

MIAMI BEACH

City Commission Meeting SUPPLEMENTAL MATERIAL 1

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
February 10, 2016

Mayor Philip Levine
Commissioner John Elizabeth Alemán
Commissioner Ricky Arriola
Commissioner Kristen Rosen Gonzalez
Commissioner Michael Grieco
Commissioner Joy Malakoff
Commissioner Micky Steinberg

City Manager Jimmy L. Morales
City Attorney Raul J. Aguila
City Clerk Rafael E. Granado

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ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

SUPPLEMENTAL AGENDA

C7 - Resolutions

C7L A Resolution Approving And Authorizing The Mayor And City Clerk To Execute An Amendment To The Professional Services Agreement With Industrial/Organizational Solutions, Inc., Approved By The City Commission On July 18, 2012, Said Amendment To Provide Additional Testing Services During The Fourth Contract Year For Potential Non-Certified Police Officer Trainees, Certified Police Officers And Fire Fighters; And Requesting Additional Funding, In An Amount Not To Exceed \$69,400.

(Human Resources)
(Memorandum)

R5 - Ordinances

R5D An Ordinance Amending Chapter 78 Of The Code Of The City Of Miami Beach, Entitled "Personnel," By Amending Article I, Entitled "In General," By Amending Section 78-2, Entitled "Reserved," To Codify Requirements For Criminal History Record Checks For Certain Municipal Employees, Contractors, Employees Of Contractors, And Vendors, In Accordance With State Law; Providing For Repealer, Severability, Codification, And An Effective Date.

10:15 a.m. Second Reading Public Hearing

(Sponsored by Commissioner Michael Grieco)
(Legislative Tracking: Human Resources)
(First Reading on January 13, 2016 - R5O)
(Memorandum & Ordinance)

R7 - Resolutions

R7J A Resolution Approving And Authorizing The Mayor And City Clerk To Execute The Second Amendment To Lease Agreement With The Miami Beach Police Athletic League, Inc. (PAL), Substantially In The Form Attached To This Resolution, Relating To The Building Located At 999 11th Street (Premises); Said Amendment Establishing The Permitted Uses Under The Lease; Clarifying And Establishing Terms Relating To The Shared Use Of The Premises By The City And PAL; Clarifying The Operational, Management, And Maintenance Obligations With Respect To The Shared Use Of The Premises; Providing PAL With A \$1.00 Per Hour Of The Off-Duty Police Surcharge During The Term Of The Lease; And Further Extending The Lease Agreement Term For An Additional Two (2) Years, Through And Including June 30, 2025.

(Police)
(Deferred from January 13, 2016 - R7G)
(Memorandum & Resolution)

R7K A Resolution Authorizing The City Manager To Enter Into Eight (8) Consent Orders With The State Of Florida Department Of Health For Noticed Permit Violations Dating Back To 2012, Associated With City Water Systems Being Placed Into Service Without The State Of Florida, Department Of Health Approval Or State Clearance In Violation Of 62-555.345, F.A.C., And 403.121(3)(a), Florida Statutes; And Authorizing The City Manager To Execute The Eight (8) Consent Orders Attached Hereto As Exhibit 1, For A Total Cost Of \$31,500.

(Public Works)
(Memorandum & Resolution)

Reports and Informational Items

4. Miami Beach Convention Center Monthly Construction Project Update - LTC No. 052-2016.
(Office of the City Manager)
(LTC)

Condensed Title:

A Resolution of the Mayor and Commission of the City of Miami Beach, Florida, Approving and Authorizing the Mayor and City Clerk to Execute an Amendment to the Professional Services Agreement with Industrial/Organization Solutions, Inc., approved by the City Commission on July 18, 2012, Said Amendment to Provide Additional Testing Services For The Police and Fire Department And Requesting Additional Funding, In An Amount Not To Exceed \$69,400.

Key Intended Outcome Supported:

Attract and maintain a workforce of excellence

Item Summary/Recommendation:

On May 25, 2011, the City issued RFP #34-10/11, for testing services programs to determine qualified applicants for police and fire entry level positions and classified promotional classifications, and to provide consultation services for sworn and non-sworn positions in order to develop job analyses, entry level and promotional tests, scoring, and minimum requirements for jobs background test requirements. At its regular meeting on July 18, 2012, the Mayor and City Commission adopted Resolution No. 2012-27941, approving and authorizing the City Manager to execute a professional services agreement with Industrial/Organizational Solutions, Inc. (consultant).

Pursuant to directions from the City Attorney's Office, the agreement was executed for the services pertaining to the police promotional process and general consultation services for the Human Resources Department, in an amount not to exceed \$75,400.

The contract was first amended on April 22, 2013, through Resolution No. 2013-28182 to provide funding for testing services for police and fire entry level positions, in an amount not to exceed \$70,000. The second amendment was on October 16, 2013, through Resolution No. 2013-28396 to provide funding for testing services for classified ranks in the Ocean Rescue Division of the Fire Department, in an amount not exceed \$38,000, and the third amendment through Resolution No. 2014-28775 to provide promotional testing for the Fire Department. The request for this fourth amendment is To Provide Additional Testing Services During The Fourth Contract Year For Non-Certified Police Officer Trainees, Certified Police Officers And Fire Fighters; And Requesting Additional Funding, In An Amount Not To Exceed \$69,400.

As the Administration continues to evaluate and identify areas for which the consultant's services are appropriate, The City will seek Commission approval for additional funding.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:	Amount	Account
1	\$21,130	Professional Services Account #011-1210-000312
2	\$48,240	Professional Services Account #011-1130-000312
Total	\$69,370	

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Sylvia Crespo-Tabak, Human Resources Director

Sign-Offs:

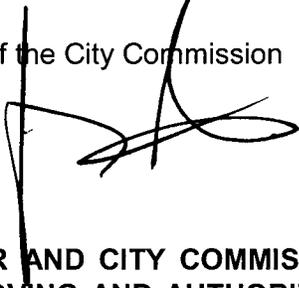
Department Director SC-T <u>SLT</u>	ACM/CFO JMT <u>[Signature]</u>	City Manager JLM <u>[Signature]</u>
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MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager 

DATE: February 10, 2016

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH INDUSTRIAL/ORGANIZATIONAL SOLUTIONS, INC., APPROVED BY THE CITY COMMISSION ON JULY 18, 2012, SAID AMENDMENT TO PROVIDE ADDITIONAL TESTING SERVICES DURING THE FOURTH CONTRACT YEAR FOR POTENTIAL NON-CERTIFIED POLICE OFFICER TRAINEES, CERTIFIED POLICE OFFICERS AND FIRE FIGHTERS; AND REQUESTING ADDITIONAL FUNDING, IN AN AMOUNT NOT TO EXCEED \$69,400.**

RECOMMENDATION

The Administration recommends adoption of the resolution.

BACKGROUND

On May 25, 2011, the City issued RFP #34-10/11, for testing services programs to determine qualified applicants for police and fire entry level positions and classified promotional classifications, and to provide consultation services for sworn and non-sworn positions in order to develop job analysis, entry level and promotional tests, scoring, and minimum requirements for jobs background test requirements. At its regular meeting on July 18, 2012, the Mayor and City Commission adopted Resolution No. 2012-27941, approving and authorizing the City Manager to execute a professional services agreement with Industrial/Organizational Solutions, Inc. (Consultant).

I/O Solutions is a public safety human resources consulting firm that specializes in personnel selection, development, validation and administration of police, corrections and fire services entrance, physical ability and promotional examinations. In addition to providing third-party recruitment services, the firm is also a national test publishing organization, offering over 30 published entry-level and promotional exams and assessments. The firm employs a team of psychometricians and experts in the industrial and organizational psychology field, and puts a strong emphasis on developing assessment tools to identify the best candidates whether entry-level or promoting existing personnel, through a valid, reliable, fair, and defensible selection process.

I/O Solutions has worked with over 1,000 public safety agencies throughout the United States

and Canada, such as the Florida Department of Law Enforcement (FDLE), Jacksonville Sheriff's Police Department, Washington, D.C. Fire and EMS, Washington, D.C. Metropolitan Police Department, New York State Police Department and the City of Chicago. I/O Solutions is one of the few major public safety consulting firms with an unblemished litigation history.

In 2009, the U.S. Supreme Court, in *Ricci v. DeStefano*, ruled that the City of New Haven, CT was required to use the examinations developed by I/O Solutions in order to resolve a lawsuit brought against the City by twenty city firefighters alleging that the city discriminated against them with regard to promotions. In addition, in 2007, the entry-level police officer examination I/O Solutions developed for the City of Buffalo, NY, satisfied the scrutiny of the U.S. Department of Justice. Further, an independent firm hired by the City of Chicago to evaluate all commercially available entry-level firefighter examinations identified I/O Solutions as having the best firefighter selection tool in the nation.

The City entered into an agreement with the consultant for an initial term of one (1) year, with four (4) additional one (1) year renewal options, exercised at the City Manager's sole option and discretion. At the time, pursuant to direction from the City Attorney's Office, the agreement was executed for services pertaining only to testing services pertinent to the police promotional process and general consultation services for the Human Resources department.

The contract was first amended on April 22, 2013, through Resolution No. 2013 –28182 to provide funding for testing services for police and fire entry level positions, in an amount not to exceed \$70,000. A second amendment to the contact was approved on October 16, 2013, through Resolution No. 2013-28396 to provide funding for testing services pertinent to the ocean rescue promotional process, in an amount not to exceed \$38,000.

The Mayor and City Commission approved a third amendment to this professional service agreement by adopting Resolution 2014-28775 October 22, 2014. The statement of work from the consultant included the related activities to develop promotional testing in the Fire Department, to fill vacancies in the ranks of Fire Lieutenant and Fire Captain.

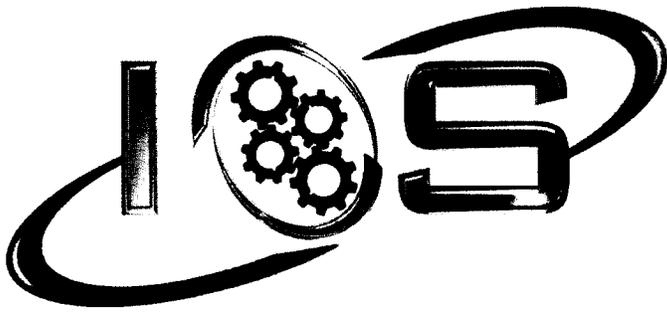
The City is seeking to amend the agreement with the consultant a fourth time, to develop, update, as required, validate, administer, and score written examinations, and to develop and validate live interview questions for the firefighter, certified police officer and non-certified police officer candidates selected by the City who are interested in pursuing an educational opportunity in law enforcement through the Police Department's pilot program, therefore, we are requesting additional funding in an amount not to exceed \$69,400. A copy of the proposals from I/O Solutions are attached.

As the Administration continues to evaluate and identify areas for which the consultant's services are appropriate, the City will seek Commission approval for additional funding.

CONCLUSION

The Administration recommends that the Mayor and City Commission approve the attached resolution, approving and authorizing Industrial/Organizational Solutions, Inc., to provide additional testing services for Fire Department classified promotional classifications, and requesting additional funding, in an amount not to exceed \$69,400.

Attachment
JLM/JMT/SC-T



Statement of Work

Client: Miami Beach Fire Department

Project Title: Entry-level Firefighter Selection Process

The purpose of this document is to describe the components of the proposed project and to document the associated costs. The table on the following page will describe the anticipated project steps and associated costs. Should any component of the project need to be modified, IOS will contact the client and explain the required modification and any associated pricing change. Any future change in the proposed project must be mutually acceptable to the Client and IOS.

Industrial/Organizational Solutions will submit invoices according to the following schedule: 1/3rd upon project commencement, 1/3rd at project midpoint, and 1/3rd upon project completion.

The following table(s) contain a breakdown of the project steps and associated costs.

Rate Classification/Schedule	I/O Solutions Staff Members	Rate/ Hour
Manager	Brian Marentette, Ph.D.	\$250
Consultants	Linda Reynaud, M.A. Maria Szczech, M.A. Amy Kupec, M.A. Christen Dovalina, M.S.	\$175
Technical writer	Karen Steiger, M.A.	\$85
Administrative	Tami Marsiglio Samantha Gleaves	\$35

Cost Structure

Project Component	Description	Cnslt. Hrs.	Tech. Wtr. Hrs.	Admin. Hrs.	Cost
Candidate orientation presentations	Delivery of candidate orientation presentations to describe process and preparation recommendations (4 sessions over three days)	24		4	\$4,340
National Firefighter Selection Inventory (NFSI)	\$18.00/candidate (estimated 500 candidates)				\$9,000
Written exam administration	On-site exam administration oversight by IOS consultant (assumes 2 days, four exam sessions)	16			\$2,800
Development of technical summary	Development of a report to summarize job analysis outcomes, design/validation of the assessment and analysis of outcomes, including impact.	10	4		\$2,090
Administrative expenses	Shipping of exams and assessment materials.				\$200
Consultant travel expenses (detailed below)	Site visits: exam administration, candidate orientations.				2,700
TOTAL COST		50	4	4	\$21,130

Travel Costs (detailed)

Project Step	Staff	Days	Airfare Units (\$600)	Lodging Units (\$175)	Transport Units (\$80)	Meal Units (\$45)	Total
Orientation	1	3	1	3	3	3	\$1,500
Written Exam Admin	1	2	1	2	2	2	\$1,200
TOTAL							\$2,700

Authorizations:

Acceptance by Client:

I acknowledge that I have reviewed this Statement of Work and hereby authorize I/O Solutions and its representatives to commence work on the project components as described herein.

Signature of Authorized Agent

Title of Authorized Agent

Date

Acceptance by IOS:

IOS agrees to conduct the work outlined herein according to a timeline that is mutually agreeable to both parties.

Signature of Authorized Agent

Title of Authorized Agent

Date



Statement of Work

Client: City of Miami Beach – Police Department

Project Title: Entry-level Police Officer Testing Process –
(Non-Certified AND Certified combined)

The purpose of this document is to describe the components of the proposed project and to document the associated costs. The table on the following page will describe the anticipated project steps and associated costs. Should any component of the project need to be modified, IOS will contact the client and explain the required modification and any associated pricing change. Any future change in the proposed project must be mutually acceptable to the Client and IOS.

Industrial/Organizational Solutions will submit invoices according to the following schedule: 1/3 at project commencement, 1/3 at the project midpoint, and 1/3 upon completion of the project.

The following table(s) contain a breakdown of the project steps and associated costs.

Rate Classification/Schedule	I/O Solutions Staff Members	Rate/ Hour
Manager	Brian Marentette, Ph.D.	\$250
Consultants	Linda Reynaud, M.A. Maria Szczech, M.A. Amy Kupec, M.A. Christen Dovalina, M.S.	\$175
Technical writer	Karen Steiger, M.A.	\$85
Administrative	Tami Marsiglio Samantha Gleaves	\$35

Cost Structure

Project Component	Description	Cnslt. Hrs.	Tech. Wtr. Hrs.	Admin. Hrs.	Cost
Candidate orientation presentations	Delivery of candidate orientation presentations to describe process and preparation recommendations (4 sessions over three days)	24		4	\$4,340
National Criminal Justice Officer Selection Inventory-Integrity (NCJOSI ²) @ \$18/candidate + the Situationally Based Structured Assessment (SBSA) @\$10/candidate	\$28.00/candidate (estimated 1,000 candidates)				\$28,000
Written exam administration	On-site exam administration oversight by IOS consultant (assumes 2 days, four exam sessions – additional days will be billed at a daily rate of \$1,400)	16			\$2,800
Oral Interview Development	Development and validation of interview questions and rating	20			\$3,500

Cost Structure

Project Component	Description	Cnslt. Hrs.	Tech. Wtr. Hrs.	Admin. Hrs.	Cost
	criteria.				
Assessor training	Conduct assessor training for oral interview process	8			\$1,400
Provision of oral interview results	Data entry and scoring of oral interview	4		16	\$1,260
Development of technical report	Development of a report to document job analysis outcomes, design/validation of the assessment and analysis of outcomes, including impact.	16	4		\$3,140
Administrative expenses	Shipping of exams and assessment materials.				\$200
Consultant travel expenses	Site visits: exam administration, candidate orientations, assessment training.				\$3,600
TOTAL COST		88	4	20	\$48,240

Travel Costs (detailed)

Project Step	Staff	Days	Airfare Units (\$600)	Lodging Units (\$175)	Transport Units (\$80)	Meal Units (\$45)	Total
Orientation	1	3	1	3	3	3	\$1,500
Written Exam Admin	1	2	1	2	2	2	\$1,200
Oral Interview Training	1	1	1	1	1	1	\$900
TOTAL							\$3,600

Authorizations:

Acceptance by Client:

I acknowledge that I have reviewed this Statement of Work and hereby authorize I/O Solutions and its representatives to commence work on the project components as described herein.

Signature of Authorized Agent

Title of Authorized Agent

Date

Acceptance by IOS:

IOS agrees to conduct the work outlined herein according to a timeline that is mutually agreeable to both parties.

Signature of Authorized Agent

Title of Authorized Agent

Date

RESOLUTION TO BE SUBMITTED

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Condensed Title:

An ordinance of the Mayor and City Commission of the City of Miami Beach, Florida, amending Chapter 78 of the Code of the City of Miami Beach, entitled "Personnel," by amending Article I, entitled "In General," by amending section 78-2, entitled "Reserved," to Codify Requirements for Criminal History Record Checks for Certain Municipal Employees, Contractors, Employees of Contractors, and Vendors, in accordance with State Law; providing for repealer, severability, codification, and an effective date.

Key Intended Outcome Supported:

- Strengthen internal controls to achieve more accountability

Supporting Data (Surveys, Environmental Scan, etc.): N/A

SECOND READING AND PUBLIC HEARING

Item Summary/Recommendation:

In 1999 the City of Miami Beach entered into an intergovernmental agreement with the Florida Department of Law Enforcement to permit the City of Miami Beach to check the criminal backgrounds of persons who work or volunteer with children, the elderly, or the disabled under the National Child Protection Act (NCPA) (1993), as amended and § 943.0552, Florida Statutes (1999).

The City of Miami Beach runs criminal background checks prior to the beginning of employment or service to the City on all selected candidates for employment and promotions, most contractors, contractor employees, interns, temporary agency employees assigned to work for the City and any other such persons whose employment or contractual relationship with the City gives them routine, who has direct contact with individual members of the public or unescorted access to City offices or publicly operated facilities in such a matter or to such an extent the City's governing body finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.

