



MIAMI BEACH

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: September 26, 2011

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for September 26, 2011, at 3:30 P.M. at 1755 Meridian Avenue, in the 3rd Floor Training Room.

The agenda is as follows:

OLD BUSINESS

- 1. Follow up: Discussion regarding the Miami Beach Festival of the Arts and potentially contracting with a professional art festival company to produce the Festival for the City (September 15, 2010 Commission Item C4B)**

Max Sklar – Cultural Arts & Tourism Development Director

NEW BUSINESS

- 2. Discussion regarding a proposed ordinance on ethics guidelines for acceptance of gifts, favors, or services by City employees (April 13, 2011 Commission Item C4I)**

Jose Smith – City Attorney

- 3. Discussion regarding Security Alliance (April 13, 2011 Commission Item C4J)**

Gus Lopez – Procurement Director

- 4. Discussion regarding a proposed modification of the Promissory Note dated February 5, 2007, from MBCDC Meridian Place LLC, A Florida Limited Liability Corporation, to the Miami Beach Redevelopment Agency, and to discuss a subordination of the City's mortgages in favor of a mortgage being made to MBCDC by Bank United. (May 11, 2011 Commission Item C4A)**

Anna Parekh – Director of Real Estate Housing and Community Development

- 5. Discussion regarding the proposed inter-local agreement between Miami-Dade County and the City of Miami Beach for the provision of a bi-directional transit circulator route service known as the "South Beach Local" (July 13, 2011 Commission Item C4C)**

Fred Beckmann – Public Works Director

- 6. Discussion pertaining to the issuance of the Request for Proposals (RFP) for the comprehensive professional tennis management and operations services at the City's Flamingo Park and North Shore Tennis Centers (July 13, 2011 Commission Item C4D)**

Kevin Smith – Parks & Recreation Director

- 7. Discussion regarding authorizing the City Manager to negotiate and enter into temporary licensing-use agreements with contractors requiring the use of City-owned property for the purpose of staging and/or storage of construction equipment in connection with City or privately funded construction projects (July 13, 2011 Commission Item C4E)**

Anna Parekh – Director of Real Estate Housing and Community Development

- 8. Discussion concerning City Fees and Charges for Gay Pride 2012 (July 13, 2011 Commission Item C4G)**

Max Sklar – Cultural Arts & Tourism Development Director

- 9. Discussion regarding reducing the bills penalty from 10% to 5% (July 13, 2011 Commission Item R5D)**

Patricia Walker – Chief Financial Officer

- 10. Discussion regarding the Catering and Concession Agreements for the Miami Beach Convention Center (September 14, 2011 Commission Item C4E)**

Max Sklar – Cultural Arts & Tourism Development Director

- 11. Discussion Pertaining to Providing Outdoor Seating on City-Owned Space Adjacent to Cinematheque Theater at Historic City Hall (September 14, 2011 Commission Item C4I)**

Anna Parekh – Director of Real Estate Housing and Community Development

- 12. Discussion Regarding Possible Refunding of General Obligation Bonds of Series 2000**

Patricia Walker – Chief Financial Officer

13. Discussion authorizing the City to enter into an energy audit and permitting agreement with Ameresco to provide a detailed engineering study and energy savings calculations with guaranteed payback related to the feasibility of construction and operation of a water reclamation plant for the irrigation of the Miami Beach Golf Course.

Fred Beckman – Public Works Director
Duncan Ballantyne – Assistant City Manager

**14. Discussion regarding amendments to the Recycling Ordinance
(July 13, 2011 Commission Item R5F)**

Fred Beckman – Public Works Director
Duncan Ballantyne – Assistant City Manager

Finance and Citywide Projects Committee Meetings for 2011:

October 27, 2011

December 28, 2011

JMG/PDW/rs/th

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Cc. Mayor and Members of the City Commission
Management Team

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MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee
FROM: *Hilda D. Jernandez*
Jorge M. Gonzalez, City Manager

DATE: September 26, 2011

SUBJECT: **AN UPDATE REGARDING THE MIAMI BEACH FESTIVAL OF THE ARTS AND THE OUTCOME OF THE 2011 EVENT.**

BACKGROUND

The Music and Fine Arts Board was originally created in 1962 to encourage and develop cultural programs with the objective of making the Community a recognized leader in the State of Florida in the field of fine arts. Subsequently, in 1974 the resolution was amended renaming the board the Fine Arts Board. This board's new mission was to "promote the work of contemporary visual and cultural artists, to enhance the appreciation for the arts in the community at large, and to provide economic stimulation to underserved neighborhoods." The annual Miami Beach Festival of the Arts was created to fulfill this task and was produced by the City of Miami Beach from 1975 through 2002.

Taking over production of the Festival from the Parks and Recreation Department in 1999, the Office of Arts, Culture and Entertainment relocated the 2000 Festival to Ocean Terrace in North Beach. In seeking a partnership with the North Beach Development Corporation (NBDC) for promotion and marketing, a Quality of Life grant in the amount of \$15,000 was awarded in 2000 for the 2001 event. This grant was increased to \$45,000 for the 2002 event. Fiduciary responsibility and production of Festival of the Arts event was transferred to the NBDC in 2004. NBDC produced the Festival of the Arts for four (4) years with the help of an annual allocation from the City of \$75,000. During this time, the Fine Arts Board continued to jury the Festival with regard to the poster artist selection, the exhibiting artist applications, the local artist program, the children's art display and the City's portable collection.

In 2008, the City once again assumed all production responsibilities for the Festival of the Arts. The Tourism and Cultural Development Department (formerly Arts, Culture and Entertainment), which staffs the Fine Arts Board, managed a professional services agreement with Mr. Brian Huether, who was the event coordinator for the Festival of the Arts since 2004. In 2009, funding for the Festival of the Arts was reduced to \$55,000 annually. This City appropriation was to be offset by any revenue generated from the event. Since 2008, the offset has ranged from a high of \$39,026 in 2010, to a low of \$10,500 in 2009.

ANALYSIS

Since 2008, the Fine Arts Board has spent countless hours looking at alternative ideas and formats to raise the caliber of the Festival of the Arts, and increase interest and attendance. Additionally, the Board also spent much time tweaking the entertainment, children's area and other aspects of the event. Following the 2010 Festival of the Arts, the Administration met with Mr. Howard Alan, whose company, Howard Alan Events, produces art festivals all across the country, including the Las Olas festivals and the Key Biscayne festival. Mr. Alan recommended repositioning the festival as more of a crafts-oriented event with the focus more on crafts, food, flowers and some art (but not high end art), and move the date to mid-April when it fits more into the calendar for arts and crafts events.

The Fine Arts Board discussed his recommendation at their July and August 2010 meetings and unanimously recommended in favor of this change. Additionally, they recommended the City contract with Howard Alan Events to produce the Festival for the City. In making this recommendation, the Fine Arts Board felt Mr. Alan must retain full control of the event. Mr. Alan agreed with this and also agreed to assume all risk, responsibility and reward in the production of the event. This change would save the City the \$49,500 that is annually budgeted for the Festival of the Arts. At the time, the Administration referred the subject to the Finance Committee and also suggested issuing a Request for Proposals (RFP) for a company to produce the event on behalf of the City. However, the Administration also desired to contract with Mr. Alan to produce the event in 2011 while the RFP was reviewed.

The Finance and Citywide Projects Committee discussed the subject at the October 14, 2010 meeting and recommended not issuing an RFP. The Committee directed the Administration to contract with Howard Alan Events to produce the 2011 Miami Beach Festival of the Arts, and requested a report following the 2011 event. The Administration subsequently entered into an agreement with Howard Alan Events for 2011, which eliminated the City's financial obligation and only required the City to pay Mr. Howard if the event generated a profit; compensation to Mr. Howard was capped at \$20,000.

2011 EVENT

The Miami Beach Arts and Crafts Festival took place on April 9 – 10, 2011. Attendance was very poor and the vendors reported very low sales over the course of the two day event. Sales were so poor that some vendors said they would not return and the producer had to refund their registration fees. One possibility for the low attendance was thought to be from lack of sufficient advertising; however, the producer marketed the event as they do every other festival they produce. Aside from that, the producer did an excellent job coordinating and producing the event.

The Fine Arts Board discussed the 2011 Festival at their regularly scheduled meeting on April 14, 2011. The members generally felt that the Festival was not a success, and that marketing and promotion of the Festival was poor. There followed general discussion about street art festivals being passé. All agreed that the Festival presented a "bad image" of Miami Beach to the public. The Board recommended by unanimous vote that the City permanently cease presentation of the Festival and seek other ways to promote activity in North Beach.

FINANCE AND CITYWIDE PROJECTS COMMITTEE – MAY 19, 2011

Members of the Finance and Citywide Projects Committee discussed the Fine Arts Board's recommendation at its regular meeting on May 19, 2011. The Committee was hesitant to approve cancellation of the Festival without having a clear alternative in place. There was general agreement that a series of events over an extended period of time would be more effective in promoting business and community in the North Beach neighborhood than the one-weekend-a-year Festival of the Arts. The recently renovated Band Shell was discussed as the most likely location for these events.

OPTIONS

The City Manager directed TCD staff to meet with the VCA staff to discuss possible events and production strategies. At that meeting, held on June 14, 2011, VCA staff pointed out that the VCA was not a presenting or producing organization, but that it would be happy to fund potential Band Shell programming as long as the VCA's minimum room night threshold (75 room nights) was met.

The following are options either currently under development, or for potential development.

Fresh Air Fund

For fiscal year 2011/12, the Miami Beach Cultural Arts Council (CAC) instituted a "Fresh Air Fund" to reward grantee organizations who provide free, outdoor programming in Miami Beach. Four of the twelve qualifying organizations are recommended for funding to present free programs at the Band Shell next year; they include FUNDarte, the Miami Short Film Festival, Dance Now! Ensemble, and the Miami Gay Men's Chorus. Additionally, the Brazilian Film Festival (recipient of a joint CAC/VCA grant) kicks off each year with a free screening at the Band Shell.

Arts in the Park

Arts in the Parks options include movies and live performances. The overwhelming popularity of the SoundScape Cinema Series provides strong support for the idea of offering a similar weekly series in North Beach. The Band Shell has all of the necessary projection, screen and sound equipment, so production costs and staffing requirements would be minimal. Film licensing fees average \$500 per screening. After the completion of the recent renovations to the Band Shell, the set-up for movies is very easy and inexpensive. Based on the success of the SoundScape Cinema Series, City staff believes creating a weekly movie series at the Band Shell can quickly establish a following in the community and cost-effectively create an immediate positive impact the North Beach. Staffing and licensing fees for a September – April weekly movie series would cost approximately \$25,000. Should this be pursued it would be scheduled to not compete with the SoundScape schedule.

Parks and Recreation Programming

In addition to a regular movie series, the City's Parks and Recreation Department is considering reestablishing the Friday Night Skate event. These skate events can be done monthly or semi-monthly in a cost-effective manner.

Arts in the Park

Live performances at the Band Shell produced by the City's Arts in the Parks program would cost from \$2,000 (local band) up to \$20,000 (opera).

Street Vendor Festival

At its most recent meeting (June 9, 2011) the Fine Arts Board suggested inviting all of the City's licensed street artist vendors to set up in the Band Shell on a regularly recurring Saturday or Sunday for an arts and crafts market. Since the artist vendors have their own tables the main cost would be marketing. This has the potential to regularly present cultural arts and an eclectic mix of vendors that could also drive additional business to the North Beach community. This concept has NOT yet been discussed with the artist street vendors and staff does not yet know if there is interest from the vendors. If this concept is desired, staff would meet with the street vendors to determine level of interest.

Food Truck Event

There has also been ongoing discussion regarding the establishment of a pilot food truck event in North Beach. The Administration met with the North Beach business community on June 2, 2011, and presented the concept. The businesses, specifically the restaurants in the area were not enthusiastic about a food truck event, but seemed willing to consider it if it were held on a slower week night and offered something more than just food. They felt live music or other regular entertainment programming should also be a focus of the City if the desire is to spur economic development. However, following discussion and input from the business community at the July 7, 2011 Neighborhoods and Community Affairs Committee, the Committee deferred discussion on whether or not to establish a food truck pilot program pending a decision on how best to proceed

with the Festival of the Arts.

Theater Dining Program

The Neighborhoods and Community Affairs Committee at their July 7, 2011 meeting also directed staff to work with the Miami Beach Stage Door Theater at the Byron Carlyle and area restaurants to help establish a Theater Dining Program before the start of the Stage Door's July 29 opening show. Staff quickly coordinated a meeting with the business community and Stage Door, who was already interested in creating this type of program, to recruit business participation. Marketing material was developed and a marketing campaign launched the second week of August. The pilot program ends on October 31st, and staff will evaluate if it should be continued.

The Committee directed staff to develop the cost estimates for the various options. The following are the estimates of funding required to implement and/or market these options at the Band Shell:

Activity	Funding	Comments
Movie Series	\$ 25,000.00	One movie weekly from Sept – April; does not include security (Police)
Friday Night Skate	\$ 2,400.00	Monthly Rate (one event per month); does NOT include security (Police)
Live Performances	\$ TBD	Private Non-Profit Rentals or event through CAC grants; Arts in Park programming ranges from \$2,000-\$20,000 per event
Marketing Campaign, including Theater Dining Program	\$ 15,000.00	Website development, printed material, online and print marketing campaign

The Administration is seeking the Committee's direction.

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MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Jonah Wolfson, Commissioner

DATE: March 14th, 2011

SUBJECT: Discussion Item for April 13th, 2011 Commission Meeting

Please place on the April 13th, 2011, Commission meeting agenda a referral to the Finance Committee on the attached memorandum and proposed ordinance.

If you have any questions, please do not hesitate to contact Leonor Hernandez at extension 6437.

JW/h

RECEIVED
 2011 MAR 16 PM 5:18
 OFFICE OF THE MAYOR AND COMMISSION

Agenda Item C4I
 Date 4-13-11

We are committed to providing excellent public service and safety to all who live, work, and play in our

March 12, 2011

MEMORANDUM FOR: Commissioner Jonah Wolfson, City of Miami Beach

FROM: Frank Del Vecchio, 301 Ocean Drive, Apt. 604, Miami Beach, FL 33139

SUBJ: Ethics Guidelines for Acceptance of Gifts, Favors or Services by City Employees

I recommend enactment by the city commission of a standard of conduct prohibiting the city's officers and employees from accepting a gift, favor or service discounted below fair market value from an entity doing business with the city or from a lobbyist. Section 2-449 of the Standards of Conduct "Acceptance of gifts, favors, services", is the appropriate section of the city code for such an amendment. [Attachment 1.]

