is agreed upon, the Subcontractor shall promptly proceed with the work involved. The price to be paid or credit for such work shall then be determined on the basis of current market value but in no event shall such value exceed the actual cost of performing the Work, plus a fixed markup for overhead and profit in the amount set forth in the Subcontract. In such case, and also under Section 4.4.3 hereof, the Subcontractor shall keep and present in such form as the Contractor may prescribe, an itemized accounting together with appropriate supporting data, and Subcontractor's costs shall be subject to audit by Owner or Contractor. Pending final determination of cost, payments on account may be made on the Architect's Certificate for Payment. The amount of credit to be allowed by the Subcontractor to the Contractor for any deletion or change which results in a net decrease in cost will be the amount of the actual decrease. When both extras and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.
- 4.6. The cost for Changes pertaining to add alternates (those items that will be constructed if sufficient funds remain after all other necessary items were completed) shall be at the price set forth hereof. The Subcontractor bears the risk for any fluctuations in the cost of add alternates.

## 5. Insurance and Indemnity

The parties hereby agree that the Project shall be Insured as set forth in **Exhibit G** hereof. The Subcontractor, at its own expense, shall obtain and submit to the Contractor, before undertaking any part of the Work, policies and certificates with receipts for the payment of premiums from the Subcontractor's insurance carriers indicating coverage from companies, in amounts and on such other terms as provided for hereinafter and in the "Insurance Schedule" attached to this Agreement as **Exhibit G**. Any "deductible" with respect to such coverage shall be submitted to, and approved in writing by, Contractor, provided that any costs or damages not covered due to the approved deductible shall be borne solely by Subcontractor.

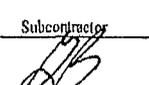
All such additional insurance required to shall be maintained by Subcontractor, at its expense, and listed in Exhibit G, shall remain in full force and affect until the Work has been completed and all obligations of Subcontractor under the Contract Documents have been satisfied. Any policy of insurance covering the Subcontractor's tools, equipment or facilities against loss of physical damage, shall provide for a complete waiver of subrogation against the Construction Manager, the Owner, and their respective members, officers, directors, employees, agents and servants.

All policies required of Subcontractor hereunder shall provide for notice to the Contractor thirty (30) days before any change in or cancellation of such insurance, and shall otherwise be acceptable to the Contractor. Upon request, the Subcontractor shall furnish the Contractor with evidence of insurance satisfactory to the Contractor for each subcontractor employed by it. The insurance required herein shall in any event include blanket (broad form) contractual liability insurance. The existence of insurance shall not be construed to limit the Subcontractor's liability under this Contract.

- 5.1. In the event that the Subcontract Sum exceeds \$100,000.00, the Subcontractor shall provide 100% dual obligee payment and performance bonds, to satisfy the requirements of Florida Statutes, Section 713.23(3), assuring the performance of and proper payments by the Subcontractor issued by a surety acceptable to the Contractor, the Owner and its Lender naming the Contractor, the Owner and its Lender as obligees there under.
- 5.2. The Subcontractor agrees that neither he nor his insurance company will subrogate any loss or claim to the Subcontractor's equipment or personnel against the Owner and Contractor. It is the sole responsibility of the Subcontractor to insure any material, tools, etc., stored on Jobsite and not yet incorporated into the work.

- 5.3. The Subcontractor agrees to perform the Work in compliance with all municipal, state and federal laws, ordinances, and codes, and to indemnify and hold the Contractor harmless from all annoyances and fines having reference to the Work, and to give proper authorities all requisite notices relating to the Work and to produce and pay for all necessary licenses, permits, and taxes.
- 5.4. To the extent permitted by law, including Sec. 725.06, Florida Statutes, Subcontractor shall indemnify, defend, save and hold the Owner, Contractor, and Architect (excluding with respect to the Architect, claims arising out of (i) the preparation or approval of maps, drawings, opinions, reports, survey, Change Orders, designs or specifications, or (ii) the giving of or the failure to give directions or instructions by the Architect, his agent or employees, provided such giving or failure to give is the primary cause of the injury or damage), and their respective partners, officers, directors, employees and anyone else acting for or on behalf of any of them (herein collectively called "Indemnitees") harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever (including attorney's fees and disbursements) which arise out of or are connected with, or are claimed to arise out of or be connected with
- 5.4.1. The performance of the Work by the Subcontractor, or any act or omission of Subcontractor;
- 5.4.2. Any accident or occurrence which happens, or is alleged to have happened, in or about the place where the Work is being performed or in the vicinity thereof (a) while the Subcontractor is performing the Work, either directly or indirectly through a sub-subcontractor or material agreement, or (b) while any of the Subcontractor's property, equipment or personnel are in or about such place or the vicinity thereof by reason of or as a result of the performance of the Work; or
- 5.4.3. The use, misuse, erection, maintenance, operation of or failure of any machinery or equipment (including, but not limited to, scaffolds, derricks, ladders, hoists, rigging supports, etc.) whether or not such machinery or equipment was furnished, rented or loaned by the Owner or the Contractor or their officers, employees, agents, servants or others, to the Subcontractor.
- 5.5. Without limiting the generality of the foregoing, such defense and indemnity includes all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss (including loss of use) to any Indemnitee, any of Indemnitees' employees, agents, subcontractors or sub-subcontractors, licensees or invitees, or other subcontractors or sub-subcontractors, their employees, agents, sub-subcontractors, licensees or invitees or to any other persons, whether based upon, or claimed to be based upon, statutory (including, without limiting the generality of the foregoing, workmen's compensation), contractual, tort or other liability of any Indemnitee, subcontractor, sub-subcontractor or any other persons. In addition, the liability, damages, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any other so called "intangible" property rights, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatever or which arise out of any failure of Subcontractor to discharge his duties specified in the Contract Documents, including, without limitation, these General Conditions.
- 5.6. In the event more than one subcontractor is connected with an accident or occurrence covered by this indemnification, then all of such subcontractors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such indemnifying subcontractors for the loss and expense of any such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other right of indemnification right which Owner, Contractor or Architect has by law. Subcontractor expressly understands and agrees that any

