

MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Rafael A. Paz, City Attorney



DATE: March 27, 2023

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, ACCEPTING THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE (FERC) RECOMMENDATION WITH RESPECT TO THE PROPOSAL RECEIVED FROM ALCHEMY MIAMI BEACH LLC PURSUANT TO RFP 2022-047-WG FOR GARAGE ADVERTISING SERVICES, AND APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH ALCHEMY MEDIA, CONSISTENT WITH THE FERC'S RECOMMENDED TERMS.**

BACKGROUND

On April 6, 2022, the City Manager recommended the rejection of the sole bid received from Alchemy Miami Beach LLC ("Alchemy") in response to Request for Proposal 2022-047-WG (the "RFP"). The City Commission deferred action on the City Manager's recommendation and directed the Administration to attempt to negotiate mutually acceptable financial terms with Alchemy.

As directed by the City Commission, the Administration held several meetings with Alchemy representatives in an attempt to negotiate mutually acceptable financial terms for the services. On August 16, 2022, Alchemy submitted a revised final proposal with two options (the main difference between the two being the inclusion of digital boards in Option I). After considering the revised proposal submitted by Alchemy, on November 16, 2022, the City Manager resubmitted a recommendation to the City Commission to reject the sole bid received.

At the November 16, 2022 Commission meeting, instead of rejecting Alchemy's bid as recommended by the City Manager, the City Commission referred the item to the Finance and Economic Resiliency Committee (the "FERC") for further discussion.

At its January 27, 2023 meeting, the FERC discussed the potential benefits of Alchemy's proposal, including the monetary benefits offered for Miami Beach public schools and for general maintenance and beautification of public areas surrounding garages where the proposed signage would be located. Following its discussion, the FERC referred this item back to the City Commission with a recommendation that Alchemy be awarded the contract contemplated by the RFP, provided that a termination for convenience clause exercisable after sixteen (16) months be included, with an amortization based on the three (3) year term. The FERC also requested that,

prior to the March 27, 2023 Commission meeting, the City Attorney's Office (1) determine whether the existing naming rights agreement with OVG360 precluded the City from entering into an agreement with Alchemy and (2) review whether any of the proposed signage falls outside of the scope of the RFP and would thus require a bid waiver.

LEGAL ISSUES PRESENTED

OVG360 Agreement. The Naming Rights and Sponsorship Agreement dated August 14, 2020 between the City and OVG360 (the fictitious name for Global Spectrum LP) (the "NRS Agreement") does not confer exclusivity with regard to the procurement of advertising within City garages unless the City issues a Notice to Proceed with regard to City garages to OVG 360; the City has not issued such a Notice to Proceed. The NRS Agreement, therefore, does not preclude the City from entering into an agreement for garage advertising services with Alchemy. The NRS Agreement does, however, confer upon OVG360 the right to act as the City's sole and exclusive representative for the marketing of naming rights of certain City-owned properties including City garages. Accordingly, if OVG360 presents a naming rights opportunity for a City garage that the City Commission is inclined to accept, the City would need to direct Alchemy to remove any advertising that would conflict with the proposed name. Given the long lead time for reviewing and approving any potential naming rights opportunity, this issue could be resolved contractually by including a provision in the proposed contract with Alchemy, requiring Alchemy to remove conflicting advertising within a reasonable period following notice from the City.

Proposed Location of Signage. One of the Administration's concerns relating to the Alchemy proposal is that it contemplates placement of advertising signs that are not at garage entrances or exits. Section 82-71 of the City Code governs the placement of signage on City garages. It includes the following restrictions:

"[Advertising signs within City garages] shall only be placed within the property line of the municipal parking garage facilities, and may be visible from the public right-of-way. Notwithstanding the preceding, however:

(a) No advertising sign shall be placed on a municipal parking garage facility facade, except at a garage entrance or exit, and

(b) No advertising sign above the first floor shall be placed in any location where such sign may be visible from the right-of-way."

Section 82-71, City of Miami Beach Code of Ordinances. The ordinance does not define "garage entrance or exit." Therefore, the question as to whether the contemplated locations of advertising signs by Alchemy are consistent with the restrictions in Section 82-71 is for the City Commission, as the owner of the City's public parking garage facilities, to determine in its sole discretion. In response to the Administration's concerns, Alchemy has submitted that each of the proposed signs is in proximity to either a vehicular or pedestrian entrance or exit to a garage (a copy of Alchemy's proposal is attached as **Exhibit A**).

In particular, with respect to one proposed location for signage along the Meridian Avenue façade of the 1755 Meridian Ave building, the proposed location is not near the **vehicular** entrance to the garage, but rather, is in proximity to stairway and/or other pedestrian entrances to the garage. Section 82-71, however, provides no guidance, does not prescribe any specific distance requirement, or otherwise provide any indication that the references to "garage entrance or exit"

are only related to *vehicular* entrances/exits. Accordingly, a finding by the City Commission that the location of the signs contemplated by Alchemy's proposal are at garage entrances or exits would conclusively settle the issue in Alchemy's favor. Conversely, a finding by the City Commission that it believes references to "garage entrance or exit" only relates to vehicular entrances/exits, or that the proposed locations are not otherwise consistent with Section 82-71 requirement for signage to be "at garage entrances or exits," would likewise settle the issue, and in such event, the City Commission could either decline to approve the particular signage along Meridian Avenue and proceed with the remainder of the proposal, or award the signage in question with a waiver of competitive bidding. Further, if the City Commission desires to clarify the restrictions imposed in Section 82-71 by, for example, developing a definition of garage entrance or exit and/or providing for a maximum distance for the placement of signage from a garage entrance or exit, the City Commission could certainly amend the Code at any time, to clarify the issues prospectively.

Moonlighter. Notwithstanding the foregoing, there is one proposed sign that requires separate analysis. Specifically, Alchemy's proposal includes signage that is near the entrance/exit of the garage located at 1661 Pennsylvania Avenue, along the façade of a portion of the building that is currently leased to Moonlighter, Inc. ("Moonlighter"). Because Moonlighter holds the lease, which includes the exterior windows as part of the leased property, any placement of signage at this location will require Alchemy to reach a separate agreement with Moonlighter. Should the City Commission approve signage at this location, the agreement with Alchemy shall make clear that the signage could only be installed, if approved by Moonlighter, as the lessee of the property.

The Office of the City Attorney has prepared this Memorandum based on the FERC's desire for clarification as to the foregoing legal issues, and expresses no recommendation either for or against the award of the contract. For its part, the Administration has not changed its recommendation that the City Commission reject Alchemy's bid, for the reasons the Administration previously articulated. However, if the Commission elects to proceed with an award of the garage advertising services contract to Alchemy, the Administration would recommend excluding all advertisement signs that are near, but not at, a *vehicular* garage entrance.

RAP/RJD/ag

Attachments:

Exhibit A – Excerpts from Alchemy Proposal Reflecting Proposed Sign Locations