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COMMITTEE MEMORANDUM

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

FROM: City Manager Jorge M. Gonzalez *for*

DATE: April 14, 2010 *Jish*

SUBJECT: **REPORT OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE MEETING OF March 25, 2010.**

OLD BUSINESS

NEW BUSINESS

1. Discussion regarding the potential garage project and joint venture in the Collins Park Neighborhood.

ACTION

The Committee recommended that the contract for purchase be brought to the April 14, 2010 Commission Meeting.

Assistant City Manager Jorge Gomez presented the item and gave a brief history of the item. Mr. Gomez stated that American Riviera Real Estate Company (ARRE) has agreed to sell the land to the City with the following considerations in the proposal:

- once the garage is open, Palm Court would have the right to purchase 50 monthly municipal garage permits at market rate
- until construction starts, the surface parking lot would continued to be used by AARE for Palm Court,
- ARRE has agreed to give the City architectural plans that have already been prepared to date,
- And if the City were to have a valet operator in the garage, the City would not preclude Palm Court from negotiating with the operator to also service Palm Court.

Mayor Matti Bower asked what the procedure is currently for valet operations in the City's other garages. City Manager Jorge Gonzalez stated that the City has not used public garages for valet operation, other than a few spaces that are contractually obligated in the Anchor garage as part of the Loews and Royal Palm agreement, 5th and Alton is the only garage has been used for valet storage. Commissioner Jorge Exposito asked how many spaces would be in the Collins Park garage. Mr. Gomez stated that approximately 360 are planned for the garage. The Committee recommended that the contract for purchase be brought to the April 14, 2010 Commission Meeting.

2. Status of a Land Easement Purchase Agreement with the Miami Beach Housing Authority for the Proposed West Avenue Bridge.

ACTION

The Committee recommended the item be brought to the Commission with the term sheet unless an issue arises in which case it should return to the Finance & Citywide Projects Committee.

Assistant City Manager Jorge Gomez presented the item and gave a brief history of the item.

In 1999, the City Commission approved the Municipal Mobility Plan (MMP). The West Avenue Bridge Project (the Project) was developed from the MMP Project #30, which envisioned corridor improvements to the intersection of Dade Boulevard at 17th Street/Bay Road to be combined with a connection between Dade Boulevard and West Avenue through the construction of a new bridge. The implementation of the project requires that the City acquire right-of-way, either via easement or fee, through a parcel presently owned by the Housing Authority of the City of Miami Beach (HACMB). For over two years, the City and HACMB have been negotiating the purchase of either all, or a portion out of the triangular property located on 17th Street. The City has offered to pay the appraised value of the easement. The purchase of the easement was chosen (rather than fee) because it allows the remaining property to keep the Floor Area Ratio (FAR) of the entire parcel to be utilized on that portion of the property that is not subject to the easement.

At the June 25, 2009 Finance Committee meeting, the Committee directed the Administration to submit a written offer for the easement. Said written offer was submitted to the HACMB on June 30, 2009. At the October 29, 2009 Finance Committee meeting, General Counsel for the HACMB stated that the HACMB Board rejected the June 30 offer but may still be willing to negotiate further. On February 18, 2010, the City received a letter from the HACMB, transmitting their counter-offer to the City's offer to purchase the easement area. The HACMB acceptance was conditioned on a number of items. On February 23, 2010, the Administration sent a letter to the HACMB, stating that the counter-offer could not be accepted, and that the City's offer remained unchanged from that of the June 30, 2009.

The HACMB has accepted the City's purchase price of the easement for \$1.635 million. Mr. Gomez reviewed the February 18, 2010 HACMB counter-offer letter with the Committee and stated conditions (1), (2), and (6) were accepted; (3) and (4) were modified and accepted; (5), (9), (10), (11) and (13) were rejected and (12) would be researched further. Deputy City Attorney Raul Aguila stated that two documents will be prepared, the grant of easement and a development agreement. Commissioner Jorge Exposito asked that in the future an appraisal be obtained within the last six months of approving any future land purchases.

The Committee recommended the item be brought to the Commission with the term sheet unless an issue arises in which case it should return to the Finance & Citywide Projects Committee.

3. Discussion regarding the Federal Legislative Services Agreement

ACTION

The Committee recommended retaining the MWW Group and that the item be brought to the full Commission.

City Manager Jorge Gonzalez presented the item and gave a brief synopsis of the memo.

