



MIAMIBEACH

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

COMMITTEE MEMORANDUM

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

FROM: City Manager Jorge M. Gonzalez

DATE: January 19, 2012

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for January 19, 2012, at 3:00 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

OLD BUSINESS

1. **Follow up: Report on the number of Business Tax Receipts (BTRs) outstanding.** *(April 29, 2010 Commission Item C6E)*

Patricia Walker -- Chief Financial Officer

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

Fred Beckman -- Public Works Director

3. **Discussion regarding towing permits**

Jorge Gomez -- Assistant City Manager

4. **Discussion of a proposed modification of the Promissory Note dated February 5, 2007, between 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 made by a commercial lending institution**

Anna Parekh -- Director of Real Estate Housing and Community Development

REPORTS

5. **Report on the status of FY 2010/11 potential new revenue initiatives**

Kathie Brooks - Budget & Performance Improvement Director

NEW BUSINESS

6. **Request for approval to issue a Request for Qualifications (RFQ) for a fourth solid waste franchise contractor to provide commercial waste collections and disposal services** (*July 13, 2011 Commission Item C2G*)

Fred Beckmann – Public Works Director

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

Max Sklar – Cultural Arts & Tourism Development Director

8. **Discussion pertaining to the issuance of a Request for Proposals (RFP) for auditing services for the City's (CAFR), (OMB A-133 Single Audit), The Miami Beach Redevelopment Agency's basic financial statements (RDA), ...(PSF), (VCA) financial statements, The Miami Beach Convention Center, as managed by Global Spectrum, financial statements, The Children's Trust Program, The Building Better Communities Bonds Program, and The Safe Neighborhood Parks and Bond Program (SNP)** (*September 14, 2011 Commission Item C7I*)
(*October 19, 2011 Commission Item C4D*)

Patricia Walker -- Chief Financial Officer

9. **Discussion regarding property assessed clean energy (PACE) program** (*October 19, 2011 Commission Item R9H*)

Fred Beckman – Public Works Director

10. **Discussion pertaining to a retail lease agreement between the City and South Florida Salon Group, Inc., for use of approximately 1,327 square feet of City-owned property located at 1701 Meridian Avenue, Unit 1 (A/K/A 765 17TH Street), Miami Beach, Florida**

Anna Parekh – Director of Real Estate Housing and Community Development

11. **Discussion pertaining to a retail lease agreement with Groove Man Entertainment, Inc. involving Suites 1 through 4 in the Anchor Shops, located at 1550 Collins Avenue, Miami Beach, Florida**

Anna Parekh – Director of Real Estate Housing and Community Development

12. **Discussion regarding PAL's refusal to hand over Public Records** (*December 14, 2011 Commission Item R9W*)

Jose Smith – City Attorney

Finance and Citywide Projects Committee Meetings for 2012:

March 1, 2012

March 29, 2012

April 19, 2012

May 17, 2012

June 21, 2012

July 26, 2012

September 20, 2012

November 29, 2012

December 20, 2012

JMG/PDW/rs/th

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Cc. Mayor and Members of the City Commission
Management Team

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MIAMI BEACH

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FINANCE & CITYWIDE PROJECTS COMMITTEE MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: January 19, 2012

SUBJECT: Status of the Fiscal Year 2012 Business Tax Receipt Renewal Process.

Business Tax Receipts (BTRs) are issued annually in accordance with Florida Statutes Chapter 205, as well as, locally governed by Article V, Section 102 of the Code of the City of Miami Beach. Chapter 205 states that BTRs are due and payable on or before September 30 of each year, and expire on September 30 of the succeeding year.

During the month of July, the City sends courtesy renewal postcards to customers, reminding them to renew their BTR by September 30th. The City has traditionally given customers the month of October as a grace period to pay their renewals. Following this grace period, the Finance Department sends a list of un-renewed BTRs to the Code Compliance Division for action.

Once payment for the renewal has been received, City staff review the accounts of each customer to determine if they are current on all obligations to the City in accordance with Article V, Section 102-374 of the City Code.

If the customer is current, the City mails out the actual BTR document to the customer. If the customer is delinquent on City obligations and payment for a BTR renewal has been received, pursuant to Article V, Section 102-374 of the City Code, the City withholds the BTR document and sends a letter to the customer stating the amount due and that the delinquencies must be resolved before receiving their BTR. This has proven to be a valuable tool in assisting the City with collections of delinquent utility bills, resort tax obligations, special assessments, liens, and other payments due to the City.

The City began sending out the Fiscal Year (FY) 2012 renewal notices in early July of 2011. As of January 13, 2012, the following is a summary on the status FY 2012 BTR renewals:

- 7,801 renewal notices were mailed out;
- 1,624 renewal notices remain unpaid; and
- 1,879 renewals have been paid, but remain in pending status.

A list of of business entities that have not renewed their BTR has been sent to Code Compliance for follow-up action.

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MIAMI BEACH

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: January 19, 2012

SUBJECT: Discussion of the Proposed Recycling Ordinance.

On July 13, 2011, the Proposed Recycling Ordinance was approved and referred to the Finance and Citywide Projects Committee (FCWPC) between first and second reading. On September 26, 2011 the FCWPC asked that this item be brought to the Sustainability Committee Recycling Sub-Committee. On October 24, 2011, the Recycling Sub-Committee hosted a recycling workshop and on November 15, 2011 the Sustainability Committee recommended that the City adopt a hybrid between the existing County ordinance and the formerly proposed ordinance.

BACKGROUND

Currently, Miami-Dade County Code (Sections 15-2.2 to 15-2.4) requires multifamily and commercial establishments to have a recycling program. However, as a result of multiple issues, including fiscal constraints at the County level, the County Code requirement to demonstrate a recycling program is not adequately or comprehensively enforced. It is believed that approximately 1,558 multifamily residential buildings and commercial establishments within the City of Miami Beach are currently not participating in the County-required recycling program. This is approximately 30% of all known commercial and multifamily accounts.

The objective of the proposed recycling ordinance is to establish a comprehensive Citywide Recycling Program for multifamily residences and commercial establishments. The proposed ordinance (Attachment A), which is an amendment to Chapter 90 of the City Code, would require multifamily residences and commercial establishments in the City to provide a recycling program and to use a single stream recycling process to separate recyclables. Multifamily and commercial establishments would receive fines if they do not provide recycling program serviced by a licensed recycling contractor or if they fail to separate recyclable material from the solid waste stream. The County Code (Section 15-2.5) gives the City the authority to establish and enforce its own ordinance, provided such ordinance is equivalent to or more stringent than the County's provisions.

Single-family homes and multifamily buildings of up to eight (8) units are already provided weekly recycling services via Miami-Dade County's Curbside Recycling Program, which was done through an Inter-Local Agreement (Agreement) entered into on June 14, 1990. The Agreement authorizes the County to act on the City's behalf in the administration of the contract for this recycling service in the areas of municipal jurisdiction. The current number of households served by Miami-Dade County within the City of Miami Beach is 6,498 units. The contractor that currently provides the service to Miami Beach through the Agreement is World Waste Services.

Commercial facilities and multifamily residences with eight (8) or more units are required by Miami-Dade County to hire, by means of a contract, a private hauler for their regular trash pick-up, recycling and bulk pick-up. Miami-Dade County Code Chapter 15 entitled "Solid Waste Management", Sections 15-2.2 through Sections 15-2.5 requires the following:

- Owners/Property owners of commercial establishments in Miami-Dade County must provide a recycling program for their employees and tenants, using the services of an authorized waste hauler or private recycling hauler.
- The program must recycle three (3) items from the following list of ten (10): high-grade office paper, mixed paper, corrugated cardboard, glass, aluminum, steel, other scrap production metals, plastics, textiles, and wood.
- Modified Recycling Programs - those that incorporate modifications, substitutions or reductions to the requirements stated above - may be submitted to the Department of Solid Waste Management for review and approval.

CURRENT ENFORCEMENT

On September 1, 2009, the Miami-Dade County Multifamily and Commercial Recycling Memorandum of Understanding (MOU) between the City of Miami Beach and Miami-Dade County - Department of Solid Waste Management (SWM) was approved. Under the MOU, the County agrees to enforce recycling under County Code Chapter 15, Sections 15-2.2 through 15-2.5 within the City of Miami Beach. When facilities are found to not have a recycling program, the County issues the offending party a warning notice followed by a notice of violation that may include fines as delineated in Miami-Dade Code Chapter 8CC - entitled "Code Enforcement". In 2007-08, the County collected a total of \$11,550 in fines Countywide for non-compliance with their recycling ordinance.

On March 29, 2010, the City provided Miami-Dade County Solid Waste Management (SWM) with a list of 434 addresses from the waste haulers' multifamily and commercial accounts that were not recycling. In August 2010, the County initiated a proactive inspection approach to enforcement. Since August 2010, the County has inspected a total of 203 multi-family residences and 27 commercial establishments. If facilities were found to not have a recycling program, the facilities were issued a warning notice followed by a notice of violation that may include fines delineated in Miami-Dade Code Chapter 8CC entitled "Code Enforcement". However, in October 2010 the County returned to a compliant-driven approach with an emphasis on education. In January 2011, the City franchise waste haulers provided the Public Works, Sanitation Division, with an updated list of Miami Beach commercial facilities and multifamily residences that do not have a recycling program in place. The list included the 1,558 establishments previously noted, which represents 30% of known commercial and multifamily accounts that are estimated not to have a recycling program. The percentage of non-compliant facilities that have received fines since January 2011 is unknown. Based on SWM complaint-driven approach that focuses more on education than issuance of fines, this number is anticipated to be low.

PROPOSED RECYCLING ORDINANCE

The new proposed recycling ordinance (Attachment A) is a hybrid between the existing County ordinance and the formerly proposed ordinance. Attachment B compares the elements of the initial proposed recycling ordinance and the new proposed recycling ordinance.

The new proposed recycling ordinance closely mirrors the requirements of the County's ordinance. The new proposed ordinance requires that every multi-family residence of nine (9) dwelling units or more shall provide a recycling program and use a single stream recycling process to separate recyclables. Similar to the County, the new proposed ordinance provides that multifamily and commercial facilities can submit to the city's public works direct approval of a modified recycling program.

The Sustainability Committee recommended that the City focus on education and address enforcement efforts on a complaint driven basis. The proposed ordinance calls for, beginning June 1, 2012, a six (6) month education and community outreach effort followed by a six (6) month warning period before penalties would be issued. During the education and outreach period, the City would implement an aggressive public education campaign to inform the public of the new requirements. This would entail comprehensive community outreach through the Chamber of Commerce, local schools, business associations, and homeowner and condominium associations. In addition, the City would disseminate information about the new program through TV, website, social media, and printed media. After the year of extensive education and outreach, the six (6) month warning period (or pre-full implementation period) would take place, where only warning notices without monetary fines would be issued. In FY 2011/12, \$50,000 has been appropriated to initiate the education program. The City will retain a marketing company to develop a unified educational campaign with the goal of increasing recycling awareness & educating multifamily & commercial establishments. It is the intent that this company will establish a model for the City to continue to use and build upon. In the future, the City will also look to using volunteers to continue to promote recycling education within individual condominiums and with the business community.

It is the intent to have enforcement of the proposed ordinance conducted on a complaint driven basis by a Sustainability Officer whose focus will be to provide education and guidance rather than issuance of fines. The proposed ordinance fine schedule is less stringent than the County's. The County Ordinance states that a repeat violation which remains uncorrected beyond the time prescribed for correction in the notice of violation shall be treated as a continuing violation, and the additional penalty for each day of continued violation shall be equal to the doubled amount due for the first day of the repeat violation. The Sustainability Committee recommended that the penalties in the new proposed ordinance not accrue daily. The proposed ordinance prescribes the following penalties for failing to provide a recycling program:

- a) For the first violation, a fine of \$350.00.
- b) For the second violation, a fine of \$500.00.
- c) For the third violation, a fine of \$1,000.00.
- d) For the fourth and subsequent violations, a fine of \$2,500.00.

It should be noted the above fines mirror the City's fines for solid waste violations under Sec. 90-37 of the City Code, except for the fourth and subsequent violations. The solid waste fine is \$5,000 for the fourth and subsequent violations; however, the Sustainability Committee recommended that the fine for the fourth and subsequent recycling violations be \$2,500.

And, the penalties for failing to use a single stream recycling process to separate recyclables from all other solid waste shall be as follows:

- a) For the first violation, no fine.
- b) For the second or subsequent violations, a fine of \$100.00.

And, the penalty for all other violations of this article shall be \$250.00 for each violation.

As an alternative the City could only enforce the part of the ordinance that requires multifamily and commercial establishments to have a recycling program and leave the enforcement of the mandatory separation of recyclable materials from the solid waste stream to the County. As of the writing of this Memo, the City Attorney has not received yet a legal opinion from the County Attorney on whether or not this alternative is possible.

On July 13, 2011, the City Commission approved on first reading and referred to the FCWPC

between first and second reading. Commissioner Libbin and Commissioner Gongora stated that the ordinance needs to go back to committee to make certain the enforcement of the ordinance is complaint driven. On September 26, 2011, the FCWPC asked that this item be brought to the Sustainability Committee Recycling Sub-Committee. On October 24, 2011, the Recycling Sub-Committee hosted a recycling workshop and on November 15, 2011 the Sustainability Committee recommended that the City adopt a hybrid between the existing County ordinance and the formerly proposed ordinance.

FUNDING

The franchisee waste hauler's contract stipulates that they contribute 1.5% of their revenues to fund green initiatives in the Sustainable Initiatives Fund. These contributions will be used to fund a contracted Sustainability Officer, within the Public Works Department, who would be responsible for implementing the education, outreach, and complaint driven enforcement of the City's Recycling Program. As the program matures, if it is determined that additional education and outreach is required, additional funds from the Sustainable Initiatives Fund will be used to hire additional contracted personnel to supplement the efforts of the Sustainability Officer.

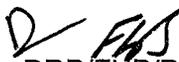
CONCLUSION

This item has been referred by the City Commission to the Finance and Citywide Projects Committee for discussion.

The City Administration recommends discussion and approval of the attached draft ordinance for the City to require and enforce that multifamily and commercial establishments have a recycling program and be required to separate recyclable materials from the solid waste stream. As an alternative, the Committee could recommend that the City further explore the option of requiring multifamily and commercial establishments to have a recycling program and for the County to enforce the mandatory separation of recyclable materials from the solid waste stream.

Attachments:

- A. Proposed Recycling Ordinance
- B. Recycling Ordinance Comparison Table


DRB/FHB/RWS/ESW

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 90 OF THE MIAMI BEACH CITY CODE, ENTITLED "SOLID WASTE," BY AMENDING THE DEFINITIONS IN ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 90-2, ENTITLED "DEFINITIONS"; BY AMENDING ARTICLE II, ENTITLED "ADMINISTRATION" BY AMENDING THE PENALTIES FOR SOLID WASTE VIOLATIONS AND TO PROVIDE PROVISIONS AND PENALTIES RELATIVE TO RECYCLING FOR MULTIFAMILY RESIDENCES AND COMMERCIAL ESTABLISHMENTS; BY CREATING ARTICLE V, TO BE ENTITLED "CITYWIDE RECYCLING PROGRAM FOR MULTIFAMILY RESIDENCES AND COMMERCIAL ESTABLISHMENTS," TO PROVIDE PROVISIONS FOR RECYCLING REQUIREMENTS AND ENFORCEMENT, A PUBLIC EDUCATION PROGRAM, A WARNING PERIOD, AN ENFORCEMENT DATE, COLLECTOR LIABILITY, PENALTIES, AND SPECIAL MASTER APPEAL PROCEDURES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the recycling of recyclable materials is in the best interest of the environment, City residents, and in maintaining the City's prominence as a world class resort destination; and

WHEREAS, by managing solid waste and conserving material resources through reduction, reuse, and recycling, the City will help minimize impacts to the quality and safety of the local environment, reduce costs of waste disposal, and decrease the carbon footprint associated with the production use, and disposal of materials; and

WHEREAS, the City seeks to establish a Citywide Recycling Program for multifamily residences and commercial establishments that provides standards that are equivalent to or exceed the minimum recycling requirements of Miami-Dade County; and

WHEREAS, pursuant to Sections 15-2.5 and 15-2.7 of the Miami-Dade County Code, the City and Miami-Dade County have agreed that the following Citywide Recycling Program meets the minimum standards set forth in section 15-2.6 of the Miami-Dade County Code and have accordingly entered into a Memorandum of Understanding so that the City may implement said Program.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Article I, entitled "In General," of Chapter 90 of the Miami Beach City Code, entitled "Solid Waste," is hereby amended as follows:

CHAPTER 90

SOLID WASTE

* * *

ARTICLE I. IN GENERAL

Sec. 90-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Commercial establishment means an establishment dealing in an exchange of goods or services for money or barter. For purposes of this chapter, the term shall include churches, synagogues and schools.

* * *

Multifamily residence means a building occupied or intended to be occupied by two (2) or more families living separately, with separate kitchens in each unit.

* * *

Offense means a notice of violation that has not been appealed timely or a finding of a violation by a special master following the appeal of a violation.

* * *

Premises means real property and includes any buildings or structures thereon.

* * *

Recyclable materials means those materials capable of being recycled and which would otherwise be processed or disposed of as solid waste. Any recyclable material mixed with solid waste shall be considered to be solid waste.

Recycling means any process by which recyclable materials are collected, separated, or processed to be reused or returned to use in the form of raw materials or products.

Recycling container means a container approved by the city manager for collection of recyclable material by a recycling contractor.

Recycling contractor means a private contractor licensed by the city and state who collects recyclable materials and transports same to a state or county-licensed recycling facility for processing. Recycling contractors must provide their customers with a separate recycling container for recyclable materials.

Single-stream recycling means a process by which certain recyclable materials are mixed together instead of being sorted into separate recycling containers in the collection process.

SECTION 2. That Article II, entitled "Administration," of Chapter 90 of the Miami Beach City Code entitled "Solid Waste," is hereby amended as follows:

CHAPTER 90

SOLID WASTE

* * *

ARTICLE II. ADMINISTRATION

Sec. 90-36. Enforcement of chapter; notice of violation.

(a) The city manager is hereby authorized and directed to enforce all the provisions of this chapter regulating and governing the accumulation, collection, and disposal of solid waste. The city manager shall have the power to delegate duties to employees working under his authority (including, without limitation, the city's public works director) in the enforcement of the provisions of this chapter.

(b) Upon presentation of proper credentials, an inspector designated by the city manager may enter any building, structure, lot or other premises for the purpose of inspection, or to prevent violations of this chapter.

(c) The existence of solid waste shall be prima facie evidence that the same was created or placed there by the occupant of the dwelling or commercial establishment; or the owner; or the operator or manager. The existence of the same garbage inside the same garbage containers for four (4) consecutive days upon premises serviced by a private waste contractor shall be prima facie evidence of a violation of this chapter by the contractor. For purposes of this section premises serviced by a private waste contractor shall not include accounts that have been discontinued by the contractor when notice of discontinued service has been mailed to the owner, occupant; or operator or manager, as well as to the city, prior to the accumulation of the garbage.

(d) Whenever a designated city inspector observes a violation (or violations) of this chapter regarding solid waste or an accumulation of solid waste that creates a health hazard, environmental hazard, or nuisance, the inspector shall order the violation(s) to be corrected within a specified period of time by serving a written notice of violation(s) upon the person causing, or responsible for, such violation and/or health hazard, environmental hazard, or nuisance. Such person shall immediately cease or abate the violation(s).

(e) ~~A~~ The notice of violation shall be served personally or by certified mail upon the property owner or upon the person(s) in lawful possession of the premises, and/or upon the waste contractor servicing the premises. If the person addressed with such notice cannot be found by the city after making reasonable good faith effort, such notice shall be sent by certified mail to the last known address of such person, and a copy of the notice shall be posted in a conspicuous place on the premises. Such notice shall be deemed the equivalent of personal service.

(f) The notice shall specify any fine(s) that may be due in connection with the violation(s), the time specified by the inspector to correct the violations, and the procedure for timely payment or appeal of the fine(s).

(g) If the inspector determines that the conditions constitute an immediate threat to the health, safety or welfare of the public, he/she may order the immediate correction of the

violation(s) at the expense of the occupant; owner; or operator or manager and the city shall have the right to recover such expenses as provided in section 90- 436 37.

(h) The enforcement of the recycling requirements for the citywide recycling program for multifamily residences and commercial establishments provided for in Article V of this chapter, and the penalties for violations of Article V, are provided in sections 90-345 through 90-347 of this chapter.

Sec. 90-37. Removal of waste by city; penalties for violations.

If the person served with a notice of violation pursuant to section 90-36 does not correct the violation within the specified time, the city manager may do the following:

(1) For violations involving failure to remove solid waste, the city manager may cause the waste to be removed from the premises and charge the actual costs to the owner; occupant; or operator or manager, on a force account basis. Any fine due pursuant to section 90-39 or 90-40 shall also be charged to the owner; occupant; or operator or manager. Failure to pay such costs and fines or to appeal pursuant to section 90-38 within fifteen (15) days of receipt of the notice shall result in the imposition of a lien upon the property, in the amount of such costs and fines. Such liens shall be treated as special assessment liens against the subject real property and, until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved. Such liens shall be enforced by any of the methods provided in Ch. 86, Florida Statutes; or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions of Ch. 173; Florida Statutes; or the collection and enforcement or payment thereof may be accomplished by any other method authorized by law. The owner; occupant; or operator or manager shall pay all costs of collection, including reasonable attorneys fees incurred in the collection of fines, and other charges, penalties, and liens imposed by virtue of this chapter.