In May 2015, the FBI conducted a National Identity Services (NIS) audit at the City of Miami Beach. The one finding was that the City of Miami Beach "performed FBI criminal background checks on all applicants for employment, volunteers, contractors and interns. In addition there was not a Public Law 9-544 approved state or ordinance that covered the applicants who were not covered by the National Child Protection Act/Volunteers for Children ACT (NCPA/VCA)."

To correct this finding the Administration recommends adopting the ordinance.

Advisory Board Recommendation:

N/A

Financial Information:

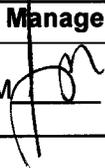
Source of Funds:		Amount	Account	Approved
<div style="border: 1px solid black; width: 40px; height: 20px; margin: 0 auto;"></div> OBPI	1			
	2			
	3			
	Total			

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Sylvia Crespo-Tabak, Human Resources

Sign-Offs:

Department Director	Assistant City Manager	City Manager
SCT 	MT _____	JLM 

Agenda Item RSD
Date 2-10-16



MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Philip Levine, Mayor and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: February 10, 2016

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 78 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PERSONNEL," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 78-2, ENTITLED "RESERVED," TO CODIFY REQUIREMENTS FOR CRIMINAL HISTORY RECORD CHECKS FOR CERTAIN MUNICIPAL EMPLOYEES, CONTRACTORS, EMPLOYEES OF CONTRACTORS, AND VENDORS, IN ACCORDANCE WITH STATE LAW; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

SECOND READING AND PUBLIC HEARING

BACKGROUND

In 1999 the City of Miami Beach entered into an intergovernmental agreement with the Florida Department of Law Enforcement to permit the City of Miami Beach to check the criminal backgrounds of persons who work or volunteer with children, the elderly, or the disabled under the National Child Protection Act (NCPA) (1993), as amended and § 943.0552, Florida Statutes (1999).

The current name for the program used by the City is VECHS, which is an acronym for Volunteer and Employee Criminal History System for criminal history checks by a qualified entity under the (NCPA) 1993 as amended and § 943.0552, Florida Statutes (1999).

To qualify for the VECHS program, an entity must provide some type of "care" or "care placement services" for children, the elderly or the disabled; even if it is only a limited part of the entity's overall business. Once qualified to participate in the program, an entity may request criminal history information on all current and prospective employees and volunteers, not only those who work with vulnerable persons. A qualified entity may also request criminal history information on employees or volunteers who have or who seek to have unsupervised access to the populations described above.

"Qualified entities" are authorized to obtain criminal history record information as described under the NCPA and related federal guidelines. Under the NCPA and Florida statute, a "qualified entity" is a business or organization, whether public, private, for profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services. "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

The City of Miami Beach runs criminal background checks prior to the beginning of employment or service to the City on all selected candidates for employment and promotions, most contractors, contractor employees, interns, temporary agency employees assigned to work for the City and any other such persons whose employment or contractual relationship with the City gives them routine, who has direct contact with individual members of the public or unescorted access to City offices or publicly operated facilities in such a matter or to such an extent the City's governing body finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.

Typically, state and national criminal history record checks are completed within three business days of receiving the electronic submission. Results are posted to DataMotion SecureMail, a secure FDLE web mail application. The results include both state and national criminal history information from the Federal Bureau of Investigations (FBI), as well as any warrants and other information related to the individual.

A result notification email is sent to the email address designated by the customer and will contain a link to this SecureMail application. This notification will also contain descriptive information specific to the transaction.

A noteworthy inclusion to this memorandum is that adverse employment decisions cannot be made solely based on the fact that an individual has been arrested. Title VII of the Civil Rights Act, longstanding court decisions and the United States Federal Government Equal Employment Opportunity Commission (EEOC) enforcement guidelines state that prior to excluding an applicant based on a criminal history, the hiring agency needs to consider the nature and gravity of the offense or conduct; the time that has passed since the offense, conduct and/or completion of the sentence; the nature of the job sought; and whether excluding the applicant is consistent with business necessity.

In May 2015, the FBI conducted a National Identity Services (NIS) audit at the City of Miami Beach. The one finding was that the City of Miami Beach "performed FBI criminal background checks on all applicants for employment, volunteers, contractors and interns. In addition there was not a Public Law 9-544 approved state or ordinance that covered the applicants who were not covered by the National Child Protection Act/Volunteers for Children ACT (NCPA/VCA)."

CONCLUSION

As requested by Commissioner Joy Malakoff, the word "Appointees," is removed from this ordinance.

To correct this finding the Administration recommends adopting the following, "An ordinance of the Mayor and City Commission of the City of Miami Beach, Florida, amending Chapter 78 of the Code of the City of Miami Beach, entitled "Personnel," by amending Article I, entitled "In General," by amending section 78-2, entitled "Reserved," to Codify Requirements for Criminal History Record Checks for Certain Municipal Employees, Contractors, Employees of Contractors, and Vendors, in accordance with State Law; providing for repealer, severability, codification, and an effective date".

JLM/JMT/SC-T

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING CHAPTER 78 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PERSONNEL," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 78-2, ENTITLED "RESERVED," TO CODIFY REQUIREMENTS FOR CRIMINAL HISTORY RECORD CHECKS FOR CERTAIN MUNICIPAL EMPLOYEES, CONTRACTORS, EMPLOYEES OF CONTRACTORS, AND VENDORS, IN ACCORDANCE WITH STATE LAW; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami beach conducts criminal background checks of employees, applicants, and others pursuant to Section 166.0442, and other relevant provisions, of the Florida Statutes; and

WHEREAS, Section 166.0442 was amended in 2013 to expand its scope; and

WHEREAS, Section 166.0442 currently requires criminal background check policies be enacted by an ordinance with regard to state and national criminal history records checks for:

- (a) Any position of municipal employment, whether paid, unpaid, or contractual, which the governing body of the municipality finds is critical to security or public safety;
- (b) Any private contractor, employee of private contractor, vendor, repair person, or delivery person who is subject to licensing or regulation by the municipality; or
- (c) Any private contractor, employee of a private contractor, vendor, repair person, for-hire chauffeur, or delivery person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing body of the municipality finds that preventing unsuitable persons from having such contact or access is critical to security or public safety; and

WHEREAS, to implement the provisions in Section 166.0442, the Mayor and City Commission determine that a) positions of municipal employment are critical to security or public safety, and b) that preventing unsuitable persons from having direct contact with individual members of the public, or having access to public facilities and publically operated facilities, is critical to security and public safety; and

WHEREAS, the Mayor and City Commission find that criminal history records checks should be required of a) positions of City employment, whether paid, unpaid, or contractual, as such positions are critical to security and public safety; and b) those City contractors or employees of a City contractor or vendor who have direct contact with individual members of the

public or access to any public facility or publicly operated facility because preventing unsuitable persons from having such contact or access is critical to security and public safety; and

WHEREAS, municipal ordinances enacted pursuant to Section 166.0442 must require that such criminal history record checks include fingerprinting the applicable individuals, and having the individuals' fingerprints submitted to the Florida Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check; and

WHEREAS, the information obtained from the criminal history record checks will be used to determine the respective individual's eligibility for employment or continued employment by the City, and to determine eligibility for City contractors, employees of City contractors, and vendors to have access, or continued access, to public facilities or publicly operated facilities, as authorized by this Ordinance and Section 166.0442 of the Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Section 78-2 of the Code of the City of Miami Beach, Florida, is hereby amended to read as follows:

**Chapter 78
PERSONNEL**

Article I. In General

* * *

Sec. 78-2. ~~Reserved. Criminal history record checks for certain city employees, contractors, and vendors.~~

- a) Pursuant to Section 166.0442 of the Florida Statutes, as such may be amended from time to time, state and national criminal history record checks shall be required for:
 - 1) Any position of City employment, whether paid, unpaid, or contractual; and
 - 2) Any City contractor, employee of a City contractor, or City vendor who has direct contact with individual members of the public or access to any public facility or publicly operated facility.

- b) Each person shall be fingerprinted who is:
- 1) applying for, or continuing employment to any position of City employment as provided in subsection (a)(1); and
 - 2) a City contractor, employee of a City contractor, or City vendor having public contact or access to public facilities or publicly operated facilities.

The City's Human Resources Department, its successor department, and other applicable departments shall utilize such fingerprints to conduct the state and national criminal history record checks provided for in this section.

- c) Fingerprints obtained pursuant to the authority of this section shall be submitted to the Florida Department of Law Enforcement for a state criminal history record check and also to the Federal Bureau of Investigation for a national criminal history record check. The information obtained from each respective criminal history record check conducted pursuant to this section shall be used to determine a person's eligibility for employment required pursuant to this section, to determine a person's eligibility for continued employment and to determine eligibility for City contractors, employees of City contractors, and City vendors to have access, or continued access, to public facilities or publicly operated facilities.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2016.

PASSED AND ADOPTED this ____ day of _____, 2016.

Philip Levine, Mayor

ATTEST:

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Michael Grieco)

Underline denotes new language

~~Strikethrough~~ denotes removed language

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

Phil Levine 2-3-16
City Attorney Date

MIAMI BEACH

CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARINGS

February 10, 2016

NOTICE IS HEREBY given that the following public hearings will be held by the Mayor and City Commissioners of the City of Miami Beach, Florida, in the Commission Chambers, Third Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **February 10, 2016**, at the times listed, or as soon thereafter as the matter can be heard:

10:00 a.m.
An Ordinance Amending The Land Development Regulations (LDRs) Of The City Code, By Establishing Chapter 133, Entitled "Sustainability And Resiliency," Establishing Requirements For Green Building Certification As A Requirement During Zoning Review Of New Projects Over A Certain Size ("Eligible Projects"), Establishing A Sustainability Fee Program For Projects That Do Not Achieve The Required Green Building Certification Level; Authorizing Property Owners And Developers To Pay A Sustainability Fee, Or, In The Alternative, Post A Bond, In The Amount Of Five Percent (5%) Of The Total Construction Cost For The Eligible Project(s), Into The City's Sustainability Fund, Which Bond Or Funds Are Reimbursable To The Property Owner Or Developer Pursuant To The Level Of Green Building Compliance Achieved By The "Eligible Project"; Establishing A Sustainability And Resiliency Fund For The Deposit Of The Sustainability Fees Generated Through The Sustainability Fee Program, And Providing The Uses For Which The Fees Deposited In The Sustainability And Resiliency Fund Can Be Used; And Repealing Chapter 100, Entitled "Sustainability" As Duplicative And Contradictory To The Sustainability And Resiliency Revisions Of Chapter 133; Providing For Review; Applicability; Codification; Repealer; Severability; And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

10:05 a.m.
An Ordinance Amending Chapter 130 "Off Street Parking," Article IV, "Off-Street Loading," By Modifying The Requirements For Calculating And Providing Required Loading Spaces For Existing Buildings, Changes In Use And New Construction, Including Enclosed Structures Used For The Storage And Parking Of Vehicles; Providing For Repealer, Severability; Codification; And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

10:10 a.m.
An Ordinance Amending Chapter 30 Of The Miami Beach City Code, Entitled "Code Enforcement," By Amending Article II, Entitled "Special Master," By Amending Section 30-37, Entitled "Terms Of Office; Compensation"; By Amending The Compensation Of The Special Master(s); Providing For Codification, Repealer, Severability, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:15 a.m.
An Ordinance Amending Chapter 78 Of The Code Of The City Of Miami Beach, Entitled "Personnel," By Amending Article I, Entitled "In General," By Amending Section 78-2, Entitled "Reserved," To Codify Requirements For Criminal History Record Checks For Certain Municipal Employees, Appointees, Contractors, Employees Of Contractors, And Vendors, In Accordance With State Law; Providing For Repealer, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Human Resources Department at 305.673.7524.*

10:20 a.m.
An Ordinance Amending Chapter 2 Of The Miami Beach City Code Entitled "Administration," By Amending Article IV Entitled "Officers And Employees;" By Amending Section 2-181 Entitled "Enumeration Of Organizational Units;" By Creating The Environment And Sustainability Department; And Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date. *Inquiries may be directed to the Human Resources Department at 305.673.7524.*

10:25 a.m. First Reading, Public Hearing
An Ordinance Amending Subpart A - General Ordinances, Chapter 6 "Alcoholic Beverages" Of The Code Of The City Of Miami Beach, By Amending Article I, "General Provisions," To Consolidate All Provisions Relating To Alcohol Regulation In One Chapter Of The City Code By Relocating Certain Alcoholic Beverage Establishment Regulations From Chapter 142 And Placing Those Provisions In Chapter 6; Providing For Hours Of Operation; Location And Use Restrictions; Patron Age Restrictions; Minimum Seats And Hotel Rooms Requirements; By Amending Article II, "Conduct," By Modifying And Creating Definitions; Providing For Repealer; Severability; Codification; Exceptions; And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

10:26 a.m. First Reading, Public Hearing
An Ordinance Amending Chapter 142 "Zoning Districts And Regulations;" Article II, "District Regulations;" Division 3, "Residential Multifamily Districts;" Division 4, "CD-1 Commercial, Low Intensity District;" Division 5, "CD-2 Commercial, Medium Intensity District;" Division 6, "CD-3 Commercial, High Intensity District;" Division 7, "CC-Civic And Convention Center District;" Division 8, "CC-Golf Course District;" Division 9, "GU Government Use District;" Division 10, "HD Hospital District;" Division 11, "L-1 Light Industrial District;" Division 12, "MR Marine Recreation District;" Division 13, "MXE Mixed Use Entertainment District;" Division 16, "WD-1 Waterway District;" Division 17, "WD-2 Waterway District;" Division 18, "PS Performance Standard District;" Division 20 "TC North Beach Town Center Districts;" To Define All Alcoholic Beverage Establishments As Related Main Permitted, Conditional, And Prohibited Uses By Zoning District; Modifying Chapter 142, Article IV, "Supplementary Regulations;" Division 2, "Accessory Uses;" Article V, "Specialized Use Regulations;" To Delete Division 4, And Section 142.1301, Entitled "Permitted Districts; Striking Alcohol Regulations Relating To Hours Of Operation, Minimum Seat And Hotel Rooms From Chapter 142 "Zoning Districts And Regulations;" Article II "District Regulations;" And Modifying Chapter 142, Article V "Special Use Regulations;" At Division 4 "Alcoholic Beverages;" By Striking Sections 142-1302 And 142-1303; Providing For Repealer; Severability; Codification; Exceptions; And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

10:30 a.m.
A Resolution Adopting The Third Amendment To The Capital Budget For Fiscal Year 2015/16. *Inquiries may be directed to the Budget & Performance Improvement Department at 305.673.7510.*
Dr. Stanley Sutnick Citizen's Forum - Pursuant to Resolution No. 2013-28440, the times for the Dr. Stanley Sutnick Citizen's Forum are **8:30 a.m.** and **1:00 p.m.**, or as soon as possible thereafter. Approximately thirty minutes will be allocated to each session, with individuals being limited to no more than three minutes or for a period established by the Mayor. No appointment or advance notification is needed in order to speak to the Commission during this Forum.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these items are available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting, or any item herein, may be continued, and under such circumstances, additional legal notice need not be provided.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

Rafael E. Granado, City Clerk
City of Miami Beach

Condensed Title:

A RESOLUTION OF THE MAYOR AND CITY COMMISSION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE SECOND AMENDMENT TO THE LEASE AGREEMENT WITH THE MIAMI BEACH POLICE ATHLETIC LEAGUE, INC (PAL).

Key Intended Outcome Supported:

Insist On Police Department Accountability And Skilled Management/ Leadership

Supporting Data (Surveys, Environmental Scan, etc.): N/A

Item Summary/Recommendation:

On September 19, 2014 an internal Audit Division report of the Miami Beach Police Athletic League (PAL), covering 2009-14, highlighted a number of findings. Thereafter, the City and the PAL negotiated the Second Amendment to the Lease Agreement, which addresses the following issues (among others):

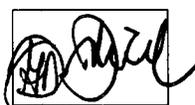
- Shared Use. currently 50% by each party, with certain portions of the premises being used exclusively by PAL or City, with other areas shared.
- Shared obligations/Expenses.
 - Maintenance/Capital Improvements. The City shall be responsible for maintenance and capital improvements for premises, except that with respect to the following expense relating to the area used exclusively by PAL, for which PAL shall be responsible: (1) floors; (2) walls; (3) maintenance of personalty in the PAL Area in good, clean and working order; and (4) maintaining clean and in good order the PAL Area; and
 - Shared Utilities. (50%) of the shared utilities (cable, water and electricity).
- Deliverables. PAL shall provide reports/financial records; an annual report as to all activities, including revenue generating uses; an audited financial statement; a detailed operating budget, and upcoming annual programmatic plan.
- Back-payment for utility payments: City shall pay PAL \$77,468.54 as back-payment for previously shared and unpaid utility payments through December 31, 2015
- City continues to assign one full-time police officer to spearhead programming efforts.
- The PAL shall receive \$1.00 from all of the Police Department's Off-Duty surcharges
- The PAL shall hire, at its own expense, an Executive Director to manage/fundraise.
- The fitness center shall continue to offer City of Miami Beach employees a 25% discount.

Recommendation: Adopt the Resolution.

Advisory Board Recommendation:

NA

Financial Information:

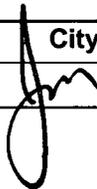
Source of Funds:		Amount	Account
	1	77,468.54	General Fund Contingency Account
 OBPI	2		
	3		
	Total		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Chief of Staff Wendy Rich-Goldschmidt ext. 3054

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Chief Daniel J. Oates 		

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MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: February 10, 2016

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE SECOND AMENDMENT TO LEASE AGREEMENT WITH THE MIAMI BEACH POLICE ATHLETIC LEAGUE, INC (PAL), SUBSTANTIALLY IN THE FORM ATTACHED TO THIS RESOLUTION, RELATING TO THE BUILDING LOCATED AT 999 11TH STREET (PREMISES); SAID AMENDMENT ESTABLISHING THE PERMITTED USES UNDER THE LEASE; CLARIFYING AND ESTABLISHING TERMS RELATING TO THE SHARED USE OF THE PREMISES BY THE CITY AND PAL; CLARIFYING THE OPERATIONAL, MANAGEMENT, AND MAINTENANCE OBLIGATIONS WITH RESPECT TO THE SHARED USE OF THE PREMISES; PROVIDING PAL WITH A \$1.00 PER HOUR OF THE OFF-DUTY POLICE SURCHARGE DURING THE TERM OF THE LEASE; AND FURTHER EXTENDING THE LEASE TERM FOR AN ADDITIONAL TWO (2) YEARS, THROUGH AND INCLUDING JUNE 30, 2025.**

ADMINISTRATION RECOMMENDATION

Approve the Resolution.