On January 12, 2005, the Mayor and City Commission approved Resolution No. 2005-25794, approving a new agreement with the MWW Group. The current agreement expires on September 30, 2010, and includes the following terms:

- Three (3) year base term;
- Two (2), one-year renewal options
- \$100,000 per year beginning the first full year of the agreement (Oct 2005-Sep 2006), with a CPI escalator each year, beginning with the second full year of the agreement and including the option years.
 - *Note: the contract amount for the current fiscal year is \$102,800*

Historically, the Mayor and City Commission have in the past chosen to approve a waiver of competitive bidding and enter into a new agreement with the City's existing firm, and on other occasions the Mayor and City Commission have issued a Request for Qualification (RFQ) for state and/or federal legislative services. The Administration is supportive of a new contract with the MWW Group. The Committee recommended retaining the MWW Group and that the item be brought to the full Commission.

4. Living Wage/Proposed Ordinance Amendment

ACTION

The Committee recommended the item be brought to the Commission with the following changes included:

- **Include a "make-up" provision to allow the City to increase the living wage by greater than 3% if no increase has been given in prior years**
- **60 days be allowed to receive information from the vendor after a complaint is filed and the City Manager be allowed 60 days to complete the investigation, and that failure to comply could result in termination or suspension of the contract**
- **Streamline Section 2-410 (b)(2), (3), and (4)**
- **A Letter to Commission (LTC) should be issued on the status of complaints**
- **Include in the definition of covered employee to include former covered employee**
- **Remove the specification for the amount of damages the City may impose (Sec. 2-410 (d)(1))**
- **Leave the definition of covered employer unchanged**

City Manager Jorge Gonzalez presented the item and gave a brief synopsis of the memo.

Deputy City Attorney Raul Aguila presented the proposed changes made to the ordinance which included defining health benefits, indexing the living wage to the Miami/Ft. Lauderdale Consumer Price Index for all Urban Consumers (CPI-U), limiting the amount increase given in one year so as to not exceed 3% or exceed the increase

given to unclassified city employees, revision of the complaint process. Chairperson Deede Weithorn asked if the 3% cap could be modified so that if there are years when no increase has been given an increase larger than 3% would be allowed. Mr. Aguila stated that a “make-up” provision could be added. Mr. Aguila then reviewed the proposed changes to the complaint and enforcement procedures. Discussion ensued and the Committee recommended streamlining Section 2-410 (b)(2), (3), and (4). Chairperson Weithorn asked if a report could be given once a complaint is filed and a status of the complaint. Mr. Aguila stated that a Letter to Commission could be given for complaints that are filed. The Committee then discussed the sanctions against service contractors and asked that the specification of the amount of damages that the City could impose be removed. Julio Diaz, representing SEIU Local 32BJ, asked that under the definition of covered employer “contracting directly or indirectly with the city” be added back in so that an employer could not circumvent the living wage by stating that they employ independent contractors and not employees. The Committee recommended the item be brought to the Commission with the following changes included:

- Include a “make-up” provision to allow the City to increase the living wage by greater than 3% if no increase has been given in prior years
- 60 days be allowed to receive information from the vendor after a complaint is filed and the City Manager be allowed 60 days to complete the investigation, and that failure to comply could result in termination or suspension of the contract
- Streamline Section 2-410 (b)(2), (3), and (4)
- A Letter to Commission (LTC) should be issued on the status of complaints
- Include in the definition of covered employee to include former covered employee
- Remove the specification for the amount of damages the City may impose (Sec. 2-410 (d)(1))
- Leave the definition of covered employer unchanged

5. Discussion regarding requested Right-of-Way, entryway, and public safety improvements to Sunset Drive/North Bay Road at the entryway to Sunset Islands 3 & 4.

ACTION

None – Status Report

City Manager Jorge Gonzalez presented the item.

There have been recent requests from the Sunset Islands 3 and 4 Homeowner’s Association (HOA) to increase capital funding for proposed entryway improvements. The Sunset Islands 3 and 4 neighborhood desires to have its own overhead utilities undergrounded as part of the capital improvement project. The HOA has been working towards this goal for years and has recently obtained certain assurances from the utility companies to attain their goal with the assistance of the Office of Capital Improvement Projects. The design phase of the project has been on hold since 2005 pending the undergrounding of the overhead utilities on the islands. The HOA recently advised that the City should move forward with the design efforts so that the improvements can be realized. The forthcoming capital budget cycle will request construction funding for the neighborhood improvement project.