(2) For violations of this chapter for which no fine is specified in sections 90-39 and 90-40, the city attorney may prosecute the violators pursuant to section 1-14. Fines for such offenses shall be as follows:

- a. First offense, \$350.00.
- b. Second offense, \$500.00.
- c. Third offense, \$1,000.00.
- d. Fourth or subsequent offense, \$5,000.00.

(3) For violations which present a serious threat to the health, safety or welfare of the public and/or violations that ~~are continually repeated~~ constitute a fourth or subsequent offense by the same violator, the city ~~attorney~~ may seek injunctive relief and/or, in the case of commercial establishments, revoke the business tax receipt and/or certificate of use of the establishment and/or premises, in addition to the penalties set forth in sec. 90-37(2).

Sec. 90-38. Appeal to special master.

(a) Any person receiving a notice of violation pursuant to section 90-36 and/or a notice of fine pursuant to sections 90-39 and/or 90-40 may request, within fifteen (15) days of receipt of the notice, an administrative hearing before a special master, appointed as provided in article II of chapter 30, to appeal the decision of the city inspector resulting in the issuance of the notice. Procedures and application fee for the scheduling and conduct of the hearing shall be as provided in sections 102-384 and 102-385. Failure to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, as noticed, and fines and penalties may be assessed accordingly.

(b) Timely filing of a notice of appeal pursuant to this section shall toll the imposition of a lien pursuant to section 90-37 or 90-136, or enforcement procedures pursuant to section 90-36, until thirty (30) days after the issuance of a written determination by the special master. Any amounts of money due the city pursuant to such determination must be received by the city within thirty (30) days after the issuance of the determination, or a lien shall be imposed upon the property in question, and any other enforcement or collection procedures commenced, as provided by this chapter or under state law.

SECTION 3. That Article V, to be entitled "Citywide Recycling Program for Multifamily Residences and Commercial Establishments," of Chapter 90 of the Miami Beach City Code, entitled "Solid Waste," is hereby created as follows:

CHAPTER 90

SOLID WASTE

* * *

ARTICLE V.

**CITYWIDE RECYCLING PROGRAM FOR
MULTIFAMILY RESIDENCES AND COMMERCIAL ESTABLISHMENTS**

Sec. 90-340. Recycling program and separation of recyclable materials from solid waste stream required for multifamily residences of nine (9) dwelling units or more; owner/association liability.

(a) As of January 1, 2013, every multi-family residence of nine (9) dwelling units or more shall provide a recycling program pursuant to this section or a City approved modified recycling program pursuant to section 90-345. The property owner shall be liable for the failure to provide a recycling program or a modified recycling program approved by the City, provided, however, that a condominium or cooperative apartment having a condominium association or a cooperative apartment association shall be liable, rather than the individual unit owner(s), for a violation of this subsection.

(b) As of January 1, 2013, every multifamily residence of nine (9) dwelling units or more shall be required to use a single stream recycling process to separate, from all other solid waste, the five (5) following recyclable materials:

- 1) Newspaper. Used or discarded newsprint, including any glossy inserts;
- 2) Glass. Glass jars, bottles, and containers of clear, green or amber (brown) color of any size or shape used to store and/or package food and beverage products for human or animal consumption, and/or used to package other products, which must be empty and rinsed clean of residue. This term excludes ceramics, window or automobile glass, mirrors, and light bulbs;
- 3) Metal food and beverage containers. All ferrous and nonferrous (i.e. including, but not limited to, steel, tin-plated steel, aluminum and bimetal) food and beverage containers (i.e. including, but not limited to, cans, plates, and trays) of any size or shape used to store and/or package food and beverage products suitable for human or animal consumption, which must be empty and rinsed clean of residue;
- 4) Other metal containers. All other ferrous and non ferrous containers used to package household products including, but not limited to, paint cans and aerosol cans, which must be empty and rinsed clean of residue;
- 5) Plastics. All high density polyethylene (HDPE) and/or polyethylene terephthalate (PET) bottles, jugs, jars, cartons, tubs, and/or other containers, and lids, of any size or shape used to package food, beverages, and/or other household products, or crankcase oil, which must be empty and rinsed clean of residue. This term excludes all plastic film, plastic bags, vinyl, rigid plastic (i.e. toys), and plastic foam materials; and

(c) Every multifamily residence of nine (9) dwelling units or more shall be serviced by a recycling contractor licensed by the city and state.

Sec. 90-341. Recycling program and separation of recyclable materials from solid waste stream required for commercial establishments; joint and several liability.

(a) As of January 1, 2013, every commercial establishment shall provide a recycling program pursuant to this section or a City approved modified recycling program pursuant to section 90-345. The failure of a commercial establishment to provide a recycling program or a modified recycling program shall result in joint and several liability for the property owner(s) and the owner(s) and operator(s) of the commercial establishment.

(b) As of January 1, 2013, every commercial establishment shall be required to use a single stream recycling process to separate, from all other solid waste, three (3) of the following seven (7) recyclable materials.

- 1) Newspaper, Cardboard, Magazines, and Catalogues, Telephone Books and/or Directories, and Office Paper. As defined, but not limited to, the same type(s) of recyclable materials as provided in Section 90-340(b)(1);
- 2) Glass. As defined and including the same type(s) of recyclable materials as provided in Section 90-340(b)(1)(2);

- 3) Metal food and beverage containers. As defined and including the same type(s) of recyclable materials as provided in Section 90-340(b)(3);
- 4) Other metal containers. As defined and including the same type(s) of recyclable materials as provided in Section 90-340(b)(4), but also, for purposes of this subsection (4), including scrap metal, which shall mean used or discarded items suitable for recycling, consisting predominantly of ferrous metals, aluminum, brass, copper, lead, chromium, tin, nickel or alloys thereof including, but not limited to, bulk metals such as large metal fixtures and appliances (including white goods such as washing machines, refrigerators, etc.), but excluding metal containers utilized to store flammable or volatile chemicals, such as fuel tanks;
- 5) Plastics. As defined and including the same type(s) of recyclable materials as provided in section 90-340(b)(5);
- 6) Textiles;
- 7) Wood. Clean wood waste and/or pieces generated as by-products from manufacturing of wood products. It excludes clean yard waste and clean waste (i.e. natural vegetation and minerals such as stumps, brush, blackberry vines, tree branches, and associated dirt, sand, tree bark, sand and rocks), treated lumber, wood pieces, or particles containing chemical preservatives, composition roofing, roofing paper, insulation, sheetrock, and glass.

(c) Every commercial establishment shall be serviced by a recycling contractor licensed by the city and state.

Sec. 90-342. Unauthorized collection of designated recyclable materials.

Only those recycling contractors that have been authorized and licensed by the city and the state to collect designated recyclables in the city shall be authorized to collect recyclable materials under this article. All recycling contractors shall comply with all applicable state and city laws and regulations.

Sec. 90-343. Public education program; requirements for recycling contractors; warning period; enforcement date.

- a) Beginning June 1, 2012, the city shall engage in public education efforts and the city shall not prosecute individuals who unknowingly fail to provide a recycling program or a city approved modified recycling program, or unknowingly fail to separate recyclable materials from all other solid waste materials required to be separated by this article, until as provided in subsections (c) and (d) of this section.
- b) All recycling contractors must appropriately designate the recycling collection containers they provide to customers. The containers must contain the appropriate signage and information, as shall be established and approved by the city pursuant to subsection (c) below, that allows users to clearly and easily identify the container for recycling.

- c) Beginning January 1, 2013, the city shall provide for a six (6) month warning period, through and including December 31, 2012, in which warning tickets shall be issued to persons who fail to provide a recycling program, or a City approved modified recycling program, or fail to separate recyclable materials from all other solid waste materials, regardless of knowledge or intent.
- d) Beginning July 1, 2013, this article shall be enforced and penalties shall be applied and imposed for violations of this article as provided in sections 90-345 and 90-346.

Sec. 90-344. Modified recycling programs.

- (a) Recycling programs which incorporate modifications, substitutions or reductions to the requirements of Sections 90-340 and 90-341 may be submitted to the city's public works director ("director") for approval. Approval, rejection, or approval with conditions of the proposed modified recycling program shall be determined by the director. The director shall consider the following factors in evaluating the proposed modified recycling program:
 - (1) Whether the establishment operates a recycling program, and is self-hauling the materials to a recyclable material vendor.
 - (2) Whether the establishment generates a lesser number of recyclable materials than the required minimum types of recyclables required in Sections 90-340 or 90-341, as applicable.
 - (3) Whether the establishment generates and recycles materials not listed in Section 90-340 or Section 90-341, as applicable.
 - (4) Whether the establishment is contracting with a permitted private hauler for collection services, which services provide for a post-collection separation of recyclable material, and which:
 - (i) generate recyclable materials which comply, in kind and quantity, with the recycling requirements provided for in Section 90-340 or Section 90-341, as applicable; and
 - (ii) utilize a materials separation facility which is permitted in accordance with all applicable federal, State and local laws.
- (b) Any person seeking approval of a modified recycling program shall submit an application in such form as is prescribed by the director. All modified recycling programs shall be reviewed on an annual basis and applicants shall be required to confirm or revise the information contained in their applications at that time. An application for approval of a modified recycling program shall include, but not be limited to, the following documentation, as appropriate to the specific application:

- (1) Supporting documentation to evidence self-haul activities, which shall include proof of source-separation activities and copies of receipts from recyclable material purchasers.
- (2) A waste composition study of the waste generated by the applicant, which shall cover a representative time period of no shorter than one (1) week.
- (3) A copy of the applicable contract with a post-collection separation facility, specifying materials and volumes recycled which are attributable to the applicant.

Sec. 90-345. Enforcement.

(a) The city manager is hereby authorized and directed to enforce all the provisions of this article regulating and governing the accumulation, collection, recycling, and disposal of recyclable materials. The city manager shall have the power to delegate duties to employees working under his authority in the enforcement of the provisions of this article.

(b) Whenever a designated city inspector observes a violation(s) of this article, or an accumulation of recyclable materials that creates a health hazard, environmental hazard, or nuisance, the inspector shall order the violation(s) to be corrected within a specified period of time by serving a written notice of violation(s) upon the property owner or upon the manager or other person in charge. Such person(s) shall immediately cease or abate the violation(s).

(c) If the inspector determines that the conditions constitute an immediate threat to the health, safety or welfare of the public, the inspector may order the immediate correction of the violation(s) at the expense of the property owner, manager, or other person in charge, and the city shall have the right to recover such expenses as provided in section 90-37(1).

(d) A notice of violation shall be served personally or by certified mail upon the property owner, or upon the manager or other person in charge of the premises. If the person addressed with such notice cannot be found by the city after making a reasonable good faith effort, such notice shall be sent by certified mail to the last known address of such person, and a copy of the notice shall be posted in a conspicuous place on the premises. Such notice shall be deemed the equivalent of personal service.

(e) Beginning July 1, 2013, violators of sections 90-340 and 90-341 shall be issued one warning and shall correct the violation within 30 days. If the violation is not corrected within 30 days, a notice of violation shall be issued. After one warning, violators of sections 90-340 and 90-341 shall be issued a notice of violation. All notices of violations shall specify any fine or penalty that may be due in connection with the violation(s), the time specified by the inspector to correct the violation(s), and the procedure for timely payment or appeal of the fine or penalty.

Sec. 90-346. Penalties for violations of this article; removal of recyclable materials by city, liens imposed for failure to pay fines or appeal.

- (a) Penalties for violations of sections 90-340(a) and 90-341(a) shall be as follows:
 - (1) For the first violation, a fine of \$350.00.

(2) For the second violation, a fine of \$500.00.

(3) For the third violation, a fine of \$1000.00.

(4) For the fourth violation, a fine of \$2,500.00.

(b) The penalty for violation of sections 90-340(b) and 90-341(b) shall be as follows:

(1) For the first violation, no fine.

(2) For the second or subsequent violations, a fine of \$100.00.

(c) The penalty for all other violations of this article shall be \$250.00 for each violation.

(d) Any penalty due pursuant to this article shall be charged to the person or entity as provided in section 90-340(a) or section 90-341(a). Failure to pay such costs and penalties, or to appeal pursuant to section 90-347 within fifteen (15) days of receipt of the notice of violation shall result in the imposition of a lien upon the premises, in the amount of such costs and penalties. Such liens shall be treated as special assessment liens against the subject real property and, until fully paid and discharged, shall remain liens equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved. Such liens shall be enforced by any of the methods provided in Ch. 86, Florida Statutes; or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions of Ch. 173; Florida Statutes; or the collection and enforcement or payment thereof may be accomplished by any other method authorized by law. The owner, occupant, operator, or manager of the premises shall pay all costs of collection, including reasonable attorneys fees incurred in the collection of fines, and other charges, penalties, and liens imposed by virtue of this chapter.

(e) For violations which (i) present a serious threat to the health, safety or welfare of the public, and/or (ii) constitute a fourth or subsequent offense by the same violator under section 90-346(a), the city may seek injunctive relief and/or, in the case of commercial establishments, revoke the business tax receipt and/or certificate of use of the establishment and/or premises, in addition to the penalties set forth in section 90-346(a), (b), or (c), as applicable.

Sec. 90-347. Appeal to Special Master.

(a) Any person receiving a notice of violation pursuant to this article may request, within fifteen (15) days of receipt of the notice, an administrative hearing before a special master, appointed as provided in article II of chapter 30, to appeal the decision of the city inspector resulting in the issuance of the notice. The procedures and application fee for the scheduling and conduct of the hearing shall be as provided in sections 102-384 and 102-385. Failure to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.

(b) Timely filing of a notice of appeal pursuant to this section shall toll the imposition of a lien or enforcement procedures pursuant to section 90-347, until thirty (30) days after the issuance of a written determination by the special master. Any costs or penalty amounts due the city pursuant to such determination must be received by the city within thirty (30) days after the issuance of the determination, or a lien shall be imposed upon the premises, and any other enforcement or collection procedures may be commenced, as provided by this chapter or under state law.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 6. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect the ____ day of _____, 2011.

PASSED and ADOPTED this ____ day of _____, 2011.

ATTEST:

ROBERT PARCHER, CITY CLERK

MAYOR MATTI HERRERA BOWER

Underline denotes additions and ~~Strike through~~ denotes deletions.

RECYCLING ORDINANCE COMPARISON TABLE

Item	Old Proposed Ordinance	New Proposed Ordinance
Citywide Recycling Program	Multifamily residences & commercial establishments are required to recycle recyclable materials.	Multifamily residences & commercial establishments are required to provide a recycling program and separate recyclable materials from the solid waste stream.
Multifamily Residence Requirements	Recycling required for multifamily residences (9 dwelling units or more)	Recycling program and separation of recyclable materials from solid waste stream required for multifamily residences (9 dwelling units or more).
	1. Multifamily are required to use a single-stream recycling process to recycle	1. Multifamily residences are required to provide a recycling program and be serviced by a recycling contractor licensed by the city and state.
	2. Must recycle the following five (5) materials: newspaper; glass; metal food and beverage containers; other metal containers; and plastics. And at least three (3) of the following: cardboard; magazines; telephone books; or office paper.	2. Every multifamily establishment shall be required to use single stream recycling process to separate recyclables from all other solid waste. 3. Must recycle the following five (5) materials: newspaper; glass; metal food and beverage containers; other metal containers; and plastics. And at least three (3) of the following: cardboard; magazines; telephone books; or office paper.
Commercial Establishment Requirements	Every commercial establishment shall be required to recycle at least three (3) of the following materials: 1. Newspaper, cardboard, magazines, telephone books, and office paper; 2. Glass; 3. Metal food & beverage containers; 4. Other metal containers; 5. Plastics; 6. Textiles; or 7. Wood.	1. Every commercial establishment shall be required to provide a recycling program . 2. Every commercial establishment shall be required to use single stream recycling process to separate recyclables from all other solid waste. 3. Must recycle at least three (3) of the following materials: 1. Newspaper, cardboard, magazines, telephone books, and office paper; 2. Glass; 3. Metal food & beverage containers; 4. Other metal containers; 5. Plastics; 6. Textiles; or 7. Wood.
Public Education	The City will engage in public education efforts beginning 10 days after adoption of ordinance. The program will include establishing uniform signage to clearly delineate allowable recyclables.	Beginning June 1, 2012 the City will engage in public education efforts and the City shall not prosecute individuals who unknowingly fail to provide a recycling program or to separate recyclable materials.

RECYCLING ORDINANCE COMPARISON TABLE

Item	Old Proposed Ordinance	New Proposed Ordinance
Warning Period	For six (6) months beginning one (1) month after effective date of the ordinance. Only warning tickets will be issued.	Beginning January 1, 2013, the City shall provide for a six (6) month warning period through and including December 31, 2012. Only warning tickets shall be issued.
Enforcement Commencement	Begins eighteen (18) months and one (1) day after effective date of the ordinance.	Beginning July 1, 2013.
Modified Recycling Programs		The Public Works Director may approve modified recycling programs for both multifamily and commercial establishments.

RECYCLING ORDINANCE COMPARISON TABLE

Item	Old Proposed Ordinance	New Proposed Ordinance
Liability of Recycling Contractors	Recycling contractor shall not collect from facilities that have violated the ordinances separation requirements and the recycling contractor will be fined if they collect such waste.	
	Recycling contractors shall assist and notify the director of public works in identifying facilities that unlawfully mix solid waste and recyclables in accordance with the "Red Tag" Noticing System.	
Red Tag Noticing System	<p>First Tag Recycling contractor shall leave a "red tag" notice if materials are not the correct type as designated for that container (i.e. recyclables in a solid waste container / solid waste in a recycling</p>	
	<p>Second Tag Contractor leaves a second tag on the container identifying incorrect materials and sends a written notice to the entity who subscribes for that collection service and the director of public</p>	
	<p>Third Tag After the contractor has left two (2) tags the contractor shall refuse to empty the container and leave a third tag and send a written notice to entity who subscribes for that collection service and the director of public works. **The contractor may not refuse to empty containers from multifamily residences or commercial establishments with multiple tenants and joint account collection</p>	

RECYCLING ORDINANCE COMPARISON TABLE

Item	Old Proposed Ordinance	New Proposed Ordinance
Enforcement	<p>1. Existence of recyclable materials any place other than in a recycling container is a violation.</p> <p>2. City shall issue warnings and NOVs to property owners, managers, or other persons in charge.</p> <p>3. Warning notices & NOVs may be served upon the recycling contractor servicing the premises.</p> <p>4. Recycling contractors may issue warnings at the request of the director of public works.</p> <p>5. If the inspector determines that the conditions constitute an immediate threat to the health, safety or welfare of the public, the inspector may order the immediate correction of the violation at the property owners expense.</p>	<p>1. The property owner or condo association shall be liable for failure to provide a recycling program, rather than the individual owner.</p> <p>2. Failure of a commercial establishment to provide a recycling program shall result in joint and several liability for the property owner(s) and the owner(s) and operator(s) of the commercial establishment.</p> <p>3. Failure to use a single stream recycling process to separate recyclables from all other solid waste is a violation.</p> <p>4. If the inspector determines that the conditions constitute an immediate threat to the health, safety or welfare of the public, the inspector may order the immediate correction of the violation at the property owners expense.</p> <p>5. Beginning July 1, 2013, violators of the Ordinance shall be issued one warning and shall correct within 30 days. If the violation is not corrected within 30 days, a notice of violation shall be issued. After one warning, violators shall be issued a notice of violation. All notices of violations shall specify any fine or penalty that may be due in connection with the violation(s), the time specified by the inspector to correct the violations(s), and the procedure for timely payment or appeal of the fine or penalty.</p>
	<p>Penalty shall be charged to the owner, occupant, operator, manager, or other person(s) in lawful possession of the premises. Such liens shall be treated as special assessment liens against the subject real property.</p> <p>1. For the first violation, a warning 2. For the second violation a fine of \$350 3. For the third violation a fine of \$500 4. For the fourth violation a fine of \$1000</p>	<p>For multifamily residences, penalty shall be charged to the property owner or condominium association, rather than the individual unit owner(s). And, for commercial establishments the penalty shall be charged to the property owner(s) and the owner(s) and operator(s) of the commercial establishment.</p> <p>Failure to have a recycling program:</p> <p>1. For the first violation a fine of \$350 2. For the second violation a fine of \$500 3. For the third violation a fine of \$1000 4. For the fourth violation a fine of \$2500</p>

RECYCLING ORDINANCE COMPARISON TABLE

Item	Old Proposed Ordinance	New Proposed Ordinance
Penalties	<p>5. For the fifth or subsequent violations, a fine of \$5,000</p> <p>Violations which present a serious threat to the health, safety or welfare of the public and/or violations that constitute a fifth or subsequent offense, the city may seek injunctive relief and/or, revoke the business tax receipt and/or certificate of use of the establishment and/or premises in addition to the penalties set forth in this section.</p>	<p>Failure to separate recyclables:</p> <ol style="list-style-type: none"> 1. For the first violation, no fine 2. For the second or subsequent violations, a fine of \$100 <p>All other violations of this article: \$250 for each violation</p> <p>Violations which present a serious threat to the health, safety or welfare of the public and/or violations that constitute a fourth or subsequent offense, the city may seek injunctive relief and/or, revoke the business tax receipt and/or certificate of use of the establishment and/or premises in addition to the penalties set forth in this section.</p>
Special Master	Any person receiving a NOV may request within 15 days an administrative hearing before the special master.	Any person receiving a NOV may request within 15 days an administrative hearing before the special master.