HISTORY/BACKGROUND

The City is the owner of the fee simple title in and to that certain City-owned property consisting of a building having approximately 13,367 square feet, within Flamingo Park, located at 999 11th Street, Miami Beach, Florida, 33139, hereinafter demised and described (the "premises"). On May 15, 1996, the Mayor and City Commission adopted Resolution No. 96-21987, approving the Lease Agreement with the Miami Beach Police Athletic League, Inc., a not-for-profit corporation ("PAL") for use of the premises for a five (5) year term, commencing on July 1, 1996 and ending on June 30, 2001 (the "Lease Agreement").

In 1997, PAL was awarded a grant from Miami-Dade County under the Safe Neighborhood Parks Bond Program (the "SNPB Program") to assist in funding the building of the new PAL Youth Resources Center (the "PAL Center") to be located on the premises and one of the requirements of the SNPB Program was that grant funds used for the purposes of development, improvement, rehabilitation or restorations by the grantee (PAL) be expended

only on lands owned by the grantee or upon lands for which the grantee holds a lease or other use agreement for an unexpired term of twenty-five (25) years. In order to meet the requirements of the SNPB Program, on June 17, 1998, the City Commission approved Resolution No. 98-22787, authorizing the First Amendment to Lease Agreement, dated June 17, 1998, which First Amendment extended the lease term from June 30, 2001, to June 30, 2023; added Exhibit B describing the permanent improvements (i.e. the new "PAL Center") which were going to be constructed at the premises; and updated the notice provision for the City under the Lease.

On September 19, 2014 the Internal Audit Division of the City of Miami Beach Office of Budget and Performance Improvement (OBPI) published an Internal Audit Report relating to the activities of the Miami Beach Police Athletic League (PAL) between June 1, 2009 and February 28, 2014. The audit was presented to the Finance and Citywide Projects Committee on September 24, 2014. The report highlighted a number of shortcomings that needed to be addressed.

As a result of the audit findings, the City and the PAL Board met on numerous occasions to clarify follow up responsibilities. These discussions evolved into a negotiated Second Amendment to the Lease Agreement.

ANALYSIS

The Second Amendment to the Lease Agreement reflects the audit recommendations and incorporates language regarding optimal business practices. A summary of the proposed terms includes:

- Establish the permitted uses of the premises to coincide with the current uses of the PAL Center.
- Shared Use. Clarify and establish the terms and conditions relating to the shared use (currently approximately 50% by each party) of the premises, with certain portions of the premises being used exclusively by PAL ("PAL's Area"), certain portions being used exclusively by the City ("City's Area"), and certain portions shared by PAL and the City ("Shared Area").
- Shared obligations/Expenses. Clarify the obligations of the City and the PAL, in connection with their respective use of the premises, including apportioning responsibility for the payment of operational expenses, management obligations, maintenance obligations, insurance obligations and other like necessary conditions, in connection with providing a recreational and sports facility for use by the community. Primarily, as follows:
 - Maintenance/Capital Improvements. The City shall be responsible for the payment of all maintenance and capital improvements expenses for the entire premises, except that with respect to the following expense relating to the PAL Area, for which PAL shall be responsible: (1) floors; (2) walls; (3) maintenance of personalty in the PAL Area in good, clean and working order; and (4) maintaining clean and in good order the PAL Area; and
 - Shared Utilities. The parties shall equally share the costs of the shared utilities (cable, water and electricity).
- Deliverables. PAL shall be responsible for providing the following reports/financial records: (1) within 120 days from the end of each fiscal year, an annual report as to all activities at the premises, including revenue generating uses; and an audited financial statement and Profit and Loss statement for all PAL programs and uses at the premises; (2) by August 1st of each year, PAL shall provide the City Manager with a detailed line item annual operating budget, covering the next fiscal year, with projected income and expense statement and upcoming annual programmatic plan.
- Approval of Subtenants. The following subtenants occupying a portion of PAL's Area are being approved as subtenants: (1) Miami Beach Policeman's Relief and

Pension fund; (2) William Nichols Lodge No. 8 Fraternal Order of Police; and (3) Miami Beach Police Athletic League Fitness Center, Inc.

FISCAL IIMPACT

The Second Amendment also contains the following terms, which have a financial impact:

- The City shall pay the PAL the total sum of \$77,468.54 as back-payment for previously shared and unpaid utility payments through December 31, 2015. This amount will be paid from the General Fund Contingency Account.
- The PAL shall pay the City the rental sum of \$1.00 per year, though June 30, 2025.
- The City and PAL shall be responsible for their proportionate share of all shared utility bills generated in connection with the joint use of the premises, which currently is 50%, but is subject to adjustment if there is a material change in the use of the premises (defined as a change by 15% or more).
- The City's ongoing support of assigning one full-time police officer to spearhead programming efforts, consistent with PAL's mission.
- The PAL shall receive \$1.00 from all of the Police Department's Off-Duty surcharges during the term of the Lease Agreement which may be used for the payment of the Executive Director's salary, utility expenses and other operation expenses.
- The PAL shall hire, at its own expense, an Executive Director to manage and operate all PAL activities, including fundraising.
- The fitness center shall continue to offer City of Miami Beach employees a discount of no less than 25% off of the current rates for services offered by the fitness center, so long as the discount does not violate any gift rules which may be implemented by the City from time to time.

CONCLUSION:

The Administration recommends that the Mayor and City Commission adopt the Resolution approving the proposed Second Amendment to the Lease Agreement between the City and the Miami Beach Police Athletic League, Inc., relating to the building located at 999 11th Street.

Exhibits:

"A" – Second Amendment to Lease Agreement


JLM:DJO:DW

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A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE SECOND AMENDMENT TO LEASE AGREEMENT WITH THE MIAMI BEACH POLICE ATHLETIC LEAGUE, INC (PAL), SUBSTANTIALLY IN THE FORM ATTACHED TO THIS RESOLUTION, RELATING TO THE BUILDING LOCATED AT 999 11TH STREET (PREMISES); SAID AMENDMENT ESTABLISHING THE PERMITTED USES UNDER THE LEASE; CLARIFYING AND ESTABLISHING TERMS RELATING TO THE SHARED USE OF THE PREMISES BY THE CITY AND PAL; CLARIFYING THE OPERATIONAL, MANAGEMENT, AND MAINTENANCE OBLIGATIONS WITH RESPECT TO THE SHARED USE OF THE PREMISES; PROVIDING PAL WITH A \$1.00 PER HOUR OF THE OFF-DUTY POLICE SURCHARGE DURING THE TERM OF THE LEASE; AND FURTHER EXTENDING THE LEASE AGREEMENT TERM FOR AN ADDITIONAL TWO (2) YEARS, THROUGH AND INCLUDING JUNE 30, 2025.

WHEREAS, the City is the owner of the fee simple title in and to that certain City-owned property consisting of a building having approximately 13,367 square feet, within Flamingo Park, located at 999 11th Street, Miami Beach, Florida, 33139 (the "premises"); and

WHEREAS, on May 15, 1996, the Mayor and City Commission adopted Resolution No. 96-21987, approving the Lease Agreement with PAL for use of the premises for a five (5) year term, commencing on July 1, 1996 and ending on June 30, 2001; and

WHEREAS, in 1997, PAL was awarded a grant from Miami-Dade County under the Safe Neighborhood Parks Bond Program to assist in funding the building of the new PAL Youth Resources Center ("PAL Center") to be located at the premises; and

WHEREAS, one of the requirements of the Safe Neighborhood Parks Bond Program was that grant funds used for the purposes of development, improvement, rehabilitation or restorations by the grantee (PAL) be expended only on lands owned by the grantee or upon lands for which the grantee holds a lease or other use agreement for an unexpired term of twenty-five (25) years; and

WHEREAS, in order to meet the requirements of the Safe Neighborhood Parks Bond Program, on June 17, 1998, the City Commission approved Resolution No. 98-22787, authorizing the First Amendment to Lease Agreement, which amendment extended the lease term from June 30, 2001, to June 30, 2023; added Exhibit "B" describing the permanent improvements (i.e. the new "PAL Center") which were going to be constructed at the premises; and updated the notice provision for the City under the Lease Agreement; and

WHEREAS, On September 19, 2014 the Internal Audit Division of the City of Miami Beach Office of Budget and Performance Improvement (OBPI) published an Internal Audit

Report relating to the activities of the Miami Beach Police Athletic League (PAL) between June 1, 2009 and February 28, 2014; and

WHEREAS, the audit report highlighted a number of shortcomings that needed to be addressed and said audit findings were presented to the Finance and Citywide Projects Committee at its September 24, 2014 meeting; and

WHEREAS, the City and PAL hereby wish to amend the Lease Agreement in order to: (1) address the audit findings contained in the September 19, 2014 Audit Report; (2) establish the permitted uses on the premises to coincide with the evolving character of the PAL Center; (3) clarify and establish the terms and conditions relating to the shared use of the premises by the City and PAL; (4) clarify the obligations of the City and PAL, in connection with their respective use of the premises, including without limitation, apportioning responsibility for the payment of operational expenses, management obligations, maintenance obligations, insurance obligations and other like necessary conditions, in connection with providing a recreational and sports facility for use by the community; (5) provide for financial and programmatic reporting requirements; and (6) provide PAL with a \$1.00 per hour of the off-duty police surcharge during the term of the Lease Agreement; and

WHEREAS, the Administration recommends that the Mayor and the City Clerk execute the Second Amendment to the Lease Agreement, substantially in the form attached hereto and incorporated herein by reference as Exhibit "A".

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve and authorize the Mayor and City Clerk to execute the Second Amendment to Lease Agreement with the Miami Beach Police Athletic League, Inc. (PAL), substantially in the form attached to this Resolution, relating to the building located at 999 11st Street (premises); said amendment establishing the permitted uses under the lease; clarifying and establishing terms relating to the shared use of the premises by the City and PAL; clarifying the operational, management, and maintenance obligations with respect to the shared use of the premises; providing PAL with a \$1.00 per hour of the off-duty police surcharge during the term of the Lease Agreement; and further extending the Lease Agreement term for an additional two years, through and including June 30, 2025.

PASSED AND ADOPTED this _____ day of _____, 2016

ATTEST:

PHILIP LEVINE, MAYOR

RAFAEL E. GRANADO, CITY CLERK

T:/agenda/2016/February 10/Police Department/PAL Second Amendment Reso

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

Paul O'Neil 2-2-16

City Attorney *AM* Date

**SECOND AMENDMENT TO LEASE AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH
AND THE MIAMI BEACH POLICE ATHLETIC LEAGUE**

This Second Amendment ("Second Amendment") to the Lease Agreement, dated May 15, 1996 (the "Lease Agreement"), as amended by that First Amendment to Lease Agreement, dated June 17, 1998 ("First Amendment") (collectively the First Amendment and the May 15, 1996 Lease Agreement are hereinafter referred to as the "Lease"), for the property located at 999 11th Street, Miami Beach, Florida, between the CITY OF MIAMI BEACH, a Florida Municipal Corporation ("City" or "Lessor"), and the MIAMI BEACH POLICE ATHLETIC LEAGUE, INC., a not-for-profit corporation ("PAL" or "Lessee"), is entered into this _____ day of _____, 2015 ("Effective Date").

WITNESSETH

WHEREAS, the Lessor is the owner of the fee simple title in and to that certain City-owned property consisting of a building having approximately 13,367 square feet, within Flamingo Park, located at 999 11th Street, Miami Beach, Florida, 33139, hereinafter demised and described (the "premises"); and

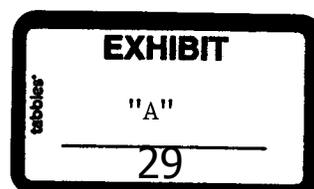
WHEREAS, on May 15, 1996, the Mayor and City Commission adopted Resolution No. 96-21987, approving the Lease Agreement with PAL for use of the premises for a five (5) year term, commencing on July 1, 1996 and ending on June 30, 2001, and

WHEREAS, in 1997, the PAL was awarded a grant from Miami-Dade County under the Safe Neighborhood Parks Bond Program (the "SNPB Program") to assist in funding the building of the new PAL Youth Resources Center ("PAL Center") to be located on the premises; and

WHEREAS, one of the requirements of the SNPB Program was that grant funds used for the purposes of development, improvement, rehabilitation or restorations by the grantee (PAL) be expended only on lands owned by the grantee or upon lands for which the grantee holds a lease or other use agreement for an unexpired term of twenty-five (25) years; and

WHEREAS, in order to meet the requirements of the SNPB Program, on June 17, 1998, the City Commission approved Resolution No. 98-22787, authorizing the First Amendment, which First Amendment extended the Lease term from June 30, 2001, to June 30, 2023; added Exhibit B describing the permanent improvements (i.e. the new "PAL Center") which were going to be constructed at the premises; and updated the notice provision for the City under the Lease; and

WHEREAS, Lessor and Lessee hereby wish to amend the Lease in order to: (1) establish the permitted uses on the premises to coincide with the current uses of the PAL Center; (2) clarify and establish the terms and conditions relating to the shared use of the premises by Lessor and Lessee; and (3) clarify the obligations of Lessor and Lessee, in connection with their respective use of the premises, including without limitation, apportioning responsibility for the payment of operational expenses, management



obligations, maintenance obligations, insurance obligations and other like necessary conditions, in connection with providing a recreational and sports facility for use by the community; and

WHEREAS, the parties acknowledge that to the extent any of the provisions in this Second Amendment are in conflict with the provisions of the SNPB Program agreement, the provisions of the SNPB Program agreement shall govern.

NOW THEREFORE, the Lessor and the Lessee, for and in consideration of the mutual covenants, agreements and undertakings herein contained, and in further consideration of the payments herein mentioned, made and to be made, do by these presents mutually covenant and agree to amend the Lease, as follows:

1. The recitals set forth above are true and correct and are incorporated herein by reference.

2. The paragraph on page 1 of the Lease, commencing with the word "WITNESSETH," is hereby amended as follows, including the replacement of Exhibit A with the Exhibit A attached hereto and incorporated herein by reference:

WITNESSETH: The Lessor, for and in consideration of the rent herein reserved to be paid by the Lessee, and in consideration of the covenants herein to be kept and performed by the Lessee, does hereby lease and demise unto the Lessee the following ~~described premises~~ City-owned facility (the "premises") situated in the City of Miami Beach, County of Dade, State of Florida:

The building ("Building"), currently named and referred to as the "Pal Center", having ~~Approximately 42,600~~ 13,367 sq. ft., of property, located at 999 11th Street, in Flamingo Park, together with all improvements and appurtenances located thereon including, without limitation, the improvements contemplated in Exhibit B to the First Amendment, which improvements have been completed and accepted by Lessor, more particularly described as a portion of Block 90, Ocean Beach, FL Addition No. 3 (Dade County P.B. 2, P. 81), as contained in the attached Exhibit A.

Lessor and Lessee hereby acknowledge and agree that the premises, including, without limitation, the Building are owned by the City of Miami Beach, Florida.

3. The paragraph on page 1 of the Lease (as amended by the First Amendment), commencing with the words, "TO HAVE AND TO HOLD", is amended as follows:

TO HAVE AND TO HOLD the premises unto the Lessee, from the 1st day of July 1996 to and including the 30th day of June, ~~2023~~ 2025, the Lessee yielding and paying to the Lessor the rental sum of one (\$1.00) dollar per year, ~~as well as providing permanent improvements to the premises as described in the attached Exhibit, and subject to the approval of the Lessor.~~

4. The following paragraph on page 1 of the Lease is deleted in its entirety:

~~Lessee shall also pay, as additional rent, all sales or use or excise tax(es), if any, imposed, levied or assessed against the rent or any other charge or payment required here by any governmental authority having jurisdiction thereover, even though the taxing statute or ordinance may purport to impose such sales tax against Lessor. The payment of sales tax shall be made by Lessee concurrently with payment of the fixed minimum annual rental. Lessee agrees that it will pay its Proportionate Share of real estate taxes, if same are subsequently assessed against the Building and its Proportionate Share of operating expenses in the Building, as set forth and defined in Paragraph 2 of this Agreement. Lessee's Proportionate Share of real estate taxes will be paid upon demand accompanied by a copy of the paid tax bill. Lessee's Proportionate Share of operating expenses will be paid monthly (or as otherwise determined by Lessor) upon demand by Lessor. As used herein, Lessee's "Proportionate Share" means a fraction the numerator of which is the square footage of the premises and the denominator of which is the square footage of all of the rentable area in the building of which the premises is a part ("Building"), including the square footage of the premises.~~

5. Paragraph 2 on page 2 of the Lease is deleted in its entirety and replaced with the following:

~~Lessee agrees to pay for all utilities used within the premises including, but not limited to, electric, water, gas, telephone and garbage disposal.~~

2. Payments.

2.1 Sales/Use/Excise Tax(es). Lessee shall pay all sales or use or excise tax(es), if any, imposed, levied or assessed against the rent, or any other charge or payment required by any governmental authority having jurisdiction over the premises, even though the taxing statute or ordinance may purport to impose such charge or payment against Lessor. The payment of such sales, use, or excise tax(es) shall be made by Lessee concurrently with payment of the annual rental.

2.2 Real Estate Taxes. Lessee also agrees that it will pay its Proportionate Share of real estate taxes, if same are also assessed against the premises.

As used herein, Lessee's "Proportionate Share" means a fraction, the numerator of which is the square footage of the Building being occupied exclusively by Lessee and jointly by Lessee and Lessor, and the denominator of which is the square footage of all of the rentable area in the Building. As of the Effective Date, Lessee is occupying approximately fifty percent (50%) of the Building, with the balance of the Building being occupied by the Lessor's Parks and Recreation Department; with certain portions of the Building being occupied exclusively by PAL ("PAL's Area"), certain portions of the Building being occupied exclusively by the City ("City's Area"), and certain portions of the Building being shared by PAL and the City ("Shared Area"), as more particularly described in the Site Plan, attached hereto and incorporated herein as composite Exhibit "A-1". Unless otherwise indicated herein, Lessee's Proportionate Share shall be deemed to be fifty percent (50%). Lessee's Proportionate Share of real estate taxes will be paid upon demand accompanied by a copy of the paid tax bill. Notwithstanding anything to the contrary in this Lease, if the premises is assessed real estate taxes,

solely as a result of PAL's use of the premises (including the use by any subtenant's of PAL), PAL shall be solely responsible for the total real estate tax assessment.

