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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 Members

FROM: Kathie G. Brooks, Interim City Manager

DATE: March 21, 2013

SUBJECT: **DISCUSSION REGARDING THE USE OF CITY-OWNED FEE SIMPLE LAND FOR THE PURPOSE OF STAGING AND/OR STORAGE OF CONSTRUCTION EQUIPMENT IN CONNECTION WITH CITY OR PRIVATELY FUNDED CONSTRUCTION PROJECTS.**

BACKGROUND

The City has no established policy regarding the use of City-owned fee simple land for construction staging and/or construction equipment storage.

Currently, arrangements are made on a case-by-case basis, interdepartmentally, depending on the proposed use of the land. Because it is not feasible to govern the use of City-owned fee simple land by a conventional lease agreement or by the existing mechanism and fee structure identified for use of right-of-ways, the Administration has developed a proposed License and Use Agreement for your consideration, and has also conducted an analysis of comparable market rates for the use of land for construction staging. The analysis of comparable rates resulted in widely varying scenarios for the City's consideration in determining a fee structure. Other general matters should be determined such as whether the City wishes to charge contractors for the use of City land during City construction projects; whether the City should allow contractors to use City land for staging of private projects, and whether the City should allow contractors to use City of Miami Beach land for staging of projects in neighboring communities.

In 2011, as the City anticipated escalating its right-of-way (ROW) infrastructure improvement projects, City contractors began to pursue available sites for staging and storage. The City did not have a process or fee structure in place to govern the use of City property for construction staging.

The City was approached by, among others, Weekly Asphalt and Paving, the contractor engaged by FDOT to undertake roadway improvements extending along AIA (Collins Avenue) from 75th Street in Miami Beach to beyond City limits, where Collins Avenue intersects Harding Avenue in Surfside. The contractor had requested temporary use of one of the vacant City-owned lots on Collins Avenue between 86th and 87th Streets for its construction staging for a period of approximately twelve months, commencing as soon as available. Earlier requests were also received from the City of Bal Harbor requesting temporary use of one or more of these same lots for a project that it completed last summer and from Ric-Man International for a project it is currently working on in the City of Surfside. Due to the anticipated timing involved with the City being able to make a decision concerning use of the vacant lots, Bal Harbour opted to stage within its own boundaries while Ric-Man International did not want to spend more than

\$1,000.00 per month for use of the site. Other ROW projects, including Central Bay Shore and Lake Pancoast being undertaken by Lanzo Construction and Sunset Islands 1 and 2 being undertaken by DMSI, are using FDOT's property on the Julia Tuttle Causeway for staging at no additional cost to the projects.

David Mancini & Sons (DMSI) is currently using 52,500 square feet of City-owned vacant lots located between 85 and 86th Streets along Collins Avenue. DMSI has been using this site since May 4, 2011 for construction staging, parking and material storage in connection with two projects. At first, DMSI utilized the site while working as the City's right-of-way JOC Contractor for the Water Main Installation Project, and then remained on the site for the Biscayne Point Neighborhood Project, which broke ground at the end of September, 2011. DMSI provided proof of liability insurance coverage which shows the City as an Additional Named Insured, however a fee structure for the use of the property is yet to be determined.

ANALYSIS

While there is no fee structure in place for construction staging on fee simple land, a mechanism and fee structure exists regarding obstruction of City right-of-way space during construction staging. Section 82-151 of the City Code cites the market rate for obstruction of ROW as \$.03 per square foot per day, plus a \$37.50 application fee, and requires that contractors also be required to provide commercial general liability insurance naming the City as an additional insured, as well as worker's compensation and employer's liability as approved by the City's Risk Manager. Public Works also charges a review fee of \$320.43 to cover the cost of staff time spent reviewing applications of this nature.

For vacant City land that is not a right-of-way, the Administration is recommending the development of a License and Use Agreement, a draft of which is attached, which will govern the use of the site(s) for the duration of the construction projects. If the City wishes to continue to allow construction staging on fee simple land, and wishes to charge a fee, it is recommended that a Use Fee range be approved. Therefore, the Administration conducted research of comparable Miami Beach sites used for construction staging by general contractors, revealing the following information:

1. The City's established rate for obstructing ROWs is \$.03 per square foot per day, plus a \$37.50 application fee.
2. In 2008, the City of Miami Beach Housing Authority (HACMB) rented its property located at 321-327 Michigan Avenue site to Ric-Man International for staging of the Washington Avenue Improvement Project. HACMB charged Ric-Man \$5.14 per square foot or \$6,000 per month for use of 14,000 square feet of property
3. One approach used by a private property owner for use of its property in South Pointe for construction staging has been to charge a prorata/per diem share of real estate taxes. This affords the private property owner with tax relief on vacant, unused/underused property. As you know, City property isn't taxable.
4. According to information received from CIP and Trans Florida Construction which has been contracted by the City in connection with phases 3, 4 and 5 of the South Pointe Streetscape Project, it is currently staging on two privately-owned properties in South Pointe: a 17,250 square foot lot located at 126 Ocean Drive, at a rate of \$2.43 per square foot or \$3,500 per month to rent the property; and a 9,000 square foot lot located at 803 5th Street, at a rate of \$2.93 per square foot or \$2,200 per month.