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performance bond or insurance protection required by any provision of the Contract Documents, or otherwise provided by Subcontractor, shall in no way limit the responsibility to indemnify, save and hold harmless and defend the Indemnitees as herein provided.

- 5.7. The Owner or Contractor shall have the right to require any Subcontractor to furnish bonds covering the faithful performance of the Subcontract and the payment of all obligations arising thereunder if required in the Contract Documents or subsequent to the execution of this Subcontract. The failure of the Subcontractor to furnish a bond within five (5) days after having been given notice of such requirement by either the Owner or Contractor shall constitute sufficient cause for termination of this Subcontract.
- 5.8. Notwithstanding the above, wherever there is a provision in or change of the applicable law governing this Subcontract changing the scope of any such indemnification of an Indemnitee hereunder, then and in any event such indemnification shall apply only to the extent permitted by such existing or changed applicable law. Nothing herein set forth shall be deemed to preclude the indemnification of an Indemnitee hereunder from any of the foregoing damages caused by, arising out of, resulting from, or occurring in connection with the negligence or any other fault of a party other than the Indemnitee, whether or not the Indemnitee is partially negligent or at fault. Subcontractor's obligation hereunder shall not be limited by the provisions of any workmen's compensation or similar act.

## 6. Warranties.

- 6.1. The Subcontractor warrants that it is duly licensed to perform the Work, that it has reviewed the Drawings and that they are complete and constructible, and that it has visited the Jobsite and become familiar with any conditions that may affect the Work.
- 6.2. The Subcontractor warrants that its Work will be free from defects, merchantable, fit for use for a particular purpose, will conform with the Drawings and any applicable law, and that it will deliver good title to the Work. In the event that any Work fails to conform to the requirements of this Agreement, said Work shall be corrected by Subcontractor immediately upon discovery. Further, in the event that defects due to faulty materials, or workmanship appear within one (1) year from date of final completion of the Project, the Subcontractor, whether or not Work was by, through, or under him, shall, at his own expense, promptly correct the same.
- 6.3. Unless otherwise specified in the Contract Documents, the Subcontractor warrants that all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Subcontractor shall, if required, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workmen skilled in their respective trades, and workmanship shall be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents will result.
- 6.4. The Subcontractor warrants and guarantees to Contractor and Owner all work performed and materials and equipment furnished under his Subcontract against defects in materials and workmanship for a period of one (1) year from the date of Final Acceptance by the Owner of the completed Work, or for a longer period if so specified in the Contract Documents.
- 6.5. With respect to any of the Subcontractor's warranties, if such materials or equipment or portion of the Work is found after such Final Acceptance not to comply with the Contract Documents or otherwise in breach of warranty, the warranty and guarantee period thereon shall commence with the date it is corrected to comply with the Contract Documents. Reference is made to other sections of the specifications for specific performance and time guarantees as may be required therein over and above the one (1) year general guarantee specified above. Delivery of Subcontractor's guarantee is one of the conditions to Subcontractor's final payment.

- 6.6. Subcontractor shall, promptly upon receipt of written notice thereof, make good any defects in materials, equipment and workmanship to its Work which may develop within periods for which said materials, equipment and workmanship are guaranteed, and also make good any damage to other work caused by the repairing of such defects at his own expense, and without reimbursement under the Subcontract. The foregoing remedies shall not deprive the Owner or Contractor of any action, right, or remedy otherwise available to it for breach of any of the provisions of the Contract Documents by the Subcontractor and the periods referred to above, or such longer time as may be specified elsewhere, shall not be construed as a limitation on the time in which the Owner or Contractor may pursue such other action, right or remedy against any Subcontractor.
- 6.7. If the Contractor, Architect and Owner deem it inexpedient to correct Work damaged or Work not performed in accordance with the Contract Documents, an equitable deduction from the Subcontract Sum shall be made.
- 6.8. Subcontractor shall promptly remove from the premises all its materials, equipment (whether incorporated in the Work or not) and all Work condemned by the Architect or Contractor as failing to conform to the Contract Documents and each Subcontractor shall promptly replace and re execute all Work under its Subcontract in accordance with the Contract Documents and without expense to the Contractor or Owner. Subcontractor shall bear the expense of making good all work of other subcontractors or sub-subcontractors destroyed or damaged by such removal or replacement.
- 6.9. If the Subcontractor does not remove such non-conforming work, equipment and materials within a reasonable time fixed by written notice from Contractor, the Owner or Contractor may, at the expense of the Subcontractor, remove same and store any such equipment or materials. If the Subcontractor does not pay the expenses of such removal and storage within three (3) days thereafter, the Contractor may, upon three (3) days written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof only after deducting all the costs and expenses that should have been borne by the Subcontractor. Without limitation of any other right or remedy available to Owner or Contractor under the Contract Documents or at law, any coverage involved may be returned to the Subcontractor and any shortage shall be paid by the Subcontractor to the Contractor.
- 6.10. Neither the issuance of the final certificate or final payment hereto, or any provisions in the Contract Documents, shall relieve the Subcontractor of responsibility for faulty materials, equipment or workmanship, and the Subcontractor shall remedy any defects due thereto and pay for any damage to other work resulting therefrom in accordance with the applicable guarantee or warranty provisions of the Contract Documents. The Owner or Contractor shall give written notice of such observed defects with reasonable promptness.