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MIAMI BEACH

OFFICE OF THE CITY MANAGER

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager *JMG for JAG*

DATE: January 19, 2012

SUBJECT: **DISCUSSION REGARDING POLICE TOWING PERMITS - FOLLOW-UP**

On December 27, 2011, the Finance and Citywide Projects Committee (FCPC) discussed the police towing permit issues at length. The FCPC directed the Administration to bring back the item to its meeting on January 19, 2012; continue negotiations with both Permittees (Beach Towing and Tremont); and perform further analysis regarding the following: (1) enhance the public benefit provisions; (2) confirm towing rates for comparable jurisdictions; (3) conduct a sensitivity analysis for the index applied in the towing rate analysis provided by the Permittees (CPI - Consumer Price Index); (4) enhance the existing audit and inspection provisions by developing agreed upon procedures; (5) dismissal of the pending lawsuits; and (6) return with the Terminal Isle discussion.

The Administration has conducted the analyses directed by the Committee, and met with representatives of both Permittees on Friday, January 6, 2012, Tuesday, January 10, 2012 and Friday, January 13, 2012. The following reflects the results of those meetings:

I. PUBLIC BENEFITS

At the FCWPC meeting of December 27, 2011, the Permittees clarified that the proposed public benefit was a one time, 20% reduction for Miami Beach residents. The FCWPC did not feel that this was a significant benefit and they requested that other options be explored.

The following two options were developed and agreed upon by the Administration and Permittees. The Administration is seeking feedback and direction from the FCWPC:

A. Resident Discounts for Public Tows

Option 1:

- Twenty percent (20%) discount to Miami Beach residents for public tows only.
- Discount may be applied two (2) times per year, per resident, per Permittee. This equates to four (4) benefits annually. The benefit resets each year; therefore, the resident receives the benefit annually for as long as the Permit is in effect. Permittee will track issuance of discounts to residents, annually.
- Residents must provide proof of residency within the City limits, and their driver's license information must match with the vehicle registration information.
- 20% discount would also be applicable to the City's Fee.

Option 2:

- Twenty percent (20%) discount to Miami Beach residents for public tows only.
- Discount may be applied three (3) times, per resident. This benefit does not reset each year; therefore, the resident receives this benefit three (3) times, from each Permittee, for a total of six (6) benefits.. Permittee will track issuance of discounts to residents, annually.
- Residents must provide proof of residency within the City limits, and their driver's license information must match with the vehicle registration information.
- 20% discount would also be applicable to the City's Fee.

B. Permittees agreed to develop a formal “internal review” process to address citizen complaints. This has not been developed as of the writing of this memo.

II. MAXIMUM ALLOWABLE TOWING RATES - ANALYSIS

At the December 6, 2011, FCWPC Meeting, the Permittees jointly provided an analysis of the Maximum Allowable Towing Rates. The analysis alleges that the current towing rates are inadequate, since they have not been increased since 2004. The analysis further alleges that a CPI (Consumer Price Index) of three percent (3%) be applied to certain towing rates (See attached Permittees’ Analysis). The summary (Table 2) of the Permittees’ Analysis was inserted into the chart below for comparative purposes.

At the direction of the FCWPC on December 27th, the Administration updated its own research of towing rates in comparable jurisdictions, and also received data from the Permittees regarding towing rates from comparable jurisdictions. The table below has been updated as per discussions with the Permittees; however, this analysis reflects a single tow under a specific set of assumptions. The Permittees believe that the analysis should reflect the various types of tows that occur during time. For example, a significant percent of tows may occur during normal work hours and while not a majority, when included in a blended analysis it will reflect a different ATF. The Permittees will present a different analysis based on the above at the FCWPC meeting.

Maximum Allowable Towing Rates in Florida – The Average Tow Fee (ATF) is comprised of:

- Class “A” Tow Fee
- Administrative Fee
- Mileage one (1) mile
- Labor
- After Hours Fee

The Class “A” Tow Fee and the add-on fees mentioned above are the “mode” value fees (value fees that occurs most often) for Miami Beach public tows. In other words, the majority of tows are comprised of these fees.

Cities in Florida	Total ATF*	Class A	Adm Fee	Mileage	Labor per 15 min	After Hours	City Fee
Bal Harbor	\$223.00	\$115.00	\$40.00	\$3.00	\$25.00	\$0.00	\$40.00
Fort Lauderdale (4)	\$159.80	\$100.00	\$30.00	\$4.80	\$25.00	\$0.00	\$0.00 (1)
Jacksonville	\$204.03	\$106.02	\$0.00 (2)	\$3.04	\$22.72	\$57.25	\$15.00
Key West	\$226.75	\$135.00	\$25.00 (7)	\$3.00	\$33.75	\$30.00	\$0.00
Miami-Dade	\$161.25	\$104.00 (8)	\$30.00	\$3.00	\$24.25	\$0.00	\$0.00
MPA	\$176.00	\$118.00	\$30.00	\$5.00	\$23.00	\$0.00	\$26.00 (1)
Orlando	\$144.00	\$125.00	\$0.00 (3)	\$4.00	\$15.00	\$0.00	\$0.00
Surfside (5)	\$205.00	\$115.00	\$30.00	\$5.00	\$25.00	\$30.00	\$40.00 (1)
West Palm Beach	\$228.00	\$130.00	\$60.00	\$5.00	\$33.00	\$0.00	\$0.00
Palm Beach County	\$237.00	\$156.00	\$0.00 (9)	\$7.00	\$39.00	\$35.00	\$0.00
Hillsborough County	\$264.00	\$115.00	\$75.00	\$4.00	\$20.00	\$50.00	\$0.00
Broward County	\$192.50	\$105.00	\$30.00 (6)	\$0.00	\$27.50	\$0.00	\$30.00
St. Lucie County	\$198.00	\$100.00	\$35.00	\$3.00	\$25.00	\$35.00	\$0.00
Indian River County	\$208.50	\$119.00	\$34.00 (6)	\$3.00	\$12.50	\$40.00	\$0.00
Monroe County	\$271.75	\$135.00	\$25.00 (7)	\$3.00	\$33.75	\$75.00	\$0.00
CMB (CURRENT)	\$205.00	\$115.00	\$30.00	\$5.00	\$25.00	\$30.00	\$25.00 (1)
Average	\$206.54	\$118.31	\$29.63	\$3.80	\$25.59	\$23.89	\$11.00
Permittees' proposed rates applied to an average tow							
2012	\$241.00	\$140.00	\$35.00	\$6.00	\$30.00	\$30.00	\$30.00
2013	\$259.00	\$150.00	\$41.00	\$6.00	\$32.00	\$30.00	\$35.00
2014	\$269.00	\$155.00	\$44.00	\$7.00	\$33.00	\$30.00	\$40.00

- (1) City Fee is included in the Class A Fee
- (2) Adm Fee is \$63.16 applied after 72 hours
- (3) Adm Fee is \$50.00 applied after 48 hours
- (4) Permit Fee is annual/per zone
- (5) CMB Towing Permit Piggyback
- (6) Adm Fee applied per notification after 24 hrs
- (7) Adm Fee applied per notification after 24 hrs and up to \$135
- (8) Includes \$3.00 Fuel Surcharge
- (9) \$50 Adm Lien Fee after 24 hours

Maximum Allowable Towing Rates in Florida – The Average Tow Fee (ATF) is the mode value (value that occurs most often) for Miami Beach and it includes fees assessed to the most common type of tow (Class A Tow). Please note that the Average Tow Fee (ATF) includes a Class “A” Tow Fee; Administrative Fee; Mileage one (1) mile; Labor; and After Hours Fee. Also, please note that the Permittees presented certain fees that are applicable in the jurisdictions they researched; however, these certain fees are not applicable to the mode value tow described in the examples below.

Based on the example above, the Permittees have proposed a rate increase that will raise the average tow fee to \$269.00 over a three (3) year period. This represents a 31% increase over the current Average Tow Fee. It should be noted that the Permittees will present a different analysis which takes into account a variety of tows that may result in a different percent increase.

The Class "A" Tow Fee (the most common type of tow) is proposed by the Permittees to increase from \$115, over the three year period, to \$155; or an increase of 35% over the current rate. The Permittees have also proposed to increase the City's fee, which they collect for the municipality, from the current \$25 per tow, to \$30 per tow in year one; \$35 in year two; and up to a maximum of \$40 in year three.

It is important to note that for public tows, in addition to the tow fees incurred, a parking citation also accompanies the tow fee. Parking citation fines for towable infractions range between \$23.00 and \$250.00. The only notable exception is for vehicles that have an impound order for outstanding citations, and even under those circumstances all outstanding citations must be paid in order to retrieve the vehicle.

III. CONSUMER PRICE INDEX (CPI) SENSITIVITY ANALYSIS

The FCWPC discussed the issue of indexing towing rates and directed the Administration to: (1) conduct a sensitivity analysis regarding the index (CPI) utilized by the Permittees in their analysis to determine the actual effect of compounding the CPI to towing rates over a long period; and (2) insert typical language used in other City ordinances, (such as the Business Tax Receipts Ordinance) related to an index or escalator for fees (See Attachment No. 1, Section 102-379(a) – (c), which contains sample language previously developed for the BTR ordinance). In the alternative, the City Attorney's Office has also developed standard contract language, which it typically uses in leases, concession agreements, and other agreements that generate payments to the City, providing that the initial fee be increased by CPI or [X] percent, whichever is greater. However, similar language as that contained in Attachment No. 1 maybe better suited to the instant case.

The Administration conducted its own indexing analysis utilizing CPI for the Miami-Fort Lauderdale area. Upon comparing both the Permittees and the Administration's indexing analysis, the variations ranged between \$0.11 and \$2.04 among the fee categories. Please refer to the tables below.

PERMITTEES' CPI Adjusted Rates from Applicable Base (2005) to FY2012 through FY2014									
	Outside Storage Fee Motor & Scooters	Outside Storage Fee Any Vehicle <20ft L & <8ft W	Outside Storage Fee Any Vehicle <20ft L or >8ft W	Class "A" Tow Fee	Class "B" Tow Fee	Class "C" Tow Fee	Class "D" Tow Fee	Class B&C Towing Fee Car Carrier	Annual CPI %
YEAR	22.A.(2)(a)	22.A.(2)(b)	22.A.(2)(c)	22.B	22.C	22.D	22.E	22.F	2.80%
2005	\$10.00	\$25.00	\$30.00	\$115.00	\$145.00	\$175.00	\$200.00	\$138.23	4.70%
2006	\$10.47	\$26.18	\$31.41	\$120.41	\$151.82	\$183.23	\$209.40	\$144.73	4.90%
2007	\$10.98	\$27.46	\$32.95	\$126.30	\$159.25	\$192.20	\$219.66	\$151.82	4.20%
2008	\$11.44	\$28.61	\$34.33	\$131.61	\$165.94	\$200.28	\$228.89	\$158.19	4.60%
2009	\$11.97	\$29.93	\$35.91	\$137.66	\$173.58	\$209.49	\$239.42	\$165.47	-0.30%
2010	\$11.93	\$29.84	\$35.80	\$137.25	\$173.06	\$208.86	\$238.70	\$164.98	0.80%
2011	\$12.03	\$30.08	\$36.09	\$138.35	\$174.44	\$210.53	\$240.61	\$166.30	3.70%
2012	\$12.48	\$31.19	\$37.43	\$143.47	\$180.89	\$218.32	\$249.51	\$172.45	3.00%*
2013	\$12.85	\$32.12	\$38.55	\$147.77	\$186.32	\$224.87	\$256.99	\$177.62	3.00%*
2014	\$13.24	\$33.09	\$39.71	\$152.20	\$191.91	\$231.62	\$264.70	\$182.95	

CITY'S CPI Adjusted Rates from Applicable Base (2005) to FY2012 through FY2014									
	Outside Storage Fee Motor & Scooters	Outside Storage Fee Any Vehicle <20ft L & <8ft W	Outside Storage Fee Any Vehicle <20ft L or >8ft W	Class "A" Tow Fee	Class "B" Tow Fee	Class "C" Tow Fee	Class "D" Tow Fee	Class B&C Towing Fee Car Carrier	Annual CPI %
YEAR	22.A.(2)(a)	22.A.(2)(b)	22.A.(2)(c)	22.B	22.C	22.D	22.E	22.F	2.77%
2005	\$10.00	\$25.00	\$30.00	\$115.00	\$145.00	\$175.00	\$200.00	\$138.23	4.69%
2006	\$10.47	\$26.17	\$31.41	\$120.39	\$151.80	\$183.20	\$209.38	\$144.71	4.94%
2007	\$10.99	\$27.46	\$32.96	\$126.34	\$159.30	\$192.25	\$219.72	\$151.86	4.16%
2008	\$11.44	\$28.61	\$34.33	\$131.60	\$165.93	\$200.26	\$228.87	\$158.18	4.58%
2009	\$11.97	\$29.92	\$35.90	\$137.63	\$173.53	\$209.43	\$239.35	\$165.43	-0.33%
2010	\$11.93	\$29.82	\$35.78	\$137.17	\$172.96	\$208.74	\$238.56	\$164.88	0.76%
2011	\$12.02	\$30.05	\$36.06	\$138.21	\$174.27	\$210.32	\$240.37	\$166.13	3.00%*
2012	\$12.38	\$30.95	\$37.14	\$142.36	\$179.50	\$216.63	\$247.58	\$171.11	3.00%*
2013	\$12.75	\$31.88	\$38.25	\$146.63	\$184.88	\$223.13	\$255.01	\$176.25	3.00%*
2014	\$13.13	\$32.83	\$39.40	\$151.03	\$190.43	\$229.83	\$262.66	\$181.54	
Diff	\$0.11	\$0.26	\$ 0.31	\$1.17	\$1.48	\$1.79	\$2.04	\$1.41	

IV. AUDITING AND INSPECTION PROVISIONS

Pursuant to the direction received from the FCWPC to enhance the audit provisions in the current Administrative Rules and Regulations (which govern public tows), to look at other existing audit provisions, in comparable business models, such as the language in the agreements between the City and Smith & Wollensky and the Boucher Bros, the Administration drafted the following language, which could be included in the Administrative Rules and Regulations (to expand upon the existing audit provisions).

It is important to note that the agreed upon audit procedures for both of the aforementioned agreements require either an automated point of sale (POS) system; cash register, or comparable system. The industry specific POS and software system offered by Dispatch and Tracking Solutions (DTS) would provide the kind of safeguards, reporting; and auditing tools sought in this provision.

The following is a draft of the proposed language for the provision. The agreed upon audit procedures would need to be developed jointly between the Permittees and the Administration.

SECTION #. MAINTENANCE AND EXAMINATION OF RECORDS.

Permittee shall maintain current, accurate, and complete financial records, on an accrual basis, related to its operations pursuant to this Permit. Systems and procedures used to maintain these records shall include a system of internal controls; all accounting records shall be maintained in accordance with generally accepted accounting principles; and shall be open to inspection, copying, and audit by the City Manager or his designee upon reasonable verbal or written notice, during normal hours of operation. Permittee shall maintain all such records at its principal office, currently located at _____, Miami Beach, Florida, 33139, or, if moved to another location, all such records shall be relocated, at Permittee's sole expense, to a location in Miami Beach, within ten (10) days from notice of request for inspection from the City. Such records and accounts shall include, at a minimum, a breakdown of gross receipts, expenses, and profit and loss statements. Permittee shall maintain accurate receipt-printing cash services which will record and show the payment for every service provided. Such other records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles. Permittee records shall also be maintained for a period of three (3) years following expiration (or the termination) of this Permit (regardless of whether such termination results from the expiration of the Term or for any other reason).

A monthly report of gross receipts must be submitted to the City Finance Department's Revenue Manager, no later than thirty (30) days after the close of each month during the Term herein. Permittee shall submit to the City's Finance Department's Revenue Manager, within sixty (60) days of the end of each contract year, an annual statement of gross receipts, along with any payment required pursuant to Section _____ herein, in a form consistent with generally accepted accounting principles. Additionally, within one hundred twenty (120) days of the end of each permit year, a report applying agreed-upon procedures shall be submitted to the City Finance Department's Revenue Manager, such statement shall be accompanied by a report from an independent CPA firm which shall perform certain agreed upon procedures, as described in Exhibit __ attached hereto.

SECTION #. INSPECTION AND AUDIT.

The City Manager or his designee shall be entitled to audit Permittee's records once a year throughout the Term, and three (3) times within the three (3) year period following expiration (or other termination) of this Permit. The City shall be responsible for paying all costs associated with such audit(s), unless the audit(s) reveals a deficiency of five (5%) percent or more in Permittee's statement of gross receipts for any year or years audited, in which case Permittee shall pay to the City, within thirty (30) days of the City deeming the audit final, the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest. These audits are in addition to periodic City audits of Resort Tax collections and payments (which are performed separately).

It is Permittee's intent to stay informed of comments and suggestions by the City regarding Permittee's performance under the Agreement. Within thirty (30) days after the end of each contract year, Permittee's and the City may meet to review Permittee's performance under the Permit for the previous contract year. At the meeting, Permittee and the City may discuss quality, operational, maintenance and any other issues regarding Permittee's performance under the Permit. Nothing contained within this Section shall preclude the City's audit rights for Resort Tax collection purposes.

V. DISMISSAL OF PENDING LAWSUITS/LEGAL ISSUES

The City has been a party to the following litigation arising out of disputes between the two towing companies:

1. *Beach Towing Services, Inc., v. The City Of Miami Beach*, Case no. 11-37364 CA 31, Eleventh Judicial Circuit, General Jurisdiction Division (complaint challenging the adoption of Ordinance 2008-3617 on robotic and mechanical parking);

2. *Beach Towing Services Of Miami, Inc., v. City Of Miami Beach*, Case No. 11-465 AP, Eleventh Judicial Circuit, Appellate Division (petition for writ of certiorari challenging the Board of Adjustment's opinion upholding the decisions of the Planning Director with respect to a towing garage in the I-1 district); and

3. *Beach Towing Services Of Miami, Inc., v. City Of Miami Beach*, Case No. 11-466 AP, Eleventh Judicial Circuit, Appellate Division (petition for writ of certiorari challenging the Board of Adjustment's opinion upholding the decisions of the Planning Director with respect to a towing garage in the I-1 district).

The Plaintiff in case number 1 has filed a notice of voluntary dismissal without prejudice. Case numbers 2 and 3 have been partially briefed, and await replies to be filed by the Petitioners. It is proposed that, as a condition of approval of Permit renewal, that the plaintiffs agree to dismiss, **with** prejudice, their lawsuits and petitions, within five (5) days of adoption of the Resolution, each party to bear their own costs and attorneys' fees, and with the City drafting the Orders of Dismissal. Further, since the Plaintiff has already dismissed case number 1, that it, and all related persons and entities, agree not to pursue any action against Ordinance No. 2008-3617, and not to encourage any other person or entity to file any administrative or judicial challenge to such Ordinance.

VI. CITY'S IN-HOUSE TOWING INITIATIVE

The City Commission discussed the viability of storing City directed towed vehicles on Terminal Island on June 1, 2011. The Administration was directed to conduct a traffic impact study for the proposed facility on Terminal Island for the storage of towed vehicles. The results of that study were placed on the Neighborhoods and Community Affairs Committee agenda and, after deferring discussions for two months, the Committee decided, at its December 8, 2011 Meeting, to table this item until such time as the Commission decides to place it back on the agenda for discussion. On December 27, 2011, the FCWPC decided to have the discussion on this issue with the full Commission. The Committee instructed the Administration to ensure that the nearby home owner's association be notified of that upcoming discussion, it is anticipated that this issue will be placed on the City Commission's February agenda.

VII. ACCOUNTABILITY AND ENHANCEMENTS - UPDATED

The following enhancements were revisited during the meetings with Permittees and the results have been highlighted below in bold.

- In-Vehicle Cameras (Video and Audio Recording) – Towing service providers would be required to record video and audio of all tows, public and private. Recording equipment shall be mounted on the vehicle (wrecker) and any and all footage (video/audio) shall be provided to the City, upon request.

(Note: Permittees have acquiesced from their previous position and agreed to consider this as a requirement upon conducting further research and evaluation of the various systems proposed).

- RSI/GPS Tracking Devices (Wreckers) - Radio Satellite Integrators (RSI) is a third party provider of state-of-the-art vehicle tracking systems. The City has contracted RSI to provide a web based vehicle tracking system to manage its fleet, including location, speed, and idle times of City vehicles. Each towing service provider would be required to engage RSI and deploy GPS tracking devices for all wreckers and/or service vehicles; and would be required to provide access to the RSI system to the Police and Parking Departments.

(Note: Permittees have acquiesced from their previous position and agreed to consider this as a requirement upon conducting further research and evaluation of the various systems proposed).

