



MIAMIBEACH

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

COMMITTEE MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: City Manager Jorge M. Gonzalez

DATE: November 16, 2009

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for November 16, 2009, at 3:00 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

OLD BUSINESS

1. Update on Building Development Process Fee Study

Kathie Brooks – Budget & Performance Improvement Director

NEW BUSINESS

2. Discussion regarding the implementation of a Municipal Marketing (Corporate Sponsorship) program for the City.

Hilda Fernandez – Assistant City Manager

3. A discussion regarding a lease agreement with Immunity, Inc. a computer security software company, for use of the 7th and 8th floor of Historic City Hall

Anna Parekh – Director of Real Estate Housing and Community Development

Finance and Citywide Projects Committee Meetings for 2009:

December 15, 2009

JMG/PDW/rs/th

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Cc. Mayor and Members of the City Commission
Management Team

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Discussion Item

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: Jorge M. Gonzalez, City Manager

DATE: November 16, 2009

SUBJECT: **DISCUSSION REGARDING A LEASE AGREEMENT WITH IMMUNITY, INC. FOR USE OF THE 7TH AND 8TH FLOORS OF HISTORIC CITY HALL**

BACKGROUND

On November 2, 2004, a referendum supporting The Building Better Communities General Obligation Bond Program (BBC GOB) was passed, which provided \$2.9 billion to fund more than 300 capital improvements, and included an allocation for the renovation of Historic Old City Hall. Renovations necessitated that the occupants of the building vacate during the construction process. Although substantial completion of the extensive renovations has been completed for some time, the building did not receive a Certificate of Completion until May 13, 2009. The Miami-Dade Clerk of the Courts moved back into the building earlier this year and resumed services to the public on June 22, 2009. The building is now available for occupancy by tenants.

In regard to the leasing of space within the building, at the October 21, 2008 meeting of the F&CW Committee it was determined that Historic City Hall would not be fully re-occupied by City offices, resulting in leaseable space availability. The Committee directed the Administration to advertise and market the leaseable ground floor retail space (approximately 5113 sf), and negotiate any potential leases. The Administration did not receive any initial interest in the first floor space for retail use, but received interest in vacant office spaces in the building (approximately 4,000 sf). In a subsequent F&CW meeting on March 10, 2009, a comprehensive overall space utilization and planning item identified that City departments originally intended to re-occupy Historic City Hall would be relocated to other available space in City buildings, increasing the leaseable space in Historic City Hall by approximately 5085 sf, or a total of approximately 14, 215 sf, including the ground floor, but exclusive of the second floor space utilized by the Clerk of the Courts.

At that meeting, the Committee approved the Administration's recommendation that the process of developing lease agreements based on supply and demand be utilized for the occupancy of these available spaces, and that any future commercial leases (including renewals and/or extensions) for use of space at Historic City Hall be handled as it is in the private sector and not through a competitive bid process, with the administration ensuring that market rates are negotiated and operating expenses included. All leases would continue to require City Commission approval per City Code.

Staff marketed the location using typical real estate marketing tools. To date, staff has fielded all public queries and has shown the property, resulting in Letters of Interest (LOI). However, based on the fluctuation of the current real estate market in this economic environment, the City requested an appraisal which was obtained by Bondarenko & Associates to determine the market rent value; a revised appraisal was provided on July 7, 2009 to reflect further changing conditions. The Revised Appraisal is attached hereto as Attachment "A". The resulting market

rental rates of \$25-\$30 PSF were determined to be based on gross rent, full service. The \$25 PSF market rent for floors 1 – 7 was set as an average, with a premium for the 8th floor penthouse set at \$30 PSF. The highest and best use for the entire building was deemed to be "Office," with the notation that the ground floor potential use as retail commercial is not practical due to the restrictions of the Historic designation of the site.

A recent review of LoopNet, the industry's resource for commercial real estate, found that available office spaces in the 33139 zip code area are listed with a range of \$21.60 - \$55.00, with an average rate of \$ 31.60 Gross/Full Service.

As you may recall, the City has negotiated short term leases for use of the ground floor and 8th floor space with ESPN relating to their local coverage of the NFL's Pro Bowl and Super Bowl. As such, the 8th floor space is not available until after their move out following Super Bowl.

PROPOSED LEASE

Immunity, Inc., is a computer security software company. The company was founded in 2002 as an independent security research company (**EXHIBIT A**). They are currently occupying offices at 1247 Alton Road. Immunity submitted various Letters of Intent (LOI) for use of both the 7th and 8th floors in Historic City Hall, located at 1130 Washington Avenue.