## 7. Default.

- 7.1. In the event of Subcontractor's default, the Contractor shall have the right, without the obligation, after seventy-two (72) hours written notice to the Subcontractor, to provide, through itself or through others, any such labor, materials and/or supplies, and to deduct the cost thereof from any money due to or thereafter to become due to the Subcontractor under this Agreement. The Contractor shall also have the right to terminate this Agreement, to enter on the premises and take possession, for the purpose of completing the Work, of materials, supplies, equipment, tools and appliances located thereon, and employ any person to finish the Work and to provide equipments, tools, appliances, materials and supplies thereof. In the event that this Agreement is terminated, the Subcontractor shall, if requested by the Contractor, assign, transfer and/or convey to the Contractor any all equipment, supplies, materials, tools and appliances which he has ordered or procured in connection with the Project.
- 7.2. In the event that this Agreement is terminated, the Subcontractor shall not be entitled to receive any further payment under this Agreement until the Project is finally completed. If upon final completion, the unpaid balance due under this Agreement exceeds the expense incurred by the

Owner and/or Contractor in connection with said default exceeds the unpaid balance under this Agreement, then the Subcontractor shall pay the difference to the Owner and/or Contractor.

- 7.3. The expense incurred by the Owner and/or Contractor in connection with said default shall include, without limitation, the cost of all labor, tools, equipment, appliances and materials which are needed to complete the work, delay and other consequential damages which result from the default and attorney's or other legal fees and costs, including appellate fees and costs, which are incurred in connection with said default.
- 7.4. The following shall constitute an event of default:
- 7.4.1. The Subcontractor at any time, refuses, fails or neglects to supply a sufficiency of skilled workers or materials of the proper quality and/or quantity;
  - 7.4.2. The Subcontractor fails in any respect to perform the Work with promptness, diligence and in a workmanlike manner;
  - 7.4.3. The Subcontractor stops, delays or interferes with the work of the Contractor or any other subcontractor or materialman on the Project;
  - 7.4.4. The Subcontractor, through any act or omission, causes any loss or damage to Owner or Contractor;
  - 7.4.5. The Subcontractor, in failing to complete the Work within the Subcontract Time, causes any loss or damage to owner or Contractor;
  - 7.4.6. A decree or order by a court having jurisdiction in the premises, is entered adjudging the Subcontractor as bankrupt or insolvent, or approving, as properly filed, a petition seeking reorganization of the Subcontractor under the current Bankruptcy Act, or any similar, applicable federal or state law, and such decree or order shall have continued undischarged and unstayed for a period of ninety (90) days;
  - 7.4.7. A decree or order by a court having jurisdiction in the premises, is entered for the appointment of a receiver, liquidator or trustee or assignee in bankruptcy or insolvency for the Subcontractor or its property, or for winding up or liquidation of its affairs, provided the decree or order continues undischarged and unstayed for a period of ninety (90) days;
  - 7.4.8. The Subcontractor institutes voluntary bankruptcy proceedings or consents to the filing of a bankruptcy proceeding against it;
  - 7.4.9. The Subcontractor files a petition, answer or consent seeking reorganization under the Federal Bankruptcy Act or any other similar applicable federal or state law, or consents to the filing of such a petition;
  - 7.4.10. The Subcontractor consents to the appointment of a receiver, liquidator or trustee or assignee in bankruptcy or insolvency for it or its property;
  - 7.4.11. The Subcontractor makes an assignment for the benefit of creditors;
  - 7.4.12. The Subcontractor admits, in writing, its inability to pay its debts generally as they become due;
  - 7.4.13. The Subcontractor takes legal action in furtherance of any of the aforesaid purposes;
  - 7.4.14. The Subcontractor fails to satisfy and discharge any final judgment within ten (10) days of its entry;
  - 7.4.15. The Subcontractor fails to perform any of the Subcontractor's obligations under the Contract Documents;
  - 7.4.16. Failure to pay timely any supplier, laborer, or sub-subcontractor providing Work at the Project.