- Towing Software (Dispatch and Tracking Solutions) - Dispatch and Tracking Services (DTS) – DTS is a third party provider of state-of-the-art towing software. Each towing service provider shall be required to engage DTS, a web based towing software provider, to manage public and private property tows. Both towing service providers would be required to use the DTS system for all tows. A DTS tow fee is assessed for each tow.

(Note: Permittees have acquiesced from their previous position and agreed to consider this as a requirement upon conducting further research and evaluation of the various systems proposed).

- Temporary [Towed] Vehicle Storage – The Administration recommends an amendment to the City Code allowing for temporary storage of towed vehicles during high impact events in the City.

(Note: Permittees have acquiesced from their previous position and agreed to this provision).

- Defamation Provision (video/audio depiction of public tows) – This provision is intended to develop protections for the City from potential defamation that may arise from towing service providers intending to either pursue on their own or engage a third party to film depictions of public property tows.

(Note: This was previously agreed to by both Permittees and can be required by the Permit).

- Employee Drug Screening - Towing service providers would perform drug test screening on all employees and provide pass/fail results to the City upon request.

(Note: This was previously agreed to by both Permittees and can be required by the Permit).

- Drivers License Screening – Each towing service provider would perform driver's license screening on all employees with driving responsibilities.

(Note: This was previously agreed to by both Permittees and can be required by the Permit).

- Uniforms – Towing service providers would be required to provide all employees with uniforms. Uniforms shall be approved by the City Manager or his designee.

(Note: This was previously agreed to by both Permittees and can be required by the Permit).

- Penalties/Fine Schedule – The existing towing permits allow the City Manager to suspend the permit for a period of time as a penalty. The Administration recommends a fine schedule, as a financial disincentive, for violation(s) of the towing permit. Fines for typical violations may include, but are not limited to: employees out of uniform; illegal storage of vehicles; overcharging/assessment of drop fees; violations of the conditional use requirements, etc.

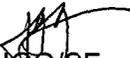
(Note: Both Permittees have agreed to continue discussing this issue).

- Extend the number of hours of storage at no charge to the customer from eight (8) hours to 12 hours.

(Note: Permittees have not agreed to this provision).

CONCLUSION

The Administration seeks further policy direction regarding the proposed revisions to towing rate increases; public benefits for Miami Beach residents; permit requirements/enhancements; accountability; and legal issues.


JMG/JGG/SF

Attachment No. 1

Sec. 102-379. - Schedule of taxes, effective October 1, 2009.

(a)

Business taxes for the following businesses, occupations or professions are hereby levied and imposed as follows:

(b)

Effective on October 1, 2005 (fiscal year 2005-2006), the following business taxes will be increased by five percent rounded to the nearest dollar, and further increased by five percent every other year on October 1, until such taxes/fees have caught up with the cumulative percentage change in the Consumer Price Index (CPI) measure between June 1994 through March 2003, which is 24.5 percent; further providing for another change equal to the cumulative percentage change in the CPI from March 2003 to September 2011.

(c)

As provided in Resolution No. 2003-25299, a review of the annual permit fee/business tax will be required whenever the change in the Consumer Price Index (CPI), between the latest CPI and the date of the CPI used for the last tax/fee adjustment, is five percent or greater.

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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 Chairperson and Committee Members

FROM: Jorge M. Gonzalez, City Manager

DATE: January 19, 2012

SUBJECT: **A DISCUSSION OF A PROPOSED MODIFICATION OF THE PROMISSORY NOTE DATED FEBRUARY 5, 2007, BETWEEN 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 MADE BY A COMMERCIAL LENDING INSTITUTION**

BACKGROUND

This memorandum serves as a supplement to the Committee Memorandum dated October 27, 2011, attached hereto for reference, and also serves to clarify salient issues. A modification of the repayment terms in the Promissory Note dated February 5, 2007, between MBCDC: Meridian Place, LLC, to the Miami Beach Redevelopment Agency is necessary in order to facilitate the completion of Meridian Place, as well as to prevent jeopardizing \$6,415,085 of additional public funds which have been awarded to this affordable housing project for formerly homeless elderly persons.

The repayment terms in the Promissory Note are not feasible because this affordable housing project cannot produce sufficient cash flow to cover annual principal payments in the amount of \$150,000 to the RDA. The development's eventual cash flow is limited by HUD rents. Furthermore, the project rehabilitation is 70% complete, and therefore had no rental revenue cashflow to make the first \$150,000 annual loan payment which was due in December, 2011. Subsequent annual payments are due every December for the next nine years. MBCDC maintains that, upon the project's completion, and if the RDA Promissory Note is modified to reflect a deferred or forgivable status, then the project will produce a modest net cash flow average of approximately \$20,000 for each of the next ten years; with the exception of the first year of operation. This also presumes that MBCDC is successful in receiving its requested payment deferral and extended amortization of an existing \$1 million State loan, which it inherited from Carrfour Supportive Housing, the original developer.

A HUD-required Subsidy Layering Review was initiated by the Administration in August 2011 in order to evaluate the sources and uses and ensure that the necessary funds are invested in HOME-funded affordable housing projects. The procured consultant, First Housing Development Corporation, reviewed Meridian Place and determined in its "Draft" report that "It is First Housing's opinion that the property will not be economically feasible with the uncertainty surrounding the proposed first mortgage loan and the requirement of the RDA loan to begin principal payments of \$150,000 on December 31, 2011. If these two issues can be resolved satisfactorily then First Housing is of the opinion that the property will be economically viable."

The debt service required in the Promissory Note has impeded the completion of a satisfactory HUD-required Subsidy Layering Review, and will preclude any favorable underwriting report

which is necessary for the release of allocated County grant funds, the balance of the State grant, and necessary commercial bank gap financing. Furthermore, MBCDC applied for a HUD HOME/HOPWA grant in the amount of \$300,000 from the City of Miami and was informed that the current cash flow projections with an RDA debt repayment would render the project unable to maintain the levels of rents required by the grant program.

ANALYSIS

In the event the RDA Promissory Note's debt service is not modified, the project cannot be completed and the other existing funding sources are in jeopardy. Each of the other funding sources entered into various governing documents with MBCDC and its predecessor to secure the use of funds and project execution. While all the documents were prepared independently by each lender, all the loan documents share common covenants which require the delivery of a completed affordable housing project. The other funding sources' governing documents, project requirements, repayment terms, and default provisions are briefly summarized below.

City of Miami Beach \$2,864,642 of HUD HOME and CDBG Program Funds:

- Governing documents: various Mortgages, Promissory Notes, and Restrictive Covenants
- Project requirements: developer must deliver affordable housing units and maintain affordability for 30 years
- Repayment terms: loans are converted to forgivable grants as long as the project remains an affordable housing project during the affordability period
- Default provisions: if project fails to operate as affordable housing, City funding becomes due and payable
-

Miami-Dade County - \$1,379,395 of Documentary Stamp Surtax Funds

- Governing document: Affordable Housing Funding Agreement
- Project requirement: affordable housing for a 30-year affordability period
- Repayment terms: accrues interest at 1% per annum which shall not be collected as long as the project complies with all loan conditions and if the project complies with all loan conditions, then the principal and interest shall be forgiven by the County in equal increments equal to 25% of the loan amount in years 27 through 30
- Default provisions: if the borrower ceases its use of the property as a homeless facility, the loan and any accrued interest become due and payable

Miami-Dade County - \$395,605 of HUD HOME Program Funds:

- Governing document: Mortgage Assumption Agreement
- Project requirement: must deliver affordable housing units and maintain affordability
- Repayment terms: forgivable loan at maturity date, 06/08/23, as long as developer complies with affordable housing rental provisions
- Default provisions: A breach of contract exists if there is a failure to fulfill each and every contract provision and if terms are breached, the County is entitled to return of any and all funds awarded.

State: Florida Housing Finance Corporation Demonstration Program Loan - \$1,000,000

- Governing documents: Land Use Restriction Agreement, Mortgage and Note
- Project requirement: production of affordable housing units for 15 years
- Repayment terms: accrues interest at 0 percent, maturity date April 4, 2020
- Default provisions: In the event of default, the unpaid principal is accelerated and

becomes due and payable

In addition to the funding sources stated above, MBCDC is working directly with U.S. HUD to obtain project vouchers to be received by MBCDC in equal annual installments over a ten year period. However, the vouchers will not be released until the project is complete and therefore, MBCDC must first obtain gap financing and complete the project.

Finally, Miami Dade County District 5 General Obligation Bond funds in the amount of \$440,431 have been allocated to Miami Beach Community Development Corporation to finance development of certain affordable housing units. MBCDC has committed the use of this allocation towards Meridian Place. However, the County will not allocate the funds directly to a specific project without favorable underwriting. Once the favorable underwriting is submitted, the allocation of the County funds will require board approval and necessary documentation and the process and release of funds will not be completed immediately. In anticipation of the release of the County funds, commercial bank gap financing will be sought to complete the project. Once the County GOB funds are released, MBCDC has committed to applying that funding to repayment of the bank financing.

RECOMMENDATION

A responsibility exists to ensure that federal, state, and local funds allocated to this affordable housing project for formerly homeless elderly persons are utilized in a feasible project. In light of the HUD subsidy layering feasibility requirements, it is recommended that the RDA loan repayment terms be restructured to be consistent with other affordable housing grants (loans) from the City which defer the repayment of the funding as long as the project is kept "affordable" in accordance with HUD guidelines. This project's "affordability period" is currently thirty (30) years, commencing at the issuance of the Final Certificate of Completion. Should the deferral be approved, it is recommended that at the expiration of the 30-year affordability period, the City may be given the option to either call in the note, extend the affordability period (e.g. another thirty years), or otherwise modify the note. Furthermore, consistent with other recently approved grants and loan documents to MBCDC, a provision may be added to the terms of a modified loan which requires that, in the event the project fails to comply with HUD's affordability requirements, title to the property reverts to the City and the RDA loan repayment is accelerated and is immediately due and payable.

CONCLUSION

Based on the project's inability to service the RDA debt from projected affordable rent cashflow, as well as MBCDC's inability to secure necessary additional funds based on the feasibility of the project with the current RDA repayment schedule, it is recommended that the RDA loan repayment terms be restructured as stated above to be consistent with other affordable housing loans. Also, it is recommended that MBCDC be required to apply the proceeds of the GOB funding from the County to the reduction of the private bank financing, and rents be reduced to reflect the debt service cashflow savings. Finally, in light of MBCDC's need for upfront funding of the HUD approved gap financing and the additional private bank gap financing, it is recommended that the City subordinate its secured debt position in the maximum amount of \$980,000 to a commercial lending institution, if bank financing is secured, consistent with prior practice.

JMG/HMF/AP/ARB
Attachments

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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 & Citywide Projects Committee Members

FROM: Jorge M. Gonzalez, City Manager

DATE: January 19, 2012

SUBJECT: **Report on the Status of FY 2010/11 Potential New Revenue Initiatives**

At the March 9, 2011 City Commission meeting, Commission Item R2A was referred to the Finance and Citywide Projects Committee (FCWPC) regarding the status of potential new revenue initiatives. That item directed the Administration to provide quarterly reports on the status of potential new revenue initiatives to the Finance and Citywide Projects Committee.

Please find below the final status report for FY 2010/11 potential new revenue initiatives.

Revenue Initiative	Department Responsible	Budget (\$)		Status
		Rev.	Exp.	
Credit Card Savings	Finance	0	400,000	Completed The rates have been re-negotiated and the new contracts were signed in May 2011. The new rates have saved the City \$95,000 thru the end of FY 2010/11.
Parking Meter Ticket Stub Advertising	Communications	50,000	0	Completed Anticipating \$20,000 revenue for FY 2011/12.
Exclusive Beverage Provider	Communications	0	0	Completed Anticipating \$800,000 revenue for FY 2011/12.
Bus Shelter Advertising at 5 th and Alton Garage	Communications	48,000	0	Completed One of four space ads sold for full year (\$12,000).
Sponsorship on Cable TV	Communications	0	0	Underway Staff is working on putting this project together for underwriting instead of sponsorship. This includes the development of rates and media kit based on comparables.

Revenue Initiative	Department Responsible	Budget (\$)		Status
		Rev.	Exp.	
Official City Map	Communications	10,000	0	Underway A vendor has made an offer to the City. The offer is being reviewed by the City Manager.
Include Electric Car Charging Stations in Parking Garages	Parking	0	0	Underway Awarded and negotiating the agreement.
Towing Rates	Parking	0	0	Underway Currently negotiating
Develop a Product to Market for Profit	Communications	0	0	Underway Being addressed by the City's Corporate Sponsorship company.
Review Collection of Code Fines	Code	0	0	Underway Database being developed that reflects all outstanding fines and written procedures are almost complete.
Neighborhood Establishment Impact Fee	Code	0	0	Underway A fee schedule based on occupancy loads and thresholds including indoor vs. outdoor venues, dance entertainment, etc. has been drafted and is pending approval from Assistant City Manager and determination if it will be presented to Commission.
Explore Kiosk Machines that sell merchandise such as gift cards	Finance	0	0	Underway The City has been authorized to run a pilot program with a company called Pay-Ease that will install a kiosk to accept city payments. These kiosks have the ability to issue gift cards. Once we open the new service center where the kiosk is going to be installed, we will be expanding the services to include gift cards.

Revenue Initiative	Department Responsible	Budget (\$)		Status
		Rev.	Exp.	
Amend Ordinance No. 2007 – 3553 to Increase Beachfront Concession Upland Fees Per Unit From the Current Base Rate of \$16 Per Unit and Max Cap of \$10,000 for Hotels	Real Estate, Housing and Community Development (REHCD)	48,000	0	Underway REHCD has: <ul style="list-style-type: none"> • Compiled a Beach Concession/Vendor Survey with the status of concession information from nine other coastal communities. • Initiated a cost allocation analysis relative to hoteliers, excluding public areas, including cost of: <ul style="list-style-type: none"> - Field monitor for concessions - Asset Management staff - Finance staff - Code Compliance monitoring - Police staff The next steps REHCD will take: <ul style="list-style-type: none"> • Obtain contracts from specific coastal communities to extract relevant information and fee schedules for: <ul style="list-style-type: none"> A) food and beverage sales B) beach equipment C) water sports • Estimate revenues based upon a comparable market analysis and perform an income analysis of the beachfront concession operations by selecting 3 to 5 established beachfront concessions with varying characteristics and observe/calculate income generated by concessionaires from rentals of chairs, umbrellas, and watersports. • Coordinate meeting with Chamber of Commerce and/or Hoteliers to discuss options. • Verify the number of upland units in each permitted Beachfront Concession operation.

Revenue Initiative	Department Responsible	Budget (\$)		Status
		Rev.	Exp.	
Blue Tooth Advertising	Communications	0	0	Underway City will evaluate the potential of this initiative and may issue a request for proposal (RFP) for potential solutions and vendors.
Ocean Rescue and Pool Lifeguard Uniforms	Communications	50,000	54,000	Underway Staff has contacted several apparel companies and the expense has been too great during current market conditions for them to take advantage of the opportunity. Staff continues to pursue this initiative.
Police and Fire Uniforms	Communications	50,000	0	Underway Staff has contacted several apparel companies and the expense has been too great during current market conditions for them to take advantage of the opportunity. Staff continues to pursue this initiative.
Explore Intellectual Property Rights for City Produced Events and City Sponsored Events	TCD	0	0	Closed Administration is recommending no action on this initiative based on research by the Tourism and Cultural Development Department.
Advertising on Parking Garage Arms	Communications	180,000	0	Closed Not being pursued as directed by Commission – 9/14/11
Elevator Advertising in Parking Garages	Communications	80,000	0	Closed Not being pursued as directed by Commission – 9/14/11
Light Pole Banner Advertising	Communications		0	Closed Advertising on State light poles prohibited by State of Florida.
Parking Garage Advertising Alternatives (striping, pillars)	Communications	0	0	Closed Not being pursued as directed by Commission – 9/14/11

Revenue Initiative	Department Responsible	Budget (\$)		Status
		Rev.	Exp.	
Vacant storefront advertising	Planning	0	0	Closed Proposal for revenue generating commercial storefront advertising program was abandoned by the Land Use and Development Committee based upon legal and planning concerns. No proposal to change City Code to permit revenue generating vacant storefront advertising is under consideration at this time.
Bus Ads on the Local	Public Works	0	0	Closed The buses have a distinct wrap that was designed for the South Beach Local, so placing any good size ad is not possible. There are no provisions for the City placing ads in our current agreement with Miami-Dade Transit (MDT). We are negotiating a new agreement which has been difficult at best, because MDT wants the City to pay a larger share of the operating costs, so if they agree to any City managed ads, MDT would most likely want to keep the revenue. Our top priority is to keep current level of services at the same financial split rather than trying to negotiate for ad revenue.
Parking Valet Franchise	Parking	0	0	Closed Pursuant to direction at the 10/27/11 FCWPC meeting.
Pursue Study of Fire Assessment District for FY 2011/12	OBPI	0	0	Closed Draft Request for study presented to FCWPC on 12/16/10 and put on hold until all other initiatives have been addressed.
Master Meter Map program	Communications	0	0	Closed Not being pursued as directed by Commission – 9/14/11

Revenue Initiative	Department Responsible	Budget (\$)		Status
		Rev.	Exp.	
Business Improvement Districts	NA	0	0	On hold At this time the City is exploring outsourcing of the management of Lincoln Road, similar in concept to the operating structure that would be accomplished through a Business Improvement District.
Pursue development and promotion of Miami Beach in next 20 years as "most mobility friendly", "most aging friendly"	NA	0	0	On hold No action at this time.
Respond to Cities Desiring Police Services from Miami Beach	Police	0	0	Pending Pending expression of interest from neighboring cities who may want to utilize the City of Miami Beach for full provision of their Police services.

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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: January 19, 2012

SUBJECT: **SOLID WASTE FRANCHISE CONTRACTOR WASTE COLLECTION AND DISPOSAL SERVICES**

At the July 13, 2011 City Commission Meeting, Commissioner Libbin introduced a Motion recommending that Item C2G – “A Request for Approval to Issue a Request for Qualifications for a Fourth Solid Waste Franchise Contractor to provide Commercial Waste Collection and Disposal Services” (see Attachment 1) be referred to the Finance and Citywide Projects Committee (FCWPC) for further consideration and discussion and brought back to the City Commission. The motion was seconded by Commissioner Weithorn and was unanimously passed.

BACKGROUND

At the Finance and Citywide Projects Committee Meeting of January 26, 2010, the Committee recommended that the City pursue the option of maintaining four (4) franchise haulers and to accept the services package presented combined with a five (5) year term. The Committee also recommended that a minimum of four (4) haulers be retained and in the event the number falls below four, the matter be brought to the attention of the City Commission.

There are presently three waste collection and disposal services franchisees in the City of Miami Beach: Waste Management of Dade County; Waste Services, Inc.; and Choice Environmental Services of Miami. In 2011, a previous fourth franchisee, General Hauling Services, Inc., was purchased by Waste Services in 2011. The current waste collection and disposal services franchisees have petitioned the City to maintain at three the number of haulers providing services within the City. The current ordinance requires that at the expiration of the initial term of a franchise agreement, or earlier revocation of the franchise, the City Commission may choose, in its sole discretion, to accept applications for new franchise waste contractors, or in the alternative, to renew an existing franchise agreement for an additional three-year renewal term.

It was recommended that the fourth hauler negotiations could provide the opportunity for the three remaining haulers to proffer additional resources for the educational and enforcement requirements of the new recycling ordinance. However, the re-written ordinance significantly reduces the resource requirements for enforcement and therefore does not present the same opportunities.

Over time, the City has negotiated with the franchise haulers aggregate in-kind services and benefits that include: provision of two (2) hazardous material pick-up events per year; an annual cash allocation to the City equivalent to the purchase of fifteen (15) urban style recycling containers; reimbursement for security services provided at each of the “wasteful

weekends” sites held monthly in the community; collection and disposal of all Citywide litter can and dumpster waste, including all City facilities; a contribution capped at 1.5% of gross revenues, or approximately \$272,000, from accounts in the City used to fund “green” initiatives; and a \$75,000 contribution per franchise year to support education in the community, as determined by the City Commission. These in-kind services and contributions are apportioned to each of the haulers based on a market-share basis. In consideration of these in-kind services and contributions, in 2010 the haulers were given a five-year contract with a three-year renewal option at the City’s discretion.

ANALYSIS

In consideration of possible impacts of having three versus four haulers operating within the City, staff offers the following observations:

- From an administrative perspective, the management of three haulers, as opposed to four, should not be significantly different,
- A lesser number of haulers **may** result in some reduction in the number of trucks on City streets.

The haulers have requested that - in exchange for agreeing to increase their current contribution to fund green initiatives from 1.5% to 2% (representing an annual revenue increase of approximately \$100,000), and double their annual cash allocation for the purchase of recycling containers from (15) containers valued at approximately \$18,000 to (30) containers valued at approximately \$36,000, or current market value – they would like to:

- Keep only three haulers, and
- Exercise the 3 year renewal option currently at the City’s discretion in September 2014.

CONCLUSION

Based on the above, the Administration recommends that the Finance and Citywide Projects Committee approve the issuance of a Request for Qualifications for a fourth solid waste franchise contractor.