The Sunset Islands 3 & 4 HOA has previously approached the Office of the Mayor and City Commission regarding additional repairs and enhancements to the islands’ entryway and guardhouse. The HOA was instructed to work with the Parks and Recreation Department staff to develop a preliminary plan to construct the requested improvements. The HOA and Parks and Recreation Department did develop a

proposed design for the project. The CIP Office received the preliminary plan, met with other City staff, the Miami Beach Police Department and members of the HOA to review the proposed improvements for public safety/security and constructability issues. The proposal received minor modifications and CIP staff developed a preliminary project budget. The Administration is supportive of the entryway improvements and recommends that the improvements be identified as a future capital project.

6. Discussion regarding Property Management Division cost savings recommendation

ACTION

Item Deferred

7. Discussion regarding the management agreement to provide professional tennis management and operations services at the City's Flamingo Park and North Shore Park Tennis Centers.

ACTION

The Committee recommended exercising the first one (1) year extension and concurrently begin developing the Request for Proposal.

Chairperson Deede Weithorn recused herself.

Assistant City Manager Hilda Fernandez presented the item and gave a brief history of the item.

The Commission, Administration and the community have been working together to address a variety of issues related to the City's tennis facilities and services. The City currently has an agreement with Greensquare, Inc. to provide professional tennis management and operations services at the City's Flamingo Park and North Shore Park tennis centers. Greensquare, Inc. has been the City's tennis center operator since April 2002, and was awarded the current agreement via competitive bidding process in April 2007. The current three (3) year agreement with Greensquare, Inc. is to provide professional tennis management and operations services that will expire on April 15, 2010. There are two options:

- Exercise the first of two (2) one year extensions (April 15, 2010 – April 15, 2011), as provided for in the current Management Agreement and concurrently begin developing the Request for Proposal (RFP) for issuance and selection prior to the reopening of the Flamingo Park Tennis Center;
- Immediately initiate the process necessary to issue a RFP for the Comprehensive Professional Tennis Management and Operation at the City's Flamingo Park and North Shore Park Tennis Centers; this will require the extension of the current Greensquare, Inc., agreement on a month-to-month basis until the competitive process is completed and a new agreement is approved, negotiated and executed.

The Committee recommended exercising the first one (1) year extension and concurrently begin developing the Request for Proposal.

8. Discussion regarding an amendment to a resolution regarding assignment of a police officer to the Police Athletic League (PAL)

ACTION

The Committee recommended the item be brought back to the next Finance and Citywide Projects Committee Meeting, if possible, with a report of the programming that is provided by the Police Athletic League as well as their measurable goals, objectives, and the role played by the Executive Director.

City Manager Jorge Gonzalez presented the item.

In Resolutions passed by the City Commission in 1966 and 1983, the City directed that a full time police officer be appointed to serve as the Executive Director for the Police Athletic League (PAL). The cost of providing a full time police officer to serve as Executive Director for the PAL is approximately \$175,000, inclusive of wages and benefits. Since this assignment, aside from the expense, takes a full time police officer out of active police service at a time when police resources are sorely stressed, it was recommended that some other manner or mechanism be developed to provide linkage to the Police Department which does not involve or require the assignment of a full time police officer. City Attorney Jose Smith stated that from a legal liability perspective, the fact that there is a Miami Beach police officer as Executive Director of the organization places potential liability risk on the City, if there were to be an accident or claim because in effect we are supervising the organization. Discussion ensued. Mayor Matti Bower asked if the Parks and Recreation Department ran any programs inside the PAL building. Parks and Recreation Director Kevin Smith stated that the Parks Department runs many programs. Mayor Bower was concerned that the PAL was not running programs for children in the PAL building. City Manager Jorge Gonzalez stated that the PAL is the only parks location staffed with a police officer. The Committee recommended the item be brought back to the next Finance and Citywide Projects Committee Meeting, if possible, with a report of the programming that is provided by the Police Athletic League as well as their measurable goals, objectives, and the role played by the Executive Director.

9. Discussion regarding Global Spectrum's Fiscal Year 2009 performance and potential adjustments/amendments to the existing management agreement.

ACTION

The Committee recommended the item and referred it to the April 14, 2010 Commission meeting.

Assistant City Manager Hilda Fernandez presented the item and gave a brief history of the item.