Also attached is a reprint of the United States Department of Justice Ethics Office Handbook on acceptance of gifts by federal employees. [Attachment 2.]

In addition, also attached are excerpts from the DOJ Handbook, applicable to "Gifts from Outside Sources" (two pages), the focus of the recommended addition to the city's standard of conduct.

ATTACHMENTS:

Recommended amendment to Section 2-449, City Code ["Acceptance of gifts, favors, services."]

U.S. Department of Justice Ethics Office Handbook on Acceptance of Gifts by Federal Employees.

Excerpt from DOJ Handbook: Definition of Gift; Exceptions to the Gift Rule.

Amend Article VII. Standards of Conduct, of Part II, Subpart A, Chapter 2, Miami Beach City Code, by adding a sentence to Section 2-449; the amended subsection to read as follows:

Sec. 2-449. Acceptance of gifts, favors, services.

No officer or employee of the city shall accept any gift, favor or service that might reasonably tend improperly to influence him in the discharge of his official duties. Acceptance of a gift, favor, or a service discounted below its fair market value, from a business entity doing business with the city, as defined in section 2-450(b), or from a lobbyist, as defined in section 2-481, is deemed a violation of this section.

[Language added underlined.]

**DEPARTMENTAL
ETHICS OFFICE**

- Gifts and Entertainment



Introduction

Justice Management Division
Serving Justice - Securing Results

You may have heard it said that “public service is a public trust.” This means that each Federal employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. The public deserves and should expect no less.

This handbook was adapted from a handbook issued by the Office of Government Ethics. Its purpose is to present an overview of the types of ethical issues that frequently arise and a summary of the laws and regulations relevant to those issues. The handbook is not intended to replace the applicable statutes, executive orders, and regulations. You will not find here answers to all the ethical questions you are likely to confront in connection with your work for the Government, but a careful reading of this handbook should help you recognize those questions as they arise.

Once you're aware of an ethical question, your response should be determined by the uniform Standards of Ethical Conduct for Employees of the Executive Branch. These regulations can be found in 5 C.F.R. Part 2635. They set forth rules to be followed by executive branch employees in seven areas-

- gifts from outside sources;
- gifts between employees;
- conflicting financial interests;
- impartiality in performing official duties;
- seeking other employment;
- misuse of position; and
- outside activities.

The Standards of Ethical Conduct are based on Executive Order 12674, as amended by Executive Order 12731,

and a number of ethics-related statutes. The executive order sets forth 14 principles of ethical conduct that Federal employees must follow and on which the Standards of Ethical Conduct build. The relevant statutes deal with matters such as conflicts of interest, gifts, and post-employment restrictions.

In addition to the Standards of Ethical Conduct and the statutes, you will need to be aware of the Department's supplemental regulations which address, among other things, outside activities and employment. Noncareer employees appointed to their positions on or after January 20, 1993, who are either "senior" appointees or involved in trade negotiations, will also need to become familiar with the post-employment restrictions in Executive Order 12834.

Some of the rules of conduct set forth in this handbook are very basic and obvious. Others are not. If you are confused or have doubts about the applicability of any of these rules, consult with your agency's ethics official. The official is there to answer your questions and help you understand what is required of you.

You should know that failure to follow the uniform Standards of Ethical Conduct or our supplemental regulations could lead to reprimand, suspension, demotion, or even removal, depending on the circumstances. If the conduct also involves violation of one of the civil or criminal statutes, the penalty could include a monetary fine and/or imprisonment. Failure to adhere to the post-employment restrictions in Executive Order 12834 could lead to debarment from lobbying and/or civil proceedings for declaratory, injunctive, or monetary relief.

Don't put everything you've worked so hard to achieve at risk. Think before you act. Become familiar with the rules. And, if you have any concerns, talk to your agency ethics official.

Contents

Fourteen Principles of Ethical Conduct for Federal Employees

Gifts from Outside Sources

The basic rule

What is a gift?

Exceptions to the gift rule

Limits on use of the exceptions

Gifts between Employees

The basic rule

What is a gift?

Exceptions to the gift rule

Conflicting Financial Interests

What is a disqualifying financial interest?

Imputed interests

Resolving the conflict

What is a prohibited financial interest?

Impartiality in Performing Public Duties.

What are situations raising appearance concerns?

Resolving appearance concerns
Extraordinary severance payments

Seeking Other Employment

Restrictions on Former Employees

Permanent ban on certain activities
Two-year ban on certain activities
Additional restrictions imposed by statute

Misuse of Position

Use of public office for private gain
Use of nonpublic information
Use of Government property
Use of official time

Outside Activities

Is it all right to engage in outside activities while working as a Government employee?
Activities that would require disqualification from matters critical to performance of the employee's official duties
Representing a person or organization before a Federal department, agency or court; serving as an expert witness; and related activities
Receiving salary, contribution to, or supplementation of salary from a source other than the United States
Teaching, speaking, and writing
Fundraising activities
High-ranking noncareer employees and Presidential appointees
Just financial obligations
Purchase of forfeited property

Restrictions Imposed on Certain Employees

Special Government employees
Employees involved in procurement and contract management
Additional restrictions

**Fourteen Principles of Ethical Conduct
for Federal Employees**

- (1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
- (2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (3) Employees shall not engage in financial transactions using nonpublic Government information or allow the

improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by the Standards of Ethical Conduct, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in the Standards of Ethical Conduct. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

Gifts from Outside Sources

The basic rule

Donna works at the Environmental Protection Agency assembling data on the incidence of pesticide poisoning nationwide. In the course of her work she has occasionally spoken to Paul, a representative of a particular pesticide manufacturer. They've discovered that they were both raised on farms in Kansas. One day Paul stops by Donna's office and proudly presents her with an expensive signed and framed print depicting a typical Kansas farm scene.

May Donna accept the print? **No.**

A Federal employee may not accept gifts from any person or organization that --

- Seeks official action by the employee's agency;*
- Does business or seeks to do business with the employee's agency;*
- Conducts activities regulated by the employee's agency;*
- Has interests that may be substantially affected by performance or nonperformance of the employee's official duties;
- Is an organization a majority of whose members are described above; or
- Gives the gift because of the employee's official position.

* Most Justice Department employees need only be concerned with persons having business with their components.

What is a gift?

Jake, an employee at the Fish and Wildlife Service, attends a 2:30 p.m. meeting with officials of a local environmental organization that is concerned about a proposed FWS regulation. The meeting is held at the offices of the environmental organization, which sends out for coffee and donuts. Jake would like to help himself to the refreshments but wonders whether they might be considered a prohibited "gift."

May Jake accept the snacks? **Yes.**

The term "gift" includes almost anything of monetary value. But there are some items that won't be considered gifts. Among these are soft drinks, coffee, donuts, and other modest refreshments offered other than as part of a meal.

Other items that won't be considered gifts include--

Items of little intrinsic value which are intended solely for presentation, such as greeting cards, plaques, certificates, and trophies;

Anything paid for by the Government or secured by the Government in accordance with a statute;

- Anything for which the employee pays market value;
- Most rewards and prizes in contests open to the public;
- Commercial discounts available to the general public or to all Government or military personnel;
- Loans from banks and other financial institutions on terms generally available to the public; and
- Payments under pension and similar employee benefit plans.

Exceptions to the gift rule

Nick's job at the Federal Trade Commission is to provide economic input on issues involving consumer protection. He is given a ballpoint pen worth about \$18 from a member of a consulting firm that frequently

makes presentations before the FTC on behalf of affected clients.

May Nick accept the pen? **Yes.**

There are a number of exceptions to the rules against acceptance of gifts and one of these permits employees to accept unsolicited gifts with a market value of \$20 or less per occasion.

This "\$20 rule" does not apply to gifts of cash or investment interests. Also, under the rule, gifts received from any one source may not, in the aggregate, exceed \$50 in a calendar year.

Jenny is employed as a researcher by the Veteran's Administration. Her cousin and close friend, Zach, works for a pharmaceutical company that does business with the VA. Jenny's 40th birthday is approaching and Zach and his wife have invited Jenny and her husband out to dinner to celebrate the occasion.

May Jenny accept? **Yes.**

Gifts are permitted where the circumstances make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. It would be improper, however, for Jenny to accept the dinner if Zach charged the meal to his employer because then it would no longer be a gift from Zach.

Exceptions to the rule against acceptance of gifts allow employees to accept--

- Unsolicited gifts with a value of \$20 or less;
- Gifts clearly given because of a family relationship or personal friendship;
- Free attendance at an event on the day an employee is speaking or presenting information on behalf of the agency;
- Free attendance at certain widely-attended gatherings;
- Certain discounts and similar opportunities and benefits;
- Certain awards and honorary degrees; and
- Certain gifts based on outside business or employment relationships.

You should be aware that there are limitations on the applicability of some of these exceptions. For example, use of the widely-attended gathering exception would require an advance determination by your agency that your attendance is in the interest of the agency. Also, there are more exceptions than those listed above. When you are faced with a gift issue, it's a good idea either to get advice from your agency ethics official or to look up the relevant provisions in the regulations.

Limits on use of the exceptions

Once you've determined that a gift falls within one of the exceptions to the gift rules, are you free to accept it? **Not necessarily.** None of the exceptions may be used to--

- Accept a gift in return for being influenced in the performance of an official act;
- Solicit or coerce the offering of a gift;
- Accept gifts so frequently as to create an appearance that you are using public office for private gain;

- Accept a gift in violation of any statute.

Among the statutes you should know about are those prohibiting--

- Solicitation or receipt of bribes (18 U.S.C. § 201(b)); and
- Receipt of salary or any contribution to or supplementation of salary as compensation for Government service from a source other than the United States (18 U.S.C. § 209).

Remember also that just because you may accept a gift under one of the exceptions to the gift rule doesn't mean that you must accept the gift. It is never wrong, and is often wise, to decline a gift offered by a person or organization whose interests could be affected by actions of the agency where you work, or a gift offered because of your official position. Exercising your discretion to decline a gift may be particularly smart when a gift is offered by a person or organization whose interests could be affected by your official actions.

Gifts between Employees

The basic rule

Joe is delighted with his new boss, Dan. In a few short months Dan has brought about creative changes in the division's work product while, at the same time, improving efficiency and boosting office morale. The two workers have also developed a friendship based on mutual respect and shared outside interests. Because of a conflicting family commitment, Joe and his daughter will be unable to use their season tickets for the next Orioles home game, so Joe thinks he'd like to give them to Dan.

May he do so? **No.** And it would be impermissible for Dan to accept the tickets if offered.

An employee may not--

- Give or solicit for a gift to an official superior; or
- Accept a gift from a lower-paid employee, unless the two employees are personal friends who are not in a superior-subordinate relationship.

In this context, the words "superior" and "subordinate" refer to people in the employee's chain of command.

What is a gift?

The term "gift" has the same meaning and excludes the same items set forth in the preceding section on Gifts from Outside Sources.

Remember that if you pay market value for what is given, then it won't be considered a "gift." Joe could give Dan the Orioles tickets if Dan paid Joe the face value of the tickets. Note also that carpooling arrangements between employees won't be considered gifts if you bear your fair share of the expense or effort involved.

Exceptions to the gift rule

For Christmas, Samantha, a secretary at the National Park Service, gives her supervisor a plant purchased for

\$10.

Eli, a claims examiner at the Department of Veterans Affairs, takes his vacation at the beach. When he returns to work, he brings his supervisor a bag of saltwater taffy purchased on the boardwalk for \$8.

Susan, a section chief in the Department of Justice, invites an attorney on her staff to a dinner party at her home. The staff attorney brings her a \$15 bottle of wine.

Are the plant, the taffy, and the wine permissible gifts? Yes. They fall within the exception for certain gifts given on an occasional basis. This exception would allow gifts given, for example, on Christmas, a birthday, or a return from vacation, provided that they consist of--

- Items other than cash which, considered together, are worth no more than \$10 for each occasion;
- Personal hospitality provided at a residence;
- Gifts to a host or hostess given in connection with the receipt of personal hospitality, even if the cost of these customary gifts is in excess of \$10;
- Food and refreshments shared in the office; or
- Leave sharing as permitted by Office of Personnel Management regulations.

...

A second exception permits the giving and accepting of appropriate gifts recognizing special, infrequent events provided that the events are--

- Occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or
- Occasions that terminate a subordinate-official superior relationship such as retirement, resignation, or transfer.

Jim works as the assistant to Carol, the personnel director of the Tennessee Valley Authority. Carol is in the hospital recovering from surgery and Jim would like to send her a \$30 floral arrangement.

Joan is a chemist employed by the Food and Drug Administration. The lab director who is her official superior, Glenn, is being promoted to a higher-grade position within the supervisory chain at the FDA. In honor of Glenn's promotion, Joan plans to send him a fancy fruit basket with a card stamped "FDA approved."

Are the floral arrangement and the fruit basket permissible gifts?

The floral arrangement is fine. Although it is to be given to an official superior and to be accepted from a lower-paid employee, it falls within the exception for infrequent occasions of personal significance. The fruit basket, on the other hand, is not permissible. Unlike a retirement or resignation, Glenn's promotion does not terminate his official-subordinate relationship with Joan. Neither is it an infrequent occasion of personal significance.

A third exception to the gift rule permits voluntary contributions of nominal amounts and solicitation of voluntary contributions of nominal amounts for gifts to official superiors--

- Recognizing special infrequent events as described above; and

- For food and refreshments to be shared in the office.

Sonya is taking up a collection for a tennis racquet from everyone in her section to be presented to her section chief on the occasion of his retirement. She tells each person that the contribution amount is \$5.00.

Is this arrangement permissible? **No.**

The occasion is special and infrequent and, as such, would allow for a group gift made up of voluntary contributions. Sonya's method of collection is improper, however, because it could result in contributions not voluntarily given. Sonya may suggest a nominal amount but must indicate to all employees solicited that they are free to contribute less or nothing at all.

Of course, even if a gift from a subordinate to his superior falls within one of the exceptions, it would still be impermissible if it were coerced by the superior.

Conflicting Financial Interests

What is a disqualifying financial interest?