2.3 Operating Expenses: The operating expenses for the Building shall be shared between the Lessor and Lessee, as follows:

2.3.1 Utilities: Based upon the parties' current use of the premises, Lessor and Lessee shall each be responsible for payment of fifty percent (50%) of the total utility bills generated in connection with the joint use of the premises, which includes the bills for electricity, water, and cable ("Shared Utility Expenses"). As of the Effective Date, Lessor pays for the water bill for the premises ("City's Utility Expenses") and Lessee pays for the electricity and cable bills of the Shared Utility Expenses for the premises ("PAL's Utility Expenses"). Each party shall continue to pay the utility bills, as currently established; however, within thirty (30) days from the end of each quarter (the end of each quarter shall be referred to herein as September 30th, December 31st, March 31st, and June 30th) throughout the term, Lessee shall provide Lessor with a reconciliation, including the supporting documentation for PAL's Utility Expenses, and Lessor will, in turn, provide Lessee with a reconciliation, including the supporting documentation for the City's Utility Expenses, showing each party's respective share of the Shared Utility Expenses. The reconciliation payment shall be due within thirty (30) days from receipt of the reconciliation. The Lessor's Asset Manager shall provide Lessee with copies of the water bills, based upon the established City of Miami Beach rates, and as registered on the onsite water meter for the premises, which has been installed at the sole expense of the Lessor. If there is a material change in the use of the premises (by fifteen percent (15%) or more), the parties agree to adjust the proportionate share of the Shared Utility Expenses, as applicable, which adjustment shall be subject to approval by the City Manager, and memorialize in writing through an amendment to the Lease, executed by the City Manager on behalf of the City,

2.4 Back-Payment. Lessor and Lessee agree that upon the parties' execution of the Second Amendment, Lessor shall pay Lessee the amount of \$77,468.54 ("Back-Payment"), representative of the agreed amount which Lessee has overpaid toward the Shared Utility Bills for the premises prior to execution of this Second Amendment, which sum also includes a credit for sums PAL owes the City in connection with PAL's portion of any City Utility Expenses, from May 1, 2015 through December 31, 2015. The parties agree and acknowledge that such Back-Payment constitutes full and final settlement of any responsibility or liability that the City may have to reimburse PAL for overpayments toward the Shared Utilities, as of the Effective Date.

2.5 General Maintenance and Repairs. During the Lease term, Lessee will not suffer or permit any strip or waste of the premises. Except as specifically required to be maintained by Lessee in subsection 2.5.1, Lessor shall be responsible for the general maintenance and repairs of the premises, inclusive of PAL's Area (excluding the interior floors and walls of the PAL Area), City's Area, and the Shared Area. As referred to herein, "general maintenance and repairs"

shall include maintaining the interior of the premises, and every part thereof, in good condition, including the HVAC systems, interior plumbing, interior electrical problems and windows (Lessor's Repair Responsibility)". Lessee agrees to repair and maintain the interior walls and floors of the PAL Area, and maintain, repair and replace the security system, PAL phone system and PAL cable system, for the premises (not just PAL's Area) as needed ("Lessee's Repair Responsibility). Lessor shall repair all doors and windows, as may be required, as a condition precedent to Lessee performing any maintenance, repairs and/or replacement of the existing security system.

2.5.1 Lessee's Day to Day Maintenance Responsibility. Lessee shall, at its sole cost and expense, and to the reasonable satisfaction of the City, keep and maintain PAL's Area, including all improvements, fixtures, and equipment thereon, in good, clean, and working order. Lessee assumes sole responsibility and expense for day to day housekeeping, janitorial services, and routine maintenance of PAL's Area. Lessee's day to day maintenance responsibility shall include, without limitation, daily removal of litter, garbage and debris generated by Lessee's use of the PAL Area, including all garbage disposal generated by its operations and activities occurring therein, and interior paint and floors.

2.5.2 Lessor's Day to Day Maintenance Responsibility. Lessor shall, at its sole cost and expense, keep and maintain the City's Area and Shared Area, including all improvements, fixtures, and equipment thereon, in good, clean, and working order. Lessor assumes sole responsibility and expense for day to day housekeeping, janitorial services, and routine maintenance of City's Area and Shared Area. Lessor's day to day maintenance responsibility shall include, without limitation, daily removal of litter, garbage and debris generated by Lessor's use of the City's Area and Lessor and Lessee's use of the Shared Area, including all garbage disposal generated by its operations and activities occurring therein, and interior paint and floors.

2.6 Capital Improvements. During the Lease term, and as the owner of the premises, Lessor shall be responsible for any costs associated with all capital improvements to the premises, which Lessor, in its reasonable discretion, deems necessary. As referred to herein, capital improvements shall include roof, structural elements and infrastructure, exterior walls, exterior plumbing and sewer lines, and major exterior electrical repairs (not otherwise the responsibility of the electric company).

2.6.1 Notice of Maintenance and Capital Improvements to premises. During the Lease term, Lessee shall provide Lessor with prompt notice of any general maintenance and repairs and/or capital improvements which may be required in PAL's Area, and Lessor and Lessee shall coordinate in good faith such repairs and/or maintenance so as to minimize the impact to PAL's operations.

2.7 Security. Lessee shall be responsible for providing and maintaining a security system in order to protect the equipment and furnishings at the premises. Under no circumstances shall Lessee be responsible for any stolen or

damaged materials, equipment, and furnishings of Lessor's and/or Lessor's officials, employees, contractors, patrons, guests, and/or invitees. Additionally, under no circumstances shall Lessor be responsible for any stolen or damaged personal property of Lessee and/or Lessee's officials, employees, contractors, patrons, guests, and/or invitees.

6. Paragraph 3 on page 2 of the Lease is hereby deleted in its entirety and replaced with the following:

~~3. The Lessee accepts the premises in "As Is" condition, and is responsible for all interior modifications and maintenance. Lessee must first obtain Lessor's written approval for any alteration, additions and/or improvements to the premises and then must pay for such modifications. Detailed plans for leasehold improvements shall be submitted to Lessor within ninety (90) days following execution of this Agreement by the parties hereto. Leasehold improvements shall conform to the General Obligation Parks Master Plan as adopted by the City Commission. The Lessee shall have the right to use any equipment, furnishings and fixtures left by Lessor on the premises. Lessor represents that such equipment, furnishing and fixtures, are to be used in their "as is" condition, and the Lessee is solely responsible for maintaining same, at its sole cost and expense, throughout the duration of this Agreement. In the event any of the aforesaid items are lost, stolen or damaged, they shall be replaced or repaired at the sole cost and expense of Lessee, ordinary wear and tear excepted. Upon expiration of this Agreement, Lessee shall quietly and peacefully redeliver said equipment, furnishings and fixtures to Lessor.~~

3. The Lessee hereby reaffirms and acknowledges that, as of the Effective Date, it continues to accept the premises in "As Is" condition. Lessee must first obtain Lessor's written approval for any alteration, additions and/or improvements to the premises, and then must pay for such modifications. Detailed plans for any proposed alteration to the premises must first be submitted to Lessor, through its City Manager, for Lessor's prior review and written approval. Upon expiration of this Lease, Lessee shall quietly and peacefully redeliver to Lessor the premises and any equipment, furnishings and fixtures, with the exception of the Fitness Center (as defined in subsection 7.8) equipment and furnishings located in the PAL Area, which are not permanently affixed to the real estate.

7. Paragraph 7 on page 2 of the Lease is amended to add the following paragraphs (subsections) and a new Exhibit A-1:

7.1 Use by PAL. Lessee shall have access and use of the premises, as more particularly described in the attached composite Exhibit A-1. It is understood and agreed that the premises shall be used by Lessee during the entire term of this Lease only for the purposes and/or uses described in (and/or otherwise approved pursuant to) this subsection 7.1, and for no other purposes or uses whatsoever ("PAL Approved Uses"). In the event that the Lessee uses the premises for any purposes not expressly permitted herein, such use shall be considered an event of default under this Lease. The PAL Approved Uses shall be limited to and only include the following:

a. On-Site PAL Approved Uses. A recreational facility for use by PAL consistent with its stated mission “to prevent juvenile delinquency through the use of academics, athletics, and artistic activities” (“PAL’s Mission”), which approved uses include PAL’s administrative offices; weight room and gym room membership for adults; Boxing Program; adult Fitness Center; High School Fitness Program; distribution of snacks; community meetings and Miami-Dade County elections’ polling place. PAL also participates in the following sponsorships/collaborations with community organizations, including Another Chance Program Bicycle Program; Book Bag Giveaway; Boy Scouts; Bus Pass Program; Girl Scouts; Kindergarten Corp.; Mommy & Me; National PAL Mentoring Program; Nautilus School Awards Program; PAL Summer Work Program; Police Explorers; Rad Kids; Safety Patrol Programs; Take Your Child to Work Program; Thanksgiving Basket Giveaway Youth Director Council/Youth Leadership Program (YDC); Track Club; and tutoring services.

b. Pal and City Collaborative Approved Uses. In addition to the above mentioned PAL Approved Uses, there are recreational programs offered by the City of Miami Beach, which may have a sponsorship component from PAL including, without limitation, basketball, baseball, soccer, cheerleading, flag football, lacrosse, track, concession stand sales, and other like community based youth programs.

7.2 Use by the City. Lessor shall have access and use of the premises, as more particularly described in the attached composite Exhibit A-1, solely for the recreational and other community activities which the City offers to the public, as determined by the City, in its sole discretion, from time to time, to be in the best interest of the community (“City Approved Uses”) which approved uses include: providing a sport and recreational center; providing a quality after school program, to include teacher work days and holidays; providing sports, recreational and enrichment programs in a supervised environment; providing homework assistance, computer training, cultural arts, career mentoring and social skills; providing Spring Break Camp, Winter Break Camp, and Summer Camp; providing disaster/hurricane on-site facility, as required by the City; providing a venue for physical fitness programs; and public meetings.

7.3 Additional Programs/Adult vs Youth Programs. The parties agree and acknowledge that, in furtherance of and consistent with the approved uses, Lessee and/or the Lessor may wish to include additional activities and/or programs at the premises (“Additional Programs”), which Additional Programs shall be mutually coordinated between the parties. As to the City, such Additional Programs shall be coordinated through its Parks and Recreation Department. The City and PAL shall mutually agree upon and approve any such Additional Programs, in writing, in advance of their implementation. The Additional Programs must be reasonably related to the PAL Approved Uses and the City Approved Uses and may not materially interfere with each other’s operation. PAL and the City hereby agree to use reasonable efforts in mutually determining and agreeing upon the time, place, and manner in the coordination of such Additional Programs, pursuant to policies and procedures, which shall be established and mutually agreed upon

by PAL's Executive Director, on behalf of PAL, and the City's Parks and Recreation Director, on behalf of the City. Similarly, the parties agree that the scheduling of any permitted programming which involves adult participants in the Shared Area shall be coordinated in advance by the parties, and memorialized in writing, prior to the commencement of said adult programming, so that such adult programming does not conflict with any children and youth programming, with the children and youth programming taking precedence over the adult programming.

7.4 Conflict Resolution. Should a conflict arise whereby Lessee and Lessor cannot reach an agreement with respect to coordinating the shared use of the premises, including, without limitation, the parties' failure to agree to an Additional Program, the matter may be brought to the attention of the City Manager, whereby the City Manager will issue a written decision with respect to the conflict. If either party is not satisfied with the decision of the City Manager, the decision may be appealed to the City Commission within thirty (30) days from the date of the City Manager's written decision and, if appealed timely, the final decision of the City Commission shall be binding upon the parties. If a timely appeal is not made, the decision of the City Manager shall be final.

7.5 In the event that Lessee seeks to use the premises for additional programs, services, activities, and uses which are materially different from the approved uses (as enumerated in subsection 7.1), then each such proposed new program, service, activity and use shall be subject to the prior written approval of the City Manager, which approval shall not be unreasonably withheld or delayed, and provided such proposed program, service, activity and/or use is for a public purpose and is consistent with the approved uses herein. In the event of approval by the City Manager, all such new program(s), service(s), activity(ies), and use(s) shall be memorialized by written amendment to this Lease.

7.6 Operation and Management of the Premises. Subject to the approved uses enumerated in subsection 7.1 (as same may be amended from time to time), and any and all other terms, limitations and required approvals contained in this Lease, and compliance with all applicable laws, including, without limitation, securing a Business Tax Receipt, Lessee is authorized and required to:

a. Manage and operate the PAL Area, in connection with the PAL Approved Uses, activities, services, and programs thereon, for the purpose of coordinating, implementing, and supervising all PAL Approved Uses;

b. Maintain and provide for the day-to-day maintenance and housekeeping of the PAL Area;

c. Provide and maintain, at its sole cost and expense, all labor, personnel, materials, equipment, and furnishings, as reasonably required, to operate the PAL Area, in accordance with the approved uses set forth in subsection 7.1. In the event any materials, equipment, and/or furnishings are lost, stolen, or damaged, they shall be promptly replaced or repaired at the sole cost and expense of the Lessee;

d. Supervise and direct all PAL employees, officers, agents, contractors, invitees, visitors, and guests on the PAL Area and Shared Area, when being utilized by PAL;

e. Maintain and supervise detailed, accurate and complete financial and other records of all Lessee activities under this Lease in accordance with generally accepted accounting principles. All financial records maintained pursuant to this Lease shall be retained by Lessee as long as such records are required to be retained pursuant to Florida Public Records Law, and shall be made available upon reasonable notice by the City;

f. Develop and implement programs and activities which support and promote the PAL Approved Uses (as same may be amended from time to time); and

g. Coordinate and cooperate with the City, in connection with approved Additional Programs, as set forth in subsection 7.3 hereof, which coordination and cooperation shall not be unreasonably withheld or delayed, and provided that such Additional Programs do not materially interfere with PAL or the City's operations.

7.7 Hours of Operation. Lessor and Lessee herein agree that the normal hours of operation for the premises shall be from 6:30 AM to 11:00 PM, Monday through Friday, and 8:00 AM to 8:00 PM, during the weekend, in order to accommodate the various programs which operate from the premises, including, but not limited to:

a. PAL's Use of Premises:

Miami Beach Police Athletic League Fitness Center:

- Monday through Friday 6:30 AM – 11:00 PM
- Saturday and Sunday 8:00 AM – 8:00 PM

Miami Beach Police Athletic League:

- Monday through Friday 7:00 AM – 9:00 PM
- Saturday 12:00 PM – 5:00 PM
- Sunday (depends upon program or event)

b. City's Use of Premises:

- Monday through Friday 8:30 AM – 9:00 PM
- Saturday and Sunday 8:30 AM – 9:00 PM

The parties recognize and acknowledge that under certain circumstances, (i.e. special events, special programming, etc.), the normal hours of operation may be modified to accommodate a special event or program. Lessee may be permitted to extend its hours of operation, but any prolonged extension shall be subject to the prior written consent of the City Manager (which consent shall not be unreasonably withheld or delayed).

7.8 Lessor hereby consents to Lessee subleasing a portion of PAL's Area to Miami Beach Policeman's Relief and Pension Fund, a

and William Nichols Lodge No. 8 Fraternal Order of Police, a Florida non-profit corporation, as more particularly delineated in Exhibit A-1. Additionally, Lessor hereby consents to Lessee subleasing the portion of the premises delineated for use as a fitness center (the "Fitness Center") on Exhibit A-1 to Miami Beach Police Athletic League Fitness Center, Inc., a Florida for profit corporation, which entity is wholly owned by PAL ("MB PAL Fitness Center").

As consideration for Lessor's approval of these subtenants, PAL indemnifies and holds harmless Lessor, its elected officials, officers, employees and agents (collectively, the City), from and against any and all damages, losses and all claims, counterclaims, suits, demands, actions, causes of action, setoffs, liens, attachments, debts, judgments, liabilities or expenses including, without limitation, attorney's fees and legal costs by reason of any claim, suit or judgment arising or alleged to arise from, or relating to the use of the premises by any of said subtenants, including, without limitation, real estate taxes which may be assessed against the premises as a result of the use of the premises by any of the approved subtenants. Additionally, PAL shall ensure that all said approved subtenants shall secure any requisite governmental approvals to operate from the premises, including the requisite business tax receipts.

Additionally, as further consideration for the approval of the Miami Beach Police Athletic League Fitness Center, Inc., and as an additional public benefit, PAL shall ensure that the Fitness Center shall provide all Miami Beach employees a reduced, full access pricing that is at least 25% off the non-employee membership fee, subject to compliance with the City's policies and procedures, including, without limitation, any gift policies, as may be amended from time to time.

8. Paragraph 10 on page 3 of the Lease is hereby deleted in its entirety.
~~10. Lessee agrees to keep the interior of the premises in good condition during the continuation of the term herein demised, and every part thereof, including the plumbing, doors and windows, and will keep the same in good, sound, clean condition and repair, ordinary wear and tear, fire, hurricane or other act of God alone excepted, and will not suffer or permit any strip or waste of the premises.~~
9. Paragraph 19 on page 4 of the Lease is hereby deleted in its entirety.
~~19. the Lessee agrees that this Lease shall be subject and subordinate to any mortgage or deed of trust presently encumbering the premises, or which may hereafter be made on account of any proposed loan to be placed on the premises by the Lessor to the full extent of all debts and charge secured thereby, and to any renewals and extension of all or any part thereof, which the Lessor may hereafter at any time elect to place on the premises.~~
10. Paragraph 20 on page 4 of the Lease is amended as follows:
20. At the expiration of the term hereof, the Lessee shall quietly and peaceably deliver the premises, and any equipment, furnishings, and fixtures (excluding the equipment for the Fitness Center (as defined in subsection 7.8)) to the Lessor, in the same repair and condition in which they were received, ordinary wear and tear excepted. ~~No estate for years is created by this Lease. Lessee shall be allowed to~~

remove those "trade fixtures" installed by Lessee, and as set forth in Paragraph 3. herein.