On September 10, 2008, the City Commission approved Resolution No. 2008-26888 which approved an agreement between the City and Global Spectrum, L.P. for the management of the Miami Beach Convention Center, Colony Theater, and Byron Carlyle Theater. The Agreement was for an initial three (3) year term commencing on October 1, 2008, and ending on September 30, 2011, with two (2) one-year renewal options, exercisable with ninety (90) days prior written notice, at the sole and absolute discretion of the City. Global Spectrum officially assumed management responsibility for the Miami Beach Convention Center (MBCC), Colony Theater, and Byron Carlyle Theater on October 1, 2008. The MBCC operated at 61% occupancy for fiscal year 2008/2009. They experienced very few cancellations as a result of the economic downturn, and

have been able to achieve significant savings in insurance, energy management and "Green" initiatives, trash hauling, and event labor. They have also been able to generate additional revenue in ATM fees and sponsorship/advertising agreements.

Pursuant to the Agreement, Global Spectrum guaranteed a Net Performance Improvement, which is defined as the "Required Improvement" on the Fiscal Year (FY) 08/09 budgeted net deficit of \$1,492,134 (which includes both the FY08/09 budgeted net operating deficit and includes Executive Salaries and Benefits). The Required Improvement over the net deficit of \$1,492,134 for each Contract Year is as follows:

- FY 08/09 = \$ 500,000 (or a resulting net deficit of \$992,134)
- FY 09/10 = \$1,000,000 (or a resulting net deficit of \$492,134)
- FY 10/11 = \$1,500,000 (or a resulting net profit of \$7,866)

Global Spectrum improved the Net Operating Loss for the facility by \$345,792. However, as part of the year-end close-out, there were several adjustments regarding interest income, transition expenses, and other miscellaneous financial items, which materialized throughout the 2008/09 fiscal year. These adjustments net out to a further adjustment to the "Actual" Net Operating Income/Loss of \$27,009.66. As such, Global Spectrum's improvement is adjusted to \$372,801.66, prior to any further, negotiated credits. Global Spectrum submitted a request for the City to absorb within the MBCC Operating Account expenses associated with the transition of management from SMG to Global Spectrum. The City Administration did not approve this request and, therefore, Global Spectrum will absorb these expenses. The MBCC Finance Department will now invoice Global Spectrum for \$237,620.35 and list this as a pending Account Receivable.

Staff explained several credits and adjustments that were discussed with Global Spectrum. It was agreed, and an amendment proposed, that adjusts the starting Net Deficit (from which Global Spectrum must improve) by \$50,301.20, from \$1,492,134 to \$1,542,435. Global Spectrum ended the year with \$1,146,342 in net operating loss, adjusted by \$27,009.66 (or a total of \$1,110,332.34). The difference between Global Spectrum's final, adjusted net operating loss (\$1,119,332.34) and the adjusted contracted loss (\$1,542,435.20) is \$423,102.86. Since the required improvement is \$500,000, Global Spectrum is required to pay the City \$76,897.14, less any bad debt reserved for and subsequently collected (either as a payment or as a deduction from their Line of Credit).

The Management Agreement also has a requirement for Messe Schweiz (M.S.), in partnership with Global Spectrum, within the initial term and subject to the existing booking policies and commercial viability, book the following:

1. Use best efforts to book and actualize, one (1) M.S. owned show or event during the initial term of the Agreement.
2. Use best efforts to book and actualize during the initial term of the Agreement which can occur after the initial Term, one (1) (non-M.S. owned) international show or event.

Global Spectrum provides a Corporate Guarantee, on behalf of M.S., in the amount of \$275,000 for the City to draw upon if, notwithstanding M.S. "best efforts," as provided for in the Management Agreement, M.S. fails to book and actualize shows and events. The Management Agreement structures the M.S. Guarantee as follows:

1. If M.S. does not book and actualize one M.S. produced/owned show or event by the end of the second Contract Year then \$125,000 is due to the City.
2. If the M.S. produced/owned show or event, which is required to be booked and actualized by the end of the second Contract Year, is not

booked and actualized by the end of the second Contract Year or by the end of the third Contract Year an additional \$125,000 is due to the City.

3. If M.S. does not book during the initial Term one non-M.S. produced/owned international show or event, and additional \$25,000 is due to the City. This show or event may be actualized at any time up to 24 months following the end of the Term provided that, during such period, the Corporate Guarantee provided by global to secure this obligation remains in effect, unaffected by the termination or expiration of this Agreement.