- 7.5. The Contractor may terminate this Agreement for convenience, for any reason whatsoever. In the event that this Agreement is terminated for convenience, the Contractor shall pay for Work in place, plus a reasonable profit thereon, less the cost to correct any defective Work in place. Final payment under this Section 7.5 shall be due when the Subcontractor has all remaining tools, equipment and materials from the Jobsite. In the event that this Agreement is terminated for cause and it is subsequently determined that there was no default, the termination shall be deemed for convenience under this Section 7.5.
- 7.6. If there shall be any lien, claim, suit, attachment, notice or any other encumbrance filed against the Project by the Subcontractor (collectively referred to as "Encumbrances"), or presented to Contractor or Owner by any sub-subcontractor or supplier, Contractor and Owner shall have the right to retain out of any payments then due or which may thereafter become due to Subcontractor, an amount sufficient to protect Contractor and Owner against any loss, cost or expense arising out of or in connection with any such Encumbrances. In the event any Encumbrances are asserted, Subcontractor shall, within thirty (30) days of receipt of notice thereof, cause the Encumbrance to be discharged by payment, bonding, or otherwise. In the event that Subcontractor fails to discharge the Encumbrance, Contractor, at its option, may pay or otherwise discharge the Encumbrance and withhold the costs and expenses incurred from any amounts owed Subcontractor. The rights of Contractor and Owner under this provision are absolute, and are not dependent upon the eventual validity of the Encumbrance. Any amounts retained by Contractor or Owner shall not bear interest and shall not be released to Subcontractor until the invalidity of the Encumbrance has been finally determined by a court of competent jurisdiction or has been properly paid and satisfied and documents evidencing such disposition have been received by Contractor.
- 7.7. In addition to the foregoing, if Contractor determines that Subcontractor is delinquent in the payment of any monies due and owing for labor, materials, supplies or equipment, Contractor shall have the right, upon forty-eight (48) hours notice to Subcontractor, to pay or satisfy any such amounts due and owing, and deduct any such sum paid from the proceeds of any payments then due or to become due to Subcontractor. Any such payments made will be by joint check, payable to the Subcontractor and the person or entity to which the money is determined to be owed ("Payee"), and Subcontractor agrees to execute such joint check for the benefit of the Payee. If Subcontractor does not execute the joint check, then Contractor may pay such sum directly to the Payee. Contractor will not make such a payment if, within the forty-eight (48) hour notice period, Subcontractor submits to Contractor evidence that demonstrates to the sole satisfaction of Contractor that a good faith dispute exists concerning the alleged delinquency and adequate assurances are given by Subcontractor that the progress of the Work and the costs of performance will not be adversely affected.

**8. Miscellaneous.**

- 8.1. This Agreement represents the entire and integrated agreement between the Contractor and the Subcontractor and supersedes all prior negotiations, representations or agreements, either written or oral, which are hereby merged into this Agreement. This Agreement may be amended only by written change order, or by a written amendment, signed by both the Contractor and the Subcontractor.
- 8.2. The Subcontractor shall not sublet, assign, or transfer this Subcontract or any portion thereof without the written consent of the Contractor. The Contractor and the Subcontractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.
- 8.3. The Subcontractor shall, without making any changes, sign and return one copy of this Agreement within seven (7) days from the date of receipt, or Contractor may declare this agreement to be null and void. Contractor reserves the right to cancel this contract at any time with fourteen (14) days written notice.

**SUBCONTRACTOR:**

**BK MARINE CONSTRUCTION, INC.**

  
(Signature)

Glen Bryant V.P.  
(Print name & title)

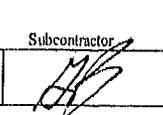
**CONTRACTOR:**

**KM PLAZA JOINT VENTURE**

  
(Signature)

Michael Melcolfo, Project Executive  
(Print name & title)

Initial Below:

	
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The Gallbut Family JCC

revised RF 9/28/11

Miami Beach, FL

KM-Plaza Project # 15181 (Estimating #09-0139)

<b>COMPANY NAME (SUBCONTRACTOR)</b>		<b>BK Marine</b>
Contact Name		<b>Matt Woonton</b>
<b>02800A - Seawall Construction</b>		<b>Tel: 954-421-2321</b>
		<b>Fax: 954-427-5168</b>
		<b>Cell: 954-520-9519</b>
		<b>Email: mattwoonton@amiell.com</b>
		<b>ADDITIONS/DEDUCTIONS</b>
<b>BASE BID AMOUNT</b>		<b>\$ 241,000.00</b>
<b>Scope of Work:</b>		
<b>1</b>		
<b>2</b>	<b>Design &amp; Permit Phase</b>	
<b>3</b>	Revise existing City of Miami Beach permit with revised sea wall design	<b>INCLUDED</b>
<b>4</b>	Assit Owner with aquiring new Permit	<b>INCLUDED</b>
<b>5</b>	Include a permitting fee allowance of \$2,500.	<b>INCLUDED</b>
<b>6</b>	Furnish detailed, signed & sealed drawings & specifications for Miami-Dade County DBRM, Army Corps of Eng and City of Miami Beach approvals including cross sections, seawall layout and details	<b>INCLUDED</b>
<b>7</b>	Furnish a survey and as-builts.	<b>NOT INCLUDED</b>
<b>8</b>		
<b>9</b>	<b>New Seawall Construction</b>	
<b>10</b>	Mobilization	<b>INCLUDED</b>
<b>11</b>	Subcontractor shall relocate two existing trees on site with their crane. Rigging to be dine in advanced by others.	<b>INCLUDED</b>
<b>12</b>	Remove existing seawall cap as required to install new sheetpiling	<b>INCLUDED</b>
<b>13</b>	Furnish & Install aluminum sheet piles behind existing seawall	<b>INCLUDED</b>
<b>14</b>	Furnish & Install tie back rods and deadmen	<b>INCLUDED</b>
<b>15</b>	Furnish & Install return walls at North and South property lines (approx 10' each).	<b>INCLUDED</b>
<b>16</b>	Furnish & Install concrete piles.	<b>INCLUDED</b>
<b>17</b>	Furnish & Install clean crushed gravel, sand or concrete to fill void between new and existing seawall.	<b>INCLUDED</b>
<b>18</b>	Furnish & Install new Cast-In -Place, continous reinforced concrete cap with a light broom finish to lock the system together. New Sea wall cap finish elevntion to be at elevation 7.75 NGVD. (breakout cost)	<b>\$ 21,575.00</b>
<b>19</b>	This Subcontractor acknowledges that the Pool will be in close proximity to the Seawall and has taken into account that tiebacks and deadmen may not be able to be used in that area due to space limitations and has included piles or other methods of retaining the wall in that location.	<b>INCLUDED</b>
<b>20</b>		
<b>21</b>	<b>General Items</b>	
<b>22</b>	Mobilization	<b>INCLUDED</b>
<b>23</b>	General Requirements / Conditions	<b>INCLUDED</b>
<b>24</b>	Barge	<b>EXCLUDED</b>
<b>25</b>	Land Based Crane	<b>INCLUDED</b>
<b>26</b>	Dumpsters for Construction Use.	<b>INCLUDED</b>