Fred, an employee at the National Institutes of Health, is responsible for reviewing proposals for a new library computer search system. Computer Corporation, a closely held company in which Fred owns a majority of the stock, has submitted a proposal for the new system.

Would Fred's review of the proposals for the new library computer system present a problem? **Yes.**

Under the Standards of Ethical Conduct and by criminal statute, 18 U.S.C. § 208(a), an employee is prohibited from participating personally and substantially in an official capacity in particular matters in which, to his knowledge, the employee has a financial interest. For a conflict to exist, it is not necessary that the extent of the possible gain or loss be known. The actual amount of the gain or loss is not important. However, to trigger the disqualification requirement, the matter in which the employee would otherwise participate must have a direct and predictable effect on his financial interest.

Imputed interests

Suppose that Fred's wife instead of Fred owns a majority of the stock in Computer Corporation. Would her interest in Computer Corporation disqualify Fred from reviewing the proposals for the new system? **Yes.**

Under the law, the financial interests of certain persons and entities, if known to the employee, will result in disqualification of the employee just as if the interests were the employee's own. These persons and entities include--

- The employee's spouse;
- The employee's minor child;
- The employee's general partner;

- An organization which the employee serves as officer, director, trustee, general partner or employee; and
- A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

Resolving the conflict

If you suspect that you may have a disqualifying financial interest, you should notify the person responsible for giving you the conflicting assignment or consult with your agency ethics official. To do otherwise may result in a criminal violation. With the aid of these persons, you should consider the alternatives for resolving the conflict. They include--

- **Disqualification**

The usual requirement is not to participate in the particular matter. It may also be necessary to take steps to ensure that others do not mistakenly involve you in the matter. A formal written statement of disqualification usually is not necessary but may be desirable in order to create a record of your actions.

- **Divestiture**

In some instances, sale or other divestiture of the asset creating the financial interest presents an alternative to disqualification from participation in the matter. If the decision is made to divest, it may be possible to defer the tax consequences of divestiture, but only if the asset is sold pursuant to a certificate of divestiture issued by the Office of Government Ethics. For this reason, it's important to see your ethics officer before selling any assets.

- **Waiver**

In some instances a waiver of general applicability may already cover the situation. Alternatively, the specific circumstances may warrant the granting of an individual waiver by an authorized agency official. A waiver permits continued participation in a matter even in the absence of divestiture.

What is a prohibited financial interest?

An employee may not acquire or hold any financial interest that the employee is prohibited from acquiring or holding--

- By statute;
- By agency supplemental regulation; or
- By reason of an agency determination that an individual employee's acquiring or holding of a particular financial interest would present a substantial conflict.

When an employee holds a prohibited financial interest, divestiture or termination of the interest is required if the employee is to continue on the job.

Impartiality in Performing Public Duties

What are situations raising appearance concerns?

Pete's work at the Food and Drug Administration requires him to participate in the process for review and approval of certain new drugs. His mother has just taken a senior position with a biomedical research company producing a new drug that would typically be subject to Pete's review. Pete is concerned that it might "look bad" if he participates in the review and approval process for the drug, but after doing some research he determines that his mother's employment with the research company is not a "disqualifying financial interest" under 18 U.S.C. § 208(a).

Should Pete disregard his concerns and proceed to review the drug? No. Pete is right to be concerned. In addition to the financial conflict of interest situations discussed above, there are a number of situations that raise "appearance" concerns and, consequently, require employees to take certain steps to avoid an appearance of the loss of impartiality.

Situations presenting some of the most significant "appearance" concerns arise when an employee is called upon to participate in a particular matter involving specific parties and the employee knows that--

- The matter is likely to affect the financial interests of a member of the employee's household; or
- One or more of the parties to the matter is or is represented by--
 - A person or organization with whom the employee has or seeks a business relationship that involves something more than a routine consumer purchase;
 - A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;
 - A person or organization for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
 - Any person or organization for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
 - An organization, other than certain political organizations, in which the employee is an active participant.

The following cases are examples of situations raising appearance concerns:

Maria, who works for the General Services Administration, wants to begin an outside retail business. In her private capacity, she has made an offer to buy a store owned by a local developer. The developer has pending with GSA a proposal to provide Federal office space and Maria expects that she will be called upon to evaluate the bid.

Frank inspects manufacturing establishments for the Occupational Safety and Health Administration. His brother-in-law and friend, James, has just purchased a plant that Frank is assigned to inspect.

Rebecca recently resigned her position as vice president of an electronics company in order to join the Federal Aviation Administration. Her new boss has asked her to participate in the administration of a contract for

which her old company is a first-tier subcontractor.

Jeremy is an attorney at the Agriculture Department as well as a member of and publicity chairperson for the private organization Stop the Gypsy Moths. Stop the Gypsy Moths files a law suit against USDA and Jeremy's boss asks Jeremy for his legal analysis of the case.

Resolving appearance concerns

If you are faced with a situation that falls within one of the above categories, your first step is to decide whether a reasonable person with knowledge of the relevant facts would question your impartiality if you participated in the matter. In making this determination you may seek assistance from your supervisor, your agency ethics official, or the person specifically designated by your agency to address appearance problems (the "agency designee"). Remember that your honesty and integrity are not relevant considerations in this determination.

If you decide that a reasonable person would not question your impartiality, then you may participate in the matter, unless the agency designee reaches a different conclusion. If you or the agency designee decide that your impartiality would be questioned, then you may not participate unless the designee, considering all the circumstances, determines that the interest of the Government in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations.

You should be aware that not all appearance problems fall into the above categories. The steps outlined here also should be followed if you are concerned that other circumstances may raise a question about your impartiality.

Extraordinary severance payments

Appearance considerations may also require disqualification of an employee who, on departure from his prior job, received from his former employer an extraordinary payment or other item worth more than \$10,000. Under certain circumstances, such a payment may bar the employee from participating, for two years, in matters in which the former employer is a party or represents a party.

Seeking Other Employment

Karen serves on a panel at the National Science Foundation that reviews grant applications to fund research relating to deterioration of the ozone layer. A representative from X university, which has an application pending before Karen's panel, calls Karen to ask whether she might be interested in applying for a faculty position with the university. They discuss generally the duties of the position and Karen's qualifications to fill it. Karen indicates she may be interested.

May Karen participate in the review of X university's grant application? **Not unless she first obtains a written waiver under 18 U.S.C. § 208(b).**

An employee who is seeking employment may not participate in particular matters that would affect the financial interest of the prospective employer. Where, as in Karen's case, the parties are actually engaged in discussions regarding employment, this prohibition is imposed by a criminal statute, 18 U.S.C. § 208, and may be avoided only by obtaining a written waiver under section 208(b). As the example indicates, the prohibition

may be triggered even before negotiation of specific terms and conditions of employment begins.

Karen hears about a job at Y university, which also has a grant application pending before the panel on which she serves at NSF. She mails her resume to Y university and is waiting to receive a reply.

Would Karen's participation in review of Y university's grant application present a problem? **Yes.**

Karen has not engaged in the kind of two-sided negotiation for employment that would bring her job search within the reach of section 208. Even mailing out an unsolicited resume, however, if it were sent to an organization that would be specifically and individually affected by Karen's performance of her official duties, could cause a reasonable person to question Karen's impartiality. For this reason, Karen may not participate in the review of Y university's application unless her participation is authorized in advance by the person designated by her agency to address such matters.

Make it your business to understand the legal consequences of job-hunting and job discussions. Consult with your agency ethics official *before* you begin your job search and *immediately upon* receiving unsolicited offers or inquiries, if a prospective employer has a financial interest in matters that cross your desk.

Restrictions on Former Employees

Permanent ban on certain activities

Five years ago Sam left the Federal Maritime Commission to set up his own law firm specializing in maritime law. Recently he was asked to represent a carrier in an appeal to which the Commission is a party. Years ago, Sam realizes, he handled the same case on behalf of the Commission.

May Sam represent the carrier in the appeal? **No.**

A former employee is forever barred from representing another person or organization before a Federal department, agency, or court on certain matters in which the former employee participated personally and substantially while working for the Government. The bar is imposed by the criminal "post-employment" statute, 18 U.S.C. § 207, which is intended to prevent employees from "switching sides."

Two-year ban on certain activities

Shortly before Mary retired from her job at the Defense Department last year, an accountant Mary supervised began an audit focusing on cost overruns under a DOD contract with an electrical pads supplier. Since Mary retired before the audit was complete, she never signed or even read the audit report. Now the supplier wants Mary to represent him in his dealings with DOD on the contract.

May Mary represent the supplier before DOD? **No.**

The post-employment statute provides that, for two years after terminating Government employment, a former employee may not represent another person or organization before a Federal department, agency, or court on

certain matters which were pending under the employee's supervision during the last year of his Government service. In the example, it does not matter that Mary never read the audit report. If she knows or should know that the audit was under her official responsibility, her representation of the supplier could subject her to criminal penalties.

Additional restrictions imposed by statute

The post-employment statute prohibits all former employees, for a period of one year after leaving Government service, from engaging in activities related to certain trade and treaty negotiations. The statute also imposes additional one-year restrictions on the activities of former senior and very senior Government employees. These are generally Executive Level officials and Senior Level officials or other employees whose basic pay is 86.5% of the rate of pay for Level II of the Executive schedule, or greater. The restrictions are on representations by these officials to the agencies that they served and, in the case of very senior employees, on representations to certain high ranking officials throughout the Government. Former senior and very senior employees are also subject to a one-year ban prohibiting certain services to foreign governments and foreign political parties.

Remember: The best time to consult with your agency ethics official regarding post-employment restrictions is *before* leaving the Government. However, you may also obtain advice from your agency ethics official whenever, *after* you've left the Government, you find yourself confronting a post-employment issue.

You should know that there are other sources of post-employment restrictions that could apply to your activities after leaving Government. These include statutes specific to particular agencies or to employees performing particular functions and, for lawyers, bar association rules.

Misuse of Position

Use of public office for private gain

Sylvia, an employee of the Securities and Exchange Commission, offers to help a friend with a consumer complaint by calling the manufacturer of a household appliance. In the course of the conversation with the manufacturer, Sylvia states that she works for the SEC and is responsible for reviewing the manufacturer's SEC filings.

Tony, an employee of the Department of Education, is asked to write a letter of recommendation to a private company for a person he knows socially. He writes the letter on official stationery and signs it using his official title.

Calvin, a Commissioner of the Consumer Product Safety Commission, appears on a television commercial to endorse as safe a product produced by his former employer. On the commercial he is identified as a Commissioner of the CPSC.

What do Sylvia, Tony, and Calvin have in common? **They have all misused their public offices.**

Employees may not use their public offices for private gain, either their own gain or that of others. In the examples, employees used their offices to induce a benefit, to secure employment, and to suggest Government

endorsement -- all for private purposes.

Use of nonpublic information

Gail is a Navy employee who learns that her agency will award a contract to Supplier Corporation. Before the contract is publicly announced, Gail calls her stockbroker and purchases stock in Supplier Corporation.

Harry, a General Services Administration employee, discloses the terms of a proposal for a GSA construction contract to a friend whose company has submitted a competing proposal.

Are Gail and Harry making permissible use of nonpublic information? **No.**

Employees may not use or allow the use of nonpublic information to further their own private interests or the private interests of others. In addition to violating the uniform Standards of Ethical Conduct, the actions described in the above examples may also violate Federal statutes prohibiting the use and disclosure of confidential and inside information.

Use of Government property

Will is a Government worker who also coaches his daughter's soccer team. On a slow day at work, he uses Government computer and photocopy equipment to type and reproduce the game and practice schedule for the soccer team.

Barbara works for the Government but is an avid gardening enthusiast in her spare time. She wants to have pens and paper pads on hand for note takers at the garden club meeting at her house, so she "borrows" some from her agency's supply cabinet.

Are these permissible uses of Government property? **No.**

An employee has a duty to protect and conserve Government property and may not use Government property, or allow its use, for other than authorized purposes. In addition to the Standards of Ethical Conduct, there are statutes that apply to misuse of Government property. These include statutes prohibiting theft of Government property.

Justice Department employees are authorized to use government office and library equipment and facilities for personal uses that involve only negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear). Department employees are also authorized to make limited personal use of telephone and facsimile machines for calls to locations within the office's commuting area or that are charged to personal accounts. This authorization may be revoked or limited by a supervisor for any business reason. In using government property, employees should be mindful of their responsibility to use official time in an honest effort to perform official duties.

Use of official time

In addition to her Government job, Christine runs a catering business. It's difficult to reach her clients after

hours, so she discusses menus and gives bids by telephone during work hours.

Richard, a supervisor at a Government agency, has forgotten to use his lunch break to pick up the tennis racquet he dropped off for restringing last week. During the afternoon he remembers the racquet and his evening tennis date, so he asks his secretary to pick the racquet up for him.

Are Christine and Richard misusing official time? **Yes.**

Except as otherwise authorized, an employee must use official time in an honest effort to perform official duties and may not ask or direct a subordinate to perform activities other than those required in the performance of official duties.

Outside Activities

Is it all right to engage in outside activities while working as a Government employee?

Most employees may engage in outside activities, which may include paid employment and civic, charitable, religious, and community service work performed without compensation. But not all activities are permissible. Employees should be aware of a number of restrictions and prohibitions on outside activities.

Activities that would require disqualification from matters critical to performance of the employee's official duties

Juan's principal duty in his new position at the Environmental Protection Agency is to write regulations relating to the disposal of hazardous waste. He has been asked to serve, however, as president of a nonprofit environmental organization that routinely submits comments on such regulations.

May Juan serve as an officer of the environmental organization? **No.**

An employee may not engage in an outside activity if the rules dealing with conflicting financial interests or the appearance of a loss of impartiality would require the employee's disqualification from matters so central or critical to the performance of the employee's official duties that his ability to perform the duties of his position would be materially impaired.

Representing a person or organization before a Federal department, agency or court; serving as an expert witness; and related activities

Ian is an attorney at the Federal Maritime Commission who has a small outside law practice. On a matter unrelated to his Federal service, he is thinking about accepting a fee to represent a contractor before the General Services Administration Board of Contract Appeals, to contest the Government's termination of its contract.

Catherine is an official at the Small Business Administration. From time to time she looks in on an elderly neighbor to see if she needs anything. On a recent visit, Catherine learned that her neighbor is upset over the Internal Revenue Service's assessment of a penalty against her because of a claimed overdue payment. The neighbor is apprehensive about calling the IRS to explain the claimed IRS error, so Catherine would like to call

for her. She does not intend to take any compensation.

