



# MIAMI BEACH

OFFICE OF THE CITY MANAGER  
NO. LTC # 267-2013

LETTER TO COMMISSION

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

FROM: Jimmy L. Morales, City Manager

DATE: August 5, 2013

SUBJECT: The Barclay Elevator

The purpose of this Letter To Commission is to address the facts regarding the elevator at The Barclay, an affordable housing project for elder residents owned and managed by the Miami Beach Community Development Corporation (MBCDC). The Barclay was the topic of an article in *The Miami Herald* published over the weekend. There are several factual errors presented in the article that must be clarified.

To date, the City has released \$70,400 to MBCDC for the modernization of its elevator at The Barclay (despite an approved budget of only \$65,000 for such repairs). The City has yet to receive a full accounting of how the dispersed funds were expended. More so, according to the Building Department, MBCDC has yet to apply for or obtain an elevator permit for this location.

As a point of clarification, MBCDC has ample HOME funds (\$388,840.28) available in its current grant agreements from which to draw and address the needed elevator repairs:

Fund Source	Amount Awarded	Date of Contract	Date of 1 <sup>st</sup> Draw	Date of Last Draw	Amount Released to Date	Balance Remaining for Draw
CDBG	\$ 75,018	10/6/2011	7/20/2012	7/20/2012	\$24,753.21	\$ 50,264.79
HOME	\$500,000	3/28/2011	10/11/2011	9/13/2012	\$ 111,159.72	\$ 388,840.28
	<b>\$575,018</b>		<b>TOTALS</b>		<b>\$ 135,912.93</b>	<b>\$ 439,105.07</b>

However, it was not until July 16, 2013, that MBCDC submitted budget amendment requests to the City to address elevator repairs. MBCDC's HOME budget amendment proposal sought to increase the total amount for elevator repair work and modernization from \$65,000 to \$175,833.67. MBCDC is required to submit a detailed explanation justifying the appropriateness of this expense. **MBCDC did not.** Furthermore, MBCDC sought to increase the total amount for architectural and engineering work from \$20,000 to \$39,000. MBCDC is required to submit a detailed explanation justifying the appropriateness of this expense. **MBCDC did not.**

MBCDC's CDBG budget amendment sought to shift an additional \$20,000 from rehabilitation to architectural and engineering. Since architectural and engineering costs were not part of the original award scope, MBCDC is required to submit a detailed explanation justifying the appropriateness of this expense. **MBCDC did not.** Furthermore, MBCDC requested \$9,000 in Developer's Fees. Since a Developer's Fee was not part of the original award scope, it is deemed as profit and is therefore disallowed

With the deficiencies as noted, the City rejected MBCDC's budget amendment requests on July 25, 2013. In its rejection, the City advised MBCDC that, should it wish to pursue the budget amendments, appropriate documentation is required. As of this writing, MBCDC has yet to resubmit a corrected budget amendment for either HOME or CDBG funds.

In *The Miami Herald* article, it states that "In March, MBCDC asked Miami Beach to release grant money for elevator repairs." In actuality, MBCDC submitted a draw request to the City for \$30,000 on March 25, 2013 to address "electrical gear" but does not reference the elevator. In addition, MBCDC requested an advance on its Developer's Fee of \$5,000. MBCDC's funds request referenced an invalid grant agreement. Noting its error, **MBCDC asked that the draw be voided**. The City voided the draw request as directed.

On April 9, 2013, MBCDC submitted an advance draw request for \$72,424.88 in HOME funds to address the "elevator machine room". As the grant agreement between the City and MBCDC is based on reimbursement and only allows for advanced draws with a construction consultant verifying the scope of work to be undertaken, the City was required to contract a construction consultant.

Upon completion of the procurement process for a construction consultant, the City contracted with Douglas Wood & Associates on June 13, 2013. In its report, Douglas Wood & Associates noted the following deficiencies in MBCDC's draw request which required corrective action prior to the release of funds:

1. The fiscal documentation from Pinar Electric Ltd, Inc. for the elevator gear appears to be a quote and not a contract for service as required.
2. The supporting documentation for the Fire Alarm from Silmar Electronics, Inc. with Life Safety 1<sup>st</sup> Corp. as the "bill to" party did not reference either MBCDC or The Barclay and had no evidence of acceptance by MBCDC or its General Contractor, Al Jer Construction, as required.

In addition, staff noted the following additional discrepancies with the April 9, 2013 MBCDC draw request:

- The *AIA Document G702 Application #2* submitted by Pinar Electric Ltd, Inc. on March 25, 2013 and certified by the Architect, Manny Reus, on March 26, 2013 was actually notarized on February 22, 2013 -- more than a month before the document was actually certified by the Contractor (Pinar Electric).
- The *AIA Document G702 Application #2* by All Jer Construction and dated March 26, 2013 was not certified by the architect of record, Manny Reus, as required, preventing the release of \$9,650.62.

On July 1, 2013, MBCDC submitted a revised draw request increasing the amount of the advance to \$94,259.71 but did not address the documentation issues raised by Douglas Wood & Associates. Please note that this advanced draw, which addresses work to the elevator, triggers a budget amendment because the amount requested exceeds the approved budget.

**To date, MBCDC has yet to resubmit a corrected draw request or budget amendment in compliance with its grant agreement.**

As the City's Certified Housing Development Organization and a recipient of housing funding from other government funders, MBCDC is well versed on the housing development industry and HUD's policies regarding appropriate documentation and process for payment requests and budget amendments. City staff has always been and continues to be available to address questions or concerns while ensuring compliance with HUD rules and regulations.

In fact, the City began to provide support to residents impacted by the elevator problem in March 2011. At that time, the City worked with Jewish Community Services to ensure that meals would be delivered to a homebound client living in the building. More so, the City proactively promoted *Special Needs Registration* of these tenants to ensure that, in the event of a hurricane, the City could provide help as necessary.

In addition, the City interceded on behalf of Barclay residents seeking help with their Safelink telephone service. On July 27, 2012, a tenant came to the City complaining that his Safelink phone service was declined because The Barclay was listed as a hotel (not a residence) and did not have post office –approved mail boxes. It was not until earlier this year that the building's classification was resolved and the tenant's phone service was restored.