*[Handwritten initials]*

27	Provide proper disposal of demolished items.	INCLUDED
28	Design and Engineering Fees	INCLUDED
29	Sales Tax	INCLUDED
30	Schedule of Construction from date released	8 weeks
31	All Materials Shall Meet the Minimum Requirements of the Florida Building Code or the Project Documents, whichever Requirements are Greater.	INCLUDED
32	Subcontractor Shall Comply with all Local Building Codes, All Federal, State and Municipal Laws, Codes, Ordinances, Regulations or any Local or State Codes having Jurisdiction.	INCLUDED
33	Subcontractor Shall Furnish Sufficient Materials, Equipment and Labor so as to Maintain Schedule. Including Overtime Work if Contractor Fails to Meet the Schedule Due to His Own Fault.	INCLUDED
34	Includes and will follow all OSHA regulations. Specially OSHA regulations which apply to this trades contract work under the means and methods contract clause.	INCLUDED
35	This contractor to provide sufficient Water Coolers for your work forces, as per OSHA requirements. KM/Plaza will provide water at ground level.	INCLUDED
36	Warranties	INCLUDED
37	Permits to be pulled by this Subcontractor, fee's paid by Owner	INCLUDED
38	Worker's Compensation and General Liability Insurance	INCLUDED
39	Longshore and Harbor Workers Compensation (If Required)	INCLUDED
40	Jones Act Insurance (If Required)	INCLUDED
41	Payment & Performance Bond - Provide Percent	2.8%
42		
43	Total Scope Adjustments (See Above)	
44	Base Bid	\$ 241,000.00
45	Payment & Performance Bond	Included
46	Total Bid Amount for 02800A - Seawall Construction	\$ 241,000.00
47		
48		
49		
50		
51		
52	ALTERNATES	
53	To remove and dispose of all vegetation and overgrowth from the existing properties fence to the existing seawall	\$ 15,000.00
54	Deduct for Owner Direct Purchase of Sheet Piling (including sales tax)(Owner would issue Purchase order in the amount of \$48,961.76 to Southern Pine Lumber).	\$ (51,855.00)