Are the representational services Ian and Catherine propose to provide permissible? **No.**

Two overlapping Federal statutes, 18 U.S.C. §§ 203 and 205, prohibit an employee from making representations -- whether for compensation or not -- before any department, agency, or court if the matter is one in which the United States has a substantial interest. The statutes also prohibit an employee from--

- Taking compensation for such representational services provided by another; and
- Receiving consideration for assisting in the prosecution of a claim against the United States.

There are a number of exceptions to sections 203 and 205. An important one allows an employee, under certain circumstances, to represent himself, his parents, his spouse, his children, and certain others for whom the employee serves in a specific fiduciary capacity, such as a guardian.

There is also an exception in the statutes for giving testimony under oath. Use of this exception, however, is limited by the Standards of Ethical Conduct. The Standards provide that an employee may not serve as an expert witness for a private party in a proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest. This restriction applies whether compensation is received or not. It may be waived by the employee's agency ethics official under certain conditions.

* Please note that Department of Justice employees must obtain written approval from the Deputy Attorney General before engaging in the compensated outside practice of law.

Receiving salary, contribution to, or supplementation of salary from a source other than the United States

The Society for Ethical Conduct in Government, a private, nonprofit, and non-partisan organization, announces that it is sponsoring a number of two-year fellowships for individuals of high ethical character who are willing to serve in any policy position in the Federal Government during the pendency of the fellowship. To encourage people to apply for the fellowship, the Society has determined that benefits of the fellowship will include monthly payments from the Society that make up the difference between the recipient's Federal salary and \$150,000. The fellowship program is completely the idea of the Society and there is no statute authorizing it. Warren, a Federal employee in a policy position, has applied for one of the fellowships.

If Warren is selected as one of the fellows, may he accept the monthly stipend? **No.**

Warren's acceptance of the money would probably be considered a violation of a criminal statute, 18 U.S.C. § 209. With some limitations, this statute prohibits an employee from receiving anything other than his Federal salary as compensation for services as a Government employee.

Teaching, speaking, and writing

Paula works in the public information office of the Internal Revenue Service. A private trade association offers to pay her to teach a short course on a new taxpayer assistance program being implemented by the IRS.

May Paula accept the offer? **No.**

An employee may not receive compensation -- including travel expenses for transportation and lodging -- from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties. For most employees, teaching, speaking, or writing is considered "related to official duties" if--

- The activity is part of the employee's official duties;
- The invitation to teach, speak, or write is extended primarily because of the employee's official position;
- The invitation or the offer of compensation is extended by a person whose interests may be affected substantially by the employee's performance of his official duties;
- The activity draws substantially on nonpublic information; or
- The subject of the activity deals in significant part with agency programs, operations or policies or with the employee's current or recent assignments.*

* Most Justice Department employees need only consider the programs, operations or policies of their components in applying this rule.

For certain high-ranking noncareer employees, teaching, speaking and writing will also be considered "related to official duties" if the subject of the activity deals in a significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of such an employee's agency.

There is an exception that, in certain circumstances, allows all employees to accept compensation for teaching certain courses involving multiple presentations even if the courses relate to the employee's official duties. Various requirements must be met, however, in order to use this exception.

Again, it's a good idea to consult with your agency ethics official before engaging in any outside teaching, speaking, or writing.

Fundraising activities

The Standards of Ethical Conduct also contain rules governing fundraising for nonprofit organizations by an employee in his personal capacity. There are specific rules limiting the use of official title, position, or authority to further a fundraising effort and rules restricting solicitation of funds from subordinates and persons whose interests may be affected by actions of the employee's agency.

High-ranking noncareer employees and Presidential appointees

Emily holds a noncareer Senior Executive Service position with a Federal agency and is paid at a rate of pay in excess of the GS-15 level. She also has an outside job as head of marketing for a very successful family mail order business. This outside job provides nearly half of Emily's annual earned income.

Are Emily's outside earnings permissible? **No, not in that amount.**

Certain noncareer employees whose rate of basic pay is equal to or greater than the annual rate of basic pay for positions classified above GS-15 are subject to a 15 percent limitation on outside earned income. In any calendar year, their outside earned income may not exceed 15 percent of the annual rate of basic pay for level II

of the Executive Schedule.

William is a noncareer employee of the White House who is paid in excess of the GS-15 level. A friend offers to pay him a small fee to draft wills for the friend and his wife.

Is the arrangement permissible? **No.**

Covered noncareer employees are subject to a number of restrictions on their outside activities in addition to the 15 percent limitation on outside earned income. They may not receive any compensation for --

- Practicing a profession, such as law, which involves a fiduciary relationship;
- Affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship;
- Serving as an officer or member of the board of any association, corporation or other entity; or
- Teaching without prior approval from the designated agency ethics official.

In addition, and regardless of whether they receive any compensation, such employees also may not permit use of their names by any firm or other entity which provides professional services involving a fiduciary relationship. Note that for purposes of the "fiduciary relationship" restrictions, covered professions and professional services include law, medicine, insurance, architecture, financial services, accounting and the like.

Subject to certain exclusions, *Presidential appointees* to full-time noncareer positions may not receive *any* outside earned income during their Presidential appointments.

A Justice Department employee is prohibited from practicing law unless it is uncompensated and in the nature of community service, or on behalf of himself, his parents, spouse or children. Employees are also prohibited from engaging in outside employment that involves any criminal matter or a matter in which the Department is or represents a party. The Deputy Attorney General may waive these prohibitions in unusual cases.

A Justice Department employee must obtain written approval before engaging in outside employment that involves the practice of law or a subject matter that is in his component's area of responsibility.

An employee of a component dedicated to law enforcement must consult the internal manual of his component in addition to consulting the Standards of Ethical Conduct for additional restrictions that may be imposed on his outside activities. Those components include the Bureau of Prisons, Drug Enforcement Administration, Federal Bureau of Investigation, Immigration and Naturalization Service, Office of the Inspector General, Offices of the United States Attorneys, and the United States Marshals Service.

Just financial obligations

An employee must satisfy in good faith all his obligations as a citizen, including his just financial obligations. These include Federal, state, and local taxes imposed by law.

Purchase of forfeited property

A Justice Department employee shall not purchase, directly or indirectly, from the Department or its agents, property forfeited to the United States nor use such property that was purchased by the employee's spouse or child. In unusual cases, an employee may receive approval to purchase or use forfeited property provided that the employee has not used nonpublic information or his official position in making the purchase.

Restrictions Imposed on Certain Employees

Special Government employees

The term "special Government employee" is defined in 18 U.S.C. § 202(a). With some exceptions, it applies to employees who are retained, designated, appointed, or employed to perform temporary duties, either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period. Special Government employees are subject to many of the ethics statutes and to most of the Standards of Ethical Conduct. However, parts of some of the statutes and certain Standards do not apply at all to these employees and some impose reduced standards.

Employees involved in procurement and contract management

Certain employees involved in procurement and contract management, while subject to the ethics statutes and the Standards, are also subject to 41 U.S.C. § 423. This statute is implemented at part 3.104 of the Federal Acquisition Regulation and imposes more rigorous standards relating to employment discussions, post-employment activities, and disclosure of procurement-sensitive information.

This handbook does not attempt to address all of the rules unique to special Government employees and those involved in procurement and contract management. Employees who fall within one of these groups should ask their agency ethics officials for information on the ethics rules specific to them.

Additional restrictions

There are a number of additional restrictions on the activities of Federal employees. These include--

- The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which prohibits acceptance of gifts and compensation from foreign governments;
- 18 U.S.C. § 219, which prohibits acting as an agent of a foreign principal under specified circumstances; and
- The Hatch Act, 5 U.S.C. §§ 7321 through 7328, which applies to political activities of Federal employees.

**EXCERPTS FROM U.S. DEPARTMENT OF JUSTICE ETHICS OFFICE
HANDBOOK ON FEDERAL EMPLOYEES' ACCEPTANCE OF GIFTS**

Gifts from Outside Sources

The basic rule

A Federal employee may not accept gifts from any person or organization that --

- Seeks official action by the employee's agency;*
- Does business or seeks to do business with the employee's agency;*
- Conducts activities regulated by the employee's agency;*
- Has interests that may be substantially affected by performance or nonperformance of the employee's official duties;
- Is an organization a majority of whose members are described above; or
- Gives the gift because of the employee's official position.

What is a gift?

The term "gift" includes almost anything of monetary value. But there are some items that won't be considered gifts. Among these are soft drinks, coffee, donuts, and other modest refreshments offered other than as part of a meal.

Other items that won't be considered gifts include--

Items of little intrinsic value which are intended solely for presentation, such as greeting cards, plaques, certificates, and trophies;

Anything paid for by the Government or secured by the Government in accordance with a statute;

- Anything for which the employee pays market value;
- Most rewards and prizes in contests open to the public;
- Commercial discounts available to the general public or to all Government or military personnel;
- Loans from banks and other financial institutions on terms generally available to the public; and

Payments under pension and similar employee benefit plans.

Exceptions to the gift rule

Gifts are permitted where the circumstances make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. . . .

Exceptions to the rule against acceptance of gifts allow employees to accept--

- Unsolicited gifts with a value of \$20 or less;
- Gifts clearly given because of a family relationship or personal friendship;
- Free attendance at an event on the day an employee is speaking or presenting information on behalf of the agency;
- Free attendance at certain widely-attended gatherings;
- Certain discounts and similar opportunities and benefits;
- Certain awards and honorary degrees; and
- Certain gifts based on outside business or employment relationships.

[T]here are limitations on the applicability of some of these exceptions. For example, use of the widely-attended gathering exception would require an advance determination by your agency that your attendance is in the interest of the agency. Also, there are more exceptions than those listed above. . . .

Limits on use of the exceptions

. . . None of the exceptions may be used to--

- Accept a gift in return for being influenced in the performance of an official act;
- Solicit or coerce the offering of a gift;
- Accept gifts so frequently as to create an appearance that you are using public office for private gain;
- Accept a gift in violation of any statute.

Among the statutes . . . are those prohibiting--

- Solicitation or receipt of bribes (18 U.S.C. § 201(b)); and
- Receipt of salary or any contribution to or supplementation of salary as compensation for Government service from a source other than the United States (18 U.S.C. § 209).

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MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: Jorge M. Gonzalez, City Manager

DATE: September 26, 2011

SUBJECT: NEWSPAPER ARTICLES REGARDING SECURITY ALLIANCE

At the request of Commissioner Wolfson, the Mayor and City Commission at its April 13, 2011 meeting referred Agenda Item C4J, as a discussion item relative to newspaper articles involving Security Alliance, to the Finance and Citywide Projects Committee (the "Committee").

In coordination with the City Attorney's Office, the Procurement Director has obtained the following are facts of the case that generated the newspapers articles regarding Security Alliance:

FACTS AS OUTLINED IN CASE NO. 8:10-cr-00472-SDM-TBM --- USA v. James B. Loftus, Jr.

Beginning in or around at least the late 1990's and continuing until in or around March 2007, the defendant, JAMES B. LOFTUS, JR., and Brian W. Ouellette occupied high-level security positions at Rooms To Go ("RTG"), which was a Florida corporation with its principal place of business in the Middle District of Florida. In those positions, the defendant and Ouellette were given substantial discretion by RTG to handle security-related matters entrusted to them. Additionally, as employees of the company, the defendant and Ouellette owed a fiduciary duty to RTG not to engage in certain activities, including the solicitation and receipt of kickbacks from outside vendors which RTG would, from time to time, retain to perform security-related services for it.

Without RTG's knowledge and approval, however, the defendant and Ouellette created, among other entities, Lot 49 Inc. and Wiley Management Corp. ("Wiley Management"), respectively to enable themselves to secretly receive kickbacks from an outside security vendor named Security Alliance, LLC, a/k/a Security Alliance of Florida, LLC ("Security Alliance"), which RTG had retained to employ and manage its security guards. Unbeknownst to RTG, Security Alliance had created another company, Choice Management Solutions, LLC ("Choice Management"), to make these kickback payments to the defendants and Ouellette.

To conceal and cover-up these kickbacks from RTG, the defendant and Ouellette, among other things, secretly prepared sham invoices addressed to Security Alliance and Choice Management which fraudulently sought payment for "consulting" services, and which required that such payments be made indirectly to the defendant and Ouellette through Lot 49 Inc. and Wiley Management, respectively. The defendant and Ouellette e-mailed these fraudulent invoices to Security Alliance and Choice Management, and Security Alliance and Choice Management, in turn, used the United States mail ("Postal Service") to deliver checks to the defendant and Ouellette which were addressed and made payable to Lot 49 Inc. and Wiley Management, respectively. The defendant and Ouellette received these checks from the United States Postal Service at the place the defendant and Ouellette directed said checks to be delivered.

All total, the defendant and Ouellette solicited and received kickbacks from Security Alliance and Choice Management in the amounts of approximately \$287,562 and \$550,456, respectively. In exchange for these payments, the defendant and Ouellette provided favorable treatment to Security Alliance in their official positions with RTG, including the opportunity to employ and manage, and to continue employing and managing, RTG's security guards.

SECURITY ALLIANCE'S POSITION

Security Alliance, via e-mail dated April 25, 2011, proffered the following statement as their position on this subject matter:

"Security Alliance has never been the target of a criminal investigation. The language of the charges against Mr. Ouelette and Mr. Loftus should not be misinterpreted. Security Alliance was a victim, like Rooms To Go, of the defendants' greed and undue influence. In actual fact, Security Alliance cooperated fully in assisting both Rooms To Go, and the FBI to investigate and prosecute this case. Indeed, those individuals were named by Rooms To Go in a "pure bill of discovery" lawsuit, along with other known victimized vendors, including Security Alliance, in order to obtain further evidence. That lawsuit was promptly dismissed with prejudice as to Security Alliance based on our assistance and cooperation with the FBI. It should also be clearly understood that Choice Management Solutions was formed on advice of our accountant to segregate our managerial and office staff from our security staff, in terms of employee benefits, and for administrative efficiency in paying vendors. It continues to exist and operate for these purposes to this day."

Attached is a copy of the Voluntary Dismissal of the Pure Bill of Discovery action that included Security Alliance and some of its subsidiaries. This Dismissal effectively ended the case and Security Alliance's involvement in the issue at hand.

Senior Assistant City Attorney Aleksandr Boksner will present an oral report on his conversations with individuals who investigated and/or prosecuted the case.