As an alternative, the Committee could consider the offer made by the franchisees and direct the Administration to negotiate accordingly.

Attachment 1: July 13, 2011 Commission Memorandum- Request for Approval to issue a Request for Qualifications (RFQ) for a Fourth Solid Waste Franchise Contractor to Provide Commercial Waste Collections and Disposal Services

JMG/DRB/FHB

Condensed Title:

Request For Approval To Issue A Request For Qualifications (RFQ) For A Fourth Solid Waste Franchise Contractor To Provide Commercial Waste Collections And Disposal Services

Key Intended Outcome Supported:

Improve cleanliness of Miami Beach rights of way especially in business areas
Supporting Data (Surveys, Environmental Scan, etc.): The 2009 Customer Satisfaction Survey indicated 14% improvement by businesses overall in the rating for streets in business areas.

Issue:

Shall the Mayor and City Commission approve the issuance of the RFQ?

Item Summary/Recommendation:

As a result of mergers and acquisitions, on April 14, 2010, the Mayor and City Commission approved Ordinance No. 2010-3679 which amended the City Code (Chapter 90 entitled "Solid Waste") to include a reduction in the number of the City's franchise waste haulers from five (5) to four (4).

The Franchisees of the City of Miami Beach in the provision of solid waste services to commercial properties were: (1) Waste Management of Dade County; (2) Waste Services, Inc., ("Waste Services"); (3) Choice Environmental Services of Miami; and (4) General Hauling Services, Inc..

In a letter received from Waste Services, dated May 19, 2011, the City's Solid Waste Director, Al Zamora was informed that as of April 2, 2011, General Hauling Services, Inc. had been purchased by Waste Services. As a result, the City's solid waste franchises have been reduced from four (4) to three (3), therefore requiring that the City solicit a fourth commercial solid waste franchise.

The City Code provisions now in effect have an established procedure in place to address any new Franchisees. In order to proceed maintaining four (4) franchises and securing the added public benefit the following changes in the City Code were necessary: the term of the franchise agreement in Section 90-230 of the City Code was changed to reflect a five (5) year period of time instead of a three (3) year period of time; a change to Section 90-231 which requires franchisee's for all commercial accounts, not just multi-family dwellings, to make a recycling offer with a provision to recognize the offset reduction in costs associated with waste disposal; Section 90-222 was changed to require all franchisees to distribute a contract terms disclosure form.

All firms that submit a proposal for consideration are subject to and must meet the minimum qualifications for the City's granting of waste contractor franchises, as set forth in section 90-229 of the City Code (as amended on September 17, 2008).

The term of the Agreement for the successful proposer will terminate on August 31, 2015 to coincide with the term of the three (3) existing franchise waste haulers.

APPROVE THE ISSUANCE OF THE RFQ.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:	Amount	Account
OBPI	1	N/A
Total		

Financial Impact Summary: N/A

City Clerk's Office Legislative Tracking:

Gus Lopez ext. 6641

Sign-Offs:

Department Director	Assistant City Manager	City Manager
GL FB <i>[Signature]</i>	DB <i>[Signature]</i>	JMG <i>[Signature]</i>

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MIAMI BEACH

AGENDA ITEM C26
 DATE 7-13-11



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: July 13, 2011

SUBJECT: **REQUEST FOR APPROVAL TO ISSUE A REQUEST FOR QUALIFICATIONS (RFQ) FOR A FOURTH SOLID WASTE FRANCHISE CONTRACTOR TO PROVIDE COMMERCIAL WASTE COLLECTIONS AND DISPOSAL SERVICES**

ADMINISTRATION RECOMMENDATION

Approve the issuance of the RFQ.

BACKGROUND

As a result of mergers and acquisitions, on April 14, 2010, the Mayor and City Commission approved Ordinance No. 2010-3679 which amended the City Code (Chapter 90 entitled "Solid Waste") to include a reduction in the number of the City's franchise waste haulers from five (5) to four (4).

The Franchisees of the City of Miami Beach in the provision of solid waste services to commercial properties were: (1) Waste Management of Dade County; (2) Waste Services, Inc., ("Waste Services"); (3) Choice Environmental Services of Miami; and (4) General Hauling Services, Inc..

In a letter received from Waste Services, dated May 19, 2011, the City's Solid Waste Director, Al Zamora was informed that as of April 2, 2011, General Hauling Services, Inc. had been purchased by Waste Services. As a result, the City's solid waste franchises have been reduced from four (4) to three (3), therefore requiring that the City solicit a fourth commercial solid waste franchise.

It is important to emphasize that the City Code provisions now in effect have an established procedure in place to address any new Franchisees. The changes necessary in the City Code in order to proceed maintaining four franchises and securing the added public benefit are as follows: the term of the franchise agreement in Section 90-230 of the City Code was changed to reflect a five (5) year period of time instead of a three (3) year period of time; a change to Section 90-231 which requires franchisee's for all commercial accounts, not just multi-family dwellings, to make a recycling offer with a provision to recognize the offset reduction in costs associated with waste disposal; Section 90-222 was changed to require all franchisees to distribute a contract terms disclosure form.

The City Commission also provided direction to the Administration that a \$75,000 cash contribution was to be used in support of the International Baccalaureate Program and also approved three (3) recommendations forwarded to the City Commission by the Sustainability Committee relative to recycling within the community.

In addition, specific services which were incorporated into the Service Agreements of each waste hauler included:

1. The provision of two (2) hazardous material pick-up events per year.
2. An annual cash allocation to the City equivalent to the purchase of fifteen (15) urban style recycling containers.
3. The development of a brochure common to be used by all of the franchise waste haulers, which stipulates recycling requirements, recycling options and the possibility of solid waste savings. This brochure is to be distributed to all commercial accounts in the City.
4. The City will be reimbursed for security services provided at each of the "wasteful weekends" sites held monthly in the community.
5. The City will be provided in the first year of the franchise, a contribution from all of the haulers, with the exception of General Hauling, equivalent to one half of a percent of gross revenues from accounts in the City, which shall increase by a half percent in each of the next two (2) years until a total contribution of one and a half percent of gross revenues is being made to the City. The fund is to be used at the discretion of the City Commission for "green initiatives". General Hauling is excluded from this item as they already contribute one and a half percent of gross revenues in the community as a result of their recent franchise award.
6. A cash contribution in the amount of \$75,000 per franchise year will be made to the City for support of Education in the community, as determined by the City Commission.

The five year value of the additional community benefit and services was estimated at approximately \$1,618,750. As a result of a recommendation provided by the Sustainability Committee, the franchise waste haulers agreed to remove recyclable materials from community drop off points in South, Middle and North Beach (total 3) on sites which are developed and permitted by the City.

If the City Commission authorizes the issuance of a Request for Qualifications (RFQ) for a fourth solid waste franchise contractor to provide commercial waste collection and disposal services, all aforementioned provisions will be included with a term expiring on August 31, 2015 to coincide with the term of the three (3) existing franchise waste haulers.

MINIMUM REQUIREMENTS / QUALIFICATIONS:

ALL FIRMS THAT SUBMIT A PROPOSAL FOR CONSIDERATION ARE SUBJECT TO AND MUST MEET THE MINIMUM QUALIFICATIONS FOR THE CITY'S GRANTING OF WASTE CONTRACTOR FRANCHISES, AS SET FORTH IN SECTION 90-229 OF THE CITY CODE (AS AMENDED ON SEPTEMBER 17, 2008), AND AS PROVIDED BELOW. IF THE MINIMUM QUALIFICATIONS ARE NOT MET, THE PROPOSER'S SUBMITTAL WILL BE DEEMED NON-RESPONSIVE.

Sec. 90-229. Selection of franchise waste contractors.

(a) Except as provided in section 90-233, the city shall license not more than four (4) franchise waste contractors for residential and commercial waste collections and disposal as provided in section 90-97. Each applicant for a garbage and trash disposal license or renewal thereof shall submit, in writing, a list of its qualifications. The minimum qualifications to be considered in the granting of such license shall include:

- (1) Evidence of the applicant's ability to fulfill all duties and requirements of a franchise waste contractor as set forth in this chapter, including proper certification and adequate insurance coverage.
- (2) Certification that the applicant has never defaulted on any government contract or bid award.
- (3) Evidence that the applicant has the potential for a significant amount of business within

the city, comprised of either a minimum of 50 committed accounts within the city or, in the alternative, the city commission may accept, in its sole discretion, 50 comparable committed accounts from outside of the city.

(4) Certification that there are no unsatisfied judgments against the applicant.

(5) Certification that the applicant is not, and will not be, throughout the term that it has a license, affiliated with, as a parent, subsidiary, by virtue of an interlocking directorate, or otherwise, an affiliated entity of any existing licensee or any applicant for a licensee under section 90-191 et seq.

(6) The applicant's ability and commitment to provide the city and its businesses and multi-family residences with (i) good service; (ii) competitive prices; (iii) demonstrated and/or proposed green initiatives; and (iv) ability and commitment to provide such additional "public benefit(s)" to the city which may include, without limitation: provision of additional waste collection, disposal, and/or recycling services (at no cost to the city) to city right of ways, city-owned public buildings, parks, and/or beaches; voluntary cost and/or fee reductions; and/or such other city public benefits and/or services as the city manager may, in his reasonable judgment and discretion, from time to time, require.

(b) If more than one applicant for a franchise waste contractor's license qualify under the minimum qualifications of this division, license issuance shall be determined by the city commission based upon applicant(s) that the City Commission deems, in its judgment and discretion, and having considered the recommendation of the city manager, to have provided the most significant public benefit(s) to the city (pursuant to subsection 90-229(a)(6)).

(c) In lieu of accepting applications from new applicants as set forth above, the city commission may choose to issue new licenses to previous licensees. The decision shall be based on the criteria set forth in section 90-230.

EVALUATION SELECTION PROCESS

The procedure for response, evaluation and selection is as follows:

1. Request for Qualifications issued.
2. Receipt of responses.
3. Opening of responses and determination by City if responses meet the Minimum Requirements of the RFP. This determination shall be made by the City Administration, which shall evaluate proposal in accordance with the requirements of the RFP including, without limitation, compliance to the Minimum Requirements and Chapter 90 of the City Code, as amended by Ordinance No. 2008-3616.
4. An Evaluation Committee, appointed by the City Manager, shall meet to evaluate each responsive proposal and shall make its recommendation in accordance with the requirements of this RFQ, based on the following criteria:

The experience and qualifications of Solid Waste Contractors and Key personnel's ability and commitment to provide the City and its businesses and multi-family residences with:
100 points.

- | | |
|--|------------------|
| a) good service; | 25 points |
| b) competitive prices; | 25 points |
| c) demonstrated and/or proposed green initiatives; and | 25 points |
| d) ability and commitment to provide such additional "public benefit(s)" to the City which may include, without limitation: provision of additional waste collection, disposal, and /or recycling services (at no cost to the City) to | |

city right-of-way, city-owned public buildings, parks, and/or beaches; voluntary cost and/or fee reductions; and/or such other city public benefits and/or services as the city manager may, in his reasonable judgment and discretion, from time to time, require. **25 points**

5. If further information is desired by the Committee, proposers may be requested to make additional written submissions or oral presentations to the Evaluation Committee.
6. The Evaluation Committee will recommend to the City Manager the response or responses acceptance of which the Evaluation Committee deems to be in the best interest of the City.
7. After considering the recommendation(s) of the Evaluation Committee, the City Manager shall recommend to the Mayor and Commission the proposal or proposals acceptance of which the City Manager deems to be in the best interest of the City.
8. The City Commission shall consider the City Manager's recommendation(s) as it deems appropriate, and approve the City Manager's recommendation(s); may make its own recommendation (s); may reject all proposals; or may prescribe such other action, as it deems necessary and in the best interest of the City.
9. Following recommendation of award by the City Commission, negotiations between the selected Proposers and the City Administration take place to arrive at a contract. If the Mayor and Commission has so directed, the City Manager may proceed to negotiate a contract with a proposer other than the top-ranked proposer if the negotiations with the top-ranked proposer fail to produce a mutually acceptable contract within a reasonable period of time.
10. A proposed contract or contracts are presented to the Mayor and Commission for approval, modification and approval, or rejection.
11. If and when a contract or contracts acceptable to the respective parties is approved by the Mayor and Commission, the Mayor and City Clerk sign the contract(s) after the selected proposer(s) has (or have) done so.

CONCLUSION

It is recommended that the Mayor and City Commission authorize the issuance of a Request for Qualifications (RFQ) for a fourth solid waste franchise contractor to provide commercial waste collection and disposal services.

DRB/FHB/GL

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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.

JMG/HMF/MAS

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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: January 19, 2012

SUBJECT: **A DISCUSSION PERTAINING TO THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR AUDITING SERVICES FOR THE CITY'S BASIC FINANCIAL STATEMENTS INCLUDED IN THE CITY'S COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR), FEDERAL GRANT PROGRAMS AND STATE PROJECTS (OMB A-133 SINGLE AUDIT), THE MIAMI BEACH REDEVELOPMENT AGENCY'S BASIC FINANCIAL STATEMENTS (RDA), THE PARKING SYSTEMS FUND'S (PSF) FINANCIAL STATEMENTS, THE MIAMI BEACH VISITOR AND CONVENTION AUTHORITY'S (VCA) FINANCIAL STATEMENTS, THE MIAMI BEACH CONVENTION CENTER, AS MANAGED BY GLOBAL SPECTRUM, FINANCIAL STATEMENTS, THE CHILDREN'S TRUST PROGRAM, THE BUILDING BETTER COMMUNITIES BONDS PROGRAM, AND THE SAFE NEIGHBORHOOD PARKS AND BOND PROGRAM (SNP).**

ANALYSIS

The City is required to have annual independent audits for the following:

- The City's Basic Financial Statements included in the City's Comprehensive Annual Financial Report (CAFR);
- Federal Grant Programs and State Projects (OMB A-133 Single Audit);
- Miami Beach Redevelopment Agency's (RDA) Basic Financial Statements;
- Parking Systems Funds' (PSF) Financial Statements;
- Miami Beach Visitor and Convention Authority's (VCA) Financial Statements;
- Miami Beach Convention Center (MBCC);
- The Safe Neighborhood Parks and Bond Program (SNP);
- The Children's Trust Program; and
- The Building Better Communities Bond Projects

The current auditors, McGladrey and Pullen were selected in Request for Proposals (RFP) No. 23-05/06 and approved under Commission Resolution 2006-26247 to provide auditing services for a period of five (5) years with the sole option and discretion of the City to renew for five (5) additional one (1) year periods.

McGladrey and Pullen conducted the above audits for fiscal years 2006 through 2010 and will

Finance & Citywide Projects Committee
Auditing Services
December 6, 2011
Page 2 of 2

be conducting the audit for fiscal year 2011 pursuant to Commission Resolution No. 2011-27714. However, this item is being referred to discuss the timing of the issuance of the next RFP for external audit services.

JMG/PDW/aw

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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: January 19, 2012
SUBJECT: Discussion Regarding Property Assessed Clean Energy (PACE) Program

BACKGROUND

This matter was referred to the Finance and Citywide Projects Committee at the October 19, 2011 Commission meeting.

The Property Assessed Clean Energy (PACE) Program provides a way for local governments to encourage property owners to reduce energy consumption and increase energy efficiency. The program is structured around a municipal bond, from either municipal financing districts or finance companies, which is issued to commercial and residential property owners to pay for energy retrofits. Financed retrofits include energy conservation and efficiency improvements, renewable energy improvements, and wind resistant improvements. Property owners are responsible for paying the cost of the loan over its functional life, which is generally twenty (20) years, through an annual assessment on their property tax bill.

Participation in the program is voluntary; however, at least thirty (30) days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan services of the intent to enter into the agreement. The property owners must also report the maximum amount to be financed and the maximum annual assessment that will be required to repay the amount. In the event that a loan is not timely paid, a lien can be placed on the property. In addition, if a property is sold prior to the end of the repayment, the new owner is responsible for the remaining special assessment payments as part of the property's annual tax bill.

In recent years, the Florida Legislature has placed an increasing emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida. During the 2010 Legislative Session, the State authorized local governments to create PACE programs under Section 163.08, F.S.

LEGISLATIVE AUTHORITY

Section 163.08 F.S. provides authority for a local government to pass an ordinance or adopt a resolution to create a program that provides up-front financing and allows property owners to apply to the local government to receive the finance. The qualifying improvement must be

affixed to a building or facility that is part of the property and if the work requires a license, it must be performed by a properly certified or registered contractor.

The local government may enter into a financing agreement only with the record owner of the property. The financing agreement or a summary memorandum of the agreement must be recorded in the public records of the county within five (5) days after the agreement is executed. The recorded document must give constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments.

The statute also authorizes a local government to do the following when implementing a qualifying improvement financing program:

- Partner with one or more local governments for the purpose of providing and financing qualifying improvements.
- Allow a qualifying improvement program to be administered by a for-profit entity or a not-for profit organization on behalf of and at the discretion of the local government.
- Levy a non-ad valorem assessment to fund a qualifying improvement.
- Incur debt (bonds or loans) to provide financing for qualifying improvements, payable from revenues received from the improved property or any other available lawful revenue source.
- Collect costs incurred from financing qualifying improvements through a non-ad valorem assessment.

Prior to entering into a financing agreement, a local government is required to reasonably determine that:

- All property taxes and any other assessments levied on the property tax bill are paid and have not been delinquent for the past three (3) years or the property owner's period of ownership, whichever is less;
- There are no involuntary liens on the property;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the past three (3) years or the property owner's period of ownership, whichever is less; and
- The property owner is current on all mortgage debt on the property.

If utilizing a non-ad valorem assessment to finance the qualifying improvement, the local government must follow the uniform method for the levy, collection, and enforcement of non-ad valorem assessments, enumerated in s. 197.3632, F.S. This section requires a resolution by the local government, public hearings, published notices in the newspaper, and individual mail notices to property owners informing them of the assessment and their right to attend a public hearing. Prior to s. 163.08 F.S., the special assessment process was to be initiated prior to January 1, of each year. However, s. 163.08 F.S. provides an exception to the provisions in s. 197.3632, F.S., allowing the process to start on or before August 15, if the property appraiser, tax collector, and local government agree. This allows local governments to begin the necessary special assessment process the same calendar year. The statute also provides specific language for contracts used in the sale of parcels that are subject to the non-ad valorem assessment. Attachment A provides further details of the various aspects of House Bill 7179 that created s. 163.08 F.S. (Attachment A).

PACE IMPLEMENTATION ISSUES

There are a number of issues that have slowed the development of residential PACE programs. First, local governments' ability to finance the PACE programs relies upon Federal grant funding or a third party to administer and finance local programs. Second, a recent announcement by the FHFA (Federal Housing Finance Agency) has declared that residential PACE financing programs do not meet the financial requirements of federal mortgage giants Fannie Mae and Freddie Mac. This announcement significantly hampers the ability of homeowners to use PACE financing to fund clean energy. At this time, the future of residential PACE programs is dependent on legislative decisions at the Federal level and the willingness of Fannie Mae and Freddie Mac to accept the loans required to run the program. However, commercial PACE programs are not impacted by these requirements.

GREEN CORRIDOR PACE DISTRICT

The Town of Cutler Bay has created the Green Corridor PACE District (District) to effectuate the intent and purpose of s. 163.08 F.S. The District is comprised of local municipalities that enter into an Interlocal Agreement with the other participating municipalities (Attachment B). In order to make the program financially feasible, a third party administrator provides management and finance service for the District's PACE Program. Cutler Bay on behalf of the District selected Ygrene Florida Energy Fund, LLC (Ygrene) to finance and administer the program (Attachment B).

The Agreement between Ygrene and Cutler Bay includes the following major points:

1. Ygrene will provide all of the funding for the operation of the District;
2. The term of the agreement is for five (5) years with automatic renewals for successful five (5) year terms. The District may terminate the Agreement any time after the initial term;
3. Commencement of the program will occur when: at least two members join the District; an aggregate population of at least 500,000 is within the District. The number of people within the District can be less if agreed to by Ygrene; and there is a successful bond validation
4. Ygrene will indemnify the District and the local governments included therein against:
 - a) Any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with performance of non-performance of any provision of the Agreement;
 - b) A legal challenge relating to the special assessment being a lien of equal dignity to taxes; and
 - c) Any collection risk associated with a property tax default of property that is specially assessed within the District.

The District will focus on retrofitting commercial properties. In the future, the District will be able to finance residential properties once the issue with Fannie Mae and Freddie Mac has been resolved.

It appears that the City would not have any financial or legal obligations, other than one elected official or City representative sitting on the District's governing board, to ensure that Ygrene is administering the program effectively. However, the City Attorney is reviewing the Interlocal Agreement to confirm that the City would not have additional liabilities.

CONCLUSION

This item has been referred by the City Commission to the Finance and Citywide Projects Committee for discussion. The Administration requests that the Committee discuss the matter and provide direction on whether to investigate entering into an Interlocal Agreement to participate in the Green Corridor PACE District.