CONTRACTOR'S SIGNATURE

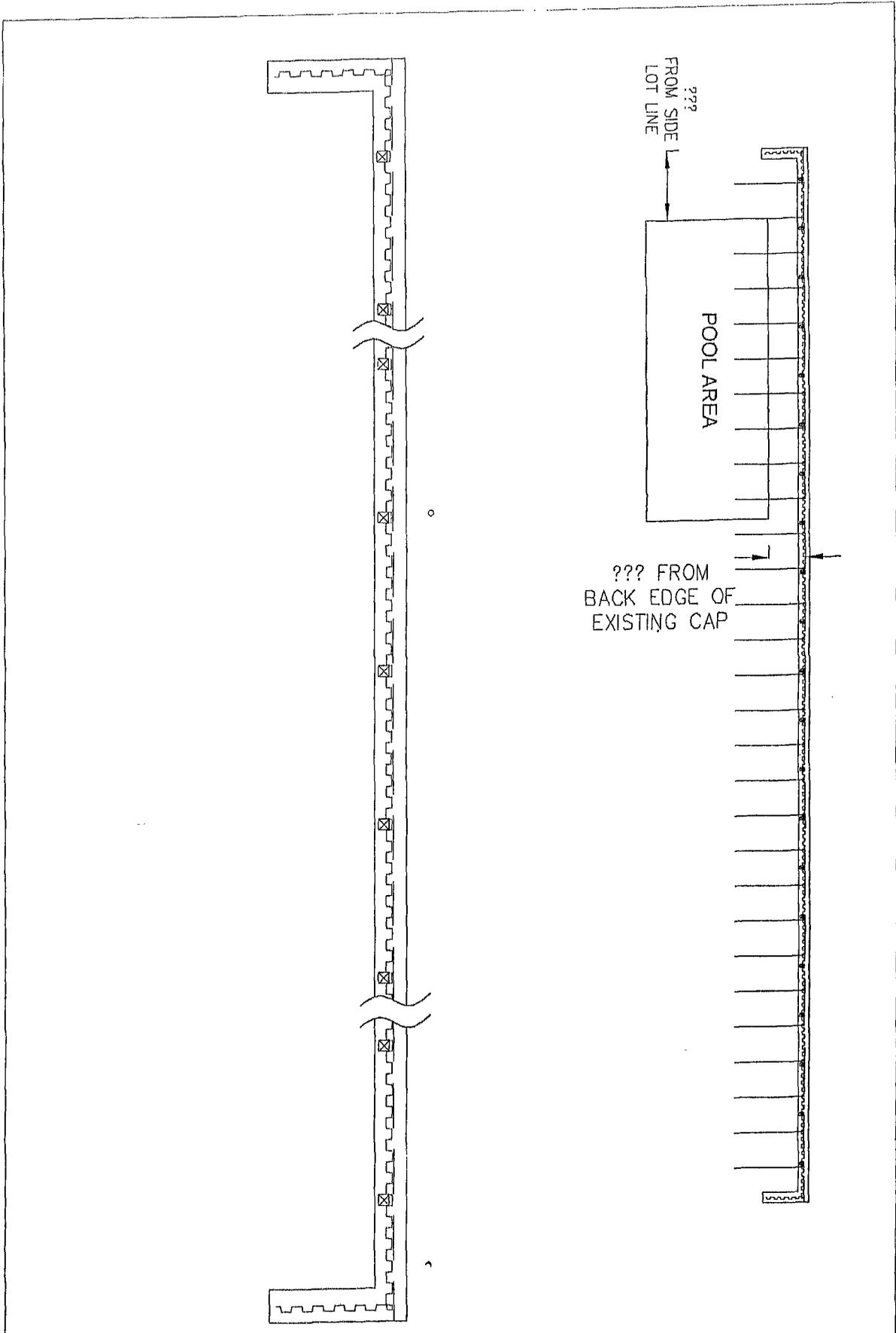
*Alan Bryant*

DATE

8/28/2011

Initial Below: KM Plaza Construction Subcontractor

*[Signature]* *[Signature]*



DATE	NOTES/REVISIONS

NOT VALID  
UNLESS SEALED  
WITH THE  
EMBOSSED SEAL

James Bushouse, P.E.  
Professional Engineer #20311  
State of Florida

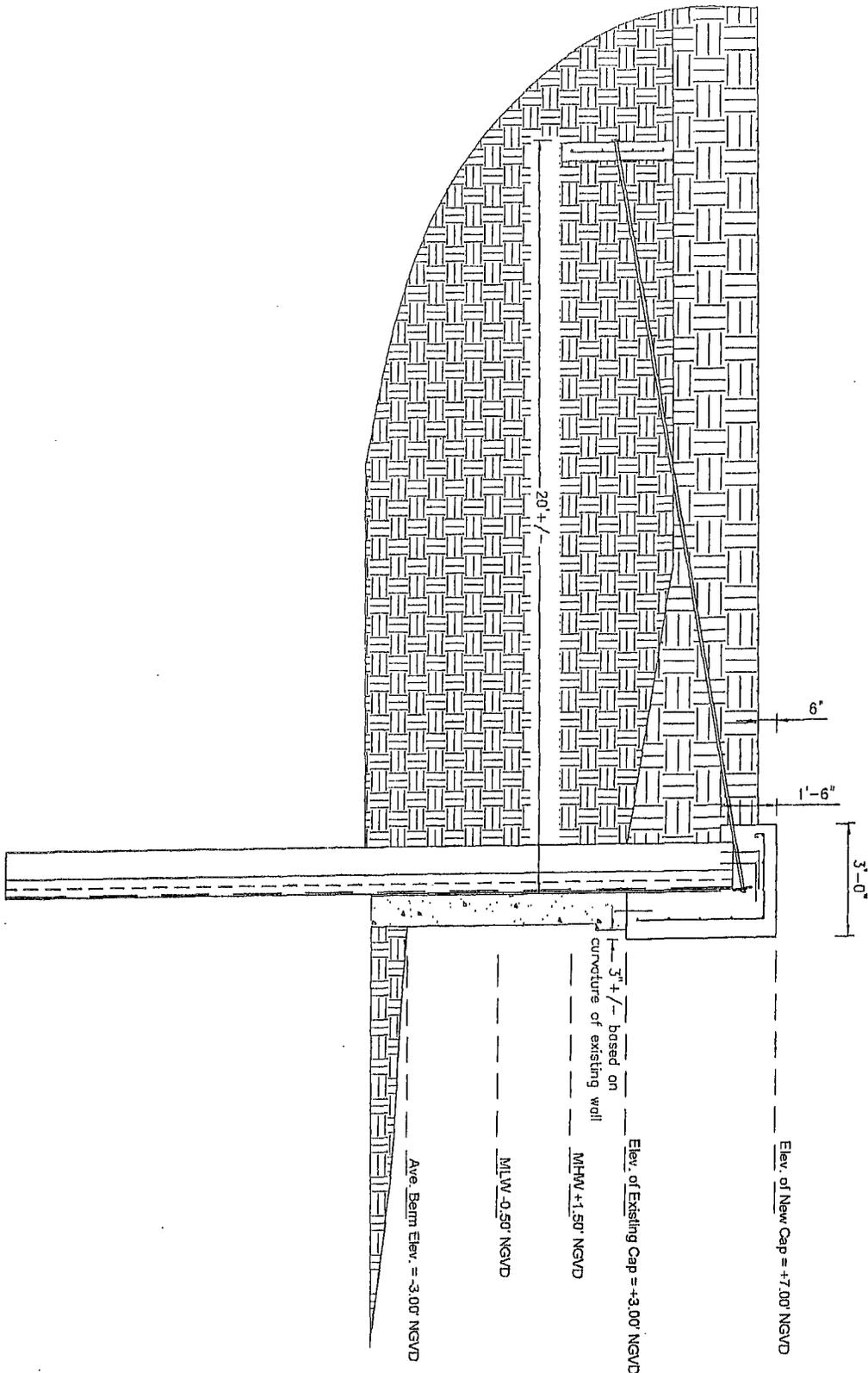
SEAWALL REPAIR FOR:  
MIAMI BEACH JCC  
4221 PINETREE DRIVE  
MIAMI BEACH, FL

PREPARED FOR:  
BK MARINE  
CONSTRUCTION, INC.  
3500 SW 14th STREET  
DEERFIELD BEACH, FL 33442  
954-421-2321 CGC052820