As always, please feel free to contact me should you have any questions or require additional information on this item.

Attachment: Plea Agreement Case of U.S.A. v. James B. Loftus, Jr.

c: Jose Smith, City Attorney

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: September 26, 2011

SUBJECT: **DISCUSSION REGARDING THE PROPOSED INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI BEACH FOR THE PROVISION OF A BI-DIRECTIONAL TRANSIT CIRCULATOR ROUTE SERVICE KNOWN AS THE "SOUTH BEACH LOCAL".**

BACKGROUND

Subject discussion was referred by the City Commission to the Finance and Citywide Projects Committee at the July 13, 2011 Commission Meeting. Under the provisions of an Interlocal Agreement (ILA) Miami-Dade County (the County) has been operating a bi-directional transit circulator route service in Miami Beach known as the "South Beach Local" (SBL) since September 25, 2005. The SBL replaced both the City's Electrowave Shuttle Service and Miami-Dade Transit's (MDT) Route W, serving the entire South Beach community. MDT became the provider of bus shuttle services on South Beach in lieu of the previous provider, the Miami Beach Transportation Management Association.

MDT has provided an expanded level of service at significantly less cost to the City as a result of the City and County combining and coordinating transit resources instead of competing for the same ridership. The partnership allows the City to comply with the requirement of the People's Transportation Plan (PTP) Surtax to expend 20% of the City's PTP share on transit purposes. If not used for transit services, the 20% share of PTP funds would be returned to the County.

The SBL ILA expired on October 11, 2010; however, MDT has continued to provide service after the expiration of the SBL ILA under the same terms and conditions.

MDT initially wanted to have the City contribute more to the annual operating cost than our current proportion of approximately 35% City and 65% County. The County wanted to have a 50% City and 50% County split. The cost increase to the City would have been \$507,379 annually. In addition, the County wanted to increase the headways during peak hours, eliminate the City's 3% annual increase limits, and eliminate the Belle Isle service.

After prolonged negotiations and support from County Commissioner Bruno A. Barreiro, the City and MDT agreed to the following:

1. The City will maintain the current level of contribution of \$1,213,121 per year.
2. Maintain the current headways of 13 minutes during the peak hours.
3. Continue service to Belle Isle.
4. Maintain the City's contribution to the annual net operating cost increase to the Miami-Ft. Lauderdale CPI Transportation Index or 3%, whichever is less.

ANALYSIS

The changed terms of the negotiated SBL ILA in comparison to the original SBL ILA are as follows:

- **Sec. 3.1 Provision of Service and 3.2 Fares**
 - Current Agreement: MDT will operate the SBL with a fare of \$0.25, service hours Mon – Sun from 8:00 a.m. – 1:00 a.m., and peak headways every 13 minutes and off peak headways every 20 minutes.
 - Negotiated Agreement: MDT will operate the SBL with a fare of \$0.25, service hours Mon – Sun from 8:00 a.m. – Midnight, and peak headways every 13 minutes and off peak headways every 20 minutes.
 - Changes: There will be no service from midnight to 1:00 a.m. due to low ridership. The average ridership was ten people for that hour.

- **Sec. 6.1 Funding: Estimated Annual Operating Cost:**
 - Current Agreement: The current net operating cost for FY 2010/11 is \$3,441,000. The City contributes \$1,213,121 and MDT contributes \$2,227,879.
 - Negotiated Agreement: Based on the projected operating cost for FY 2011/12 of \$3,177,000, the City would contribute \$1,213,121 and MDT would contribute \$1,979,303. The City agreed to maintain the same level of annual funding because the County had agreed to maintain the same 13 minute headways during peak hours, continue service to Belle Isle, and maintain the City's annual funding increase to limit the City's contribution to the Miami-Ft. Lauderdale CPI Transportation Index or 3%, whichever is less.
 - Changes: The City's contribution has not changed from the current agreement.

- **Sec. 6.1 Funding: Annual Change to City's Contribution**
 - Current Agreement: The City's contribution will increase each year based on the South Florida Transportation Consumer Price Index or 3%, whichever is less.
 - Negotiated Agreement: The City negotiated with MDT to an annual increase or decrease that will be the lesser of the Miami-Ft. Lauderdale CPI Transportation Index or three percent (3%).
 - Changes: The South Florida Transportation Consumer Price Index no longer exists. The new agreement is using the Miami-Ft. Lauderdale CPI Transportation Index.

- **Sec. 2.2 Vehicles - FTA Purchased Buses**
 - Current Agreement: If the Agreement is terminated, MDT will return City-purchased buses to the City. City will be allowed to purchase up to 6 additional minibuses from the County's procurement contract.
 - Negotiated Agreement: A change to federal regulations requires MDT to reimburse FTA for the 4 buses purchased with FTA funds for the SBL based on the depreciated value, and any remaining funds after the disposal of the buses and reimbursement to FTA will be provided to the City, if the agreement is terminated. The City will be allowed to purchase additional diesel minibuses from MDT's bus procurement contract.
 - Changes: The change from returning buses to the City to the City receiving remaining funds after FTA reimbursement is due to a change in federal regulations.

- **Sec. 3.10 FTA Monitoring and Oversight Regarding Information Required for FTA Audits**
 - Current Agreement: Agreement does not include language on this issue.

- Negotiated Agreement: MDT will provide the City with an annual performance report which includes ridership data and trends, supporting data for Service Standards, annual maintenance records, ect. and any other requirements that are pursuant to FTA.
- Changes: This is a change to the current agreement. It benefits the City to have this information for FTA audits.
- **Sec. 2.7 Public Coordination**
 - Current Agreement: Agreement does not include language on this issue.
 - Negotiated Agreement: MDT will present proposed modifications to the Transportation and Parking Committee (TPC). MDT will also provide biannual presentations to the TPC on the performance and quality of service of the SBL.
 - Changes: This is a change to the current agreement. It benefits the City by providing the proposed modifications during the term of the agreement and a biannual update to the City TPC.

CONCLUSION

The above information is provided for discussion by members of the Committee and to request endorsement of the attached "draft" ILA for full Commission approval.

Attachment:

Draft SBL Interlocal Agreement

DRB/FHB/RS/DF

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MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: *Hilda M. Fernandez*
Jorge M. Gonzalez, City Manager

DATE: September 26, 2011

SUBJECT: **REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE A DISCUSSION PERTAINING TO THE ISSUANCE OF THE REQUEST FOR PROPOSALS (RFP) FOR THE COMPREHENSIVE PROFESSIONAL TENNIS MANAGEMENT AND OPERATIONS SERVICES AT THE CITY'S FLAMINGO PARK AND NORTH SHORE PARK TENNIS CENTERS**

BACKGROUND

This matter was referred to the Finance and Citywide Projects Committee at the July 13, 2011 Commission meeting.

The current agreement with Greensquare Inc., for the management and operations of the City's tennis centers is due to expire in April, 2012. It has been the Administration's intention to issue a Request For Proposals (RFP) in a timely manner to avoid any break in quality operations or services to the City's tennis-playing residents and guests. The RFP is intended to secure a qualified professional management company for the operation of these public tennis facilities, to include the operation of the tennis courts; pro shop; a food and beverage concession; and other tennis-related operations as approved by the City. Services also include those customarily associated with the operation of a public tennis center, including permitted special events related to the tennis center activities.

The final price and terms for the contracts would be negotiated after the City Commission approves authorization to negotiate with the entity selected through the RFP. The new management agreement is expected to be for a three (3) year term, with two (2) one-year renewal options at the City's option.

ISSUE FOR DISCUSSION

The issue for the Committee's consideration and discussion at this time, is related to the timing of the issuance of this RFP, taking into consideration that the Flamingo Park Tennis Center will be soon be under complete reconstruction. The Commission has taken the actions necessary to secure the construction company to provide the GMP pre-construction and construction services for the Flamingo Park Tennis Center project. The Flamingo Park Tennis Center is currently scheduled for demolition and construction to begin in January, 2012. It is anticipated that construction will take approximately one year, with an expected completion date of January 2013.

The plan is to phase construction by always having a set of courts available for play to the patrons. The goal of keeping the Tennis Center open while under construction and continuing to provide quality customer service for our residents and guests presents some potentially challenging issues. The City may benefit from having a management team familiar with the current tennis patrons and the conditions of the current tennis center and programs. Some of these challenges include, but are not limited to:

- Anticipated complaints from current tennis center members and guests trying to obtain a court reservation with approximately 50% fewer courts available for play
- Assuring a delicate balance of member play, non-member play, private lesson and clinics, given the reduction of available courts between the Flamingo and North Shore Tennis Centers.
- Continue the existing and expand the successful youth programs currently underway.

Additionally, as a result of fewer available tennis courts for play, there is an expected negative financial impact to the tennis center, and a reduction of tennis revenue during the construction period that will impact the tennis centers' management. It is unclear how this may impact potential responses to an RFP issued at this time, including the subsequent negotiations with the firm awarded the agreement.

CONCLUSION

The Administration requests that the Committee discuss the matter and provide direction on whether to issue the RFP at this time and have the selected tennis management company in position to begin operations in April of 2012 when the current agreement expires, or whether it is more beneficial for the City and our tennis-playing residents and guests for the City to extend the current agreement with Greensquare on a month-to-month basis until such time as the new Flamingo Park Tennis Center is nearing completion, and at such time coordinate the issuance of the RFP in a manner to have the selected operator in place to coincide with the grand opening of the new facility.

CC: Hilda M. Fernandez, Assistant City Manager
Kevin Smith, Director of Parks and Recreation
Julio Magrisso, Assistant Director of Parks and Recreation

JMG/HMF/KS/JEM
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MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: August 17, 2011

SUBJECT: **Discussion concerning City Fees and Charges for Gay Pride 2012.**

BACKGROUND

The subject discussion item was referred to the Finance and Citywide Projects Committee at the July 13, 2011 City Commission meeting.

In 2008, Mayor Bower created the Gay Business Development Ad Hoc Committee. One of the first initiatives of this Ad Hoc Committee was to establish a Miami Beach Gay Pride. In 2009 the Committee celebrated the inaugural Miami Beach Pride event and they have successfully produced the event for three (3) consecutive years.

The following is a breakdown of the fees charged by the City for Miami Beach Pride in each year of the event (W=Waived):

	2009		2010		2011	
Application Fee	(\$250.00)	W	(250.00)	W	(250.00)	W
Permit Fee	(\$250.00)	W	(500.00)	W	(500.00)	W
Vehicle Beach Access Passes	(\$1,200.00)	W	(3,000.00)	W	(4,500.00)	W
Square Footage Fee	3,475.00	-	10,390.00	-	5,130.65	-
Lummus Park User Fee	2,194.00	-	2,794.75	-	3,476.70	-
Police Personnel	3,923.00	-	8,264.00	-	8,414.50	-
Police Admin. Fees	(980.00)	W	(330.00)	W	(300.00)	W
Fire Personnel	0.00	-	520.00	-	520.00	-
Fire Admin. Fees	0.00	W	(104.00)	W	(104.00)	W
Parking Fees	1,920.00	-	3,300.00	-	3,300.00	-
Parking Admin. Fees	30.00	-	30.00	-	30.00	-
Sanitation Fees	2,963.49	-	775.00	-	1,219.81	-
Building Fees - Aprox.	463.60	-	1,117.24	-	766.40	-
TOTAL COSTS	\$12,289.09		\$23,006.99		\$17,204.06	
TOTAL WAIVERS	\$2,180.00		\$3,684.00		\$5,154.00	

As you are aware, the City does not provide waivers to any entity for hard costs (police and fire personnel, parking or sanitation), and cannot waive Building fees by State law.

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MIAMI BEACH

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

FINANCE & CITYWIDE PROJECTS COMMITTEE MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: September 26, 2011

SUBJECT: Discussion regarding the reduction of utility bill's penalty percentage from 10% to 5%.

At the July 13, 2011 City of Miami Beach Commission meeting, a discussion item regarding the reduction of utility bill's penalty percentage, from 10% to 5%, was referred to the Finance and Citywide Projects Committee (F&CWPC) for discussion.

This discussion item was added to an Ordinance, under first reading, which changes the due date for utility bills to 21 days from their current 15 days from the date of the bill. This change in date came as a recommendation from the F&CWPC after the Committee analyzed and compared due dates from other public utility providers from neighboring communities, as well as, other utility bills from private providers who operate in Miami Beach.

Presently, when a utility bill is in arrears, the City charges a one-time 10% penalty on the current portion of the bill. No additional interest or penalties are charged.

Similarly as to the study conducted with changing the due date from 15 days to 21 days, listed below for your review is a comparison of local Utility Bills from neighboring communities, as well as, two other energy utility providers in Miami Beach:

**City of Miami Beach
Finance and Citywide Projects Committee
Utility Billing Analysis**

Community Name	Late Penalty	Interest
City of Miami Beach - Utility Billing	10% of current bill	No interest
Miami-Dade Water and Sewer Department	10% of current bill	No interest
Broward County Comm. - Public Works Dept.	N/A	2.5% monthly on entire past due bal.
City of Miramar	\$15.00	No interest *high reconnection fee
City of Fort Lauderdale	N/A	1% monthly on entire past due bal.
Other Utilities		
Florida Power and Light	1.5% of current bill	1.5% monthly on entire past due bal.
TECO - Peoples Gas	1.5% of current bill	1.5% monthly on entire past due bal.

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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 Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 14, 2011

SUBJECT: **REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE A DISCUSSION PERTAINING TO THE CATERING AND CONCESSIONS SERVICES AGREEMENT FOR THE MIAMI BEACH CONVENTION CENTER.**

ADMINISTRATION RECOMMENDATION

Refer the matter to the Finance and Citywide Projects Committee for discussion.

ANALYSIS

On April 11, 2006, the Mayor and City Commission approved the issuance of Request for Proposals (RFP) No. 22-05/06, to Provide Professional Food and Beverage Facilities Management Services for the Miami Beach Convention Center; with an option to manage food and beverage services at other city cultural facilities to include: 1) the Jackie Gleason Theater of the Performing Arts; 2) the Colony Theater; and 3) the Byron Carlyle Theater. This RFP was issued in advance of Centerplate's expiring contract on February 28, 2007. Centerplate, doing business originally as Volume Services America, Inc., held the exclusive food and beverage services contract at the Miami Beach Convention Center since December 17, 1986. The original contract had an initial term of fifteen years, and the City Commission exercised a five (5) year renewal term on May 16, 2001 via Resolution No. 2001-24393.

