

MIAMI BEACH

COMMITTEE MEMORANDUM

TO: Neighborhood and Quality of Life Committee Members
FROM: Raul J. Aguila, Interim City Manager
DATE: February 24, 2021
SUBJECT: **DISCUSSION REGARDING THE GARAGE ADVERTISING AGREEMENT.**

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Raul Aguila
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HISTORY:

On October 24, 2017, the City of Miami Beach entered into an agreement with Alchemy Miami Beach LLC for City Municipal Parking Garage Advertising Services. The initial term of this Agreement was for three (3) Contract Years. Per the agreement the City was to receive a Minimum Guarantee in the amount of Two Hundred Fifty thousand dollars (\$250,000.00) per year, payable in monthly payments of Twenty Thousand Eight Hundred and Thirty-Three Dollars (\$20,833.00).

BACKGROUND

As a result of the Covid pandemic, the City and Alchemy entered into a letter agreement on or about March 24, 2020 whereby the parties mutually agreed to “temporarily toll and suspend Alchemy’s payment obligations to the City... until such time that the City’s Emergency Measures prohibiting the general public’s access to the City-owned parking garages is lifted or expired.” A copy of the Letter Agreement is attached as Exhibit “A” hereto. The Letter Agreement also provides that once the general public is granted access to the City-owned parking garages, Alchemy’s payment obligations pursuant to the Agreement shall be “automatically reinstated, which amounts shall be pro-rated based on the date in the month access to the general public is reestablished.”

On October 1, 2020, the City’s Emergency Measures were amended to allow general public access to the City-owned parking garages. Accordingly, the period the Agreement was tolled pursuant to the Letter Agreement was March 24, 2020 to October 1, 2020, and Alchemy’s payment obligations pursuant to the Letter Agreement automatically reinstated on October 1, 2020. The tolling of the payment obligations resulted in a savings to Alchemy of at least \$124,998.00.

On October 26, 2020, the City notified Alchemy that general public access had been reinstated to the garage as of October 1, 2020, and that Alchemy's payment obligations resumed that date. The letter is attached hereto as Exhibit "B". Despite this, Alchemy has failed to tender any amount due since March 19, 2020. Alchemy's current past due amount, accounting for the tolling period, is \$83,332.00, plus all accrued interest, pursuant to Article 5.2 of the Agreement, until such time as payment is actually received by the City. Please note that Alchemy's payment obligations, including the monthly Minimum Guarantee, will continue to accrue until the end of the term.

Regarding a proposed settlement to amicably, and mutually, terminate the Agreement, the City had initially proposed allowing the Agreement to expire on the expiration date of the Agreement, and issue a credit to Alchemy against the past due amounts it owes to the City, in exchange for the City's ability to retain the hardware that Alchemy has installed in the garages. Alchemy has rejected this offer; indicated that it had no desire to allow the City to retain the hardware; and was not interested in any credit. In the alternative, Alchemy affirmed the following counter proposal:

1. Effective February 1, 2021 Alchemy proposes that the current Agreement would convert to a revenue share Agreement.
2. Alchemy and its sub, City Media, will pay the City of Miami Beach 15% of net revenues (gross revenues minus Agency commissions not to exceed 16.667%) on a monthly basis. Payment to be made on the 15th of the following month.
3. The City will receive up to 10% of inventory on a space available basis for the City's own use. The City will pay for production. Alchemy and City Media will post, manage and maintain the City's advertising copy at its own cost.
4. The Term will be extended for one year ending on 2/28/22.
5. If Combined Net Revenues for Alchemy and City Media is equal to or greater than \$500,000 over the 12 months of the Renewal Term, Alchemy and City Media will pay the City an additional \$25,000, and the Agreement would then renew for an additional year at the original base rent.

CONCLUSION

Having considered Alchemy's counter-offer, we hereby reject it, and would not recommend same to the Mayor and City Commission. Alchemy's proposal materially alters the core terms of the original Agreement, including extending the term and significantly altering Alchemy's financial obligations. Alchemy's proposal is effectively, a completely new deal, and as such, it would require a competitive bid waiver and a 5/7ths vote of the Mayor and City Commission.

EXHIBIT A



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

Office of the City Manager

Tel: 305-673-7010

Via e-mail to maf@alchemymedia.net
and Via Overnight Delivery

March 24, 2020

Mr. Michael A. Freedman
Alchemy Miami Beach LLC
104 Bayberry Lane
Westport, CT 06880

Re: **Agreement dated October, 24, 2017, between the City of Miami Beach, Florida ("City") and Alchemy Miami Beach LLC ("Alchemy"), for City Municipal Parking Garage Advertising Services Pursuant to RFP 2017-081-WG (the "Agreement").**

Mr. Freedman:

Due to the onset of the COVID-19 pandemic, the State, County and City of Miami Beach have declared a State of Emergency. The City has enacted Emergency Measures, which in part, provides that "[a]ll City-owned parking garages and City-owned surface parking lots shall be **CLOSED** to the general public **(except for permit and access card hold)**."