**James Bushouse, Inc**  
CONSULTING ENGINEERS  
L.B. #27565

1178 S.W. 4th COURT  
ROCK HAVEN, FLORIDA 33428  
(561) 417-3881

210 E. LAURENSA STREET  
ARCADIA, FLORIDA 31708  
(904) 181-9218



DATE	NOTES/REVISIONS

NOT VALID UNLESS SEALED WITH THE EMBOSSED SEAL

James Bushouse, P.E.  
Professional Engineer #10311  
State of Florida

SEAWALL REPAIR FOR:  
MIAMI BEACH JCC  
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MIAMI BEACH, FL

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3500 SW 14th STREET  
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James Bushouse, Inc  
CONSULTING ENGINEERS  
L.B. #27565

1175 S.W. 4th COURT  
BOCA RATON, FLORIDA 33432  
(561) 461-3891

214 E. MADONNA STREET  
ARLINGTON, FLORIDA 33496  
(813) 951-8181

SHEET No. 2 OF 3



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# MIAMI BEACH

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

## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: Kathie G. Brooks, Interim City Manager

DATE: January 24<sup>th</sup>, 2012

SUBJECT: **Proposed Gun Buy-Back Program**

This Item was referred at the January 16, 2013 Commission Meeting where the Commission appropriated \$10,000 from the Law Enforcement Trust Fund, subject to review from the Finance and Citywide Projects Committee whose direction was to maximize the use of the sponsorship funding.



# MIAMI BEACH

MIAMI BEACH POLICE DEPARTMENT

## MEMORANDUM

TO: Kathie G. Brooks, Interim City Manager  
FROM: Raymond A. Martinez, Chief of Police  
DATE: January 15, 2013  
SUBJECT: Proposed Community Gun Buy-Back Program

This memorandum concerns the January 16, 2013 City Commission discussion item regarding the establishment of a Community Gun Buy-Back Program.

In an effort to assess the feasibility of implementing a Community Gun Buy-Back Program, the Miami Beach Police Department has researched local and nationwide police agency gun buy-back programs. Following are recommendations on implementation of a similar program for the City of Miami Beach.

The intent of this program is to remove guns from the streets by exchanging firearms for financial incentives, which can be provided in various forms including, gift cards or cash, or some combination thereof. The Miami Beach Police Department (MBPD) would have full control and responsibility for the administration of this program. Funding for these types of programs is established through government funding (state and/or local), private donations, or a combination of both. Proposed funding for this program would come from State confiscated funds in the Law Enforcement Trust Fund, which is statutorily permitted under Florida Statute Chapter 932. In order to encourage community participation, a public information campaign utilizing print and electronic media must be established.

The gun buy-back would need to take place at a City facility, such as the Miami Beach Convention Center, which could accommodate a number of participants, provide adequate parking and allow for the logistics required in receiving the firearms. The (MBPD) is suggesting that this program be held in March 2013.

Similar to other programs, a process would be established to manage the intake of the firearms, ensure their security and place a value on the major types of firearms such as revolvers, semi-automatic handguns, rifles and assault rifles. It would be the policy of the program that participants are not required to provide their name or address in order to neither exchange the firearms nor explain the circumstances as to how they came in to possession of the firearm.

As part of MBPD's due diligence, similar programs at the following jurisdictions have been reviewed: Los Angeles, CA; Camden, NJ; Oakland, CA; San Francisco, CA; Seattle, WA; New York, NY; Opa Locka, FL; and Miami-Dade County, FL.

Gun Buy-Back programs remove guns from the street that could have otherwise been used to commit a crime or injure someone accidentally. The success of a Gun Buy-Back program is often quantified by the number of firearms taken off the streets.

Below is a table that represents the performance of similar programs in other jurisdictions:

Agency	Number of Firearms Recovered	Funding	Exchange
New York City Police Department	85	Government funding	Cash
Opa Locka Police Department	Event #1 – 55 Event #2 – 103	Government funding	Cash
Seattle Police Department	1,700	1992 event funded by the Centers for Disease Control  2013 event funded through private donations	Gift cards
Camden Police Department	1,137	State funding	Cash
Los Angeles Police Department	2,037	Private donation	Gift cards
Bridgeport Police Department	104	Government funding and private sector donations	Cash and gift cards
Oakland Police Department	400	Private donation	Cash

The most recent local police agency Gun-Buy-Back program was conducted by the Opa-Locka Police Department in December 2012. Their program, which has had two recent events, has netted 158 firearms. In addition, the City of Miami Police Department (MPD) has recently announced that they will be holding three (3) events as part of their Gun Buy-Back program, to be held on January, 19, 26 and February 2, 2013, at various locations throughout the City of Miami. The City of Miami will be giving out gift certificates in exchange for the firearms.