During the initial 20 years of the agreement, the Convention Center's food and beverage concessionaire was restricted from hosting local catering events such as banquets, weddings, and galas, when those events did not book an exhibit hall and were not conventions, trade, public or consumer shows. Prior to the issuance of the RFP, the social catering restriction was reviewed by several City committees and organizations and a recommendation was made to remove the prohibition. The City Commission subsequently endorsed the removal of the social catering prohibition; the ensuing RFP allowed for the successful proposer to host local catering events at the Miami Beach Convention Center, and specific attention was given to this area.

The RFP Evaluation Committee and the City Administration recommended Centerplate as the top-ranked firm. This recommendation was made in large part due to Centerplate's proposed partnership with Barton G. At the time, Centerplate had formed an exclusive relationship with Barton G., a Miami-based event planning and production company with a strong base of social, corporate and philanthropic clients. On September 6, 2006, the City Commission adopted Resolution No. 2006-26316 authorizing the Mayor and Clerk to execute an agreement upon completion of successful negotiations by the Administration.

As stated previously, Centerplate's Agreement expired on February 28, 2007. The City and

Agenda Item C4E
Date 9-14-11

Centerplate didn't conclude negotiations until December 13, 2007, which is when the final agreement was executed. Much of the delay in agreeing to terms centered around the partnership with Barton G and operational issues involved with booking social catering business. The terms of the Agreement were retroactive to March 1, 2007 and expires on September 30, 2012. The Agreement also includes two (2) successive, five (5) year renewal options at the City's discretion.

The Agreement includes the following:

- **Guaranteed Minimum Annual Rent of \$1,250,000, representing 25.5% of gross revenue up to \$4 million. Above \$4 million, the commission increases in tiers up to 33%.**
- **Capital Investment: Centerplate invested \$800,000 towards food and beverage capital projects to enhance the foodservice facilities at the Miami Beach Convention Center.**
- **Centerplate also allocates 1.5% of Gross Receipts towards a Capital Reserve Fund.**
- **Marketing Reserve Fund: Centerplate allocates the greater of an annual contribution of \$20,000 or 1.5% of Catering Gross Receipts to a Marketing Reserve Fund to promote the food and beverage offerings (catering, concessions, etc.). In addition, Centerplate also pre-funded \$50,000 towards the Marketing Reserve Fund.**
- **Scholarship Fund: Centerplate contributes \$20,000 annually toward the City's tourism and hospitality scholarship program.**

Some early social catering business was booked at the Convention Center in partnership with Barton G. However, due to issues with the relationship between Centerplate and Barton G, on May 15, 2008, the City was officially notified the partnership would not continue. Section 10.17 of the Agreement between the City and Centerplate stipulates that any replacement for Barton G is subject to the prior written approval of the City Manager. Centerplate immediately began searching for a new social catering partner and on August 28, 2008 Centerplate proposed Touch Catering. After reviewing the material and Touch Catering's history and track record, the City approved the replacement of Barton G with Touch Catering on December 19, 2008.

Centerplate hired a dedicated social catering salesperson to focus on booking more of this business. They have been successful in booking numerous social catering events at the Convention Center and continue to focus heavily in this area. Centerplate, in partnership with Touch Catering, also completed a new Kosher kitchen and has booked several Kosher events. Although Centerplate's client survey scores continue to be among the lowest scores given by Convention Center users (meeting planners, etc.), specifically in food quality and food presentation of the concession operation, they have improved their scores in each of the past three (3) years (see attached).

Centerplate informed the City on March 4, 2011, that they had replaced their General Manager with an Interim General Manager, Nick Tierno. Mr. Tierno has since revised Exhibitor Booth Catering Menus, adjusted pricing and made operational changes.

Convention Center Advisory Board

As previously stated, Centerplate's agreement with the City expires on September 30, 2012. As such, the Convention Center Advisory Board (CCAB), at their June 7, 2011 meeting, discussed

FCWPC Referral – Convention Center Catering and Concessions Services Agreement

Commission Memorandum

July 13, 2011

Page 3 of 3

whether or not the City should exercise the five (5) year renewal option available in the Agreement or issue a new Request for Proposals (RFP). The CCAB reviewed Centerplate's history and unanimously recommended that the City issue a new RFP for catering and concession services at the Convention Center. This recommendation was based largely on Centerplate's client survey scores and their history of being the lowest-rated area of the Convention Center's operations.

CONCLUSION

The Administration recommends that the Mayor and the City Commission refer the matter to the Finance and Citywide Projects Committee for discussion.


JMG/HMF/MAS

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**Miami Beach Convention Center Client Response Results
October 2008 - September 2009**

	Excellent	Pctg	Good	Pctg	Fair	Pctg	Poor	Pctg	Positive	Negative
Sales										
Knowledgeable	44	88.00%	6	12.00%	0	0.00%	0	0.00%	100.00%	0.00%
Responsiveness to your needs	45	90.00%	5	10.00%	0	0.00%	0	0.00%	100.00%	0.00%
Professionalism	44	89.80%	5	10.20%	0	0.00%	0	0.00%	100.00%	0.00%
Readily Accessible	44	89.80%	4	8.16%	1	2.04%	0	0.00%	97.96%	2.04%
Clarity of Information	39	84.78%	6	13.04%	1	2.17%	0	0.00%	97.82%	2.17%
Sales Subtotal	216	88.47%	26	10.68%	2	0.84%	0	0.00%	99.16%	0.84%
Event Manager										
Knowledgeable	36	70.59%	15	29.41%	0	0.00%	0	0.00%	100.00%	0.00%
Responsiveness to your needs	38	74.51%	7	13.73%	5	9.80%	1	1.96%	88.24%	11.16%
Professionalism	40	78.43%	9	17.65%	2	3.92%	0	0.00%	96.08%	3.92%
Readily Accessible	38	74.51%	7	13.73%	5	9.80%	1	1.96%	88.24%	11.76%
*Pre-Event	37	74.00%	11	22.00%	1	2.00%	1	2.00%	96.00%	4.00%
*On-Site	38	74.51%	8	15.69%	5	9.80%	0	0.00%	90.20%	9.80%
Clarity of Information	35	71.43%	10	20.41%	4	8.16%	0	0.00%	91.84%	8.16%
Event Manager Subtotal	262	74.00%	67	18.94%	22	6.21%	3	0.85%	92.94%	6.97%
Building Operations										
Courtesy of Building Staff	34	68.00%	14	28.00%	2	4.00%	0	0.00%	96.00%	4.00%
Cleanliness	29	58.00%	14	28.00%	5	10.00%	2	4.00%	86.71%	14.00%
Accuracy of Setups	26	52.00%	19	38.00%	5	10.00%	0	0.00%	90.00%	10.00%
Timeliness of Setups	28	56.00%	17	34.00%	4	8.00%	1	2.00%	90.00%	10.00%
Building Signage	21	46.67%	15	33.33%	8	17.78%	1	2.22%	80.00%	20.00%
Building Operations Subtotal	128	56.13%	79	32.27%	24	9.96%	4	1.64%	88.40%	11.60%
Global Spectrum Subtotal	606	72.87%	172	20.63%	48	5.67%	7	0.83%	93.50%	6.47%
Priority Networks										
Knowledgeable	19	63.33%	10	33.33%	1	3.33%	0	0.00%	96.66%	3.33%
Responsiveness to your needs	18	60.00%	9	30.00%	1	3.33%	2	6.67%	90.00%	10.00%
Professionalism	17	56.67%	10	33.33%	3	10.00%	0	0.00%	90.00%	10.00%
Readily Accessible	17	56.67%	10	33.33%	1	3.33%	2	6.67%	90.00%	10.00%
Clarity of Information	17	56.67%	9	30.00%	3	10.00%	1	3.33%	86.67%	13.33%
Accuracy of Setups	20	66.67%	8	26.67%	2	6.67%	0	0.00%	93.34%	6.67%
Timeliness of Setups	19	70.37%	5	18.52%	0	0.00%	3	11.11%	88.89%	11.11%
Priority Networks Subtotal	127	61.48%	61	29.31%	11	5.24%	8	3.97%	90.79%	9.21%



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**Miami Beach Convention Center Client Response Results
October 2008 - September 2009**

	Excellent	Pctg	Good	Pctg	Fair	Pctg	Poor	Pctg	Positive	Negative
Smart Source										
Knowledgeable	18	69.23%	7	26.92%	0	0.00%	1	3.85%	96.15%	3.85%
Responsiveness to your needs	17	68.00%	6	24.00%	1	4.00%	1	4.00%	92.00%	8.00%
Professionalism	16	64.00%	6	24.00%	2	8.00%	1	4.00%	88.00%	12.00%
Readily Accessible	16	64.00%	8	32.00%	1	4.00%	0	0.00%	96.00%	4.00%
Clarity of Information	16	64.00%	7	28.00%	1	4.00%	1	4.00%	92.00%	8.00%
Accuracy of Setups	16	64.00%	6	24.00%	2	8.00%	1	4.00%	88.00%	12.00%
Timeliness of Setups	16	64.00%	7	28.00%	0	0.00%	2	8.00%	92.00%	8.00%
Courtesy of AV floor Operations Staff	17	73.91%	4	17.39%	2	8.70%	0	0.00%	91.30%	8.70%
Smart Source Subtotals	132	66.39%	61	25.54%	9	4.59%	7	3.48%	91.93%	8.07%
Centerplate										
Knowledgeable	28	66.67%	12	28.57%	2	4.76%	0	0.00%	95.24%	4.76%
Responsiveness to your needs	31	73.81%	7	16.67%	3	7.14%	1	2.38%	90.48%	9.52%
Professionalism	31	73.81%	9	21.43%	2	4.76%	0	0.00%	95.24%	4.76%
Readily Accessible	28	66.67%	9	21.43%	5	11.90%	0	0.00%	88.10%	11.90%
Clarity of Information	23	60.53%	11	28.95%	4	10.53%	0	0.00%	89.48%	10.53%
Courtesy of Catering Staff										
Food Quality	19	45.24%	16	38.10%	6	14.29%	1	2.38%	83.34%	16.67%
Food Presentation	19	45.24%	16	38.10%	6	14.29%	1	2.38%	83.34%	16.67%
Menu Selection/Variety/Flexibility	22	52.38%	14	33.33%	6	14.29%	0	0.00%	85.71%	14.29%
Accuracy of Setups	26	61.90%	9	21.43%	5	11.90%	2	4.76%	83.33%	16.66%
Timeliness of Setups	23	57.50%	10	25.00%	5	12.50%	2	5.00%	82.50%	17.50%
Courtesy of Concessions Staff										
Food Quality	11	31.43%	17	48.57%	7	20.00%	0	0.00%	80.00%	20.00%
Food Presentation	12	33.33%	16	44.44%	8	22.22%	0	0.00%	77.77%	22.22%
Menu Selection	13	36.11%	16	44.44%	7	19.44%	0	0.00%	80.55%	19.44%
Cleanliness and Setup of Outlets	12	36.36%	16	48.48%	5	15.15%	0	0.00%	84.84%	15.15%
Centerplate Subtotals	342	53.33%	202	32.67%	80	12.94%	7	1.06%	86.01%	13.99%

MIAMIBEACH
convention
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**Miami Beach Convention Center Client Response Results
October 2008 - September 2009**

	Excellent	Pctg	Good	Pctg	Fair	Pctg	Poor	Pctg	Positive	Negative
Other Services										
Valet Parking	3	9.68%	24	77.42%	3	9.68%	1	3.23%	87.10%	12.91%
Business Center	5	19.23%	17	65.38%	2	7.69%	2	7.69%	84.67%	15.38%
Convention Concierge	3	15.00%	14	70.00%	2	10.00%	1	5.00%	86.00%	15.00%
Miami Beach Fire Marshall	17	44.74%	17	44.74%	3	7.89%	1	2.63%	89.48%	10.52%
Other Services Subtotal	28	22.16%	72	64.39%	10	8.82%	6	4.64%	86.56%	13.45%
Building Subtotal	1,235	55.25%	558	34.51%	158	7.45%	34	2.80%	89.76%	10.24%
Surveys Sent	92									
Surveys Received	51									
Percent Received	55.43									

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Miami Beach Convention Center Client Response Results
October 2009 - September 2010

	Excellent	Pctg	Good	Pctg	Fair	Pctg	Poor	Pctg	Positive	Negative
Sales										
Knowledgeable	50	81.97%	11	18.03%	0	0.00%	0	0.00%	100.00%	0.00%
Responsiveness to your needs	52	85.25%	7	11.48%	2	3.28%	0	0.00%	96.72%	3.28%
Professionalism	54	88.52%	6	9.84%	1	1.64%	0	0.00%	98.36%	1.64%
Readily Accessible	52	85.25%	8	13.11%	1	1.64%	0	0.00%	98.36%	1.64%
Clarity of Information	47	82.46%	9	15.79%	1	1.75%	0	0.00%	97.56%	1.75%
Sales Subtotal	255	84.69%	41	13.65%	5	1.66%	0	0.00%	98.20%	1.66%
Event Manager										
Knowledgeable	51	80.95%	12	19.05%	0	0.00%	0	0.00%	100.00%	0.00%
Responsiveness to your needs	53	84.13%	10	15.87%	0	0.00%	0	0.00%	100.00%	0.00%
Professionalism	55	87.30%	8	12.70%	0	0.00%	0	0.00%	100.00%	0.00%
Readily Accessible	54	85.71%	8	12.70%	1	1.59%	0	0.00%	98.41%	1.59%
*Pre-Event	49	77.78%	14	22.22%	0	0.00%	0	0.00%	100.00%	0.00%
*On-Site	57	90.48%	6	9.52%	0	0.00%	0	0.00%	100.00%	0.00%
Clarity of Information	48	80.00%	11	18.33%	1	1.67%	0	0.00%	98.33%	1.67%
Event Manager Subtotal	367	83.76%	69	15.77%	2	0.46%	0	0.00%	99.54%	0.46%
Building Operations										
Courtesy of Building Staff	44	69.84%	19	30.16%	0	0.00%	0	0.00%	100.00%	0.00%
Cleanliness	40	63.49%	17	26.98%	5	7.94%	1	1.59%	90.48%	9.52%
Accuracy of Setups	43	68.25%	16	25.40%	3	4.78%	1	1.59%	93.65%	6.35%
Timeliness of Setups	45	71.43%	14	22.22%	4	6.35%	0	0.00%	93.65%	6.35%
Building Signage	34	54.84%	20	32.26%	6	9.68%	2	3.23%	87.10%	12.90%
Building Operations Subtotal	206	65.57%	86	27.40%	18	5.75%	4	1.28%	92.97%	7.03%
Global Spectrum Subtotal	828	78.00%	196	18.94%	25	2.62%	4	0.42%	96.94%	3.04%
Priority Networks										
Knowledgeable	27	77.14%	8	22.86%	0	0.00%	0	0.00%	100.00%	0.00%
Responsiveness to your needs	27	77.14%	6	17.14%	1	2.86%	1	2.86%	94.29%	5.71%
Professionalism	27	77.14%	7	20.00%	1	2.86%	0	0.00%	97.14%	2.86%
Readily Accessible	26	74.29%	5	14.29%	3	8.57%	1	2.86%	88.57%	11.43%
Clarity of Information	27	77.14%	6	17.14%	2	5.71%	0	0.00%	94.29%	5.71%
Accuracy of Setups	27	77.14%	6	17.14%	2	5.71%	0	0.00%	94.29%	5.71%
Timeliness of Setups	24	75.00%	6	18.75%	2	6.25%	0	0.00%	93.75%	6.25%
Priority Networks Subtotal	185	76.43%	44	18.19%	11	4.57%	2	0.82%	94.62%	5.38%