Pursuant to Section 13.1(b) of the Agreement, Alchemy and the City hereby agree to temporarily toll and suspend Alchemy's payment obligations to the City for the Minimum Guarantee and Utility Charges (as defined in Article 5.1 and 5.4 of the Agreement), until such time that the City's Emergency Measures prohibiting the general public's access to the City-owned parking garages is lifted or expired. Once the general public is again granted access to the City-owned parking garages, Alchemy's payment obligations of the Minimum Guarantee and Utility Charges shall be automatically reinstated, which amounts shall be pro-rated based on the date in the month access to the general public is reestablished.

Except as amended in this Letter Agreement, all other terms and conditions of the Agreement shall remain in full force and effect (unless amended, in writing, and executed by the parties, at a future date).

City of Miami Beach


Jimmy L. Morales, City Manager

Alchemy Miami Beach LLC


NAME: *Michael A. Freedman*
TITLE: *CEO*

cc: Tonya Daniels, City of Miami Beach

EXHIBIT B

MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139 Tel. 305-673-7010 Fax: 305-673-7782
Office of the City Manager

October 26, 2020

Via electronic mail to maf@alchemymedia.net
And Via Overnight Delivery

Mr. Michael A. Freedman
Alchemy Miami Beach LLC
103 Bayberry Lane
Westport, CT 06880

Re: Agreement dated October, 24, 2017, between the City of Miami Beach, Florida ("City") and Alchemy Miami Beach LLC ("Alchemy"), for City Municipal Parking Garage Advertising Services Pursuant to RFP 2017-081-WG (the "Agreement").

Mr. Freedman:

This shall serve as a follow up to the City of Miami Beach's March 24, 2020 letter to Alchemy, whereby the City temporarily tolled and suspended Alchemy's payment obligations for the Minimum Guarantee and Utility Charges pursuant to the Agreement, due to the onset of the COVID-19 pandemic and the State, County and City of Miami Beach declaration of a State of Emergency. The City enacted the Emergency Measures, which in part, provided that "[a]ll City-owned parking garages and City-owned surface parking lots shall be CLOSED to the general public (except for permit and access card hold)."

Pursuant to the direction set forth during the recent Miami Beach Commission Meeting held on Wednesday, September 29, 2020, all Miami Beach parking facilities have been reopened at full capacity. The City's March 24, 2020 letter provided that once "the general public is again granted access to the City-owned parking garages, Alchemy's payment obligations of the Minimum Guarantee and Utility Charges shall be automatically reinstated, which amounts shall be pro-rated based on the date in the month access to the general public is reestablished." Accordingly, access to the general public has been reestablished and Alchemy's payment obligations pursuant to the Agreement are reinstated as of October 01, 2020. Payment to the City shall be remitted for past due amounts on or before November 30, 2020.

The City reserves all of its rights and remedies under the Agreement, at law and in equity. Should you have any questions regarding the foregoing, please do not hesitate to reach out to Tonya Daniels at (305) 216-9462.

Sincerely,

DocuSigned by:



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Jimmy Morales
City Manager

Cc:

Tonya Daniels, City of Miami Beach Director of Marketing and Communications

EXHIBIT C



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139 Tel. 305-673-7010 Fax: 305-673-7782
Office of the City Manager

February 3, 2021

Via electronic mail to maf@alchemymedia.net
And Via Certified Mail

Mr. Michael A. Freedman
Alchemy Miami Beach LLC
103 Bayberry Lane
Westport, CT 06880

Re: **NOTICE OF DEFAULT**

Agreement dated October, 24, 2017, between the City of Miami Beach, Florida ("City") and Alchemy Miami Beach LLC ("Alchemy"), for City Municipal Parking Garage Advertising Services Pursuant to RFP 2017-081-WG (the "Agreement").

Mr. Freedman:

This letter shall serve as the City's Notice of Default to Alchemy, in accordance with Article 14.2 of the Agreement, for failure to tender to the City amounts due under the Agreement, including, without limitation, the Minimum Guarantee as set forth in Article 5.1 of the Agreement. The current past due amount to the City is **\$83,332.00**. Alchemy's failure to tender the past due amounts within fifteen (15) days shall result in the termination of this Agreement, for cause pursuant to Article 14.2 of the Agreement.