11. Paragraph 21 on page 5 of the Lease is hereby deleted in its entirety.
~~21. The Lessor covenants that it will keep the exterior roof and walls of the building in which premises are situated, in good repair. The Lessee shall give to the Lessor seven (7) days written notice of needed repairs, and the Lessor shall have a reasonable time thereafter within which to commence said repairs.~~

12. Paragraph 26 on page 5 of the Lease is amended as follows:

26. Should any mechanics' liens, mortgages, or other liens be filed against the premises or any part thereof for any reason whatsoever by reason of Lessee's acts or omissions or because of a claim against Lessee, Lessee shall cause the same to be cancelled and discharged, of record, by bond or otherwise within twenty thirty (~~20~~ 30 days after the filing such lien.)

13. Paragraph 27, commencing on page 5 of the Lease, is hereby deleted in its entirety.

~~27. In the even the premises are not ready for occupancy by the Lessee upon the commencement date hereof, for any reason whatsoever, the Lessor shall have no liability to the Lessee by reason of the Lessor's inability to deliver possession. In such event, the rent set forth herein shall abate until such time as the premises are ready for occupancy and the commencement date of the term hereof shall be deemed to commence upon such date, provided, however, that notwithstanding such commencement date, this Lease shall expire on the termination date set forth on Page 1 hereof.~~

14. Paragraph 30, commencing on page 6 of the Lease, is amended to update the designated parties for notice purposes, as follows:

For Lessor: Sergio Rodriguez Jimmy L. Morales
City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

With a copy to: Murray H. Dubbin Raul J. Aguila
City Attorney
City of Miami Beach
1700 Convention Center Drive
4th Floor
Miami Beach, Florida 33139

For the Lessee: Bernie Winer _____
Executive Director
999 11th Street
Miami Beach, Florida 33139

With a copy to: Richard Barreto Daniel Oates

Chief of Police
1100 Washington Avenue
Miami Beach, Florida 33139

15. Paragraph 31 on page 7 of the Lease is hereby amended to reflect that the Comprehensive General Liability Insurance coverage is increased from \$300,000 to \$1,000,000.00 per occurrence for bodily injury and property damage.
16. Paragraph 31, on Page 8 of the Lease, entitled "Limitation of Liability", is hereby renumbered to reflect Paragraph 32, instead of 31.
17. Paragraph 33 is hereby added to the Lease, as follows:

33. Executive Director. PAL shall hire, at its own expense, an Executive Director, who will manage and operate all PAL activities, including fundraising. Within sixty (60) days from the Effective Date of this Second Amendment, Lessee shall recommend a candidate for the Executive Director position, to replace the full-time police officer currently assigned to this position. The new Executive Director, as well as any subsequent Executive Directors for PAL, shall have significant experience in non-profit organizational management, as well as in charity fundraising. Additionally, the hiring of this new Executive Director, as well as any subsequent Executive Directors, shall require the prior written approval of the City Manager, on behalf of the Lessor, which approval shall not be unreasonably withheld. For good cause, and upon the request of the Lessee, the City Manager may extend the time to secure a candidate for the Executive Director position, which extension shall not be unreasonably withheld.
18. Paragraph 34 is hereby added to the Lease, as follows:

34. Designated Police Officer. The City shall continue to support PAL's youth services to the community by assigning one full-time police officer, to be selected by the City's Chief of Police, at his or her reasonable discretion, and who shall be charged with the specific assignment of supervising the police-community programs, consistent with PAL's mission of serving youth, excluding fundraising activities ("Dedicated Police Officer"). During this assignment, the Dedicated Police Officer shall report to the Chief of Police or his or her designee. However, said Dedicated Police Officer may also be directed by PAL's Executive Director, for day to day duties, so long as the Dedicated Police Officer operates at all times within the rules of the City and the City's Police Department, works primarily on programs for the youth, and does not engage, directly or indirectly, in fundraising activities.
19. Paragraph 35 is hereby added to the Lease, as follows:

35. This Lease is made with the understanding that Lessee shall at all times, throughout the term of this Lease, remain a Florida not-for-profit corporation, pursuant to Chapter 617, Florida Statutes, the Florida Not For Profit Corporation Act, and maintain a federal tax exemption pursuant to IRC 501(c)(4). In the event that Lessee ceases to be a not-for-profit corporation, this Lease shall be subject to termination upon thirty (30) days written notice by Lessor to Lessee. Notwithstanding the foregoing, Lessee shall be permitted to operate the Fitness Center through PAL's related entity, Miami Beach Police Athletic League Fitness Center, Inc., a Florida for-profit corporation, which

Lessor has approved as a subtenant in subsection 7.8 of the Lease, subject to the conditions set forth therein.

20. Paragraph 36 is hereby added to the Lease, as follows:

36. Revenues from PAL related activities, financial records and reports.

36.1 Revenues from PAL Related Activities. The Lessor herein acknowledges that Lessee may derive additional revenues from a portion of the approved uses it conducts on the premises (such revenue generating uses may include, from time to time, events on the premises, specialty sales, classes, lectures, and sale of food and beverages). Any revenue-generating uses conducted from the premises must be in accordance with the approved uses in subsection 7.1 and consistent with this subsection 36.1 of the Lease. All revenues received by Lessee in connection with such uses shall be dedicated exclusively to help fund Lessee's management, operation, and maintenance of the premises, as required herein. In the event that revenue(s) pertaining to Lessee's operation exceeds expenses during a particular budget year (in accordance with projected annual operating budget submitted by Lessee to Lessor, pursuant to subsection 36.2 herein), Lessor and Lessee agree that such excess, if any, shall be applied by Lessee to support other programming of Lessee. For purposes herein, "revenues" shall also be deemed to include public/private grant funding, and unrestricted donations and contributions received by Lessee specifically ear-marked toward Lessee's operation, management and programming. No portion of the net earnings resulting from the activities of Lessee on the premises shall inure to the benefit of any private individual. Any revenue generating uses which are not consistent with the approved uses in subsection 7.1, shall first be approved, in writing, by the City Manager (prior to commencement of same).

36.2 Financial Records and Reports. Lessee shall maintain on the premises, or at the location set forth in the Notices section of this Agreement, or at such other place within Miami Dade County, Florida, true, accurate, and complete records and accounts of all receipts and expenses for any and all uses, services, programs, events, and activities (including, without limitation all revenue generating uses) being conducted on the premises by PAL and MB PAL Fitness Center, and shall give the City Manager, or his authorized representative, access during reasonable business hours to examine and audit such records and accounts.

Throughout the term of this Lease, and no later than one hundred and twenty (120) days following the closing of City's fiscal year (October 1st – September 30th), Lessee shall provide the City Manager with an annual report of all uses, services, programs, events, activities and operations (including, without limitation, all revenue generating uses) ("PAL Programs") conducted upon the premises by PAL and MB PAL Fitness Center, referencing the number of persons participating in the PAL Programs. Simultaneously with said annual report for the PAL Programs, Lessee shall provide Lessor with audited financial statements for PAL and MB PAL Fitness Center, certified as true, accurate and complete by Lessee and by its certified public accountant.

36.3 The annual report for PAL and MB PAL Fitness Center shall also include a Profit and Loss Statement (including gross revenues by categories from all revenue sources and operating expenses by categories), and a detailed year-end Balance Sheet.

21. Paragraph 37 is hereby added to the Lease, as follows:

37. Budget and Funding for PAL.

37.1 Throughout the term of this Lease, Lessee shall prepare and present, commencing on August 1, 2015, and thereafter by August 1 of each year, a proposed, detailed line item annual operating budget for Lessee and MB PAL Fitness Center for the period from the next October 1 to September 30th, for review by the City Manager. Said budget shall include a projected income and expense statement; projected year-end balance sheet; statement of projected income sources; and application of funds. Additionally, the budget shall also include, without limitation, the following detailed projections for PAL and MB PAL Fitness Center:

- a. Gross revenues by categories from all revenue sources and revenue generating uses derived on the premises;
- b. Operating expenses;
- c. Administrative, labor and general expenses;
- d. Marketing, advertising and promotion expenses;
- e. Utility costs;
- f. Regular repairs and maintenance costs; and
- g. In addition to subsection (f) above, Lessee shall identify for the Lessor, such long term capital repairs and maintenance of facility infrastructure of which Lessee may be aware. In conjunction with this subsection (g), Lessee agrees to allow Lessor and/or its authorized representative(s) access to the premises, as the City Manager may deem necessary, in his reasonable judgment and discretion and upon at least 24 hours prior notice (written or verbal), for the purpose of Lessor conducting its own facility assessment.

37.2 Programmatic Plan. Accompanying Lessee's proposed annual budget shall be Lessee's programmatic plan for Lessee's upcoming fiscal year, detailing the then-known (planned) PAL Programs (including an programs for the MB PAL Fitness Center) and the number of users anticipated.

22. Paragraph 38 is hereby added to the Lease, as follows:

38. Use of Off-Duty Police Surcharge. PAL shall receive \$1.00 per hour of the off-duty police surcharge fund ("Surcharge Contribution"), subject to funding availability, during the term of this Lease. This Surcharge Contribution shall be paid to PAL on a quarterly basis, upon PAL presenting a written request to the Chief of Police or his or her designee. PAL may use the Surcharge Contribution for the payment of the salary of the Executive Director, PAL's Utility Expenses, PAL's programming, and other like operational expenses.

23. Upon execution of this Second Amendment, the Memorandum of Understanding ("MOU"), dated as of October 29, 2007, shall be void ab initio. The parties acknowledge that the only agreements in effect, relating to the premises, shall be the Lease Agreement, the First Amendment and this Second Amendment. In consideration of the mutual covenants contained in this Second Amendment, receipt of which is hereby acknowledged, Pal, on its behalf and on behalf of its successors and/or assigns, hereby releases and forever discharges, and expressly agrees to indemnify and hold harmless the City of Miami Beach, its Mayor, Commissioners, Officers, employees, Agents, Representatives and Members, together with their successors and/or assigns, from any and all alleged or actual claims, actions or damages which PAL shall or may have arising out of or relating to the MOU or PAL's alleged failure to receive any benefits or privileges under the MOU including, without limitation, the \$1.00 Surcharge referred to therein.
24. In light of the longstanding relationship between the City and PAL and the benefits which the PAL organization provides to the Miami Beach residents and community at large, and further subject to PAL being in good standing under the Lease, it is the intent of the Administration, within a year of the Effective Date of this Second Amendment, to place an item for discussion before the City Commission, relating to the possible approval of a new lease with PAL, effectively extending the current lease term for a period of time in excess of ten (10) years. The parties understand that the approval of said new lease by the City Commission, shall be in the City Commission's sole discretion, and said approval, if granted at all, shall be subject to any other approvals which may be required under the City Code or City Charter, including, if required, the approval of said new lease by a majority of the voters in a City-wide referendum.
25. Except as amended herein, all other terms and conditions of the Lease Agreement and First Amendment shall remain unchanged and in full force and effect.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed by their appropriate officials, as of the date first entered above.

FOR LESSOR:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
Rafael E. Granado, City Clerk

By: _____
Philip Levine, Mayor

BY: _____
Print Name: _____

FOR LESSEE:

**MIAMI BEACH POLICE
ATHLETIC LEAGUE, INC.**

ATTEST:

BY: _____
_____, **Secretary**

By: _____
President

BY: _____
Print Name: _____



Location Map 999 11th Street

THIS IS NOT A SURVEY



NORTH

<p>Community Room (Shared)</p>		<p>HALLWAY</p>	<p>Wrestling Room (Shared)</p>		
			<p>Recreation Restroom (PARKS)</p>		
<p>Stairs</p>			<p>Playtime Room (PARKS)</p>		
<p>Hallway</p>	<p>Elevator (Shared)</p>				
<p>Each maintains computer stations</p>	<p>Kitchen (Shared)</p>		<p>FOP Office (PAL)</p>		
<p>Recreation Office (PARKS)</p>					
<p>PAL Executive Office (PAL)</p>	<p>Women's Restroom (Shared) *Needs ADA*</p>		<p>Men's Restroom (Shared)</p>		
<p>Gym Office (PAL)</p>					
<p>Fitness Center (PAL)</p>			<p>Fitness Center (Cardio Room) (PAL)</p>		

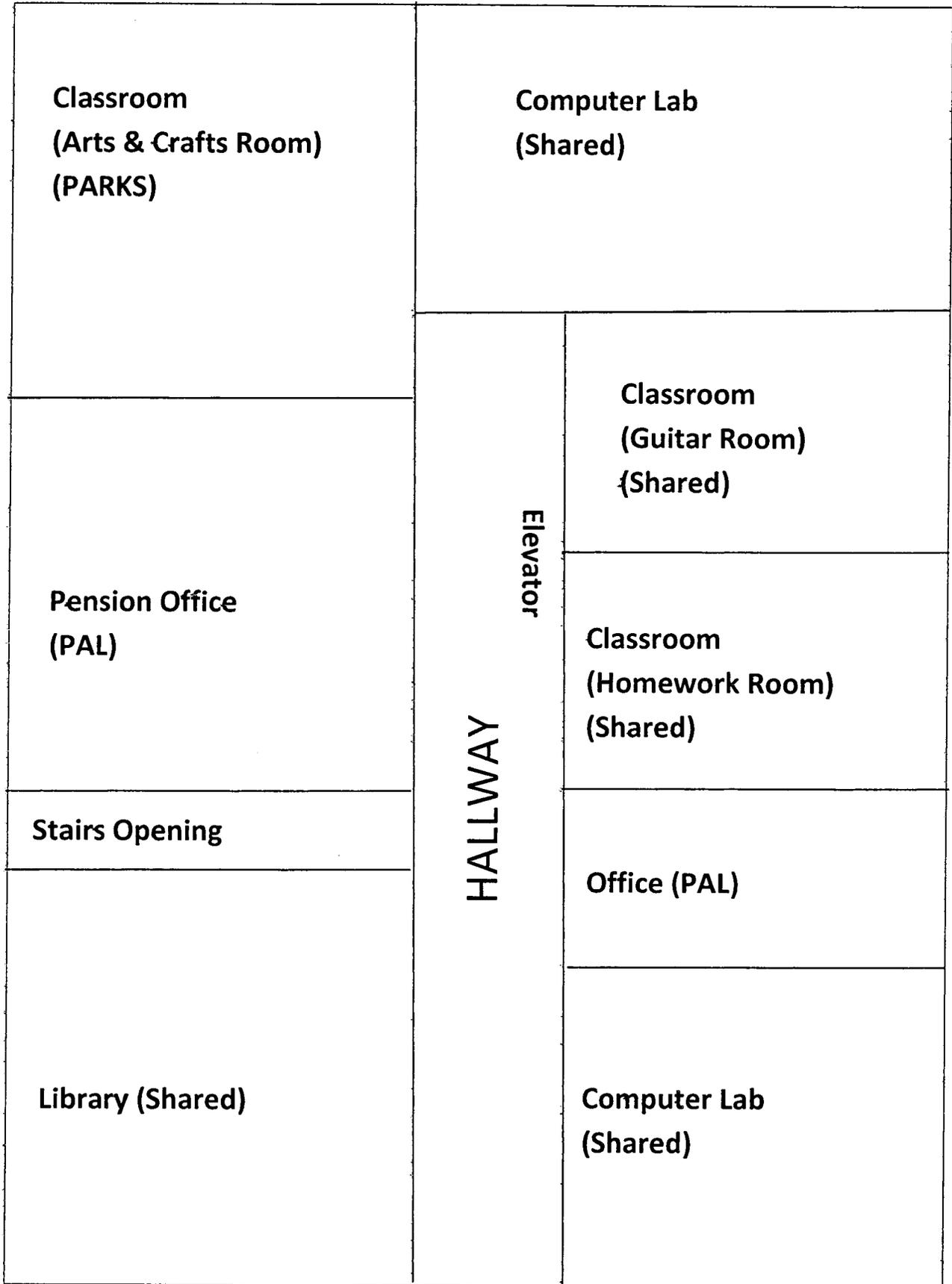
WEST

ACCESS

EAST

SOUTH

NORTH



SOUTH

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Condensed Title:

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Authorizing The City Manager To Enter Into Eight (8) Consent Orders With The State Of Florida Department Of Health For Noticed Permit Violations Dating Back To 2012, Associated With City Water Systems Being Placed Into Service Without The State Of Florida, Department Of Health Approval Or State Clearance In Violation Of 62-555.345, F.A.C., And 403.121(3) (A), Florida Statutes; And Authorizing The City Manager To Execute The Eight (8) Consent Orders Attached Hereto As Exhibit 1, For A Total Cost Of \$31,500.

Key Intended Outcome Supported:

Build and maintain priority infrastructure with full accountability

Item Summary/Recommendation:

The State of Florida Department of Health (DOH) notified the City of Miami Beach on July 6, 2012 that records of several water main extension projects may have been constructed or placed into operation without the required clearance from the Department.

Over the past 15 years the City has approved a number of development projects that have been constructed. It is often necessary to also install larger water mains and associated equipment due to the increased demand for water services. As a result, the permittee for the project(s) has a professionally licensed engineer prepare and submit permit plans to the Department of Health (DOH) to expand water services to the project area. As the City is the water supplier, the City is also required to sign the DOH permit application along with the developer's licensed engineer (engineer of record).

Prior to placing any component of the water system into service, whereby water is passed through the new water main or water system for consumption, the water system must be pressure tested, flushed, and the water tested for bacteria on two (2) consecutive days. The results from a certified laboratory are then submitted to the DOH for clearance to activate the component proposed prior to the component being placed into service.

DOH has authority derived from the Florida Statutes and through an Interagency Agreement between the State and the federal government to implement the Florida Safe Drinking Water Act Program of January 1, 2010. Additionally, the DOH, through Chapter 62-555.345(5), Florida Administrative Code, requires that "suppliers of water shall ensure that permittees have obtained written clearance from the department before suppliers of water turn on water to permittees."

On July 6, 2012, the DOH issued a letter notice of violation to the City citing five (5) projects which DOH records indicated expired permits and failure to test and obtain written clearance of the water system from DOH. It appears several of the expired permits dating back to 2003 through 2010. Since that time, the City of Miami Beach Department of Public Works has been working with the DOH to close out these open permits. During a complete review of all of the pending DOH applications, additional incomplete permit files were discovered. Over 15 files were identified as questionable. In most cases, all of the documentation was in the possession of the engineer of record, but the permittee and engineer(s) failed to provide the testing information to the DOH prior to the water components being placed into service. In a couple of cases the projects were never constructed. In other cases, the records could not be located as the applicable engineer of record was no longer in business, and as a result, new testing was performed to ensure compliance with DOH requirements. None of the subsequent testing identified any results that failed to meet DOH standards.