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**Miami Beach Convention Center Client Response Results
October 2009 - September 2010**

	Excellent	Pctg	Good	Pctg	Fair	Pctg	Poor	Pctg	Positive	Negative
Audio Visual										
Knowledgeable	24	82.76%	5	17.24%	0	0.00%	0	0.00%	100.00%	0.00%
Responsiveness to your needs	23	79.31%	6	20.69%	0	0.00%	0	0.00%	100.00%	0.00%
Professionalism	23	79.31%	6	20.69%	0	0.00%	0	0.00%	100.00%	0.00%
Readily Accessible	22	75.86%	7	24.14%	0	0.00%	0	0.00%	100.00%	0.00%
Clarity of Information	23	79.31%	5	17.24%	1	3.45%	0	0.00%	96.55%	3.45%
Accuracy of Setups	23	79.31%	6	20.69%	0	0.00%	0	0.00%	100.00%	0.00%
Timeliness of Setups	24	82.76%	5	17.24%	0	0.00%	0	0.00%	100.00%	0.00%
Courtesy of AV floor Operations Staff	21	80.77%	5	19.23%	0	0.00%	0	0.00%	100.00%	0.00%
Audio Visual Subtotals	183	79.92%	46	19.65%	1	0.43%	0	0.00%	99.57%	0.43%
Centerplate										
Knowledgeable	41	70.69%	17	29.31%	0	0.00%	0	0.00%	100.00%	0.00%
Responsiveness to your needs	40	68.97%	12	20.69%	4	6.90%	2	3.45%	89.66%	10.34%
Professionalism	43	74.14%	14	24.14%	1	1.72%	0	0.00%	98.28%	1.72%
Readily Accessible	38	65.52%	14	24.14%	4	6.90%	2	3.45%	88.66%	10.34%
Clarity of Information	40	70.18%	15	26.32%	1	1.75%	1	1.75%	96.49%	3.51%
Courtesy of Catering Staff	40	74.07%	9	16.67%	5	9.26%	0	0.00%	90.74%	9.26%
Food Quality	31	57.41%	16	29.63%	6	11.11%	1	1.85%	87.04%	12.96%
Food Presentation	34	62.96%	14	25.93%	4	7.41%	2	3.70%	88.89%	11.11%
Menu Selection/Variety/Flexibility	29	53.70%	21	38.89%	2	3.70%	2	3.70%	92.59%	7.41%
Accuracy of Setups	41	74.55%	12	21.82%	1	1.82%	1	1.82%	96.36%	3.64%
Timeliness of Setups	42	80.77%	7	13.46%	2	3.85%	1	1.92%	94.23%	5.77%
Courtesy of Concessions Staff	27	57.45%	16	34.04%	3	6.38%	1	2.13%	91.49%	8.51%
Food Quality	23	52.27%	14	31.82%	5	11.36%	2	4.55%	84.09%	15.91%
Food Presentation	23	52.27%	15	34.09%	5	11.36%	1	2.27%	88.36%	13.64%
Menu Selection	23	52.27%	15	34.09%	5	11.36%	1	2.27%	88.36%	13.64%
Cleanliness and Setup of Outlets	25	59.52%	13	30.95%	2	8.33%	2	4.76%	90.48%	13.09%
Centerplate Subtotals	540	61.97%	224	29.29%	50	7.71%	19	3.02%	91.42%	8.80%
Other Services										
Valet Parking	11	28.21%	21	53.85%	5	12.82%	2	5.13%	82.05%	17.95%
Business Center	9	29.03%	18	58.06%	2	6.45%	2	6.45%	87.10%	12.90%
Convention Concierge	13	39.39%	19	57.58%	1	3.03%	0	0.00%	96.97%	3.03%
Miami Beach Fire Marshall	31	68.89%	13	28.89%	0	0.00%	1	2.22%	97.78%	2.22%
Other Services Subtotal	64	41.38%	71	49.59%	8	5.58%	5	3.45%	90.97%	9.03%
Building Subtotal	1,800	67.54%	580	27.13%	95	4.18%	30	1.54%	94.67%	5.72%
Surveys Sent	114									
Surveys Received	63									
Percent Received	55%									

**MIAMIBEACH
convention
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Miami Beach Convention Center Client Response Results
October 2010 - June 2011

	Excellent	Pctg	Good	Pctg	Fair	Pctg	Poor	Pctg	Positive	Negative
Sales										
Knowledgeable	42	85.71%	6	12.24%	0	0.00%	1	2.04%	97.96%	2.04%
Responsiveness to your needs	43	86.00%	6	12.00%	0	0.00%	1	2.00%	98.00%	2.00%
Professionalism	43	86.00%	6	12.00%	0	0.00%	1	2.00%	98.00%	2.00%
Readily Accessible	43	86.00%	6	12.00%	0	0.00%	1	2.00%	98.00%	2.00%
Clarity of Information	41	83.67%	6	12.24%	1	2.04%	1	2.04%	95.92%	4.08%
Sales Subtotal	212	85.48%	30	12.10%	1	0.41%	5	2.02%	97.58%	2.42%
Event Manager										
Knowledgeable	47	90.38%	5	9.62%	0	0.00%	0	0.00%	100.00%	0.00%
Responsiveness to your needs	45	86.54%	6	11.54%	1	1.92%	0	0.00%	98.08%	1.92%
Professionalism	46	92.00%	4	8.00%	0	0.00%	0	0.00%	100.00%	0.00%
Readily Accessible	45	86.54%	6	11.54%	1	1.92%	0	0.00%	98.08%	1.92%
*Pre-Event	42	84.00%	7	14.00%	1	2.00%	0	0.00%	98.00%	2.00%
*On-Site	49	94.23%	3	5.77%	0	0.00%	0	0.00%	100.00%	0.00%
Clarity of Information	42	85.71%	6	12.24%	1	2.04%	0	0.00%	97.96%	2.04%
Event Manager Subtotal	316	88.49%	37	10.39%	4	1.13%	0	0.00%	98.87%	1.13%
Building Operations										
Courtesy of Building Staff	42	82.35%	8	15.69%	0	0.00%	1	1.96%	98.04%	1.96%
Cleanliness	35	68.63%	13	25.49%	3	5.88%	0	0.00%	94.12%	5.88%
Accuracy of Setups	40	80.00%	10	20.00%	0	0.00%	0	0.00%	100.00%	0.00%
Timeliness of Setups	42	82.35%	6	11.76%	2	3.92%	1	1.96%	94.12%	5.88%
Building Signage	32	64.00%	13	26.00%	4	8.00%	1	2.00%	90.00%	10.00%
Building Operations Subtotal	191	75.47%	50	19.79%	9	3.56%	3	1.18%	95.25%	4.75%
Global Spectrum Subtotal	719	78.00%	117	18.94%	14	2.62%	8	0.42%	96.94%	3.04%
Smart City										
Knowledgeable	18	78.26%	5	21.74%	0	0.00%	0	0.00%	100.00%	0.00%
Responsiveness to your needs	18	78.26%	3	13.04%	2	8.70%	0	0.00%	91.30%	8.70%
Professionalism	18	78.26%	5	21.74%	0	0.00%	0	0.00%	100.00%	0.00%
Readily Accessible	18	78.26%	4	17.39%	1	4.35%	0	0.00%	95.65%	4.35%
Clarity of Information	18	78.26%	3	13.04%	1	4.35%	1	4.35%	91.30%	8.70%
Accuracy of Setups	18	78.26%	5	21.74%	0	0.00%	0	0.00%	100.00%	0.00%
Timeliness of Setups	18	78.26%	4	17.39%	1	4.35%	0	0.00%	95.65%	4.35%
Priority Networks Subtotal	126	78.26%	29	18.01%	5	3.11%	1	0.62%	96.27%	3.73%

MIAMIBEACH
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**Miami Beach Convention Center Client Response Results
October 2010 - June 2011**

	Excellent	Pctg	Good	Pctg	Fair	Pctg	Poor	Pctg	Positive	Negative
Audio Visual										
Knowledgeable	17	77.27%	4	18.18%	0	0.00%	1	4.55%	95.45%	4.55%
Responsiveness to your needs	16	72.73%	5	22.73%	0	0.00%	1	4.55%	95.45%	4.55%
Professionalism	16	72.73%	5	22.73%	0	0.00%	1	4.55%	95.45%	4.55%
Readily Accessible	14	63.64%	6	27.27%	1	4.55%	1	4.55%	90.91%	9.09%
Clarity of Information	14	63.64%	6	27.27%	1	4.55%	1	4.55%	90.91%	9.09%
Accuracy of Setups	16	72.73%	5	22.73%	0	0.00%	1	4.55%	95.45%	4.55%
Timeliness of Setups	17	77.27%	4	18.18%	0	0.00%	1	4.55%	95.45%	4.55%
Courtesy of AV floor Operations Staff	15	75.00%	4	20.00%	0	0.00%	1	5.00%	95.00%	5.00%
Audio Visual Subtotals	125	71.88%	39	22.39%	2	1.14%	8	4.60%	94.26%	5.74%
Centerplate										
Knowledgeable	33	82.50%	6	15.00%	0	0.00%	1	2.50%	97.50%	2.50%
Responsiveness to your needs	31	77.50%	7	17.50%	1	2.50%	1	2.50%	95.00%	5.00%
Professionalism	34	85.00%	4	10.00%	2	5.00%	0	0.00%	95.00%	5.00%
Readily Accessible	32	80.00%	5	12.50%	2	5.00%	1	2.50%	92.50%	7.50%
Clarity of Information	32	82.05%	6	15.38%	1	2.56%	0	0.00%	97.44%	2.56%
Courtesy of Catering Staff	33	84.62%	5	12.82%	0	0.00%	1	2.56%	97.44%	2.56%
Food Quality	25	64.10%	11	28.21%	1	2.56%	2	5.13%	92.31%	7.69%
Food Presentation	28	71.79%	9	23.08%	2	5.13%	0	0.00%	94.87%	5.13%
Menu Selection/Variety/Flexibility	28	71.79%	9	23.08%	2	5.13%	0	0.00%	94.87%	5.13%
Accuracy of Setups	34	85.00%	5	12.50%	0	0.00%	1	2.50%	97.50%	2.50%
Timeliness of Setups	33	84.62%	5	12.82%	1	2.56%	0	0.00%	97.44%	2.56%
Courtesy of Concessions Staff	22	68.75%	9	28.13%	1	3.13%	0	0.00%	96.88%	3.13%
Food Quality	19	61.29%	7	22.58%	4	12.90%	1	3.23%	83.67%	16.13%
Food Presentation	19	61.29%	9	29.03%	3	9.68%	0	0.00%	90.32%	9.68%
Menu Selection	18	58.06%	11	35.48%	2	6.45%	0	0.00%	93.55%	6.45%
Cleanliness and Setup of Outlets	20	66.67%	10	33.33%	0	0.00%	0	0.00%	100.00%	0.00%
Centerplate Subtotals	441	61.97%	118	29.29%	22	7.71%	8	3.02%	94.78%	5.22%
Other Services										
Valet Parking	14	48.28%	11	37.93%	3	10.34%	1	3.45%	86.21%	13.79%
Business Center	11	55.00%	8	40.00%	0	0.00%	1	5.00%	95.00%	5.00%
Convention Concierge	11	55.00%	9	45.00%	0	0.00%	0	0.00%	100.00%	0.00%
Miami Beach Fire Marshall	22	68.75%	9	28.13%	1	3.13%	0	0.00%	96.88%	3.13%
Other Services Subtotal	58	56.76%	37	37.76%	4	3.37%	2	2.11%	94.52%	5.48%
Building Subtotal	1,469	74%	340	21%	47	3%	27	2%	95.00%	5.00%
Surveys Sent	78									
Surveys Received	52									
Percent Received	67%									



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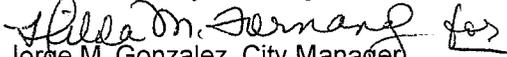


MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: 
Jorge M. Gonzalez, City Manager

DATE: September 26, 2011

SUBJECT: **DISCUSSION REGARDING A PROPOSAL BY THE MIAMI BEACH FILM SOCIETY, INC. D/B/A, MIAMI BEACH CINEMATHEQUE, TO OPERATE AN OUTDOOR CAFE IN THE CITY OWNED PUBLIC SPACE ADJACENT TO THE CINEMATHEQUE'S LEASED PREMISES AT HISTORIC CITY HALL**

BACKGROUND

On December 9, 2009, the Mayor and City Commission adopted Resolution No. 2009-27282, approving the Lease Agreement between the City of Miami Beach (the "City") and the Miami Beach Film Society, Inc. d/b/a Miami Beach Cinematheque (the "Tenant" or "Cinematheque") for the approximately 2,523 square feet of ground floor space in the building known as Historic City Hall, the City-owned property located at 1130 Washington Avenue, 1st Floor South, Miami Beach, Florida (the "Leased Premises"). The Lease Agreement is for an initial term of three (3) years, commencing on March 1, 2010, and terminating on February 28, 2013, with two (2) additional three (3) year renewal terms. The Tenant is a not-for-profit corporation.