The City's asking rate is \$25 PSF for the 7th Floor, encompassing 1,518 SF, and \$30 PSF for the 8th Floor, encompassing another 1,518 SF, and/or a blended rate of \$27.50 for the use of both the 7th and 8th Floors, encompassing a total of 3,036 SF. On October 23, 2009, Immunity submitted its first LOI offering to pay the City a monthly rent in the amount of \$5,500, equal to a blended rate of \$21.74. The City rejected Immunity's offer, at which time, Immunity submitted a second LOI offering to pay \$6,000 per month, equal to a blended rate of \$23.72. After further discussions and negotiations, Immunity submitted a third and final LOI (**EXHIBIT B**) offering to pay \$6,400 per month, equal to a blended rate of \$25.30. The City countered with a \$25.30 PSF rent, but no rent abatement as previously recommended by the F&CPC for other lessees (three months, one month per year).

At a blended rate of \$27.50 PSF (less the one month annual rent abatement), the City would be receiving a total annual rent in the amount of \$76,532.50. Immunity's offer of \$25.30 PSF (with no annual rent abatement credit as proposed by the Administration) would generate an annual rent payment to the City of \$76,810.80, resulting in a higher annual revenue to the City than would have been generated at the blended market rate with the rent abatement model previously approved by the Committee.

A summary of the proposed lease terms are being submitted for the F&CPC's consideration and are as follows:

- TENANT:** Immunity, Inc., a Florida corporation.
- DEMISED PREMISES:** A total of 3,036 SF comprised of 1,518 SF on the 7th Floor and 1,518 SF on the 8th Floor of Historic City Hall, located at 1130 Washington Avenue.
- TERM:** Initial term of three (3) years, with two (2) additional three (3) year renewal options, at the City's sole discretion.

- COMMENCEMENT DATE:** June 1, 2010
- BASE RENT:** \$25.30 PSF. Base Rent (excludes Operating Expenses, Property Taxes and Insurance) shall be increased annually, on the anniversary of the Commencement Date, in increments of three (3%) percent per year.
- ADDITIONAL RENT:** Any increase in Operating Expenses and Insurance will result in an increase to Tenant's proportionate share.
- PARKING:** Tenant may request, from the City's Parking Department, the use of no more than eight (8) parking spaces (equal to approximately one parking space per every 400 SF of leased space. Rates for said spaces are subject to change, and are currently \$70 per month plus applicable sales tax.
- SECURITY DEPOSIT:** Prior to the execution of the Lease, Tenant will furnish the City with a Security Deposit in the sum of \$12,800 (equal to two months Rent and Additional Rent costs).
- USES:** The Demised Premises shall be used by the Tenant as office space for developing and providing information security technologies and services. The Demised Premises shall be open a minimum of five days a week (Monday-Friday) from 9:00AM to 5:00PM.
- IMPROVEMENTS:** No significant improvements and/or build out is anticipated.
- INSURANCE:** Tenant shall comply with the following insurance requirements throughout the Term:
- Comprehensive General Liability in the minimum amount of \$1,000,000 per occurrence for bodily injury and property damage. The City of Miami Beach must be named as additional insured parties on this policy, subject to adjustment for inflation.
- Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.
- All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Agreement) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant, subject to adjustment for inflation.
- PROPERTY TAXES:** Property taxes for Property Tax Year 2009 are estimated at Zero Dollars (\$0.00). Notwithstanding, the City makes no warranty or representation, that the Historic City Hall building, the Land, and/or

the proposed lease premises will not be subject to ad valorem (or other) taxes in subsequent years. In the event Miami-Dade County assesses the property, Tenant shall pay its proportionate share of the property tax bill. Any property tax payment shall be payable by Tenant immediately upon receipt of notice from the City.

Tax Stop.

Notwithstanding the preceding, in the event the property is subject to Miami-Dade County property taxes, the City shall be responsible for payment of the Property Tax Payment up to an amount not to exceed Three Dollars (\$3.00) per square foot (Tax Stop Amount) with Tenant to be responsible for anything in excess of that amount. Tenant shall promptly reimburse the City for its portion of the Property Tax Payment (if any) upon receipt of the City's invoice for same.

UTILITIES:

Tenant retains sole responsibility for all utilities (not included as part of Operating Expenses) including janitorial, internet and telephone services.

**MAINTENANCE
AND REPAIR:**

Tenant shall be responsible for day-to-day maintenance and repairs of the Demised Premises, including, without limitation, all fixtures, appurtenances, equipment and furnishings.