Although the permits are now closed, and in compliance, the DOH has issued eight (8) Consent Orders to the City of Miami Beach for nine (9) violations of 62-555.345 F.A.C. and 403.121(3)(a). Each Consent Order acknowledges that DOH requested that the City undertake certain actions to resolve the violations and that the prescribed actions have been completed. However, due to the nature of the violations, the City, as the water provider, remains subject to civil penalties, as well as costs incurred by the DOH during the investigation of the matter. DOH is seeking \$3,000 in civil penalties and \$500 in expenses for each violation (3,500 x 9 violations) for a total cost to the City of \$31,500. It is the intention of the Administration to seek reimbursement from the applicable permittee and/or engineer of record for each violation.

By agreeing to the terms of the Orders, which include acknowledging and waiving rights to appeal and paying the fines, the Consent Order will constitute a final order of the DOH, unless a request for an administrative hearing is filed by a third party. The DOH acknowledges that the City's acceptance of the offer does not constitute an admission of liability for the violations
THE ADMINISTRATION RECOMMENDS ADOPTING THE RESOLUTION.

Advisory Board Recommendation:

Financial Information:

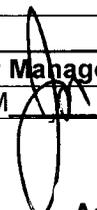
Source of Funds:	Amount	Account	Approved
OBPI	1		
Total			

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Eric Carpenter, Public Works X6012

Sign-Offs:

Department Director	Assistant City Manager	City Manager
JJF 	ETC 	JLM 

T:\AGENDA\2016\February\Public Works\Consent Decree - summary.doc

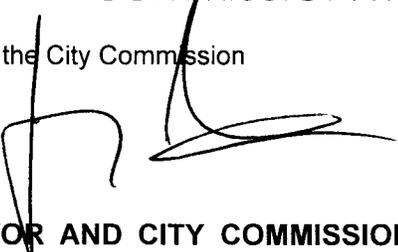


MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager 

DATE: February 10, 2016

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO EIGHT (8) CONSENT ORDERS WITH THE STATE OF FLORIDA DEPARTMENT OF HEALTH FOR NOTICED PERMIT VIOLATIONS DATING BACK TO 2012, ASSOCIATED WITH CITY WATER SYSTEMS BEING PLACED INTO SERVICE WITHOUT THE STATE OF FLORIDA, DEPARTMENT OF HEALTH APPROVAL OR STATE CLEARANCE IN VIOLATION OF 62-555.345, F.A.C., AND 403.121(3) (a), FLORIDA STATUTES; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE EIGHT (8) CONSENT ORDERS ATTACHED HERETO AS EXHIBIT 1, FOR A TOTAL COST OF \$31,500.**

BACKGROUND

The State of Florida Department of Health (DOH) notified the City of Miami Beach on July 6, 2012 that records of several water main extension projects may have been constructed or placed into operation without the required clearance from the Department.

ANALYSIS

Over the past 15 years the City has approved a number of development projects that have been constructed. It is often necessary to also install larger water mains and associated equipment due to the increased demand for water services. As a result, the permittee for the project(s) has a professionally licensed engineer prepare and submit permit plans to the Department of Health (DOH) to expand water services to the project area. As the City is the water supplier, the City is also required to sign the DOH permit application along with the developer's licensed engineer (engineer of record).

Prior to placing any component of the water system into service, whereby water is passed through the new water main or water system for consumption, the water system must be pressure tested, flushed, and the water tested for bacteria on two (2) consecutive days. The results from a certified laboratory are then submitted to the DOH for clearance to activate the component proposed prior to the component being placed into service.

DOH has authority derived from the Florida Statutes and through an Interagency Agreement between the State and the federal government to implement the Florida Safe Drinking Water Act Program of January 1, 2010. Additionally, the DOH, through Chapter 62-555.345(5), Florida Administrative Code, requires that "suppliers of water shall ensure that permittees have

obtained written clearance from the department before suppliers of water turn on water to permittees.”

On July 6, 2012, the DOH issued a letter notice of violation to the City citing five (5) projects which DOH records indicated expired permits and failure to test and obtain written clearance of the water system from DOH. It appears several of the expired permits dating back to 2003 through 2010. Since that time, the City of Miami Beach Department of Public Works has been working with the DOH to close out these open permits. During a complete review of all of the pending DOH applications, additional incomplete permit files were discovered. Over 15 files were identified as questionable. In most cases, all of the documentation was in the possession of the engineer of record, but the permittee and engineer(s) failed to provide the testing information to the DOH prior to the water components being placed into service. In a couple of cases the projects were never constructed. In other cases, the records could not be located as the applicable engineer of record was no longer in business, and as a result, new testing was performed to ensure compliance with DOH requirements. None of the subsequent testing identified any results that failed to meet DOH standards.

Although the permits are now closed, and in compliance, the DOH has issued eight (8) Consent Orders to the City of Miami Beach for nine (9) violations of 62-555.345 F.A.C. and 403.121(3)(a). Each Consent Order acknowledges that DOH requested that the City undertake certain actions to resolve the violations and that the prescribed actions have been completed. However, due to the nature of the violations, the City, as the water provider, remains subject to civil penalties, as well as costs incurred by the DOH during the investigation of the matter. DOH is seeking \$3,000 in civil penalties and \$500 in expenses for each violation (3,500 x 9 violations) for a total cost to the City of \$31,500. It is the intention of the Administration to seek reimbursement from the applicable permittee and/or engineer of record for each violation.

By agreeing to the terms of the Orders, which include acknowledging and waiving rights to appeal and paying the fines, the Consent Order will constitute a final order of the DOH, unless a request for an administrative hearing is filed by a third party. The DOH acknowledges that the City's acceptance of the offer does not constitute an admission of liability for the violations.

CONCLUSION

The Administration recommends the adoption of the resolution and authorizes the City Manager to execute the eight (8) Consent Orders and pay the civil penalties and costs of \$31,500 to the Department of Health.

JLM/ETC/JJF/BAM/WRB/LJS

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO EIGHT (8) CONSENT ORDERS WITH THE STATE OF FLORIDA DEPARTMENT OF HEALTH FOR NOTICED PERMIT VIOLATIONS DATING BACK TO 2012, ASSOCIATED WITH CITY WATER SYSTEMS BEING PLACED INTO SERVICE WITHOUT THE STATE OF FLORIDA, DEPARTMENT OF HEALTH APPROVAL OR STATE CLEARANCE IN VIOLATION OF 62-555.345, F.A.C., AND 403.121(3) (a), FLORIDA STATUTES; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE EIGHT (8) CONSENT ORDERS ATTACHED HERETO AS EXHIBIT 1, FOR A TOTAL COST OF \$31,500.

WHEREAS, the State of Florida Department of Health (DOH) under Chapter 62-555.345(5), Florida Administrative Code, requires that "suppliers of water shall ensure that permittees have obtained written clearance from the department before suppliers of water turn on water to permittees;" and

WHEREAS, the City of Miami Beach as the water supplier for the City, is required to sign off on all permits to the DOH to expand or enhance water services in the City to the construction of new development projects that may increase water consumption; and

WHEREAS, it appears that between 2003 and 2012, several permit applications were filed with the DOH, but were not closed out properly; and

WHEREAS, on July 6, 2012, the DOH issued a letter notice of violation to the City citing five (5) projects which DOH records indicated expired permits and no written clearance of the water system; and

WHEREAS, since that time, the City of Miami Beach Department of Public Works has been working with the DOH to close out these open permits, and conduct all necessary testing; and

WHEREAS, none of the subsequent testing identified any results that failed to meet DOH standards; and

WHEREAS, although the permits are now closed, due to compliance, the DOH has issued eight (8) Consent Orders to the City of Miami Beach for nine (9) violations of 62-555.345 F.A.C. and 403.121(3)(a); and

WHEREAS, each Consent Order acknowledges that DOH requested that the City undertake certain actions to resolve the violations and that the prescribed actions have been completed; and

WHEREAS, due to the nature of the violations, the City, as the water provider, remains subject to civil penalties, as well as costs incurred by the DOH during the investigation of the matter. DOH is seeking \$3,000 in civil penalties and \$500 in expenses for each violation (3,500 x 9 violations) for a total cost to the City of \$31,500; and,



Rick Scott
Governor

John H. Armstrong, MD
State Surgeon General

July 6, 2012

Mike Alvarez
Director of Public Works
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

Dear Mr. Alvarez:

Our records indicate that several water main extension projects permitted under the referenced numbers were or may have been constructed and placed into permanent operation without the required clearance from the department in violation of the conditions under which the permits was issued.

Chapter 62-555.345 Florida Administrative Code requires that no public water system components constructed or altered under a permit granted by the department shall be placed into permanent operation without prior department's approval or clearance. Specifically, Chapter 62-555.345 (5) Florida Administrative Code requires that "suppliers of water shall ensure that permittees have obtained written clearance from the department before suppliers of water turn on water to permittees".

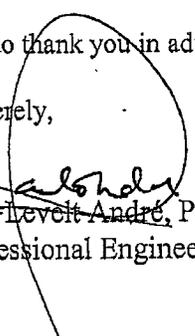
By this letter, the department is requesting that you provide documentation to evidence that the attached listed projects received proper clearance before you turned on the water to the permittees. If the aforementioned projects have not obtained proper clearance from the department, the permittees shall return and follow all clearance process to ensure the integrity of the water lines.

If this matter is not resolved immediately the Department will initiate legal action against you, which may result in a fine of up to \$ 3,000.00 and/or other penalties in accordance with Chapter 403.121(3)(a) Florida Statutes.

We look forward for your cooperation to this matter by responding within fifteen (15) days from the date of receipt of this letter. Failure to comply will leave us with no alternative to proceed as previously stated.

We do thank you in advance for your cooperation.

Sincerely,


Paul Levitt Andre, P.E., CEHP
Professional Engineer Supervisor I

Cc: Samir Elmir, PE, DEE, CEHP, PhD
Tracie Dickerson, Esq. (MDCHD)

RECEIVED
CITY OF MIAMI BEACH
2012 JUL 13 PM 3:46



Samir Elmir, PhD, PE, DEE, CEHP, Director
Environmental Health and Engineering
Miami-Dade County Health Department
1725 NW 167th Street, Miami Gardens, Florida 33056
Tel: (305) 623-3500 Fax: (305) 623-3502
Email: Samir_Elmir@doh.state.fl.us
Website: www.dadehealth.org





List of Expire Permits

- | | |
|---|---|
| 1) Permit Name: Cosmopolitan at the Court at South Beach
Address : Meridian Avenue & 1 st Street
Date of Issue: 01/29/2004 | Permit No. 126648-177-DSGP
Expiration Date: 01/29/2009 |
| 2) Permit Name: Regatta Condominiums
Address: 6580 Collins Avenue
Date of Issue: 06/16/2004 | Permit No. 126648-184-DSGP
Expiration Date: 06/16/2009 |
| 3) Permit Name: Nautica Condominium
Address: 5970-5990 Indian Creek Drive
Date of Issue: 05/02/2003 | Permit No. 125648-168-DSGP
Expiration Date: 05/02/2008 |
| 4) Permit Name: Apogee
Address: 800 South Point Drive
Date of Issue: 12/20/2005 | Permit No. 126648-197-DSGP
Expiration Date: 12/20/2010 |
| 5) Permit Name: La Gorce Country Club
Address: 5685 Alton Road
Date of Issue: 10/29/2003 | Permit No. 126648-170-DSGP
Expiration Date: 10/29/2008 |



Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



RICK SCOTT
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

Sent Via US Mail Article Number: 7002 2410 0004 7709 4483

January 14, 2016

Eric Carpenter, Assistant City Manager &
Director of Public Works
1700 Convention Center Drive
Miami, Beach, FL 33139

Dear Mr. Carpenter-

Enclosed please find eight Consent Orders for the following nine permits where the City of Miami Beach, as the supplier of water placed a water system into service without Health Department approval or clearance in violation of 62-555.345 F.A.C. and 403.121(3)(a). The fines were determined per permit violation, but to minimize confusion we have combined the consent orders by Engineer of Record (EOR).

CITY OF MIAMI BEACH
16 JAN 28 PM 1:10
PUBLIC WORKS DEPARTMENT

EOR: Carl L. Skiles, PE

DOH Permit Number 126648-168-DSGP
Project Name/Applicant: Nautica Condominium

EOR: Stephen Kutch, PE

DOH Permit Number 126648-170-DSGP
Project Name/Applicant: La Gorce Country Club

EOR: Timothy K. Blankenship, PE

DOH Permit Number 126648-177-DSGP
Project Name/Applicant: Cosmopolitan at the Courts at South Beach

EOR: Kevin J. Sacks, PE

DOH Permit Number 126648-195-DSGP
Project Name/Applicant: Miami Beach Senior High School

EOR: Kevin M. McCabe, PE

DOH Permit Number 126648-197-DSGP
Project Name/Applicant: Apogee / T.R.G. Alaska I, LTD, Joyce Bronson
DOH Permit Number: 126648-223-DSGP
Project Name/Applicant: Block 52 Condominium/TRG Alaska III, LLC

Florida Department of Health
Office of the General Counsel • Miami-Dade & Monroe Counties
8323 NW 12 Street, Suite 214 • Miami, Florida 33126
PHONE: 786-845-0300 • FAX: 786-845-0306

www.FloridaHealth.gov
TWITTER: HealthyFLA
FACEBOOK: FLDepartmentofHealth
YOUTUBE: fdoh
FLICKR: HealthyFla
PINTEREST: HealthyFla

EOR: Eithel Sierra, PE

DOH Permit Number 126648-207-DSGP

Project Name/Applicant: 12" Ductile Iron Pipe Indian Creek Drive 63-67 St

EOR: Guido Van Meek, PE

DOH Permit Number 126648-225-DSGP

Project Name/Applicant: Caribbean / Caribbean Group Owner, LLC

EOR: Jason McClair, PE

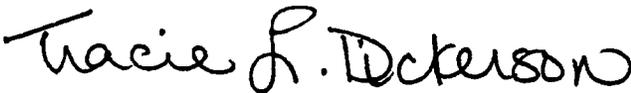
DOH Permit Number 126648-231-DSGP

Project Name/Applicant: City Center Bid Package 9B

Please review and execute each of the eight enclosed documents and return to my office. Payments should include the DEP Permit Numbers assigned and be made payable to "The State of Florida Department of Health" and should be sent to the FDOH-Environmental Health Division, Attn: Paul Andre, 1725 NW 167 St., Miami Gardens, FL 33056.

Should you have any questions regarding these actions, please call me at (786) 845-0360.

Sincerely,



Tracie L. Dickerson
Senior Attorney

Enclosures (8 Consent Orders)

cc: Lillian Rivera, RN, MSN, Ph.D., Administrator DOH-Miami-Dade
Samir Elmir, P.E., Ph.D. DOH-Miami-Dade, Director Environmental Health & Engineering
Paul Andre, P.E., DOH-Miami-Dade Environmental Health & Engineering Supervisor

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Governor

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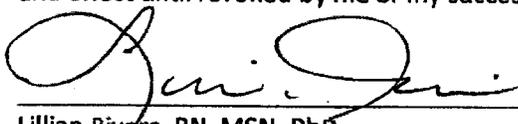
Date: February 10, 2015
To: Samir Elmir, PhD, PE, BCEE, CEHP, DOH-Miami-Dade Director of Environmental Health & Engineering
From: Lillian Rivera, RN, MSN, PhD, Administrator, DOH-Miami-Dade
Subject: Delegation of Authority for Signature on Department of Environmental Protection Drinking Water Files

Lillian Rivera, RN, MSN, PhD, Administrator, Florida Department of Health in Miami-Dade County (DOH-Miami-Dade), hereby gives Samir Elmir, PhD, PE, BCEE, CEHP, Director of Environmental Health & Engineering signature authority for Consent Decrees generated under the DOH-Miami-Dade Drinking Water Program.

The DOH-Miami-Dade Drinking Water Program is the designated program that regulates small water systems which provide water for public consumption for the Florida Department of Environmental Protection. The Authority for the DOH-Miami Dade Drinking Water Program is derived from Chapter 403, Part IV, Florida Statutes and by delegation of the federal program from the U.S. Environmental Protection Agency. This program was delegated to the Florida Department of Health through the Interagency Agreement for the Implementation of the Florida Safe Drinking Water Act Program dated January 1, 2010.

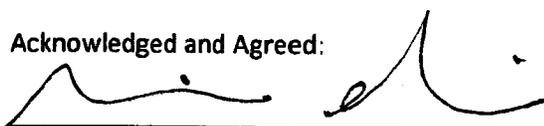
Drinking Water Program Consent Decrees must first be reviewed for sufficiency by the DOH-Miami-Dade legal department prior to Dr. Elmir's signature. This authority may not be re-delegated. In the event of Dr. Elmir's absence or unavailability to sign, the signature authority will revert back to the DOH-Miami-Dade County Administrator. Each time this signature authority is used, a scan of the document shall be sent back to the legal office for filing. The use of rubber stamps, signature plates or other mechanical devices to affix the signature is prohibited. For documents requiring signatures of two parties, the Florida Department of Health signature shall be last.

This delegation of signature authority shall be effective as of the date of signature and will remain in full force and effect until revoked by me or my successor.