Year	Property Owner - Contractor	Location	Lot Size	Fee Structure
2005	City ROW Ordinance	Citywide	N.A.	\$.03 sq ft/per day, plus a \$37.50 app fee
2008	Housing Auth- Ric Man Int'l	321 Michigan Ave	14,000 sf	\$5.14/sf
2011	Ocean Drive CFI - Trans Florida (A)	126 Ocean Drive	17,250 sf	\$2.43/sf
2011	Burman Investments - Trans Florida (B)	803 5 th Street	9,000 sf	\$2.93/sf
N.A.	The Related Group	N.A.	N.A.	Pro Rata/Per Diem – Real estate Taxes

As you know, construction staging is a component of all construction projects, and presents the greatest challenge for right-of-way projects. A general contractor's budget for construction staging as a project cost should be based on market trends for available, nearby staging areas. Contractors hired to build City projects have used a combination of private and public property for their staging/storage needs. While providing underused/vacant and available City land for construction staging/storage presents a revenue generating opportunity, it is important to note that these staging areas – even when well managed – do generate new and different (heavy equipment) traffic into areas typically not accustomed to such.

Therefore, the Administration would like direction on the following:

- Should the City allow construction staging on fee simple land?
- If so, should the City charge contractors when staging on City-owned fee simple property for City construction projects?
- Should the City allow contractors to use City-owned fee simple property for staging for private projects?
- Should the City allow contractors to use City-owned fee simple property for staging for public projects from neighboring communities?

RECOMMENDATION

The Administration recommends that, if the City opts to continue to allow any use of City-owned fee simple property for construction staging, that the attached License and Use Agreement be approved as the governing document. This Agreement reflects certain set terms and conditions for use of City-owned fee-simple property, including identifying the Use Fee; site use restrictions; indemnification provisions; insurance requirements; site restoration conditions; environmental remediation requirements; and site access by the City.

Also, the Administration makes the following general recommendations:

- Should the City charge contractors when staging on City-owned fee simple property for City construction projects? The Administration recommends that fees should not be charged, but should instead be re-directed towards projects costs. This will provide a greater benefit to the public.
- Should the City allow contractors to use City-owned fee simple property for staging for private projects? The Administration recommends against. The projected revenue potential and anticipated administrative costs to the City do not justify the imposition which large, disruptive, private projects will have on City-owned sites and neighboring residents.
- Should the City allow contractors to use City-owned fee simple property for staging for

public projects from neighboring communities? The Administration recommends against. Neighboring communities' projects should not be staged on City of Miami Beach sites due to the disruption and inconvenience to our residents.

Finally, in the event that the City continues to allow the use of City-owned fee simple property for construction staging, the Administration recommends charging the existing \$.03 per square foot/per day, plus a \$37.50 application fee rate based on the City's Right-of-way Ordinance. Applications would need to be reviewed by various departments including, but not limited to, Real Estate, Housing and Community Development, Public Works and Building. As such, the Administration also recommends establishing a review fee based on the cost of staff time needed to review an application.

CONCLUSION

If the FCWPC determines that the City should continue to allow the use of City-owned fee simple land for construction staging, the Administration will establish a policy, a License and Use Agreement, and a fee structure to govern the process.

KGB/MS/AP/KOB
Attachments

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LICENSE AND USE AGREEMENT

THIS LICENSE AND USE AGREEMENT ("Agreement"), made the _____ day of _____, 2013 (the Effective Date), by and between the CITY OF MIAMI BEACH, FLORIDA, a Florida municipal corporation ("City" or "Licensor"), and _____ INC, a Florida corporation ("Licensee"). Licensor and Licensee may also sometimes referred to, individually, as a "Party" or collectively, as the "Parties".

NOW, THEREFORE, and in consideration of the mutual promises, covenants, agreements, terms and conditions, herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto do agree as follows:

1. Permitted Uses. Licensor hereby grants to Licensee a license to occupy and use, subject to all of the terms and conditions hereof, those certain parcel(s) generally described as Subdivision Name, PB ___, Lots ___ through ___, Block ___, and located generally along _____, from ___th Street to ___th Street, all as more specifically detailed in the location map, attached and incorporated as **Exhibit "A"** hereto, (the "Parcel(s)").