As a result of the Covid pandemic, the City and Alchemy entered into a letter agreement on or about March 24, 2020 (the "Letter Agreement"), whereby the parties mutually agreed to "temporarily toll and suspend Alchemy's payment obligations to the City... until such time that the City's Emergency Measures prohibiting the general public's access to the City-owned parking garages is lifted or expired." A copy of the Letter Agreement is attached as Exhibit "A" hereto. The Letter Agreement also provides that once the general public is granted access to the City-owned parking garages, Alchemy's payment obligations pursuant to the Agreement shall be "automatically reinstated, which amounts shall be pro-rated based on the date in the month access to the general public is reestablished."

On October 1, 2020, the City's Emergency Measures were amended to allow general public access to the City-owned parking garages. Accordingly, the period the Agreement was tolled pursuant to the Letter Agreement was March 24, 2020 to October 1, 2020, and Alchemy's payment obligations pursuant to the Letter Agreement automatically reinstated on October 1, 2020. The tolling of the payment obligations resulted in a savings to Alchemy of at least **\$124,998.00**.

In accordance with Article 14.2 of the Agreement, Alchemy's failure to submit payments due under the Agreement is a "Default in Payment". Alchemy's failure to submit the past due payment within fifteen (15) days of this written notice shall result in the City's termination of the Agreement, for cause, without further demand or notice, and without the City being prejudiced as to any remedies available to the City at law or in equity.

On October 26, 2020, the City notified Alchemy that general public access had been reinstated to the garage as of October 1, 2020, and that Alchemy's payment obligations resumed that date. The letter is attached hereto as Exhibit "B". Despite this, Alchemy has failed to tender any amount due since March 19, 2020. Alchemy's current past due amount, accounting for the tolling period, is \$83,332.00, plus all accrued interest, pursuant to Article 5.2 of the Agreement, until such time as payment is actually received by the City. Please note that Alchemy's payment obligations, including the monthly Minimum Guarantee, will continue to accrue until the end of the term.

With regard to a proposed settlement to amicably, and mutually, terminate the Agreement, the City had initially proposed allowing the Agreement to expire on the expiration date of the Agreement, and issue a credit to Alchemy against the past due amounts it owes to the City, in exchange for the City's ability to retain the hardware that Alchemy has installed in the garages. Alchemy has rejected this offer; indicated that it had no desire to allow the City to retain the hardware; and was not interested in any credit. In the alternative, Alchemy affirmed the following counter proposal:

1. Effective February 1, 2021 Alchemy proposes that the current Agreement would convert to a revenue share Agreement.
2. Alchemy and its sub, City Media, will pay the City of Miami Beach 15% of net revenues (gross revenues minus Agency commissions not to exceed 16.667%) on a monthly basis. Payment to be made on the 15th of the following month.
3. The City will receive up to 10% of inventory on a space available basis for the City's own use. The City will pay for production. Alchemy and City Media will post, manage and maintain the City's advertising copy at its own cost.
4. The Term will be extended for one year ending on 2/28/22.
5. If Combined Net Revenues for Alchemy and City Media is equal to or greater than \$500,000 over the 12 months of the Renewal Term, Alchemy and City Media will pay the City an additional \$25,000, and the Agreement would then renew for an additional year at the original base rent.

Having considered Alchemy's counter-offer, we hereby reject it, and would not recommend same to the Mayor and City Commission. Alchemy's proposal materially alters the core terms of the original Agreement, including extending the term and significantly altering Alchemy's financial obligations. Alchemy's proposal is effectively, a completely new deal, and as such, it would require a competitive bid waiver and a 5/7ths vote of the Mayor and City Commission. Notwithstanding my lack of authority to unilaterally accept the counter-offer, it will be my recommendation to not accept your proposal.

Despite your initial rejection, the City is still prepared to offer a credit to Alchemy against the past due amounts it owes to the City in exchange for the City's ability to retain the hardware that Alchemy has installed in the garage, and thereby allow the Agreement to expire on March 6, 2021. Please advise if Alchemy is amenable to the City's proposal no later than fifteen (15) days receipt of this written notice.

The City reserves all of its rights and remedies under the Agreement, at law and in equity. Should you have any questions regarding the foregoing, please do not hesitate to reach out to Tonya Daniels at (305) 216-9462.

Sincerely,

Raul Aguila
Interim City Manager

Cc: Rafael Andrade, Esq.
Tonya Daniels, City of Miami Beach Director of Marketing and Communications
Jason Jacobson, Sr. Assistant City Attorney