Lillian Rivera, RN, MSN, PhD
Administrator DOH-Miami-Dade

2-18-2015
Date

Acknowledged and Agreed:


Samir Elmir, PhD, PE, BCEE, CEHP
DOH-Miami-Dade Director of Environmental Health & Engineering

2-19-2015
Date

Florida Department of Health
Miami-Dade County
8175 NW 12th Street, Suite 300, Doral, FL 33126
PHONE: 305-324-2400 • FAX 786-336-1297

www.FloridaHealth.gov
TWITTER: HealthyFLA
FACEBOOK: FLDepartmentofHealth
YOUTUBE: fldoh
FLICKR: HealthyFla
PINTEREST: HealthyFla

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Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

January 14, 2016

City of Miami Beach as Supplier of Water
Eric Carpenter, Assistant City Manager &
Director of Public Works
1700 Convention Center Drive
Miami, Beach, FL 33139

SUBJECT: Florida Department of Environmental Protection v. City of Miami Beach as Supplier of Water,
Engineer of Record: Timothy K. Blankenship, PE
OGC File No.: 2016-00387
DOH Permit Number 126648-177-DSGP
Project Name/Applicant: Cosmopolitan at the Courts at South Beach
Permit Expiration Date: January 28, 2004

Mr. Carpenter,

The State of Florida Department of Health for the State of Florida Department of Environmental Protection ("Department") finds the City of Miami Beach ("Respondent"), as supplier of water placed a water system into service without department approval or clearance in violation of 62-555.345, F.A.C. and 403.121(3)(a). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking \$ 3000.00 in civil penalties and \$ 500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 3,500.00.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return by **February 15, 2016** it to the Department at the following address:

State of Florida, Department of Health
ATTN: Drinking Water Program
1725 NW 167th Street
Miami Gardens, Florida 33056

The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

(1) Respondent must pay \$3,500.00 in full by February 15, 2016.

- (2) The payment must: (a) be in the form of a cashier's check or money order (b) be payable to the "Florida Department of Health"; (c) include the DEP Permit Number assigned and (d) be sent to Florida Department of Health in Miami Dade County, Environmental Health Division, 1725 NW 167 Street Miami Gardens FL 33056.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Paul Levelt André, P.E. at 305-623-3500 or at Paul.Andre@flhealth.gov.

Sincerely,



Samir Elmir, PE, PhD

Environmental Administrator

Environmental Health and Engineering

Florida Department of Health Miami-Dade County

FOR THE RESPONDENT:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____
[Signature]

Date: _____

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this _____ day of January, 2016 in Miami-Dade County, Florida.

STATE OF FLORIDA DEPARTMENT
OF HEALTH ON BEHALF OF STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date:

Attachments: Notice of Rights

Final clerked copy furnished to:
Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

January 14, 2016

City of Miami Beach as Supplier of Water
Eric Carpenter, Assistant City Manager &
Director of Public Works
1700 Convention Center Drive
Miami, Beach, FL 33139

SUBJECT: State of Florida Department of Health vs. City of Miami Beach as Supplier of Water,
Engineer of Record: Kevin J. Sacks, PE
OGC File No.: 2016-00390
DOH Permit Number 126648-195 DSGP
Project Name/Applicant: Miami Beach Senior High School
Permit Expiration Date: June 28, 2010

Mr. Carpenter,

The State of Florida Department of Health for the State of Florida Department of Environmental Protection ("Department") finds the City of Miami Beach ("Respondent"), as supplier of water placed a water system into service without department approval or clearance in violation of 62-555.345, F.A.C. and 403.121(3)(a). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking \$ 3000.00 in civil penalties and \$ 500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 3,500.00.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return by **February 15, 2016** it to the Department at the following address:

State of Florida, Department of Health
ATTN: Drinking Water Program
1725 NW 167th Street
Miami Gardens, Florida 33056

The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

(1) Respondent must pay \$3,500 in full by February 15, 2016.

- (2) The payment must: (a) be in the form of a cashier's check or money order (b) be payable to the "Florida Department of Health"; (c) include the DEP Permit Number assigned and (d) be sent to Florida Department of Health in Miami Dade County, Environmental Health Division, 1725 NW 167 Street Miami Gardens FL 33056.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

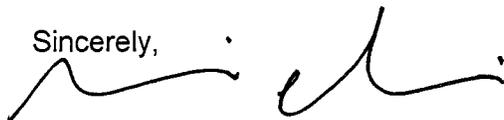
Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Paul Levelt André, P.E. at 305-623-3500 or at Paul.Andre@flhealth.gov.

Sincerely,



Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health Miami-Dade County

FOR THE RESPONDENT:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____
[Signature]

Date: _____

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this ____ day of January, 2016 in Miami-Dade County, Florida.

STATE OF FLORIDA DEPARTMENT
OF HEALTH ON BEHALF OF STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk
Attachments: Notice of Rights

Date:

Final clerked copy furnished to:
Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

January 14, 2016

City of Miami Beach as Supplier of Water
Eric Carpenter, Assistant City Manager &
Director of Public Works
1700 Convention Center Drive
Miami, Beach, FL 33139

SUBJECT: Florida Department of Health v. City of Miami Beach as Supplier of Water,
DOH Permit Number 126648-207-DSGP
OGC File No. 2016-00482
Engineer of Record: Eithel Sierra, PE
Project Name/Applicant: 12" Ductile Iron Pipe Indian Creek Drive 63-67 St
Permit Expiration Date: October 24, 2011

Mr. Carpenter,

The State of Florida Department of Health for the State of Florida Department of Environmental Protection ("Department") finds the City of Miami Beach ("Respondent"), as supplier of water placed a water system into service without department approval or clearance in violation of 62-555.345, F.A.C. and 403.121(3)(a). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking \$ 3000.00 in civil penalties and \$ 500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 3,500.00.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return by **February 15, 2016** it to the Department at the following address:

State of Florida, Department of Health
ATTN: Drinking Water Program
1725 NW 167th Street
Miami Gardens, Florida 33056

The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

(1) Respondent must pay \$3,500 in full by February 15, 2016.

(2) The payment must: (a) be in the form of a cashier's check or money order (b) be payable to the "Florida Department of Health"; (c) include the DEP Permit Number assigned and (d) be sent to Florida Department of Health in Miami Dade County, Environmental Health Division, 1725 NW 167 Street Miami Gardens FL 33056.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

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Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Paul Levelt André, P.E. at 305-623-3500 or at Paul.Andre@flhealth.gov.

Sincerely,



Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health Miami-Dade County

FOR THE RESPONDENT:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____
[Signature]

Date: _____

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this _____ day of January, 2016 in Miami-Dade County, Florida.

STATE OF FLORIDA DEPARTMENT
OF HEALTH ON BEHALF OF STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk
Attachments: Notice of Rights

Date:

Final clerked copy furnished to:
Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
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- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

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Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

January 14, 2016

City of Miami Beach as Supplier of Water
Eric Carpenter, Assistant City Manager &
Director of Public Works
1700 Convention Center Drive
Miami, Beach, FL 33139

SUBJECT: Florida Department of Health on v. City of Miami Beach as Supplier of Water,
DOH Permit Number 126648-231-DSGP
OGC File No.: 2016-00480
Engineer of Record: Jason McClair, P.E.
Project Name/Applicant: City Center Bid Package 9B
Permit Expiration Date: February 15, 2013

Mr. Carpenter,

The State of Florida Department of Health for the State of Florida Department of Environmental Protection ("Department") finds the City of Miami Beach ("Respondent"), as supplier of water placed a water system into service without department approval or clearance in violation of 62-555.345, F.A.C. and 403.121(3)(a). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking \$ 3000.00 in civil penalties and \$ 500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 3,500.00.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return by **February 15, 2016** it to the Department at the following address:

State of Florida, Department of Health
ATTN: Drinking Water Program
1725 NW 167th Street
Miami Gardens, Florida 33056

The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

(1) Respondent must pay \$ 3,500.00 in full by February 15, 2016.

(2) The payment must: (a) be in the form of a cashier's check or money order (b) be payable to the "Florida Department of Health"; (c) include the DEP Permit Number assigned and (d) be sent to Florida Department of Health in Miami Dade County, Environmental Health Division, 1725 NW 167 Street Miami Gardens FL 33056.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

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Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Paul Levelt André, P.E. at 305-623-3500 or at Paul.Andre@flhealth.gov.

Sincerely,



Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health Miami-Dade County

FOR THE RESPONDENT:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____
[Signature]

Date: _____

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this ____ day of January, 2016 in Miami-Dade County, Florida.

STATE OF FLORIDA DEPARTMENT
OF HEALTH ON BEHALF OF STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date:

Attachments: Notice of Rights

Final clerked copy furnished to:
Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Order;
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- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
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- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
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Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

January 14, 2016

City of Miami Beach as Supplier of Water
Eric Carpenter, Assistant City Manager &
Director of Public Works
1700 Convention Center Drive
Miami, Beach, FL 33139

SUBJECT: Florida Department of Health Environmental Protection v. City of Miami Beach as Supplier of Water,
Engineer of Record: Guido Van Meek, PE
OGC File No.: 2016-00389
FDOH Permit Number 126648-225 DSGP
Project Name/Applicant: Caribbean / Caribbean Group Owner, LLC
Permit Expiration Date: August 31, 2012

Mr. Carpenter,

The State of Florida Department of Health for the State of Florida Department of Environmental Protection ("Department") finds the City of Miami Beach ("Respondent"), as supplier of water placed a water system into service without department approval or clearance in violation of 62-555.345, F.A.C. and 403.121(3)(a). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking \$ 3000.00 in civil penalties and \$ 500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 3,500.00.

Respondent's Acceptance

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State of Florida, Department of Health
ATTN: Drinking Water Program
1725 NW 167th Street
Miami Gardens, Florida 33056

Florida Department of Health
Division of Environmental Health and Engineering
Miami-Dade County
1725 NW 167th Street, Miami, FL 33056
PHONE: 305/623-3500 • FAX 305/623-3502

www.FloridaHealth.gov
TWITTER: HealthyFLA
FACEBOOK: FLDepartmentofHealth
YOUTUBE: fdoh
FLICKR: HealthyFla
PINTEREST: HealthyFla

The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

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- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

(1) Respondent must pay \$3,500 in full by February 15, 2016.

- (2) The payment must: (a) be in the form of a cashier's check or money order (b) be payable to the "Florida Department of Health"; (c) include the DEP Permit Number assigned and (d) be sent to Florida Department of Health in Miami Dade County, Environmental Health Division, 1725 NW 167 Street Miami Gardens FL 33056.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

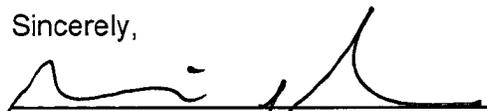
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If you have any questions, please contact Paul Levelt André, P.E. at 305-623-3500 or at Paul.Andre@flhealth.gov.

Sincerely,



Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

FOR THE RESPONDENT:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____
[Signature]

Date: _____

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this _____ day of January, 2016 in Miami-Dade County, Florida.

STATE OF FLORIDA DEPARTMENT
OF HEALTH ON BEHALF OF STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk
Attachments: Notice of Rights

Date:

Final clerked copy furnished to:
Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

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- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
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Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

January 14, 2016

City of Miami Beach as Supplier of Water
Eric Carpenter, Assistant City Manager &
Director of Public Works
1700 Convention Center Drive
Miami, Beach, FL 33139

SUBJECT: Florida Department of Health v. City of Miami Beach as Supplier of Water,
Engineer of Record: Kevin M. McCabe, PE (36841)
OGC File No.: 2015-07455
DOH Permit Number 126648-197-DSGP
Project Name/Applicant: Apogee / T.R.G. Alaska I, LTD, Joyce Bronson
Permit Expiration Date: October 20, 2010
DOH Permit Number: 126648-223-DSGP
Project Name/Applicant: Block 52 Condominium/TRG Alaska III, LLC
Permit Expiration Date: August 14, 2013

Mr. Carpenter,

The State of Florida Department of Health for the State of Florida Department of Environmental Protection ("Department") finds that City of Miami Beach ("Respondent"), as supplier of water placed a water system into service without department approval or clearance in violation of 62-555.345, F.A.C. and 403.121(3)(a). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

COUNT I

DOH Permit Number 126648-197-DSGP

Project Name/Applicant: Apogee / T.R.G. Alaska I, LTD, Joyce Bronson
Permit Expiration Date: October 20, 2010

Based on the violations described above, the Department is seeking \$ 3000.00 in civil penalties and \$ 500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 3,500.00 for Count I.

COUNT II

DOH Permit Number 126648-197-DSGP

Project Name/Applicant: Apogee / T.R.G. Alaska I, LTD, Joyce Bronson

Florida Department of Health
Division of Environmental Health and Engineering
Miami-Dade County
1725 NW 167th Street, Miami, FL 33056
PHONE: 305/623-3500 • FAX 305/623-3502

www.FloridaHealth.gov
TWITTER: HealthyFLA
FACEBOOK: FLDepartmentofHealth
YOUTUBE: fldoh
FLICKR: HealthyFla
PINTEREST: HealthyFla

Permit Expiration Date: October 20, 2010

Based on the violations described above, the Department is seeking \$ 3000.00 in civil penalties and \$ 500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 3,500.00 for Count II.

TOTAL AMOUNT DUE COUNTS I and II combined: \$7,000.00.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return by **February 15, 2016** it to the Department at the following address:

State of Florida, Department of Health
ATTN: Drinking Water Program
1725 NW 167th Street
Miami Gardens, Florida 33056

The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

(1) Respondent must pay \$7,000 in full by February 15, 2016.

(2) The payment must: (a) be in the form of a cashier's check or money order (b) be payable to the "Florida Department of Health"; (c) include the DEP Permit Number assigned and (d) be sent to Florida Department of Health in Miami Dade County, Environmental Health Division, 1725 NW 167 Street Miami Gardens FL 33056.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order

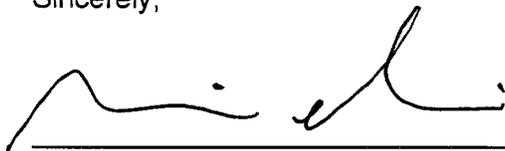
of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Paul André, P.E. at 305-623-3500 or at Paul.Andre@flhealth.gov.

Sincerely,



Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

FOR THE RESPONDENT:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____
[Signature]

Date: _____

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this _____ day of January, 2016 in Miami-Dade County, Florida.

STATE OF FLORIDA DEPARTMENT
OF HEALTH ON BEHALF OF STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.

Clerk

Date:

Attachments: Notice of Rights

Final clerked copy furnished to:

Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

January 14, 2016

City of Miami Beach as Supplier of Water
Eric Carpenter, Assistant City Manager &
Director of Public Works
1700 Convention Center Drive
Miami, Beach, FL 33139

SUBJECT: Florida Department of Environmental Protection v. City of Miami Beach as Supplier of Water,
DOH Permit Number 126648-170- DSGP
OGC File No: 2016-00479
Engineer of Record: Stephen Kutch, PE
Project Name/Applicant: La Gorce Country Club
Permit Expiration Date: October 29, 2008

Mr. Carpenter,

The State of Florida Department of Health for the State of Florida Department of Environmental Protection ("Department") finds the City of Miami Beach ("Respondent"), as supplier of water placed a water system into service without department approval or clearance in violation of 62-555.345, F.A.C. and 403.121(3)(a). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking \$ 3000.00 in civil penalties and \$ 500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 3,500.00.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return by **February 15, 2016** it to the Department at the following address:

State of Florida, Department of Health
ATTN: Drinking Water Program
1725 NW 167th Street
Miami Gardens, Florida 33056

Florida Department of Health
Division of Environmental Health and Engineering
Miami-Dade County
1725 NW 167th Street, Miami, FL 33056
PHONE: 305/623-3500 • FAX 305/623-3502

www.FloridaHealth.gov
TWITTER: HealthyFLA
FACEBOOK: FLDepartmentofHealth
YOUTUBE: fldoh
FLICKR: HealthyFla
PINTEREST: HealthyFla

The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

(1) Respondent must pay \$3,500 in full by February 15, 2016.

(2) The payment must: (a) be in the form of a cashier's check or money order (b) be payable to the "Florida Department of Health"; (c) include the DEP Permit Number assigned and (d) be sent to Florida Department of Health in Miami Dade County, Environmental Health Division, 1725 NW 167 Street Miami Gardens FL 33056.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

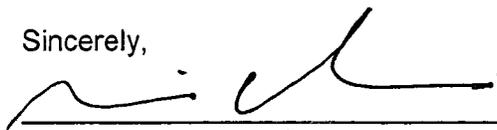
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Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Paul Levelt André, P.E. at 305-623-3500 or at Paul.Andre@flhealth.gov.

Sincerely,



Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

FOR THE RESPONDENT:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____
[Signature]

Date: _____

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this _____ day of January, 2016 in Miami-Dade County, Florida.

STATE OF FLORIDA DEPARTMENT
OF HEALTH ON BEHALF OF STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk
Attachments: Notice of Rights

Date:

Final clerked copy furnished to:
Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

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- a) The OGC Number assigned to this Order;
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Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

January 14, 2016

City of Miami Beach as Supplier of Water
Eric Carpenter, Assistant City Manager &
Director of Public Works
1700 Convention Center Drive
Miami, Beach, FL 33139

SUBJECT: Florida Department of Environmental Protection v. City of Miami Beach as Supplier of Water,
DOH Permit Number 126648-168-DSGP
OGC File No. 2016-00392
Engineer of Record: Carl L. Skiles, PE
Project Name/Applicant: Nautica Condominium
Permit Expiration Date: May 2, 2008

Mr. Carpenter,

The State of Florida Department of Health for the State of Florida Department of Environmental Protection ("Department") finds the City of Miami Beach ("Respondent"), as supplier of water placed a water system into service without department approval or clearance in violation of 62-555.345, F.A.C. and 403.121(3)(a). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

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1725 NW 167th Street
Miami Gardens, Florida 33056

Florida Department of Health
Division of Environmental Health and Engineering
Miami-Dade County
1725 NW 167th Street, Miami, FL 33056
PHONE: 305/623-3500 • FAX 305/623-3502

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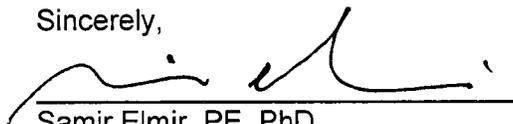
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If you have any questions, please contact Paul Levelt Andre, P.E. at 305-623-3500 or at Paul.Andre@flhealth.gov.

Sincerely,



Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health and Engineering
Florida Department of Health
Miami-Dade County

*

FOR THE RESPONDENT:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____
[Signature]

Date: _____

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this _____ day of January, 2016 in Miami-Dade County, Florida.

STATE OF FLORIDA DEPARTMENT
OF HEALTH ON BEHALF OF STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Samir Elmir, PE, PhD
Environmental Administrator
Environmental Health And Engineering
Florida Department of Health
Miami-Dade County

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date:

Attachments: Notice of Rights

Final clerked copy furnished to:
Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

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Rick Scott
Governor

John H. Armstrong, MD
State Surgeon General

July 6, 2012

Mike Alvarez
Director of Public Works
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

Dear Mr. Alvarez:

Our records indicate that several water main extension projects permitted under the referenced numbers were or may have been constructed and placed into permanent operation without the required clearance from the department in violation of the conditions under which the permits was issued.