Attachments:

- A. House Bill 7179 House Representatives Staff Analysis
- B. Draft Interlocal Agreement
- C. Functions & Responsibilities for PACE District


DRB/FHB/RWS/ESW

Attachment A

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7179 PCB EUP 10-03 Qualifying Improvements to Real Property
SPONSOR(S): Finance & Tax Council; Energy & Utilities Policy Committee; Precourt
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 2322

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Energy & Utilities Policy Committee	13 Y, 0 N	Whittier	Collins
1)	Finance & Tax Council	12 Y, 0 N, As CS	Diez-Arguelles	Langston
2)	General Government Policy Council	13 Y, 0 N	Whittier	Hamby
3)				
4)				
5)				

SUMMARY ANALYSIS

In recent years, the Florida Legislature has placed an increasing emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida. The Property Assessed Clean Energy (PACE) Program is a model that has recently become popular as an innovative way for local governments to encourage property owners to reduce energy consumption and increase energy efficiency. The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects, and the local government provides the upfront funding for the project through proceeds of a revenue bond issuance, which is repaid through an assessment on participating property owners' tax bills. There are no provisions in the Florida Statutes expressly providing for a program whereby local governments issue bonds to finance energy projects for property owners and repay the bonds through special assessments on participating property owners' property tax bills.

The bill creates s. 163.08, F.S., providing supplemental authority to local governments (counties and municipalities) regarding qualified improvements to real property. The bill provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. The qualifying improvement must be affixed to a building or facility that is part of the property and if the work requires a license, it must be performed by a properly certified or registered contractor. Qualifying improvements¹ include energy conservation and efficiency improvements; renewable energy improvements; and wind resistance improvements. However, the program does not cover wind resistance improvements in buildings or facilities under new construction. The bill provides that, at least 30 days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount. The bill provides that, "A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable." However, the bill recognizes that the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

The bill authorizes a local government to: partner with one or more local governments for the purpose of providing and financing qualifying improvements; levy a non-ad valorem assessment to fund a qualifying improvement; incur debt to provide financing for qualifying improvements; and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. The bill provides that no provision in any agreement between a local government and an energy, power, or utility provider shall limit or prohibit any local government from exercising its authority under the section and that the section is additional and supplemental to county and municipal home rule authority.

The bill provides authority for a local government to adopt a program, but does not mandate participation. The bill has no direct fiscal impact on state or local governments.

¹ These improvements are expanded upon in the Effect of Proposed Changes section of the analysis.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

2008 Legislation

In recent years, the Florida Legislature has placed an increasing emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida. During the 2008 Legislative Session, the Legislature passed significant energy policies - HB 7135 (Chapter 2008-227, L.O.F.) - which built on, among many other areas, goals of energy affordability and reliability, including the promotion of renewable energy, energy conservation, and enhanced energy efficiency.

The 2008 legislation recognized that in many instances improved energy efficiency and conservation are the cheapest and most effective way to accomplish the Legislature's related goals of energy affordability and reliability while also addressing concerns with climate change. Regarding the promotion of enhanced energy efficiency and conservation, the bill:

- Added "energy" and "global climate change" to the program areas that the Executive Office of the Governor may include in the State Comprehensive Plan. It also amended goals related to energy to require Florida to reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources and low-carbon-emitting electric power plants and amended the policies related to energy to provide that it is a policy under the State Comprehensive Plan to promote low-carbon-emitting electric power plants.
- Made significant changes to require public utilities to develop and implement approved programs to promote energy conservation and demand-side management.
 - The bill required the Public Service Commission to adopt and enforce goals for each public utility to increase and promote cost-effective demand-side and supply-side efficiency and conservation programs and demand-side renewable energy systems. Under prior law, public utility companies already offered cash incentive programs to encourage purchasing energy efficient equipment for new installations or retrofits, such as heating, air cooling, water heating, and lighting equipment. The bill revised the program to essentially require public utilities to provide incentives for conservation, increased energy efficiency, and demand-side renewable energy, such as solar energy,

when doing so is less costly for utility customers, as a whole, than constructing new generating capacity.

- Provided for a phased 50 percent increase in energy efficiency standards in the Florida Building Code by the Year 2020. Those increases are relative to the 2004 Florida Building Code, as amended on October 31, 2007:
 - By 2010, efficiency increases of at least 20 percent.
 - By 2013, efficiency increases of at least 30 percent.
 - By 2016, efficiency increases of at least 40 percent.
 - By 2019, efficiency increases of at least 50 percent.
- Required the Florida Building Commission to identify within code support and compliance documentation the specific building options and elements available to meet energy performance goals. The bill included a list of energy-efficiency performance options and elements such as solar water heating, energy-efficient appliances, and energy efficient lighting systems.
- Required the Florida Building Commission, prior to implementing the increases in energy performance of new buildings, to adopt by rule and implement a cost-effectiveness test to ensure that increases in energy efficiency result in a positive net financial impact.
- Revised current law governing guaranteed energy, water, and wastewater performance savings contracting to facilitate improving the efficiency of government-owned buildings.
- Adopted Climate Friendly Public Business requirements for the use of “green” products, lodging, vehicles, and fuel.
- Established enhanced energy standards for the construction of new state, county, municipal, school district, state university, community college, state court, and water management district buildings.
- Created the “Florida Green Government Grants Act” to provide grants to local governments to develop programs that achieve green standards.

CS/HB 697 (Chapter 2008-191, L.O.F.) addressed a wide range of building construction issues including Florida Building Code standards, the Florida Building Commission, and energy efficiency standards relating to planning and construction. With regard to energy planning and conservation practices, the bill did the following:

- Revised requirements relating to the installation of energy devices based on renewable resources on buildings.
- Required that the Florida Building Code must facilitate and promote the use of cost-effective energy conserving, energy demand-management, and renewable energy technologies in buildings.
- Integrated energy efficiency issues into several components of the local government comprehensive plan, which will be due at the next evaluation and appraisal update of each local government’s comprehensive plan:
 - The future land use element must address reduction in urban sprawl and energy efficient land use patterns in relation to existing and future electric power generation and transmission systems, as well as greenhouse gas reduction strategies.
 - The traffic circulation element must address strategies to reduce greenhouse gases.

- The conservation element must address factors that affect energy conservation.
- The housing element must contain standards and principals for energy efficiency in new houses.
- Allowed the Florida Building Commission to select the most current version of the International Energy Conservation Code as a foundation code.
- Added declarations to the list of deed restrictions, covenants, or other binding agreements which may not prohibit the installation of energy devices based on renewable resources.
- Specified that condominium units are residential dwellings for purposes of installation of solar collectors or other energy devices, and removed the three-story height restriction for installation of solar collectors or other energy devices on such residential dwellings.
- Directed the Department of Community Affairs, in consultation with the Florida Energy Affordability Coalition, to identify and review issues relating to improving the effectiveness of the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program.

Property Assessed Clean Energy (PACE) Programs

The Property Assessed Clean Energy (PACE) Program is a model that recently has become popular as an innovative way for local governments to encourage property owners to reduce energy consumption and increase energy efficiency. According to Pacenow.org, "PACE is a program designed to allow property owners to install small-scale renewable energy systems and make energy efficiency improvements to their buildings and pay for the cost over its functional life (e.g., 20 years for solar PV) through an on-going assessment on property tax bills."

Participation in the program is voluntary. The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects, and the local government provides the upfront funding for the project from proceeds of a revenue bond, which is repaid through an assessment on participating property owners' property tax bills. A lien could be placed on the property in the event that the loan is not timely repaid. If the property is sold prior to the end of the repayment period, the new owner takes over the remaining special assessment payments as part of the property's annual tax bill.²

Many states require legislation to authorize local governments to adopt PACE programs. According to Vote Solar, currently there are proposals in over 18 states³ for PACE enabling legislation, and 16 states have PACE enabling legislation in place.⁴

Currently, there are no provisions in the Florida Statutes expressly providing for a program whereby local governments issue bonds to finance energy projects for property owners and repay the bonds through special assessments on participating property owner's property tax bills. However, under existing county and municipal home rule authority, counties and cities may already have the basic authority to implement a PACE or similar program. Special districts, on the other hand, only have those powers granted to them by law.

² Vote Solar website: www.votesolar.org.

³ Ibid.

⁴ California, Colorado, Illinois, Louisiana, Maryland, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Texas, Vermont, Virginia, and Wisconsin.

Local Governments

Counties⁵

The following information was obtained from The Local Government Formation Manual 2009-2010, produced by the Military & Local Affairs Policy Committee, House of Representatives.

In Florida, counties historically were created as subdivisions of the state to carry out central (i.e., state) government purposes at the local level.⁶ Article VIII, section 1 of the State Constitution contains provisions specifically related to the county form of government in Florida, and requires the state to be divided by law into political subdivisions called "counties." The Florida Constitution recognizes two types of county government in Florida: 1) counties that are not operating under a county charter and 2) counties that are operating under a county charter. Article VIII, sections 1(f) and (g) of the State Constitution, respectively provide as follows:

Non-Charter Government: Counties not operating under county charters shall have such powers of self-government as is provided by general and/or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

Charter Government: Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

Section 125.01, F.S., outlines the powers and duties of chartered and non-chartered counties. This section provides that the county commission shall have the power to carry on county government to the extent not inconsistent with general or special law. Specific to this bill, county government authority includes the power to:

- Enter into agreements with other governmental agencies within or outside the boundaries of the county for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions.
- Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and issue bonds, revenue certificates and other obligations of indebtedness. This power must be exercised according to general law. A referendum is not required for the levy by a county of ad valorem taxes for county purposes or for the providing of municipal services within any municipal service taxing unit.
- Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.
- Enforce the Florida Building Code and adopt and enforce local technical amendments.
- Perform any other acts which are in the common interest of the people of the county and are not inconsistent with law.

The governing body of a county also has the power to establish, and subsequently merge or abolish, dependent special districts that include both incorporated and unincorporated areas. Inclusion of an

⁵ *The Local Government Formation Manual 2009-2010*, House Military & Local Affairs Policy Committee, pp. 6-10.

⁶ *Ibid.*, p. 17.

incorporated area is subject to the approval of the governing body of the affected incorporated area. Municipal services and facilities may be provided from funds derived from service charges, special assessments or taxes within the district.

Municipal Governments⁷

The following information was obtained from The Local Government Formation Manual 2009-2010, produced by the Military & Local Affairs Policy Committee, House of Representatives.

As noted above, in Florida, counties historically were created as subdivisions of the state to carry out central (i.e., state) government purposes at the local level. Municipalities were created to perform additional functions and provide additional services for the particular benefit of the population within the municipality.

A municipality is a local government entity located within a county and created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. A municipality is constitutionally and statutorily granted all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services. A municipality may exercise any power for municipal purposes except as otherwise provided by general or special law. Although a municipality may enact local ordinances to govern municipal affairs, the power to tax can be granted only by general law.

Article VIII, section 2 of the State Constitution authorizes the Legislature to establish or abolish municipalities or amend their charters by general or special law. The Constitution grants municipalities all governmental, corporate and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Municipalities may exercise any power for municipal purposes except as otherwise provided by general or special law. Each municipal legislative body must be elected by qualified voters.

The Municipal Home Rule Powers Act acknowledges that the State Constitution grants municipalities governmental, corporate and proprietary power necessary to conduct municipal government, functions and services, and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by general or special law.

Special Assessments

Special assessments are a home rule revenue source that may be used by a local government to fund certain services and construct and maintain capital facilities. As established by Florida case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax, which is levied for the general benefit of residents and property rather than for a specific benefit to property.

The applied legal test used to evaluate whether or not a special benefit is conferred on property by the provision of a service is if there is a logical relationship between the provided service and the benefit to property. This test defines the line between those services that can be funded by special assessments versus those failing to satisfy the special benefit test. Examples of services that possess this logical relationship to property and can be funded wholly or partially by special assessments include solid waste collection and disposal, stormwater management, and fire rescue. Once the service or capital facility satisfies the special benefit test, the assessment must be fairly apportioned among the benefited property in a manner consistent with the logical relationship embodied in the special benefit requirement.

⁷ Ibid., pp. 17-20.

The authority to levy special assessments is based primarily on county and municipal home rule powers granted in the Florida Constitution. In addition, statutes authorize explicitly the levy of special assessments for county and municipal governments. Special districts derive their authority to levy special assessments through general law or special act.

Non-Ad Valorem Assessments

Chapter 197, F.S., governs tax collections, sales and liens. "Non-ad valorem assessment" is defined in s. 197.3632, F.S., as "only those assessments that are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution." Section 4(a), Art. X of the State Constitution provides, in pertinent part, "There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon...."

Section 197.3632(3)(a), F.S., requires local governments electing to use the uniform method of collecting assessments for the first time to adopt a resolution at a public hearing prior to January 1, or March 1 if the property appraiser and tax collector agree. The resolution must state the need for the levy and include a legal description of the property subject to the levy. In addition, the local government must publish notice of its intent to use the uniform method for collecting such assessment.

Section 197.3632(4)(a), F.S., requires a local government to adopt a non-ad valorem assessment roll at a public hearing held between January 1 and September 15 if:

- The non-ad valorem assessment is levied for the first time;
- The non-ad valorem assessment is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition;
- The local government's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the local governing board; or
- There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

Section 197.3632(4)(b), F.S., requires that at least 20 days prior to the public hearing, the local government must notice the hearing by mail and by publication in a newspaper generally circulated within each county contained in the boundaries of the local government. The notice must be sent to each person owning property subject to the assessment and must include the following information:

- The purpose of the assessment;
- The total amount to be levied against each parcel;
- The unit of measurement to be applied against each parcel to determine the assessment;
- The number of such units contained within each parcel;
- The total revenue the local government will collect by the assessment;
- A statement that failure to pay the assessment will cause a tax certificate to be issued against the property which may result in a loss of title;
- A statement that all affected property owners have a right to appear at the hearing and to file written objections with the local governing board within 20 days of the notice; and
- The date, time, and place of the hearing.

However, notice by mail is not required if notice by mail is otherwise required by general or special law governing the taxing authority and the notice is served at least 30 days prior to the authority's public hearing. The published notice must contain at least the following information:

- The name of the local governing board;
- A geographic depiction of the property subject to the assessment;
- The proposed schedule of the assessment;
- The fact that the assessment will be collected by the tax collector; and

- A statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice.

Section 197.3632(4)(c), F.S., provides that at the public hearing, the local governing board is required to receive written objections and hear testimony from all interested persons. If the local governing board adopts the non-ad valorem assessment roll, it must specify the unit of measurement for the assessment and the amount of the assessment. The board may adjust the assessment or the application of the assessment to any affected property based on the benefit which the board will provide or has provided to the property with the revenue generated by the assessment.

Renewable Energy and Wind Resistance Property Assessment Constitutional Amendment

In the November 2008 General Election, Florida's voters approved a constitutional amendment (Amendment #3) placed on the ballot by the Taxation and Budget Reform Commission. This amendment added the following language to Article VII, Section 4 of the Florida Constitution (Taxation; assessments):

- (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:
 - (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
 - (2) The installation of a renewable energy source device.

During the 2009 Legislative Session, the House passed CS/HB 7113, which implemented the constitutional provision regarding the assessed value of real property. The bill died in Senate Messages.

The bill provided that, when determining the assessed value of real property used for residential purposes, for both new and existing construction, the property appraiser may not consider the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which include any of the following:
 - Improving the strength of the roof deck attachment.
 - Creating a secondary water barrier to prevent water intrusion.
 - Installing hurricane-resistant shingles.
 - Installing gable-end bracing.
 - Reinforcing roof-to-wall connections.
 - Installing storm shutters.
 - Installing impact-resistant glazing.
 - Installing hurricane-resistant doors.
- The installation and operation of a renewable energy source device, which means any of the following equipment which collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:
 - Solar energy collectors, photovoltaic modules, and inverters.
 - Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
 - Rockbeds.
 - Thermostats and other control devices.
 - Heat exchange devices.
 - Pumps and fans.

- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
- Windmills and wind turbines.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed. To facilitate insurer compliance with the windstorm mitigation discounts required by statute, the Department of Community Affairs in cooperation with the Department of Insurance contracted with Applied Research Associates, Inc., for a public domain study to provide insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, entitled Development of Loss Relativities for Wind Resistive Features of Residential Structures, was completed in 2002. The study's mathematical results, termed "wind loss relativities," were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property.⁸

Mitigation discounts were initially given at 50 percent of the actuarial value of the discount.⁹ In 2006, the Legislature amended the mitigation discount law (s. 627.0629(1)(a), F.S.) to require the Office of Insurance Regulation (OIR) to reevaluate the mitigation discounts and require insurers to give full actuarial value for them.¹⁰ Thus, the OIR amended the mitigation discount administrative rule to require insurers to provide mitigation discounts in an amount equal to 100 percent of the mitigation discount amount as determined by the loss relativities in the 2002 study done by Applied Research Associates, Inc.¹¹ In 2008, the OIR obtained a new study to evaluate the appropriate mitigation discount amounts; however, the OIR has not changed the mitigation discount amounts or mitigation discount administrative rule due to the results of the 2008 study.

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (Governor and Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010. The form must be signed by a hurricane mitigation inspector certified by the My Safe Florida Home Program; a building code inspector; a general, building, or residential contractor; a professional engineer meeting specified criteria; a professional architect; or any other individual or entity acceptable to the insurance company. A form certified by the Department of Financial Services must also be accepted by the insurer.

⁸ The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.

⁹ In an Informational Memorandum issued on January 23, 2003, the OIR notified insurance companies of its suggested mitigation credits for new and existing construction based on its analysis of a 2002 study completed by Applied Research Associates. However, the OIR tempered the mitigation credits derived from the study by 50 percent. As stated by the OIR in the memorandum, the 50 percent tempering of the credits was due to the large rate decreases that could result from application of the credits, the approximations needed to produce practical results, and the potential for differences in results using different hurricane models. The OIR cautioned in the memorandum that the tempering implemented would be curtailed in the future.

¹⁰ Section 14, Ch. 2006-12, L.O.F.

¹¹ The rule allowed insurance companies to modify the mitigation discounts if the insurer provided detailed alternate studies supporting the modification and allowed the OIR to review all assumptions used in the studies supporting the modification. To date, no insurer has used an alternate wind mitigation discount study to set mitigation discounts.

Effect of Proposed Changes

The bill creates s. 163.08, F.S., providing supplemental authority to local governments regarding improvements to real property.

New section 163.08(1), F.S., provides legislative purpose and intent, noting that in 2008, the Legislature declared it the public policy of the state to play a leading role in promoting energy conservation, energy security, and reduction of greenhouse gases. The 2008 Legislature amended the energy goal of the State Comprehensive Plan to require energy requirement reductions through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. It also provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction.¹² Also in 2008, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments.¹³

The bill finds that improved properties not using energy conservation strategies contribute to the burden affecting all improved property from fossil fuel energy production; likewise, the bill finds that all improved properties not protected from wind damage by wind resistance improvements contribute to the burden affecting all improved property resulting from potential wind damage. The bill declares improved properties that have been retrofitted with energy-related or wind resistance qualified improvements receive the special benefit of reducing the property's burden from energy consumption or potential wind damage. Further, the bill declares that the installation and operation of qualifying improvements not only benefits the affected properties, but assists in fulfilling the goals of the state's energy and hurricane mitigation policies. The bill states that it is a compelling state interest to make qualifying improvements more affordable and enable property owners, on a voluntary basis, to finance such improvements with local government assistance. It states that the actions authorized under the act are reasonable and necessary to achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

The bill defines "local government" as "a county or municipality."

The bill defines a "qualifying improvement" as including any of the following:

- "Energy conservation and efficiency improvement," which means a measure to reduce consumption, through conservation or more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including but not limited to:
 - Air sealing;
 - Installation of insulation;
 - Installation of energy efficient heating, cooling, or ventilation systems;
 - Building modifications to increase the use of daylighting;
 - Replacement of windows;
 - Installation of energy controls or energy recovery systems;
 - Installation of electric vehicle charging equipment; and
 - Installation of efficient lighting equipment.

- "Renewable energy improvement," which means the installation of any system whose electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources:
 - Hydrogen;
 - Solar energy;
 - Geothermal energy;

¹² Chapter 2008-227, L.O.F.

¹³ Chapter 2008-191, L.O.F.

- Bioenergy; and
 - Wind energy.
- “Wind resistance improvement,” which includes, but is not limited to:
 - Improving the strength of the roof deck attachment;
 - Creating a secondary water barrier to prevent water intrusion;
 - Installing wind-resistant shingles;
 - Installing gable-end bracing;
 - Reinforcing roof-to-wall connections;
 - Installing storm shutters; and
 - Installing opening protections.

The bill provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. The qualifying improvement must be affixed to a building or facility that is part of the property and if the work requires a license, it must be performed by a properly certified or registered contractor.¹⁴ The program does not cover wind resistance improvements in buildings or facilities under new construction.

The local government may enter into a financing agreement only with the record owner of the property. The financing agreement or a summary memorandum of the agreement must be recorded in the public records of the county within 5 days after the agreement is executed. The recorded document must give constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments.

At least 30 days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount. The bill provides that, “A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable.” However, the bill recognizes that the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

Without the consent of the mortgage holder or loan servicer, the total amount of any non-ad valorem assessment or municipal or county lien for a property cannot exceed 20 percent of the just value of the property, as determined by the county property appraiser. However, if an energy conservation and efficiency or a renewable energy qualifying improvement is supported by an energy audit, the amount financed is not limited to 20 percent if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the assessment or lien.