The Leased Premises include two large doors that open out onto steps and an outdoor courtyard to the south of the Historic City Hall Building. The Leased Premises do not include the outdoor space. The Tenant has requested use of the outdoor courtyard space, adjacent to the Leased Premises, to place eight tables and 16 chairs immediately outside of the south door for the purpose of serving the public and Cinematheque's patron's light fare, including without limitation, baked goods, specialty chocolates, coffee, tea and non-alcoholic beverages. A proposed site plan for the tables and chairs is attached and labeled Attachment 1.

ANALYSIS

In order to facilitate use of the outdoor area by Cinematheque, and consistent with other similar arrangements, a separate agreement (likely a concession agreement) is the recommended method for governing the use of the space. Cinematheque is desirous of having the outdoor café operational prior to Art Basel Miami Beach. Staff's proposed terms are outlined below, including the proposed concession fee of the greater of \$7,000 per year (the Minimum Guarantee, or MG), or 15 percent (15%) of Cinematheque's gross revenues (Percentage of Gross, PG). Fifteen percent (15%) of gross is comparable to what other food and beverage concessioners pay for comparable, limited food concessions. For purposes of determining a Minimum Guarantee, Staff reviewed Cinematheque's Projected Outdoor Café Revenue. Cinematheque's Projected Outdoor Café Revenues, Use Assumptions, Financial Assumptions, and Sample menu items are outlined in the attached Miami Beach Cinematheque Projected Outdoor Café Revenue, labeled Attachment 2. Because it is reasonable to expect that there could be up to 100 bad weather days, Staff believes that Cinematheque's gross revenues will be closer to \$55,650, or \$210 x 265 days. Based upon this assumption, at 15 percent of gross, the annual

concession fee would be \$8,348. It is therefore recommended that the annual minimum guaranteed fee be set at \$7,000, payable in 12 equal monthly installments of \$583.33. After the submission of an annual end-of-the-year report by the Cinematheque, the Cinematheque will be responsible to pay the difference between the minimum guaranteed fee and 15 percent of its reported gross revenues. A security deposit equal to three months minimum guaranteed fees is recommended at execution of the Concession Agreement in order to provide the City relief in the event of damage to the site or unanticipated maintenance at the expiration of the agreement.

The proposed terms are as follows:

CONCESSIONAIRE: Miami Beach Film Society, Inc. d/b/a Miami Beach Cinematheque

LANDLORD: City of Miami Beach

CONCESSION AREA: Courtyard Space adjacent to Tenant's Demised Premises on the South side of the Historic City Hall Building, as depicted on Attachment 1

TERM: Effective upon execution and concurrent with terms of Lease Agreement

FEE: The greater of Minimum Guaranteed fee in the amount of \$7,000 annually, payable monthly in twelve equal monthly installments of \$583.33 per month, or Fifteen Percent (15%) of the Outdoor Café's Gross Profits

SECURITY DEPOSIT: One thousand, seven hundred fifty dollars, (\$1,750) representing three monthly installments.

HOURS OF OPERATION:

The outdoor café shall be open only during Cinematheque's regular business hours.

USES: Only coffee, tea, soft drinks, baked goods and specialty chocolates shall be served. No alcoholic beverages will be served

SEATING: Maximum of seating for sixteen (16) people, maximum of eight (8) tables

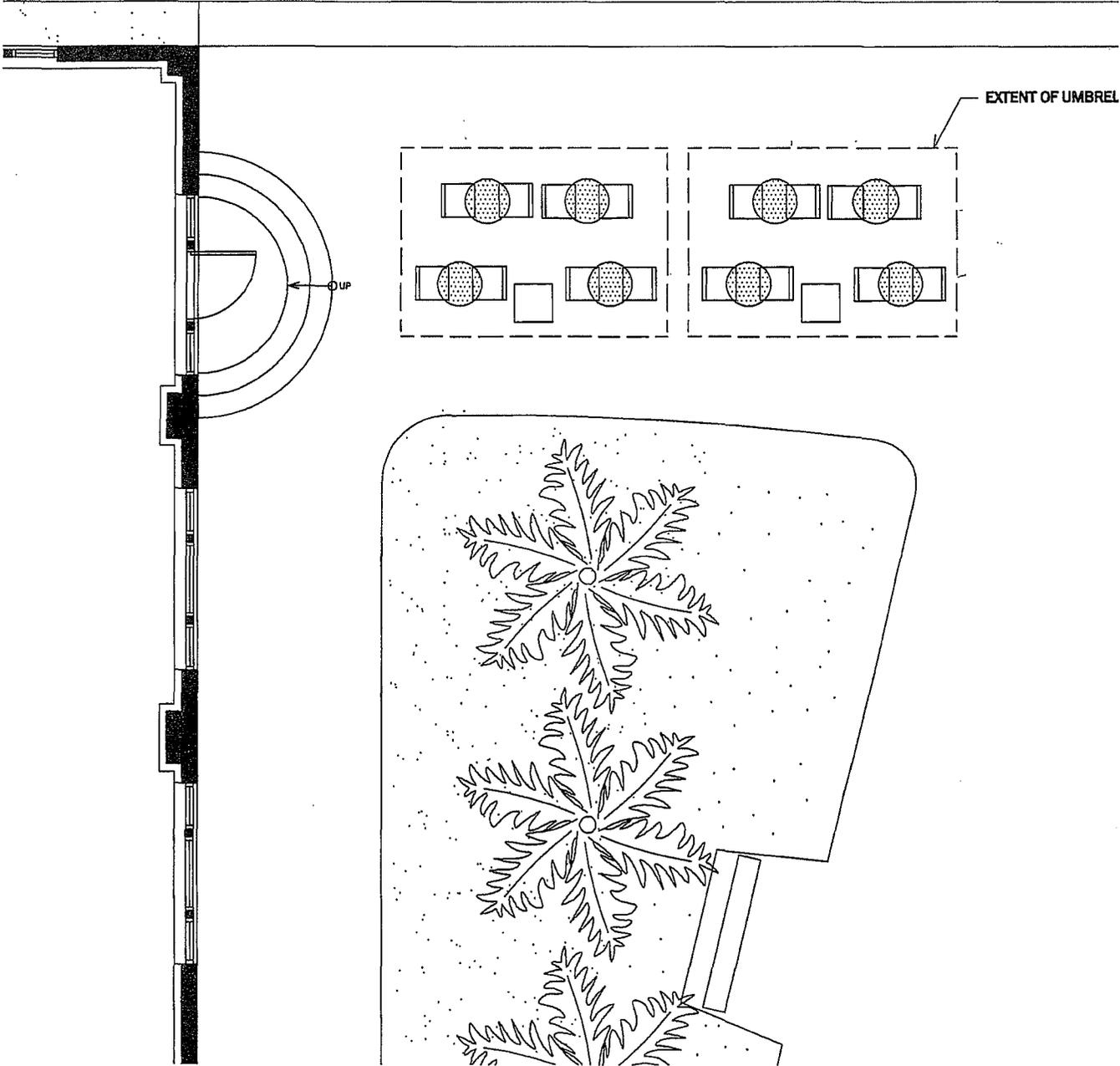
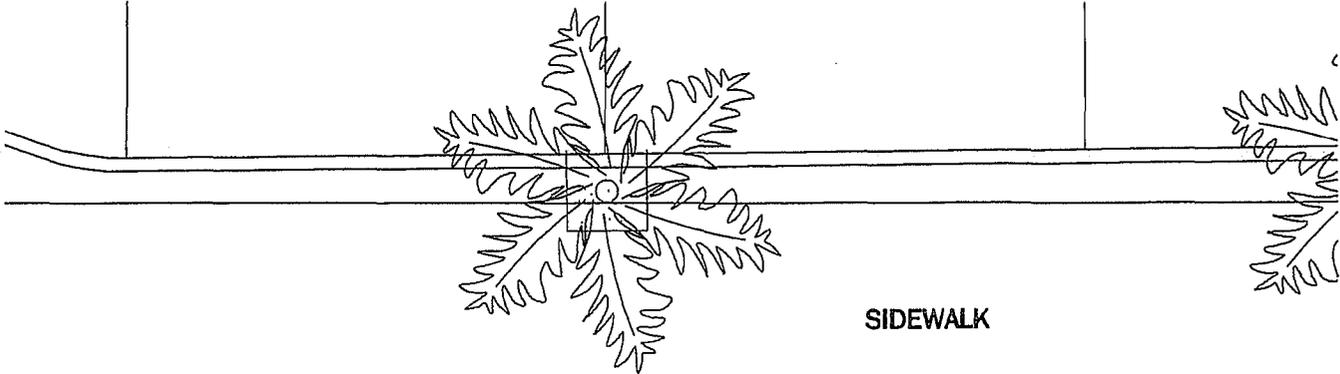
PRICING: All drinks and food items shall be priced between Three Dollars (\$3.00) and Five Dollars (\$5.00) with an average sale assumed to be Seven Dollars (\$7.00)

CONCLUSION

The Administration recommends that the Finance and Citywide Projects Committee approve the proposed terms for the operation of an outdoor café by the Miami Beach Film Society, Inc. d/b/a Miami Beach Cinematheque, on the City-owned public space adjacent to the Cinematheque's leased premises in Historic City Hall.

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Attachments

ATTACHMENT 1



ATTACHMENT 2

Miami Beach Cinematheque Projected Outdoor Café Revenue

Use assumptions:

- The café will be open during MBC's regular business hours
- No alcoholic beverages will be served in the café
- The café would serve coffee, tea, soft drinks, baked goods and specialty chocolates
- The café would have eight small tables with seating for 16 people
- All drinks and food items would be priced at between \$3 and \$5 with an average sale assumed to be \$7
- The café will primarily function as an amenity for MBC patrons providing light snacks pre and post films and during gallery visits but will be available to street traffic as well

Financial assumptions:

- 15 patrons per day between noon and 6pm @\$7 per sale = \$105
15 patrons per day between 6 and 10 pm @ \$7 per sale = \$105
Total daily income = \$210
- \$210 per day X 365 days = \$76,650 yearly income
- (not including bad weather consideration)

Sample menu items:

- Nespresso espresso \$3
- Nespresso cappuccino, or café au lait \$4
- Nespresso teas \$3
- Various soft drinks \$3
- Plain croissants \$4
- Chocolate or almond croissants \$5
- Brownies \$4
- Pound cake \$4
- Large cookies \$3
- Chocolate truffles \$5

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MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Commissioner Deede Weithorn, Chair, and Members of the Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: September 26, 2011

SUBJECT: **DISCUSSION OF THE REFUNDING OF THE OUTSTANDING GENERAL OBLIGATION BONDS, SERIES 2000**

BACKGROUND

On September 17, 1999, the Mayor and City Commission adopted Resolutions #99-23299, #99-23300, and #99-23301 that called for a special election on November 2, 1999 that submitted to the electorate of the City a bond referendum that decided whether the City should be authorized to issue an aggregate of \$92,465,000 in principal amount of general obligation bonds.

The purpose of these general obligation bonds was threefold: (1) to renovate, expand and improve fire stations and related facilities located in the City and acquire and equip fire trucks ("Fire Safety General Obligations"), (2) to improve recreational facilities and equipment, access, security and related maintenance facilities for parks and beaches located in the City ("Parks and Beaches General Obligations"), and (3) to improve neighborhood infrastructure in the City, consisting of streetscapes and traffic calming measures, shoreline stabilization and related maintenance facilities ("Neighborhood General Obligations").

On November 2, 1999, the issuance of the General Obligations was approved by the electorate of the City in accordance with the applicable laws of the State of Florida.

On June 23, 2000, the City Commission passed Resolution 2000-23966 authorizing the issuance of \$30 million of General Obligations (the first of two bond issuances) by borrowing funds from the Gulf Breeze Government Loan Pool. This issuance consisted of \$9,030,000 for the Fire Safety General Obligations, \$9,230,000 for the Parks and Beaches General Obligations, and \$11,740,000 for Neighborhood General Obligations.

ANALYSIS

As of the next bond payment date, the City will have approximately \$17,250,000 outstanding on the \$30 million Series 2000 General Obligation bonds. The City's proposed refunding of the approximately \$17.3 million outstanding General Obligation Bonds, Series 2000 is the result of the Administration's continuous review of opportunities to refund outstanding bonds to ensure the City is paying the lowest possible rate within statutory and tax requirements.

According to the loan agreements with Gulf Breeze, the City can refinance the outstanding bonds on the next redemption date which falls on December 1, 2011. The original call/redemption date for these bonds was on December 1, 2010, however, at that time the City would have had to pay a premium of approximately \$187,100 to call the bonds. The reason we are calling the bonds as of December 1, 2011 is because they are callable at par in addition to the fact that interest rates today are about 70 basis points lower for a AA rated General Obligation issue than it was at December 2010.

The bonds are paid through the assessment, levy and collection of ad valorem tax on all taxable property within the City and the full faith, credit and taxing power of the City will be pledged to the payment of the principal and interest of the bonds. Any additional costs and expenses are paid from non-ad valorem revenues.

The City's Financial Advisor has determined that the City has the capacity to refinance the Series 2000 General Obligation Bonds, and that the refunding of the Series 2000 General Obligation Bonds may provide, as of August 26, 2011, a present value savings of approximately \$3.1 million or approximately 17.7%. The refunding of these bonds does not extend the term of the bonds beyond their original maturity date.

Because of the character of the proposed refinancing of the Series 2000 General Obligation Bonds, the prevailing market conditions, the complexity of structuring a refunding and the recommendations of the Financial Advisor, it was further determined that the sale of the new refinanced General Obligation Bonds Series 2011 on the basis of a negotiated sale rather than a public sale by competitive bid is in the best interest of the City.

The Resolution for the issuance of the Series 2011 General Obligation Bonds will delegate to the Mayor, relying upon the recommendation of the Chief Financial Officer and RBC Capital Markets (the City's Financial Advisor), the determination of various terms of the Series 2011 Bonds, including whether to secure one or more Credit Facilities and/or Reserve Account Insurance Policies with respect to the Series 2011 Bonds, the final award of the Series 2011 Bonds, the dates of redemption of the Prior Bonds to be redeemed prior to maturity, the payment of all related costs and expenses in connection with the issuance of the Bonds and all other actions necessary or desirable in connection with the issuance of the Series 2011 Bonds and the refunding of the Prior Bonds.

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