Chapter 62-555.345 Florida Administrative Code requires that no public water system components constructed or altered under a permit granted by the department shall be placed into permanent operation without prior department's approval or clearance. Specifically, Chapter 62-555.345 (5) Florida Administrative Code requires that "suppliers of water shall ensure that permittees have obtained written clearance from the department before suppliers of water turn on water to permittees".

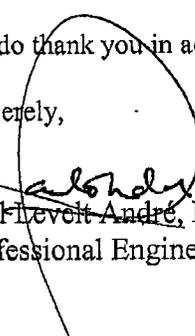
By this letter, the department is requesting that you provide documentation to evidence that the attached listed projects received proper clearance before you turned on the water to the permittees. If the aforementioned projects have not obtained proper clearance from the department, the permittees shall return and follow all clearance process to ensure the integrity of the water lines.

If this matter is not resolved immediately the Department will initiate legal action against you, which may result in a fine of up to \$ 3,000.00 and/or other penalties in accordance with Chapter 403.121(3)(a) Florida Statutes.

We look forward for your cooperation to this matter by responding within fifteen (15) days from the date of receipt of this letter. Failure to comply will leave us with no alternative to proceed as previously stated.

We do thank you in advance for your cooperation.

Sincerely,


Paul Levell Andre, P.E., CEHP
Professional Engineer Supervisor I

Cc: Samir Elmir, PE, DEE, CEHP, PhD
Tracie Dickerson, Esq. (MDCHD)

RECEIVED
CITY OF MIAMI BEACH
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2012 JUL 13 PM 3:46



Samir Elmir, PhD, PE, DEE, CEHP, Director
Environmental Health and Engineering
Miami-Dade County Health Department
1725 NW 167th Street, Miami Gardens, Florida 33056
Tel: (305) 623-3500 Fax: (305) 623-3502
Email: Samir_Elmir@doh.state.fl.us
Website: www.dadehealth.org





List of Expire Permits

- | | |
|---|---|
| 1) Permit Name: Cosmopolitan at the Court at South Beach
Address : Meridian Avenue & 1 st Street
Date of Issue: 01/29/2004 | Permit No. 126648-177-DSGP
Expiration Date: 01/29/2009 |
| 2) Permit Name: Regatta Condominiums
Address: 6580 Collins Avenue
Date of Issue: 06/16/2004 | Permit No. 126648-184-DSGP
Expiration Date: 06/16/2009 |
| 3) Permit Name: Nautica Condominium
Address: 5970-5990 Indian Creek Drive
Date of Issue: 05/02/2003 | Permit No. 125648-168-DSGP
Expiration Date: 05/02/2008 |
| 4) Permit Name: Apogee
Address: 800 South Point Drive
Date of Issue: 12/20/2005 | Permit No. 126648-197-DSGP
Expiration Date: 12/20/2010 |
| 5) Permit Name: La Gorce Country Club
Address: 5685 Alton Road
Date of Issue: 10/29/2003 | Permit No. 126648-170-DSGP
Expiration Date: 10/29/2008 |



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MIAMI BEACH

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

OFFICE OF THE CITY MANAGER

LTC # **052-2016**

LETTER TO COMMISSION

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: February 2, 2016

SUBJECT: **Miami Beach Convention Center Construction Project Update**

The purpose of this LTC is to update the Mayor and City Commission on the Miami Beach Convention Center renovation and expansion project. Project dashboard and progress photos are attached as Exhibit A. Key project milestones during the month of January 2016 are as follows:

BIDDING

Clark awarded an additional \$61 million in trade contracts in January; bringing the total under contract \$361 million out of the budgeted \$430 million. New awards related to drywall, ceilings, plaster, spray fireproofing, masonry, folding panels, and folding doors. Total trade contracts to date are on budget and the \$29.7 million construction manager's contingency has not yet been utilized.

GMP DRAW

Construction commenced in November, 2015. A total amount of \$25,893,796, or 5%, of the total GMP amount of \$515,458,058 has been invoiced to January 31, 2016.

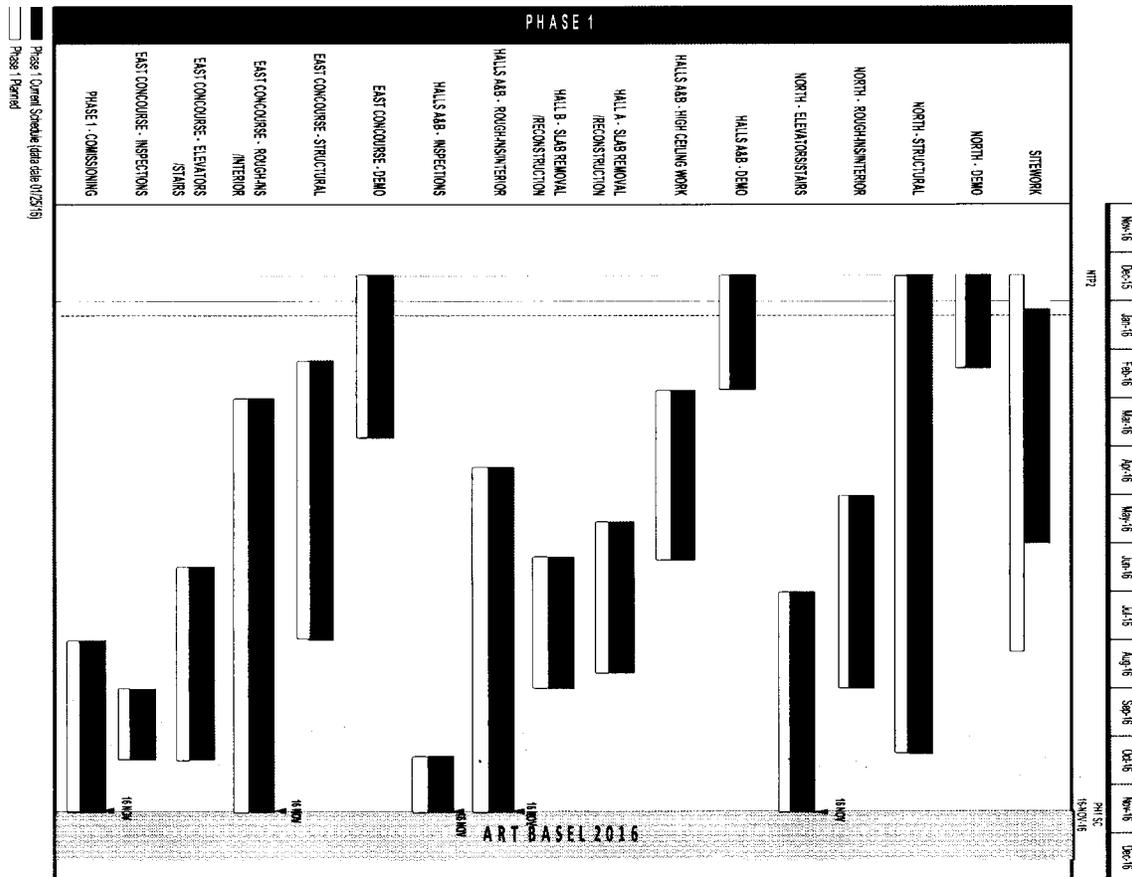
DESIGN STATUS

Construction documentation continues to progress toward its mid-February targeted completion. The Building Department and Fire Department have reviewed and commented on the plans, and Fentress Architects is incorporating their comments into the construction documents. Based upon the large population that these buildings contain, Fentress and the City have collaborated with the Building and Fire Department to provide enhanced life safety measures. These design enhancements were not anticipated at the time of the GMP (guaranteed maximum price) Amendment and a portion of the Owner's Contingency may be required to implement these improvements. The cost will be quantified after the design is complete and the construction team has time to assess the impact of the changes.

SCHEDULE

The schedule for 2016 is continually evolving with added input from the trade contractors as they come on board. Challenges with creating a safe environment for event patrons, while construction is underway, has slowed progress during the first 45 days of construction. Clark is working on a recovery plan to make up the lost productivity driven by life safety issues. In addition, Clark has indicated that their original plan of keeping the eastside kitchen in operation while the eastside is being renovated is not viable. The team is working on a solution for temporary kitchen space until the east side renovation is completed prior to Art Basel this year.

The following schedule summarizes the key milestones being tracked for Phase I which ends in December 2016:



CONSTRUCTION

Key construction activities include:

- The demolition of the youth center has been completed, and the demolition of the north loading dock is near completion.
- The Fire Command Center has been relocated to enable the west side to safely service the events occurring on the west side
- Work continues to separate the east side and west side life safety systems.
- East side interior demolition is progressing.
- Auger cast piling installation continues in the loading dock area.
- Owner and construction manager trailers are on-site.

OWNER COSTS

A total of \$24,763,277, or 35%, of the owner cost budget has been expended to date.

LOCAL HIRE

Clark Construction is committed to maximizing workforce opportunities for City of Miami Beach and Miami-Dade County residents. Attached as Exhibit B are two documents that relate to the local hiring efforts of Clark and its subcontractors thus far. The Utilization Report comes out of LCP Tracker and shows a summary of all employees on the project thus far, sorted by zip code. This shows that Clark is currently over 50% local hire (Miami Beach and Miami-Dade County) by individual and over 42% by man-hours.

If there are any questions, please do not hesitate to contact myself or Maria Hernandez at Extension 2584.

Attachments:

Exhibit A – Project Dashboard and Site Photos

Exhibit B – Clark Construction Local Hiring Plan

JLM / MH

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Center Renov & Expansion

January 31, 2016

EXHIBIT A



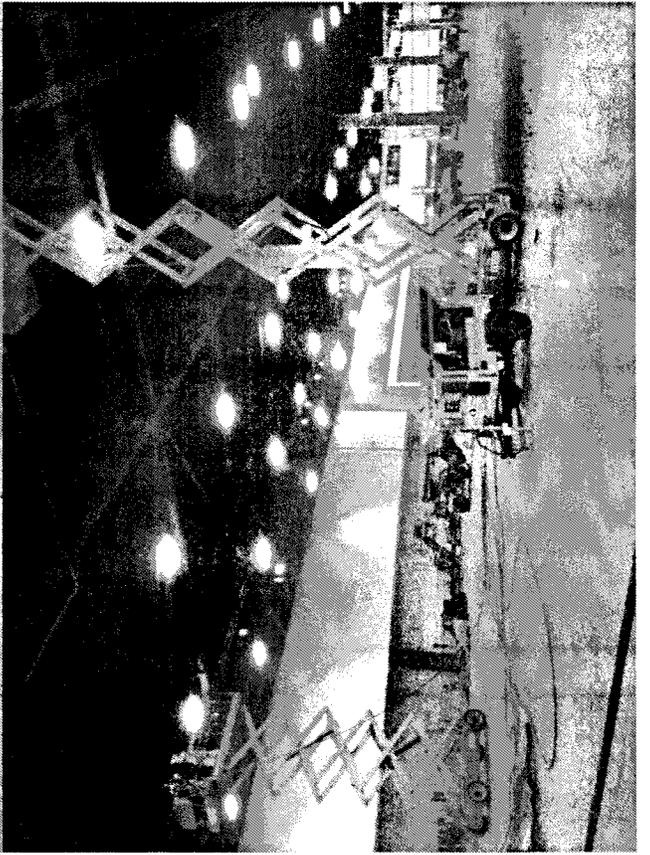
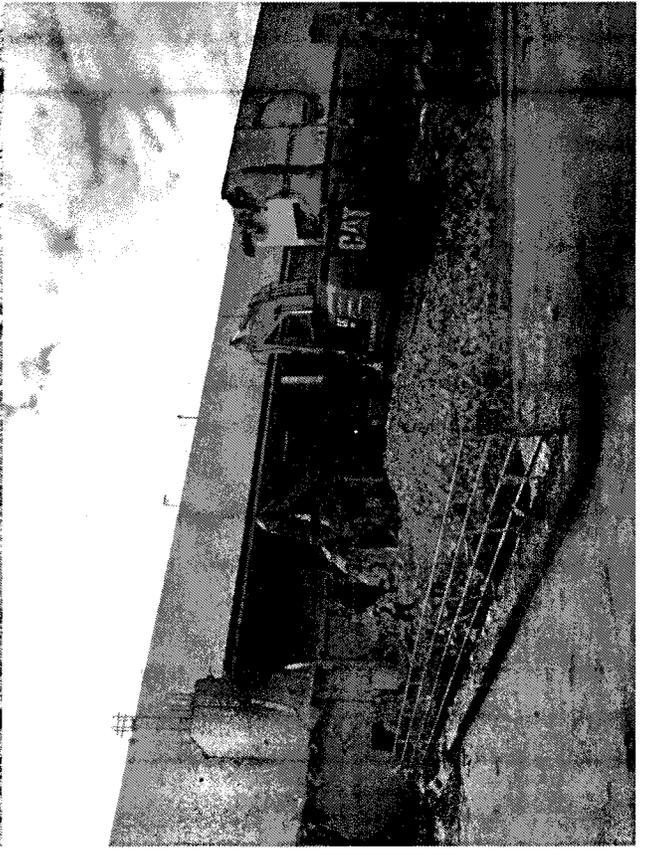
	2016	2017	2018	
Trade Bidding				Budget Actual
GMP Draw				Budget Actual
CM Contingency				Construction Notes
Owner's Contingency				Owner's Contingency
Owner Costs				Owner Notes

- Construction Notes**
- \$4.7m in GL insurance transferred from Owner budget to GMP.
 - 84% of trades bid
 - CM contingency not used.
 - Demo of youth center completed.
 - Fire Command Center relocated.
 - Demo of North Dock progressing.

- Owner Notes**
- All January shows held as scheduled.
 - Construction documents to be completed mid Feb. incorporating building department and Fire Marshal comments / changes.

Convention Center Renovation & Expansion Project Dashboard

January 2016





LOCAL HIRING PLAN

LOCAL WORKFORCE PLAN

The Clark team and subcontractors are committed to maximizing workforce opportunities for City of Miami Beach and Miami-Dade County residents. Through our Local Workforce Plan outlined below, our team will establish and implement a goal-oriented program to serve all sectors of the community. It is vital to the success of both this project and the local workforce that meaningful job opportunities for local residents are created and help them develop careers which will continue to contribute to the local Miami Beach and Miami-Dade communities.

Our company has a significant and successful history of reaching out to local residents and workforce development programs in the communities where we build. In partnership with our subcontractors we will continue to build on that history for the Miami Beach Convention Center Renovation and Expansion project.

➤ REFERRAL NETWORK

Local hiring success will begin by encouraging a referral network between the assistance agencies listed below and our subcontractors. This network will reinforce the significant benefits of hiring local workforce as well as maintain local hiring efforts within the Miami Beach area. By referring both applicants and our subcontractors to utilize the existing and trusted local resources, the pool of potential candidates is thereby increased.

- South Florida Workforce Investment Board
- Career Source South Florida
- Miami Beach Chamber of Commerce
- SER Jobs for Progress, Inc.
- City of Miami Beach
- City of Miami
- Associated Builders & Contractors (ABC)
- Associated General Contractors (AGC)
- Local Union & Apprenticeship Programs
- Helmets to Hardhats
- Transitions, Inc.

➤ 48-HOUR ADVANCE NOTICE

Clark and its subcontractors are committed to provide 48-hour advance notification of open employment opportunities via the project website and any associated City project specific website (should the City be agreeable). This advanced posting will allow for early notification of employment opportunities through the existing referral network and any potential employees signed up through their respective employment notification systems.

➤ JOB FAIR

Clark will facilitate a Subcontractor Community Job Fair focused on matching qualified local candidates with open and available subcontractor job opportunities. Project employers will be provided a table and exhibit space to highlight the various employment opportunities that may be available with their respective company. Private on-site interview space will also be made available. It is anticipated that this event take place in the convention center within the next 30-45 days. Subcontractors have already been contacted and briefed about participating in the event and are looking forward to showcasing employment opportunities with their companies.

➤ JOB OPPORTUNITY BOARD

Clark will provide an on-site Job Opportunity Board. The job opportunity board will provide a visible reminder to the local community that job opportunities exist with our subcontractors. The board will highlight open positions, employment process, contact information for subcontractor hiring personnel and helpful referral network contact information.



**CLARK - #113451 - MIAMI BEACH CONVENTION CTR
LOCAL WORKER UTILIZATION REPORT BY PROJECT**

Project: #113451 - Miami Beach Convention Center
 Project Code: 2215-29029
 Contractor(s): Multiple Contractors
 Craft(s): Nucleo Crafts

From Date: 11/1/2015
 To Date: 2/1/2016
 Report Date: 2/1/2016

Area	Total Number of Workers	% of Total Workers	Total Hours Worked	% of Total Hours Worked	Wages w/o Benefits	Wages w/o Benefits	Number of Apprentices	Number of Journeymen	Number of Foremen	Number of Owner Operators	Number of Super
Zip Lists											
Miami Beach	1	0.30 %	43.50	0.13 %	\$870.00	\$870.00	0	1	0	0	0
Miami Dade County	164	50.00 %	13,879.00	42.40 %	\$274,087.14	\$264,492.27	1	163	0	0	0
Employees Not in Specified Zip Lists	163	49.70 %	18,809.29	57.47 %	\$479,963.29	\$450,204.78	1	162	0	0	0
Demographic Profile											
African American	50	15.24 %	6,238.50	19.06 %	\$81,351.92	\$80,742.69	1	49	0	0	0
Asian	1	0.30 %	28.00	0.09 %	\$843.08	\$843.08	0	1	0	0	0
Hispanic	160	48.78 %	10,328.00	31.55 %	\$226,212.58	\$217,824.51	0	160	0	0	0
Caucasian	33	10.06 %	3,334.00	10.19 %	\$101,396.91	\$85,204.87	1	32	0	0	0
Other	84	25.61 %	12,802.29	39.11 %	\$345,515.94	\$330,951.90	0	84	0	0	0
Male	302	92.07 %	30,643.79	93.82 %	\$711,971.79	\$673,218.41	2	300	0	0	0
Female	26	7.93 %	2,087.00	6.38 %	\$42,348.64	\$42,348.64	0	26	0	0	0
Total Employees	328		32,730.79		\$754,320.43	\$715,567.05	2	326	0	0	0

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