The bill authorizes a local government to do the following when implementing a qualifying improvement financing program:

- Partner with one or more local governments for the purpose of providing and financing qualifying improvements.
- Allow a qualifying improvement program to be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.
- Levy a non-ad valorem assessment to fund a qualifying improvement.
- Incur debt (bonds or loans) to provide financing for qualifying improvements, payable from revenues received from the improved property or any other available lawful revenue source.

¹⁴ Pursuant to ch. 489, Part I and Part II, F.S.

- Collect costs incurred from financing qualifying improvements through a non-ad valorem assessment.

Prior to entering into a financing agreement, a local government is required to “reasonably determine” that:

- All property taxes and any other assessments levied on the property tax bill are paid and have not been delinquent for the past three years or the property owner’s period of ownership, whichever is less;
- There are no involuntary liens on the property;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the past three years or the property owner’s period of ownership, whichever is less; and
- The property owner is current on all mortgage debt on the property.

If utilizing a non-ad-valorem assessment to finance the qualifying improvement, the local government must follow the uniform method for the levy, collection, and enforcement of non-ad valorem assessments, enumerated in s. 197.3632, F.S. This section requires a resolution by the local government, public hearings, published notices in the newspaper, and individual mail notices to property owners informing them of the assessment and their right to attend a public hearing. Under current law, the special assessment process must be initiated prior to January 1 of each year. The bill provides an exception to the provisions in s. 197.3632, F.S., allowing the process to start on or before August 15, if the property appraiser, tax collector, and local government agree. This will allow local governments to begin the necessary special assessment process this calendar year.

Each contract for the initial sale of a parcel (newly-constructed property) which is subject to a non-ad valorem assessment imposed pursuant to this act, must include the following statement: “THE . . . (name of local government) . . . HAS IMPOSED A NON-ADVALOREM ASSESSMENT ON THIS PROPERTY. THIS ASSESSMENT IS IN ADDITION TO OTHER LOCAL GOVERNMENTAL ASSESSMENTS AND ALL OTHER ASSESSMENTS PROVIDED FOR BY LAW.

The bill provides that no provision in any agreement between a local government and an energy, power, or utility provider shall limit or prohibit any local government from exercising its authority under the section and that the section is additional and supplemental to county and municipal home rule authority.

B. SECTION DIRECTORY:

Section 1. Creates s. 163.08, F.S., providing for supplemental authority for local governments regarding improvements to real property. See Effect of Proposed Changes.

Section 2. Provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. See Fiscal Comments.

2. Expenditures:

Indeterminate. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive effect on the private sector. Being able to secure up-front capital for qualifying improvements at lower interest rates and for a long repayment period, increases the likelihood that property owners will take advantage of the program, which should stimulate the local economy.

D. FISCAL COMMENTS:

The bill provides authority for, but does not require, a local government to adopt a program. The bill does not mandate the manner in which each local government that chooses to participate structures the program. Therefore, the level of funding for the program is left to the discretion of the local government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The bill provides, in s. 163.08(13), F.S., that, "A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable."

Article I, Section 10, of the Florida Constitution provides, in relevant part, "No...law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws which retroactively burden or alter contractual relations. *In re Advisory Opinion to the Governor*, 509 So.2d 292 (Fla. 1987); *Daytona Beach Racing & Recreational Facilities District v. Volusia County*, 372 So.2d 419 (Fla. 1979); *Dewberry v. Auto-Owners Ins. Co.*, 363 So.2d 1077 (Fla. 1978).

Not all contractual impairments warrant overturning an otherwise valid law. For example, Contract rights are clearly subject to the state's power of taxation. *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974). Also, the state has some ability to modify contractual remedies without transgressing the Contract Clause. *Ruhl v. Perry*, 390 So.2d 353 (Fla. 1980). In *Brooks v. Watchtower Bible and Tract Society of Florida, Inc.*, 706 So.2d 85 (Fla. 4th DCA 1998), the Fourth District Court of Appeal found that a referendum on the sale of city property did not impermissibly impair an existing contract between the city and a prospective purchaser.

State statutes which impair contractual obligations are measured on a sliding scale of scrutiny. The degree of contractual impairment permitted is delineated by the importance of the governmental interests advanced. *Yellow Cab Co. of Dade County v. Dade County*, 412 So.2d 395 (Fla. 3d DCA 1982). The court, in *Pomponio v. Cladrige of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980), enumerated several factors it might weigh when making such determinations:

1. Whether the law was enacted to deal with a broad economic or social problem;
2. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and

3. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.

The bill provides, in s. 163.08(1)(c), F.S., that the "Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments or charges, are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants."

B. RULE-MAKING AUTHORITY:

This does not require rule-making authority on the state level.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 9, 2010, the Finance and Tax Council adopted a "strike-everything amendment," that made a number of changes to the bill. This analysis reflects the changes.

**INTERLOCAL AGREEMENT
BETWEEN
THE TOWN OF CUTLER BAY, FLORIDA,**

AND _____,

This Interlocal Agreement is entered into between the Town of Cutler Bay, Florida, a Florida municipal corporation, hereinafter referred to as "Cutler Bay;"

and

_____, Florida, a Florida municipal corporation, hereinafter referred to as the "City B;"

and

_____, Florida, a Florida municipal corporation, hereinafter referred to as the "City C;"

and

the Green Corridor Property Assessment Clean Energy (PACE) District, hereinafter referred to as the "District."

RECITALS

WHEREAS, Section 163.01, Florida Statutes, the "Florida Interlocal Cooperation Act of 1969," authorizes local government units to enter into interlocal agreements for the mutual benefit of governmental units; and

WHEREAS, Section 163.01 (7), Florida Statutes, allows for the creation of a "separate legal entity" constituted pursuant to the terms of the interlocal agreement to carry out the purposes of the interlocal agreement for the mutual benefit of the governmental units; and

WHEREAS, Cutler Bay, City B, and City C desire to enter into an interlocal agreement for establishment of the District as a separate legal entity (Collectively, the "Parties"); and

WHEREAS, Section 166.021, Florida Statutes, authorizes Cutler Bay, City B and City C to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Section 163.08, Florida Statutes, provides that a "local government," defined as a county, municipality or a dependent special district as defined in Section 189.403, Florida Statutes, may finance energy related "qualifying improvements" through voluntary assessments; and

WHEREAS, Section 163.08, Florida Statutes, provides that improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption and assists in the fulfillment of the state's energy and hurricane mitigation policies; and

WHEREAS, Section 163.08(5), Florida Statutes, provides that local governments may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements; and

WHEREAS, the Parties to this Interlocal Agreement have expressed a desire to enter into this Interlocal Agreement in order to authorize the establishment of the District as a means of implementing and financing a qualifying improvements program for energy conservation and efficiency improvements within the District; and

WHEREAS, Cutler Bay, City B and City C have determined that it is necessary and appropriate to create the District and to clarify various obligations for future cooperation between Cutler Bay, City B and City C related to the financing of qualifying improvements within the District; and

WHEREAS, Cutler Bay, City B and City C have determined that it shall serve the public interest to enter into this Interlocal Agreement to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage to provide for the financing of qualifying improvements within the District.

NOW, THEREFORE, in consideration of the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:

Section 1. Recitals Incorporated. The above recitals are true and correct and incorporated herein.

Section 2. Purpose. The purpose of this Interlocal Agreement is to consent to and authorize the creation of the District, pursuant to Section 163.08, Florida Statutes in order to facilitate the financing of qualifying improvements for property owners within the District. The District shall be a separate legal entity, pursuant to Section 163.01, Florida Statutes.

Section 3. Qualifying Improvements. The District shall allow the financing of qualifying improvements as defined in Section 163.08, Florida Statutes.

Section 4. Enabling Ordinance or Resolution. The Parties to this Interlocal Agreement agree to approve and keep in effect such resolutions and ordinances as may be necessary to approve, create and maintain the District. Said ordinances and resolutions shall include all of the provisions as provided for in Sections 163.01 and 163.08, Florida Statutes, for the creation of a partnership between local governments as a separate legal entity. The District shall be created upon the execution of this Interlocal Agreement by the Parties hereto and the adoption of an ordinance or resolution of support by the Parties establishing the District. Additional local

governments may join in and enter into this Interlocal Agreement by approval of the Board (as defined in Section 6 below), execution of this Interlocal Agreement and adoption of an ordinance or resolution of support establishing the District.

Section 5. District Boundaries. The boundaries of the District shall be the legal boundaries of the local governments that are Parties to this Interlocal Agreement. As contemplated in this Interlocal Agreement, the District will assist the local governments in levying voluntary assessments on the benefitted properties within the boundaries of the District to help finance the costs of qualifying improvements for those individual properties. Upon petition by the landowners of individual properties desiring to be benefitted, those properties receiving financing for qualifying improvements shall be assessed from time to time, in accordance with the applicable law. Notwithstanding a local government's termination of participation within this Interlocal Agreement, those properties that have received financing for qualifying improvements shall continue to be a part of the District, until such time that all outstanding debt has been satisfied.

Section 6. Governing Board of the District. The District shall be governed by a governing board of the District (the "Board,") which shall be comprised of current elected officials of the Parties to this Interlocal Agreement and one at large member. The maximum number of members of the Board serving at any given time shall be no more than seven (7) and the minimum number of members shall be not less than three (3). The initial Board which shall serve for an initial four (4) year term and shall consist of one (1) representative(s) appointed by Cutler Bay, one (1) representative(s) appointed by City B, and one (1) representative(s) appointed by City C. The initial at large member of the Board shall be appointed by a majority vote of the Board at its first regularly scheduled meeting. All subsequent renewal terms shall be for four (4) years. Following the initial Board appointments, the Parties to this Interlocal Agreement shall nominate appointees to be elected to the Board by current sitting Board members. In the event a Board member loses his or her elected seat, that Party to this Interlocal Agreement shall appoint a replacement elected official to fulfill the remaining term of that member. The Board's administrative duties shall include all duties necessary for the conduct of the Board's business and the exercise of the powers of the District as provided in Section 11.

Section 7. Decisions of the Board. Decisions of the Board shall be made by majority vote of the Board. The Board may adopt rules of procedure. In the absence of the adoption of such rules of procedure, the fundamental parliamentary procedures of Roberts Rules of Order shall apply.

Section 8. District Staff and Attorney. The Town Manager of Cutler Bay shall serve as the staff to the District. In addition, the Town Attorney for Cutler Bay shall serve as the counsel to the District. The Parties agree to designate the Town Manager of Cutler Bay, as their authorized agent for purposes of signing any agreements authorized by the Board. After the District has been operating for two years, the Board may choose to hire different District staff and/or Attorney.

Section 9. Authorized Official. The Parties agree to each identify a local official or designee of the respective Party who is authorized to enter into a financing agreement, pursuant to Section 163.08(8), Florida Statutes, with property owner(s) who obtain financing through the District.

Section 10. Procurement. The Parties agree and understand that the initial procurement for a Third Party Administrator will be performed by the Town of Cutler Bay in accordance with its adopted procurement procedures. Upon the Town of Cutler Bay selecting the Third Party Administrator (TPA), the Town will enter into an agreement with the TPA, which will be subsequently assigned to the District.

Section 11. Powers of the District. The District shall exercise any or all of the powers granted under Sections 163.01 and 163.08, Florida Statutes, as may be amended from time to time, which include, without limitation, the following:

- a. To finance qualifying improvements within the District boundaries;
- b. In its own name to make and enter into contracts;
- c. To employ agencies, employees, or consultants;
- d. To acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- e. To acquire, hold, or dispose of property;
- f. To incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the Parties to this Interlocal Agreement;
- g. To adopt resolutions and policies prescribing the powers, duties, and functions of the officers of the District, the conduct of the business of the District, and the maintenance of records and documents of the District;
- h. To maintain an office at such place or places as it may designate within the District or within the boundaries of a Party to this Interlocal Agreement;
- i. To cooperate with or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized by Section 163.08, Florida Statutes, and to accept funding from local and state agencies;
- j. To exercise all powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes authorized in Section 163.08, Florida Statutes; and

- k. To apply for, request, receive and accept gifts, grants, or assistance funds from any lawful source to support any activity authorized under this Agreement.

Section 12. Quarterly Reports. A quarterly report of the District shall be completed in accordance with generally accepted Government Auditing Standards by an independent certified public accountant. At a minimum, the quarterly report shall include a balance sheet, statement of revenues, expenditures and changes in fund equity and combining statements prepared in accordance with generally accepted accounting principles. All records such as, but not limited to, construction, financial, correspondence, instructions, memoranda, bid estimate sheets, proposal documentation, back charge documentation, canceled checks, reports and other related records produced and maintained by the District, its employees and consultants shall be deemed public records, and shall be made available for audit, review or copying by a Party to this Interlocal Agreement upon reasonable notice.

Section 13. Term. This Interlocal Agreement shall remain in full force and effect from the date of its execution; provided, however, that any Party may terminate its involvement in the District and its participation in this Interlocal Agreement upon ten (10) days' written notice to the other Parties. Should a Party terminate its participation in this Interlocal Agreement, be dissolved, abolished, or otherwise cease to exist, the District and this Interlocal Agreement shall continue until such time as all remaining Parties agree to terminate.

Section 14. Consent. This Interlocal Agreement and any required resolution or ordinance of an individual Party shall be considered the Parties' consent to the creation of the District as required by Sections 163.01 and 163.08, Florida Statutes.

Section 15. Liability. The Parties hereto shall each be individually and separately liable and responsible for the actions of its officers, agents and employees in the performance of their respective obligations under this Interlocal Agreement. Except as specified herein, the Parties shall each individually defend any action or proceeding brought against their respective agency pursuant to this Interlocal Agreement and shall be individually responsible for all of their respective costs, attorneys' fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. For any action or proceeding brought against the District pursuant to this Interlocal Agreement, the Parties shall each contribute pro rata for all costs, attorneys' fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. The Parties shall each individually maintain throughout the term of this Interlocal Agreement any and all applicable insurance coverage required by Florida law for governmental entities.

Section 16. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been given if sent by hand delivery, recognized overnight courier (such as Federal Express), or it must be given by written certified U.S. mail, with return receipt requested, addressed to the Party for whom it is intended, at the place specified. For the present, the Parties designate the following as the respective places for notice purposes:

If to Cutler Bay: Town Manager
 Town of Cutler Bay
 10720 Caribbean Boulevard, Suite 105
 Town of Cutler Bay, Florida 33189

With a Copy to: Weiss Serota Helfman
 Pastoriza Cole & Boniske, P.L.
 2525 Ponce de Leon Boulevard
 Suite 700
 Coral Gables, Florida 33134

If to City B: _____

If to City C: _____

Section 13. Amendments. It is further agreed that no modification, amendment or alteration in the terms or conditions herein shall be effective unless contained in a written document executed by the Parties hereto and the District.

Section 14. Filing. It is agreed that this Interlocal Agreement shall be filed with the Clerk of the Circuit Court of Miami-Dade County, as required by Section 163.01(11), Florida Statutes.

Section 15. Joint Effort. The preparation of this Interlocal Agreement has been a joint effort of the Parties hereto and the resulting document shall not, solely as a

matter of judicial construction, be construed more severely against one of the Parties than the other.

Section 16. Merger. This Interlocal Agreement incorporates and includes all prior negotiations, correspondence, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Interlocal Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no change, amendment, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith by all Parties to this Interlocal Agreement.

Section 17. Assignment. The respective obligations of the Parties set forth in this Interlocal Agreement shall not be assigned, in whole or in part, without the written consent of the other Parties hereto.

Section 18. Records. The Parties shall each maintain their own respective records and documents associated with this Interlocal Agreement in accordance with the requirements for records retention set forth in Chapter 119, Florida Statutes.

Section 19. Governing Law and Venue. This Interlocal Agreement shall be governed, construed and controlled according to the laws of the State of Florida. Venue for any claim, objection or dispute arising out of the terms of this Interlocal Agreement shall be proper exclusively in Miami-Dade County, Florida.

Section 20. Severability. In the event a portion of this Interlocal Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

Section 21. Effective Date and Joinder by District. This Interlocal Agreement shall become effective upon the execution by the Parties hereto. It is agreed that, upon the formation of the District, the District shall thereafter join this Interlocal Agreement and that the District shall thereafter be deemed a Party to this Interlocal Agreement as if it were an original Party thereto.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Interlocal Agreement on this ____ day of _____, 2011.

ATTEST:

TOWN OF CUTLER BAY, a municipal corporation of the State of Florida

BY: _____
Town Clerk

BY: _____
Town Manager

(Affix Town Seal)

Approved by Town Attorney
as to form and legal sufficiency

Town Attorney

Attachment C

THE PROPOSAL

Functions and Responsibilities for Green Corridor Property Assessment Clean Energy (PACE) District (the "District")

Ygrene proposes, in cooperation with Town and/or District to provide PACE administration and financing services to the District in accordance with the following:

I. TASK LIST

Task 1: Design Localization

Task 1.1: PACE Enabling Ordinance via District Interlocal Agreement

The first required action item is a procedural ordinance and/or authorizing resolution. Consistent with the Florida law and Section 163.08, Florida Statutes (the "PACE ACT"), Ygrene and its qualified Counsel ("Counsel") will provide a comprehensive set of documents that include, by way of example, the following components:

- A determination that the establishment of the program would be in the public interest as required by the law.
- A statement indicating that the jurisdiction proposes to make voluntary contractual non-ad valorem assessment ("PACE Assessment") financing available to property owners.
- An identification of the types of renewable energy sources, wind resistance and energy efficiency improvements ("Qualifying Improvements") that may be financed.
- A description of the boundaries (including a map) of the area within which contractual assessments may be offered.
- A description of the proposed financing program.
- Designation of a date, time and place for the public hearing on the matter, if required.
- A statement of assessment underwriting standards that is consistent with HB7179, reflects the legitimate concerns of mortgage lenders and cognizance of the secondary mortgage market, is designed to ensure appropriate capital markets participation, and forms the basis for Florida to demonstrate a PACE financing program that provides a model for use in other states.
- Consultation with the appropriate county officials to ensure arrangements for placing the assessments on the tax roll and all the necessary documentation.
- Under the direction of Willdan Financial Services, Barclays Capital and Counsel, development of standard or uniform protocols to create and maintain non-ad valorem assessment rolls, and transfer proceeds to cover debt service and associated program costs.

Task 1.2: PACE Report

Pursuant to adoption of a procedural ordinance and/or authorizing resolution for the District, Ygrene will provide a Report that will contain matters sufficient to fulfill legal requirements including:

- **Program Jurisdiction:** Description, map or diagram indicating the boundaries where PACE assessments can be legally offered.

- **Draft Financing Agreement:** A draft form of financing agreement consistent with the PACE Act and anticipated market acceptance specifying the terms and conditions for a property owner to fund and finance Qualifying Improvements. The final form of financing agreement will be subject to approval and execution by appropriate District officials and Counsel.
- **Policy Statement:** Please reference Task 1.3 for a detailed account of what this task entails.
- **District's PACE Finance Plan:** A description of the funding source(s) to be offered through the District for work financed by the voluntary non-ad valorem assessment under the program. Ygrene will rely on Counsel for legal analysis and advice as to the best means and methods to achieve program validity and address legal matters related to the assessments and the bonds to be issued. The Finance Plan may delineate amounts to be advanced based on funds available to the local government from any source, and may include the issuance or sale of bonds, obligations, or other financing arrangements. The Finance Plan shall include a method for determining the interest rate and time period during which affected property owners would pay any assessment. The Finance Plan will provide for the establishment of any necessary reserve fund or funds, and will provide for the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the assessments among the consenting property owners and other matters necessary to attract funding and financing.
- **Payment Schedules:** Based upon information provided by the District, Ygrene will create and provide payment schedules, to both the District and affected property owners, that identify the amount and timing of payments to be made during the agreed upon term of the assessments based upon the program interest rate. This schedule will be the basis for the assessment installments that will be submitted annually to the appropriate county tax collector for inclusion on property tax bills.
- **Assessment Applicant Criteria for the Approval/Denial Process:** Applicant qualification requirements will be determined based upon the State Law and underwriting guidelines.
- **County Tax Roll Results Report:** Ygrene will prepare and periodically update a report on the results of consultations with appropriate county officials concerning arrangements and additional fees, if any, to be charged for placing the PACE assessments on the property tax bills.

Task 1.3: PACE Policy Statement

Ygrene and Counsel will provide the District with draft policies for use in contractual assessments between the District and property owners for financing of Qualifying Improvements. These policies will be a requirement of the program and must be adopted by the District to be effective. The policy statement will include, but is not limited to, the following:

Authorized Officials: The governing body of the District will identify and delegate power to the local official(s), or designee(s), who are authorized to enter into financing agreements with participating property owners. Procedures shall provide, among other requirements, for timely execution of financing agreements.

Project Identification: Ygrene will identify the types of properties authorized to be included in the program, i.e. residential, commercial/industrial. Ygrene will provide and propose a comprehensive list of Qualifying Improvements that may be financed through the program.

Method for Prioritizing Property Owner Requests: Unless otherwise directed by the District and subject to financial underwriting guidelines, Ygrene will process and prioritize property owner requests for participation in the program on a first-come, first-served basis, without regard to size of project or type of property.