Licensee may occupy and use the Parcels solely for the purpose of staging equipment and storage of materials in connection with those certain City-funded right-of-way improvements and _____ repairs, being undertaken by the Licensee along _____, as per City of Miami Beach Resolution No. _____, attached and incorporated as **Exhibit "B"** hereto (hereinafter referred to as "the Project").

2. Term. The term of this Agreement shall commence upon execution of the Agreement by both Parties, which shall be referenced as the "Effective Date" on page 1 (above) of this Agreement, and shall terminate upon the earlier of "Substantial Completion" of the Project, as determined in writing by the Licensee's Engineer of Record; or Date, unless otherwise extended, at Licensor's sole discretion.

3. Use Fee. TBD

4. Indemnification. Licensee shall indemnify and hold harmless the Licensor, and its officers, employees, agents, and contractors, from and against any and all claims, suits, actions, damages or causes of action arising from or in connection with Licensee's, and/or its officers, employees, contractors and/or agents' activities pursuant to this License Agreement; its occupancy of the Parcels; and any other work incidental thereto.

5. Insurance. Prior to the Effective Date, Licensee shall provide Licensor for Licensor's review and approval with evidence of General Liability, Automobile Liability and Worker's Compensation insurance, in such form and amount(s) as shall be satisfactory to the City's Risk Manager. The minimum limits of coverage for General Liability shall be \$1,000,000 per occurrence, combined, single limit for bodily injury liability and property damage liability, and shall name the City of Miami Beach, Florida, as additional insured.

6. Safety and Workmanship. Licensee shall coordinate all work with the City Manager or his/her designee in order to minimize impact on Licensor's operations. Licensee shall take all necessary safety precautions, secure the Parcels by appropriate construction fencing, and coordinate with the City Manager or his/her designee to assure the safety of City employees, contractors, residents, guests, invitees, visitors, and the general public at all times during the Term.

Licensee shall resolve any safety or workmanship issues to the conditions mandated by the City Engineer.

7. Storm Water Pollution Prevention Plan. Licensee shall submit a Storm-water Pollution Prevention Plan for the Parcels within sixty (60) days of the Effective Date. The purpose of this Plan is to reduce the potential of sediments and construction debris from entering the City's storm water system from the Licensee's construction staging activities:

- A. The Licensee should describe and provide indication on a site map of all erosion and sediment controls and storm water best management practices to reduce erosion, sedimentation, and storm water pollution. These controls may include silt fences, entrance/exit controls, storm drain inlet protection, and reinforced soil retaining systems. The Licensee should establish a maintenance plan for all structural and non-structural controls to assure that they remain in good and effective operating condition.
- B. The Licensee should implement good housekeeping techniques to reduce contamination of storm water runoff. The Licensee should describe in detail controls for the following potential pollutants:
 - (i) Waste disposal, this may include construction debris, chemicals, litter, and sanitary waste.
 - (ii) Offsite vehicle tracking from construction entrances/exits.
 - (iii) The storage, application, generation and migration of all toxic substances.

8. Licensee's Obligation for Restoration. At the conclusion of the Term, Licensee shall immediately restore the Parcels, and any other adjacent City property affected by the Licensee's activities, to a condition that is not only safe and usable, but that is as good as, or better, than previously existed prior to the Effective Date of this Agreement.

9. Construction of Agreement. The Parties to this Agreement have substantially contributed to the drafting and negotiation of this Agreement, and this Agreement shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other. The Parties acknowledge that they have thoroughly read this Agreement, including all exhibits and attachments hereto, and have sought and received whatever competent legal advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

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

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

TO LICENSEE:

Title: _____

(305) _____ Ext. ____
Attn: _____

TO LICENSOR:

City of Miami Beach
City Manager
1700 Convention Center Drive
Miami Beach, Florida 33139
(305) 673-7000, Ext. 6399
Attn: Jorge M. Gonzalez

11. Entire Agreement. The making, execution and delivery of this Agreement by Licensor has been induced by no representations, statements, warranties, or agreements other than those contained herein. This Agreement embodies the entire understanding of the Parties and there are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof.

EXECUTED as of the day and year first above written.

Attest:

LICENSOR:
CITY OF MIAMI BEACH
a Florida Municipal Corporation

City Clerk

By: _____

Name: _____

Title: _____

Attest:

LICENSEE:
_____, a Florida
corporation

Secretary

By: _____

Name: _____

Print Name

Title: _____

**EXHIBIT A
PROPERTY DESCRIPTION**

DRAFT