Global Spectrum recently notified the City Administration that despite best efforts from M.S. and Global Spectrum, due to the state of the economy, they have not yet been able to book an M.S. owned/produced show or non-M.S. show. The execution of the Management Agreement coincided with the worldwide recession, which contributed to their inability to book the show. Therefore, Global Spectrum has requested the deadline, which requires them to book and actualize a M.S. owned/produced show by the end of the second contract year, (September 30, 2010) be pushed back to the end of the third contract year (September 30, 2011). Essentially this would require Global Spectrum and M.S. to book and produce the M.S. owned/produced show by the end of the initial contract term. If they do not achieve this, the penalty would be \$250,000 paid to the City at the end of the initial term. The requirement for the non-M.S. show would not change.

Based on the aforementioned, the Administration recommended amending Section 8.4 (b) (3), entitled Letter of Credit as follows:

3) Letter of Credit. Global shall provide an irrevocable Letter of Credit, in such form as shall reasonably be approved by the City Manager, in the amount of \$500,000 (the Letter of Credit or LOC), to secure the "Net Performance Improvement" as defined below.

- A. "Net Performance Improvement" is defined as the Required Improvement on the Fiscal Year (FY) 08/09 budgeted net deficit of \$1,542,435 ~~\$1,492,134~~, which includes both the FY08/09 budgeted net operating deficit and includes Executive Salaries and Benefits.
- B. Required Improvement over the net deficit of \$1,542,435 ~~\$1,492,134~~ for each Contract Year is as follows:
 - (i) FY 08/09 = \$500,000 (i.e., achieve Net Operating Loss of \$1,042,435 ~~\$992,134~~ or better)
 - (ii) FY 09/10 = \$1,000,000 (i.e., achieve Net Operating Loss of \$542,435 ~~\$492,134~~ or better)
 - (iii) FY 10/11 = \$1,500,000 (i.e., achieve a Net Operating Profit Loss of \$42,435 ~~\$7,866~~ or better)

The Administration also recommended amending the Section 8.4 (b) (2), entitled Messe Schweiz (M.S.) Guarantee as follows:

- A. ~~\$125,000~~ \$250,000 due to the City in the event M.S. does not book and actualize one M.S. produced/owned show or event by the end of the ~~second~~ third Contract Year.
- B. ~~An additional \$125,000 if (i) the MS produced/owned show or event that is required to be booked and actualized by the end of the second Contract Year (as described in the preceding paragraph) is not so booked and actualized by the end of the second Contract Year, AND (ii) MS does not book and actualize one M.S. produced/owned show or event by the end of~~

~~the third Contract Year.~~ For the sake of clarity, the parties acknowledge that if MS books and actualizes one MS produced/owned show or event by the end of the second Contract Year, M.S. shall have no further obligation to book and actualize any MS produced/owned show or event during the Term, and Global shall not be subject to any penalty under Section 8.4(b) (2) (A) or (B) if M.S. fails to book and actualize any additional MS produced/owned show or event during the Term.

The Administration recommended approval of the Amendments to the Management Agreement between the City and Global Spectrum to reflect mutually agreed-upon adjustments. The Committee recommended the item and that it be brought to the April 14, 2010 Commission meeting.

10. Discussion regarding the process for City of Miami Beach License Renewals, including notices provided to license holders

ACTION

The Committee requested the item be brought back and that the following information be included:

- **cost of an additional mailing,**
- **cost of letter mailing,**
- **cost of postcard mailing**

Chief Financial Officer Patricia Walker presented the item and gave a brief synopsis of the memo.

Chairperson Deede Weithorn stated that this item was referred by Commissioner Wolfson who was not present at the meeting. Ms. Walker went on to say that Business Tax Receipts (BTR) are issued annually in accordance with Florida State Statute Chapter 205. While the Florida Statute does not require renewal notices be sent out, the City, as a courtesy, has provided businesses with an individualized renewal notice on an annual basis. Currently the City sends out 8.5" by 11" BTR renewal notices generally in July or August prior to the expiration date of September 30th for BTRs. The notice is sent out with a self-addressed return envelope to assist the customer with mailing back their payment. Chairperson Deede Weithorn asked if postcards could be sent out rather than letters. Ms. Walker stated that the City can move from sending letters to sending postcards and added that email addresses are also being collected in hopes that notices could be sent via email in the future. Chairperson Weithorn asked that cost of an additional mailing, letter mailing, and postcard mailing be calculated and be brought back to the Finance Committee at a future date. The Committee asked that the item be brought back with the information requested.

11. Update on Ameresco Water Reclamation Plant project.

ACTION

The Committee directed Administration to proceed with the original six (6) energy conservation projects and staff is to continue to work on the water reclamation project.

Assistant City Manager Robert Middaugh presented the item and gave a brief history of the item.

The City's Energy Conservation Program has previously been reviewed and discussed