OTHER INTERESTED PARTIES

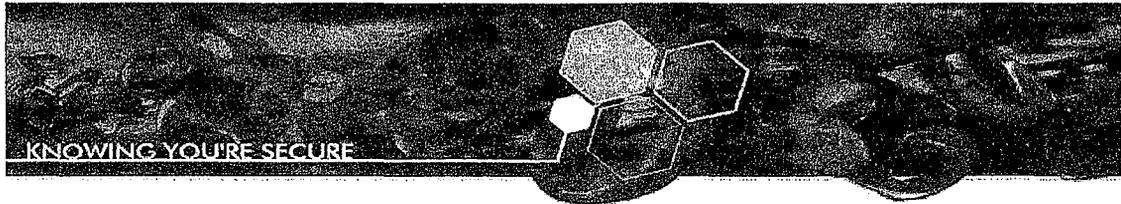
The Miami Beach Film Society, Inc. (d/b/a Miami Beach Cinematheque) also submitted an LOI for use of the 8th Floor of Historic City Hall as offices. It would be the Miami Beach Cinematheque's intention to share the 8th Floor offices with another entity, Bonafida Design. Miami Beach Cinematheque has offered to pay the City's asking price of \$30 PSF. As the proposed lease with Immunity, Inc. provides the City with occupancy of two floors, and the Cinematheque is not interested in leasing two floors, the Administration is recommending the lease with Immunity, Inc. The Cinematheque has been shown other available space at Historic City Hall but has not expressed an interest in other locations at this time.

CONCLUSION

Given the economic environment that has produced a high inventory of vacant office space in the 33139 zip code (as demonstrated by market research), the Administration recommends a lease agreement with Immunity, Inc. for use of both the 7th and 8th Floors and that the proposed terms, as delineated herein, be accepted and recommended for approval by the City Commission.

JMG/HMF/AP/rfr

EXHIBIT A



About Immunity Inc.

Immunity was founded in 2002 as an independent information security research company. Immunity has since evolved into a global leader in the computer security assessment space. By maintaining its independence from external investors, Immunity has grown its unique technology offerings and consulting services based on actual customer demand.

Immunity is an industry leader in discovering, developing and delivering information security technologies and services. This includes vulnerability analysis software, wireless penetration testing hardware, security analysis services and assessment training. Immunity's consulting services include web site penetration testing, software vulnerability management, and software source code review.

Immunity also serves as an information hub within the global security community, hosting the popular "DailyDave" mailing list and often serving as a source for analysis and opinion on the latest computer security threats, as reflected in various media coverage.

Immunity delivers products and services to Fortune and Global 500 companies and smaller organizations across all vertical markets. Immunity also serves Government departments from all over the world, often in private training classes attended by civilian and military personnel.

Immunity's team is made up leading experts, many of whom are internationally recognized for their deep technical knowledge and cutting edge industry research. Immunity often gives presentations at conferences around the world, and several of its employees have authored books and white papers on software security topics. Many of Immunity's experts relocated to Miami Beach from around the world in order to join the team.

Immunity is an independent, one hundred percent American-owned and 8(a) certified Small Disadvantaged Business and has been headquartered in Miami Beach, Florida since 2005. Most of the company's 23 employees are based in the Miami Beach headquarters, with others located in Canada, Washington DC, Hawaii and Argentina.

Immunity Ownership and Management

The Founder and CTO of Immunity, Dave Aitel, was a research scientist with the National Security Agency and then consultant with @stake (acquired by Symantec). Dave leads the technical team and product and service direction at Immunity.

Justine Aitel, Immunity's CEO, is a New Zealander who started her career with the Government Communications Security Bureau. She then joined Internet Security System's XForce and spent several years as a consultant before joining Bloomberg LP. Prior to joining Immunity, Justine was Chief Security Officer of Bloomberg LP, based in New York City.



EXHIBIT B



October 26, 2009

RE: Letter of Intent for 7th and 8th Floor Miami Beach City Hall Office Space for Lease

To whom it may concern:

Immunity Inc. is interested in entering into a lease agreement with the City of Miami Beach for the 7th and 8th floor office space that is currently available within the Historic City Hall located at 1130 Washington Avenue, Miami Beach, Florida, 33139. Immunity Inc. is offering to pay \$6,400 USD per month total for both floors. As we are currently tied into a lease at our office located off of Alton Road, we would need this lease to start on June 1, 2010.

Company Information

Immunity Inc. delivers high-tech information security products and services to local, federal and international government organizations, as well as Fortune and Global 500 companies. This includes security assessment software and hardware, information security analysis services and security assessment training classes for international clients. Immunity was founded in 2002 and is a certified 8(a) Small Disadvantaged Business.

Immunity is owned and managed by a husband and wife team. Justine and Dave Aitel are home owners in South Beach and their son attends a local school. Immunity has maintained a steady growth since its beginning, and currently has 22 full time employees, half of which were relocated to Miami Beach by Immunity. Justine and Dave are committed to continue growing Immunity Inc. in Miami Beach and contribute to the local economy and community.

If you have any questions please do not hesitate to contact us. We look forward to hearing from you!

Sincerely,

David Aitel
Founder, Owner, President, CTO