Based on the experience of other agencies, we expect that a single event may yield approximately 50 to 75 firearms, with a value of \$50-\$300 for each firearm (depending on the type of firearm). As a result, it is recommended that \$10,000 be set aside for the City of Miami Beach Gun-Buy-Back program to cover all contingencies.

If you have any questions, please feel free to contact me.

C: Mayor Matti Bower and Members of the Miami Beach City Commission

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# MIAMIBEACH

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: Kathie Brooks, Interim City Manager

DATE: January 24, 2013

SUBJECT: **A DISCUSSION REGARDING AN AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY AND MDGLCC FOUNDATION, INC., DATED MARCH 10, 2010 ("LEASE"), INVOLVING THE USE OF APPROXIMATELY 2,543 SQUARE FEET OF OFFICE SPACE LOCATED AT HISTORIC CITY HALL, 1130 WASHINGTON AVENUE, 1<sup>ST</sup> FLOOR NORTH, MIAMI BEACH, FLORIDA**

### BACKGROUND

On March 10, 2010, the Mayor and City Commission passed Resolution No. 2010-27354, approving a Lease Agreement between the City and MDGLCC Foundation, Inc. ("MDGLCC" or Tenant) for the use of approximately 2,543 square feet of City-owned property, located at 1130 Washington Avenue, 1<sup>st</sup> Floor North, Miami Beach, Florida ("Leased Premises"); said Lease having a term of three (3) years, commencing on April 1, 2010, and ending on March 31, 2013, with two (2) additional three (3) year renewal terms.

On October 30, 2012, Steven Adkins, President of MDGLCC, submitted a letter to Commissioner Michael Gongora, which is attached hereto and labeled "Attachment 1," wherein Mr. Adkins described certain problems with the building due to its age, as well as certain maintenance and repair issues. Mr. Adkins requested a rent reduction and a new ten (10) year lease.

On December 6, 2012, the Administration met with Mr. Adkins and Karen Brown, Executive Director of MDGLCC, to discuss the issues described in Mr. Adkins' letter. During the meeting, MDGLCC advised the City they had been communicating directly with Duane Knecht, former Director of Property Management, regarding various maintenance and repair issues related to their office and the building. It was determined that Property Management had been responding to MDGLCC's maintenance issues without consideration for the City's or the Tenant's obligations under the Lease. Few, if any, formal work orders had been placed. While it was acknowledged that Property Management attempted to remedy persistent rodent problems, the problem has not been eradicated. During the December 6<sup>th</sup> meeting, Property Management staff committed to continue to explore solutions to alleviate the circumstances, including concerns about leaks, which have affected the entire building, and problems with the air conditioning system, and fire alarm panel. Potential solutions for window treatments to block the heat were also discussed.

MDGLCC was provided additional contact information for Office of Real Estate, Housing & Community Development staff and both City staff and the Tenant committed to more closely tracking contractual obligations and work orders so that persistent problems may be addressed jointly and separately by both parties as necessary.

In the meantime, the Tenant has expressed a need for a rent reduction in order to offset the cost of hiring additional staff, increase its hours of operation, and broaden its advertising.

The Tenant also requested a new ten (10) year lease. As mentioned above, the current Lease term ends on March 31, 2013, but has two additional three (3) year renewal terms.

## **ANALYSIS**

### **Rent Reduction:**

MDGLCC requested that its rent be reduced to \$30,000 annually (\$11.80 per square foot) payable in monthly installments of \$2,500. MDGLCC currently pays annual rent in the amount of \$52,320 (\$20.57 per square foot) payable in monthly installments of \$4,360. Said monthly amount consists of \$2,065 for base rent (\$9.74 per square foot), \$1,950 for operating expenses (\$9.20 per square foot) and \$345 for insurance (\$1.63 per square foot).

As a comparison, Miami Beach Film Society, Inc. (d/b/a Miami Beach Cinematheque), also located on the 1<sup>st</sup> Floor of Historic City Hall, currently pays the same amount of rent as MDGLCC on a per square foot basis. With the exception of the Miami Dade County Clerk of the Courts, the remaining six tenants in the building currently pay a rental rate ranging from \$23.30 to \$26.07 per square foot for office space, which includes operating expenses of \$11.08 per square foot plus insurance charges of \$1.63 per square foot.

Comparable asking rent for office space on Washington Avenue is currently a weighted average of \$30.58 per square foot.

As previously indicated, the other ground floor tenant (Miami Beach Cinematheque) pays \$9.20 per square foot for operating expenses and \$1.63 per square foot for insurance, for a total of \$10.83 per square foot.

### **Lease Term:**

MDGLCC's current lease is for a period of three (3) years expiring March 31, 2013, with two (2) additional three (3) year renewal terms, subject to approval by the City Manager. MDGLCC has requested a new lease for a period of ten (10) years.

Typically, tenants request long or longer term leases in connection with capital investments. MDGLCC is committed to staying in the leased space and has made improvements to the space, resulting in an attractive and functional space which is an amenity to the building and to the City. However, no capital improvement was required by the City, nor is there a commitment for a defined capital improvement from the Tenant. Nonetheless, the MDGLCC is a tenant in good standing and serves an important public purpose.

**CONCLUSION AND RECOMMENDATION**

The Tenant has requested a rent reduction from \$4,360 monthly to \$2,500 monthly, representing a reduction in rent from \$20.57/sf to \$11.80/sf, and a new ten (10) year lease term.

The Administration seeks the Committee's direction with respect to granting the MDGLCC's requests.

KAB/MAS/SP/MM 

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