Program Timelines: Ygrene will specify various program timelines, including deadlines for setting up the District program. Additionally, Ygrene will set performance goals for such program components as application processing, approval notification, assessment processing, project funding and other customer service related guidelines.

Task 1.4: Program Forms

Ygrene will provide a portfolio of program forms (bi-lingual) to be used by residents who wish to participate in the program. These forms will also be provided on the District's website, and may include:

- PACE Frequently Asked Questions (FAQ)
- Schedule of Fees
- List of Qualifying Improvements
- Assessment Underwriting Terms
- Application & Documentation Checklist
- Application Form
- Financing Agreement
- Truth-In-Lending Form
- FHFA/FNMA/FMAC PACE Status Disclosure Form
- Lender Notification (Residential Properties)
- Lender Notification and Acknowledgement (Commercial and Industrial Properties)
- Project Bid and Contract Form
- Funding Request Checklist
- Utility Authorization Form
- Closing Checklist

Task 1.5: PACE Presentation to District Directors (from 1.2)

Once the program elements are completed and approved by the District, Ygrene will assist staff in presenting such information and materials to the District board, will prepare and suggest the related staff report, and participate in the required public hearing.

Task 1.6: Update and Amend PACE Report

As necessary, in a manner consistent with the PACE Act, and as directed following the public hearing, Ygrene will make requested changes and/or amendments to program elements.

TASK 2: Marketing

Task 2.1: Establish a Community Outreach and Participation Plan

Ygrene will implement the four-step marketing plan for the District:

- Step 1: Contractor Certification:** Ygrene will train and certify contractors as a prerequisite to their participation in the program. The certification approach utilizes State standards, nationally recognized programs and systems training. Ygrene's training program emphasizes customer service, market outreach, technical expertise and professionalism.
- Step 2: Property Segmentation:** Based on data analysis and statistical modeling, Ygrene can segment District properties into groups based on age, geographic location, assessed value and other attributes. This provides the basis for a District outreach program for each group of properties that utilizes the internet, local media and local canvassing with a targeted message.
- Step 3: Localized District Website Portal:** Ygrene's WebTool provides options that allow the District to localize the user experience and to establish a message that is consistent with

local political and economic development objectives. Ygrene works with staff prior to setting up and launching the localized Site.

Step 4: Outreach/Energy Centers: Ygrene will open an Outreach/Energy Center that will serve the program needs in the District for education, outreach, customer service, contractor liaison and information resources. Here, property owners can get their questions answered and obtain the necessary forms to apply for the program. District residents can learn how to save energy and money. Contractors can take classes to help them improve their service and increase their businesses. The Outreach/Energy Center will be designed, furnished and staffed by Ygrene to meet the specific needs of the PACE program in the District.

Task 2.2: Website Development

Ygrene will deliver a localized web portal for the District. The WebTool is designed to be localized, yet still provide national and statewide standardization necessary to ensure uniform legal and financial underwriting. The website components and services may include some of the following components:

Video on PACE: A short, educational video on how PACE works

Frequently Asked Questions (FAQ) Page (regularly updated)

Assessment Calculator: A computerized tool that allows interested residents to input their desired project and determine both the annual assessment payments and the expected energy savings. By modeling different project components, property owners can determine an optimum retrofit and renewable energy profile for their property.

Estimate: A computerized tool that allows interested property owners, by entering basic information about their property, to determine the amount of financing they can qualify for under the program.

Project Application: Everything necessary to apply for financing under the program.

Qualifying Improvements: A description of the project components a property owner can select under the program.

Program Forms: All program forms are available through the website. They can be completed electronically, or printed and filled out manually. Forms and personal assistance are also available at the Outreach/Energy Center.

Authorized Contractor Bid Request: This on-line tool provides real time information about contractor qualifications, the jobs they are supervising and resources for contacting them and soliciting bids.

Project Evaluation: Property owners can report their program experiences with respect to project results, contractor performance, and Administrator performance. Ygrene also provides real-time data for District analysis of jobs, energy and greenhouse gas impacts from the program.

Contact Information: Lists phone number(s) and email address(es) for all program personnel and for qualified contractors.

Contractor Communication and Coordination: An online tool that allows contractors to monitor current projects and those in the pipeline.

Contact Information: An Outreach/Energy Center resource that provides quick access to specialty subcontractors, when needed; and updates contractors on new tools, training, equipment and developments in the field.

Documents: A comprehensive document management system that allows password protected access to all program and project documents, at any time, by both Ygrene personnel and authorized District representatives.

TASK 3: Contractor Certification and Training

Based on State or other licensing requirements, Ygrene registers and authorizes all participating contractors. Ygrene provides and requires both direct and indirect training to ensure that program participants are professional, knowledgeable and qualified to undertake PACE projects. In addition, Ygrene will provide oversight, evaluations and conflict resolution. This software includes the following capabilities:

- Enables all licensed building contractors to register and participate in the program.
- Provides a platform where contractors are able to:
 - Manage the project submission and approval process
 - Track the progress of payments due under their contracts
- Provides a set of standards to calculate the SIR through audit and bid tools.
- Acquires historic energy usage for each property and quantifies energy use reductions once project improvements are completed.
- Provides immediate access to a wide range of data and reports related to the operation, status and success of the overall program.

TASK 4: Administration

The PACE administration function includes processing applications, providing customer service and administration, management of assessments and payments, recruitment, training and oversight of the contractors who perform approved energy efficiency, renewable energy and wind resistance work.

Task 4.1: Property Owner Applications

Ygrene will evaluate applications and process them on a first-come, first-served basis. Ygrene will use an electronic system that will track submitted applications, monitor the status of those applications and verify that assessments, once processed and approved, meet policy guidelines. Ygrene will also timely communicate pre-approval, approval, or denial notifications to applicants.

Task 4.2: Qualifying Project and Authorized Contractor Selection

Once an application has been submitted, the property owner will coordinate with their contractor of choice to select items from the Qualifying Improvements list that they are interested in installing. Since the District program requires compliance with the list of Qualifying Improvements, Ygrene's software tools limit funded projects only to Qualifying Improvements authorized by the District. At all steps in the process, personal assistance is available to property owners, at the Outreach/Energy Center, on the phone or via email, to complete applications and select a contractor.

Task 4.3: Energy Savings Calculations – Audit

Contractors will be equipped with audit tools in order to establish that the Savings to Investment Ratio (SIR) of the proposed project is greater than one. Quantifiable energy reductions may, in some circumstances, result in eligibility for increased assessment allocations for projects.

Task 4.4: Owner Bid Approval

Following project submittal, Ygrene will monitor project status throughout the bid acceptance process. Once the property owner accepts a project bid, Ygrene prepares and submits the financing agreement.

Task 4.5: Assessment Processing

Once submitted for funding approval and assessment documentation, the project status will be updated electronically and Ygrene will authorize the property owner and the contractor to obtain permits and commence construction.

Task 4.6: Utility Rebate Processing

As part of the processing, contractors can review each project and verify whether proposed measures may qualify for utility or other incentives. Ygrene will develop a “utility rebate” guide to assist property owners during the process of choosing qualified measures. If the PACE Assessment is for a measure that qualifies for an incentive/rebate, the applicant will be made aware of the options.

Task 4.7: Final Approval

Upon project completion, contractors will be required to obtain a final inspection from the building department that issued the building permits. Following notification of receipt of the final inspection, and verification that all liens have been released, the Property owner will approve the project and submit for payment and recording of the financing assessment.

Task 4.8: Record Notices of Assessment for Specific Properties

Ygrene will coordinate the timely recording of each financing agreement as required by the PACE Act.

Task 4.9: Program Status and Reporting

Ygrene’s WEB tool allows on-demand status and program data updates to the District and other authorized persons on a real time basis. Available information includes:

- Website Analytics
- Number of calls to 800#
- Number of assessment applications requested
- Number of assessment applications filled out/turned in
- Number of assessment applications processed
- Number of assessment applications approved
- Program funding levels and total fund status
- Authorized Contractors and Certification Levels
- Final Inspections
- Energy saved through completed projects
- Greenhouse Gas reductions achieved through completed
- Estimated job creation impact of completed projects

Task 4.10: Property Owner Services in the District

Ygrene will provide dedicated customer service appropriate to property types (residential and/or commercial/industrial):

- Dedicated toll-free property owner information line
- Outreach/Energy Center open to public
- Collateral materials
- On-line WebTool to monitor projects and assist completion
- Dedicated property owner service representatives fluent in English and Spanish;
- Reporting on owner satisfaction

TASK 5: Support

Ygrene's provides ongoing customer service and support, even after projects are completed.

Task 5.1: Website Development and Management

Ygrene has developed an overall web architecture, WebTool and database and is dedicated to continuing to improve and expand its capability. Ygrene will provide all website maintenance, technical support and updates for ongoing PACE programs.

Task 5.2: Ongoing Assessment Tracking and Management

Through Willdan Financial Services, Ygrene will coordinate ongoing management and verification of assessments throughout the amortization term of the financing.

Task 5.3: Provide Certification, Training and On-going Support for Contractors

Ygrene will maintain an updated database of contractors and make training and education programs available within the District to ensure high quality, effective installation of improvements, to share best practices, and to provide a pathway for skill upgrades.

Task 5.4: District Staff and Property Owner Support

Provide password protected, on-line access to real-time project data for properly authorized District staff. Provide in-person, telephone and email access to information regarding assessments and annual installments for property owners and program participants.

Task 5.5: Status Meetings and Coordination

Ygrene will participate in and/or attend appropriate District Board and advisory committee meetings and provide access to an administrative system that provides reports and status on the program's operations for each District participant.

II. CREATION AND COLLECTION OF NON-AD VALOREM PACE ASSESSMENTS IN FLORIDA

Ygrene sub-contractor, Willdan Financial Services ("Willdan"), in consultation with Counsel, will manage the legal and procedural considerations for placing PACE assessments on county property tax rolls. Highly experienced service providers to cities and counties in several states, Willdan and Counsel have the expertise and credentials to oversee this important PACE task on behalf of Ygrene and the District.

III. PROGRAM TIMELINES

Upon execution of the TPA agreement, Ygrene will provide a timeline for estimated completion of the Task List. Actual dates for commencement and completion will be based upon District and Counsel schedules and agreements among the Parties.

IV. QUALIFYING IMPROVEMENTS

The following list represents improvements that will be Qualifying Improvements under the District PACE Program. Additional and/or alternative measures may be approved on a case-by-case basis and/or as the list is modified from time to time in compliance with State Law or instructions from the District.

1. Energy Efficiency

- a. Air Sealing and Ventilation
 - Air Filtration
 - Building Envelope
 - Duct Leakage and Sealing
 - Bathroom, ceiling, attic, and whole house fans
- b. Insulation
 - Defect Correction
 - Attic, floor, walls, roof, ducts
- c. Weatherstripping
- d. Home Sealing
- e. Geothermal Exchange Heat Pumps
- f. HVAC Systems
- g. Evaporative Coolers
 - Cooler must have a separate ducting system from air conditioning and heating ducting system
- h. Natural gas storage water heater
 - Energy Star listed
- i. Tankless water heater
- j. Solar water heater system
- k. Reflective insulation or radiant barriers
- l. Cool roof
- m. Windows and glass doors
 - U value of 0.40 or less and solar heat gain coefficient of 0.40 or less
- n. Window film
- o. Skylights
- p. Solar tubes
- q. Additional building openings to provide additional natural light
- r. Lighting
 - Energy Star listed (no bulb, only retrofits)
- s. Pool equipment
 - Pool circulating pumps

2. Other Non - residential Building Measures

The following measures are allowed for commercial and non-residential buildings, in addition to all applicable energy efficiency measures listed above:

- a. Occupancy Sensor Lighting Fixtures
 - SMART Parking Lot Bi-Level Fixture
 - SMART Parking Garage Bi-Level Fixtures
 - SMART Pathway Lighting

- SMART Wall Pack Fixtures
- b. Task Ambient Office Lighting
- c. Classroom Lighting
- d. Refrigerator Case LED Lighting with Occupancy Sensors
- e. Wireless, daylight lighting controls
- f. Kitchen Exhaust Variable Air Volume Controls
- g. Wireless HVAC Controls & Fault Detection

3. Solar Equipment

District funding will be available for photovoltaic and solar thermal equipment. As with efficiency measures, if a rebate is available to the property owner, that amount must be deducted from the financing requested. Eligible solar equipment for both residential and commercial properties includes:

- a. Solar thermal hot water systems
- b. Solar thermal systems for pool heating
- c. Photovoltaic systems (electricity)
- d. Emerging technologies – following the Custom Measures Track

4. Wind Resistance Measures

Wind hardening measures can be deployed through this Program. The measures described qualify.

- a. Improving the strength of the roof deck and foundation attachment
- b. Creating a secondary water barrier to prevent water intrusion.
- c. Installing wind-resistant shingles or other roofing.
- d. Installing gable-end bracing.
- e. Reinforcing roof-to-wall connections.
- f. Installing storm shutters.
- g. Installing perimeter-opening protections.
- h. Raising building elevations.

5. Custom Measures

The Custom Measures Track is a process by which [Program Name] staff can evaluate and approve funding for projects that are not “off the shelf” improvements listed in the Qualifying measures. These custom projects may involve large scale industrial or commercial energy efficiency improvements; processing or industrial mechanical systems; and renewable energy generation from sources such as geothermal and fuel cells. The following are examples of custom measures that will be considered for [Program Name] funding:

6. Custom Energy Efficiency Measures

- a. Building energy management controls
- b. HVAC duct zoning control systems
- c. Irrigation pumps and controls
- d. Lighting controls

- e. Industrial and process equipment motors and controls

7. Custom Energy Generation Measures

- a. Fuel Cells
- b. Wind turbine power system
- c. Natural gas
- d. Hydrogen fuel
- e. Other fuel sources (emerging technologies)
- f. Co-generation (heat and energy)

V. DISTRICT UNDERWRITING TERMS

Following is a draft of the underwriting terms and disclosure for the District PACE program. In consultation with Counsel, Ygrene will develop the final form of this document that will be signed by all participants as a requirement of the program.

In order to apply for financing (“financing” or “funding”) under the District PACE Program (the “Program”) the property owner (the “Property Owner”) must read and accept these District PACE Program Terms (the “Program Terms”).

These Program Terms, along with the documents property owners execute in connection with the Program, including but not limited to the Application, Assessment Agreement, Notice of Assessment, Project Contract, and Escrow Instructions - Project Approval described in “Funding” below (collectively the “Program Documents”), establish the terms of the District PACE Program. Property owners should become familiar with and understand the provisions of the Program Documents. By executing the Program Documents, the property owner agrees to all of the terms of the Program. The District reserves the right to amend these Program Terms from time to time as described in “Changes to the Program Terms; Severability” below.

1. Purpose of the Program

The Program is intended to assist property owners in the District in financing the acquisition and installation of energy efficiency, wind resistance and renewable energy improvements (the “Qualifying Improvements”). With the assistance of Counsel, the District will authorize bonds to provide the source of financing for the Program. The bonds and the costs of administering the Program will be paid through special assessments added to the property tax bills paid by the property owners who choose to participate in the Program. There may be other types of financing available to property owners and the District does not guarantee that the Program is the best financing option. Property owners should obtain help in selecting the option that is most appropriate for their particular situation.

2. Summary of the Program Process

As discussed in more detail below, in order to receive funding from the Program, property owners must complete the following steps for all property types:

- a. Determine that they meet the eligibility requirements. (see “Eligibility” below).
- b. Apply online or submit a paper application for the Program. (see “Application; Approval or Denial; Application Fee” below).
- c. Agree to these Program Terms and pay an application fee as part of the application process.

- d. Notify any and all lenders holding a security lien of their intent to place a senior lien on the property and, in the case of multi-family residential property of more than four units and/or non-residential property, secure the lender(s) agreement to do so.
- e. The Administrator must approve the completed application. (see "Application; Approval or Denial; Application Fee" below).
- f. A Certified Contractor must submit a bid for the installation of Qualifying Improvements on the property. (see "Qualifying Improvements; Certified Contractors; Maximum Funding" below).
- g. The District will record a Notice of Special Tax Lien against the property at the time of project approval.
- h. The District will authorize the release of funds to the property owner after project completion. Property owners may choose to assign payment directly to their contractor. (see "Funding Request" below).
- i. Be expected to pay the special assessments in the amounts and at the times specified in the Funding Approval. (see "Financing Cost; Interest Rate; Special Assessments" below).

The District has contracted with Ygrene Energy Fund to administer the program (the "Administrator"). The District will share information with the Administrator and other third parties as necessary to administer the Program. See "Disclosure of Property Owner Information" below.

3. Eligibility

The Program is available to all privately owned improved property. The financing terms and conditions set forth in these Program Terms are applicable to financings of \$250,000.00 or less for retrofit projects in residential and non-residential properties (including multifamily properties of more than 4 units). The financing terms and conditions set forth in these Program Terms are not necessarily applicable to projects of more than \$250,000.00. The District will establish the financing terms and conditions appropriate to larger projects at the time of financing approval. Low-income applicants are encouraged to apply and may qualify for assistance with the application fee or audit costs. In order to participate in the Program, a property owner must meet and/or complete the following requirements and steps:

- a. The property to be improved with the Qualifying Improvements (the "subject property") must be located in the District.
- b. The subject property may be used for residential or non-residential purposes. If the subject property is used for residential purposes, the property owner is not required to occupy the subject property as a primary residence.
- c. The property owner must provide written notice of the proposed senior lien to any and all lenders with existing liens on the subject property. Property owners of a non-residential property (including residential property of more than four units) must obtain the written consent of existing lenders. The forms for these notifications (Lender Notification (Residential) and Lender Notification and Acknowledgement) are available on-line or from the Administrator and must be submitted to the Administrator prior to project approval.
- d. All holders of fee simple title to the subject property must sign the Program Documents. Therefore, before submitting an Application, property owners must ensure that all property owners will agree to participate in the Program on the terms set forth in these Program Terms.
- e. Property owners will be required to participate in appropriate federal, state and District incentive programs, to the extent the subject property and/or the project are eligible for such programs at the time of application.
- f. The property owner must agree to provide the Administrator with access to the property's utility usage history and information to enable the Program to monitor energy savings. The Utility Authorization Form is available on-line or from the Administrator for this purpose.
- g. Property owners must be current in the payment of all obligations secured by the subject property, including loans, property taxes, assessments and tax liens; and have maintained currency for all

such obligations for the past 3 years (or since the current owner(s) took title to the subject property if less than 3 years). The Administrator may review public records and private credit histories, including County real property records, to verify compliance with this requirement. Certain allowances may be made for property tax payment delays that do not reflect financial distress. Cases of non-residential property owners who are currently appealing a property tax assessment will be reviewed and eligibility will be determined on a case-by-case basis.

- h. The value of the property, based on just value (or market value in cases where just value can be shown to unreasonably underestimate the property value), must be equal to or greater than the sum of (i) the total debt, including mortgages and equity lines of credit, secured by the property, (ii) the principal amount of any Program indebtedness attributable to the property, and (iii) the aggregate principal amount of any fixed assessment liens on the property.
- i. The aggregate principal amount of the Program funding attributable to the property cannot exceed 20% of the value of the property (based on just value, appraised value, or market value calculated according to a method identified by the Administrator).
- j. It is critical to the health of the Program that property owners pay their special assessments and other property-related obligations in full on a timely basis. Consequently, the District reserves the right, in its sole discretion, to request supplemental information from owners and to deny applications based on any negative reports.

4. Initial Application; Approval or Denial; Application Fee.

All property owners interested in applying to the Program must submit the Initial Application Documents listed below along with a \$50 application fee (applications submitted on behalf of property owners by approved contractors, multi-family residential properties of more than four units and commercial/industrial projects are exempt from application fees). At the time of application, property owners must agree to the Program Terms. Project applications for larger financing amounts or building types not covered by these Program Terms will receive an administrative point of contact from the Administrator, who will assist in the process.

- a. Initial Application Documents
 - i. Application Form, either submitted online or printed and signed
 - ii. Lender notification
 - For residential properties of 4 units or less, proof of mailing of the Residential Lender Notification form.
 - For residential properties with more than 4 units and for non-residential properties, properly executed Lender Notification and Acknowledgement form from existing lender(s).
- b. Upon receipt of the Application documents and underwriting by the Administrator, applicants will receive either a Notice of Approval or a Notice of Denial.
- c. Upon receipt of a Notice of Approval, applicants must obtain Residential Lender Notification forms or Lender Notification and Acknowledgement forms, available either on-line or from the Administrator, and submit them to their lender(s). Property owners will be required to provide to the Administrator with Proof of Mailing for Lender Notification and Acknowledgement forms.
- d. Upon receipt of a Notice of Approval, applicants can proceed to submit their proposed project for approval (See "Project Approval" below).
- e. Should an application be denied, the notice will include recommend remedial action that may be available to the applicant.

5. Qualifying Improvements; Certified Contractors; Maximum Funding.

The following general provisions apply to all projects submitted for funding under the Program:

- a. Program financing may only be used to finance those improvements that are described in the list of Qualifying Improvements. Property owners are responsible to ensure that improvements

- installed on their property qualify under the program. Contractor/installer agreements will be required to address performance and other system-related issues to assist property owners.
- b. The Program is a financing program only. Neither the District nor the Administrator is responsible for installation of the Qualifying Improvements or their performance.
 - c. The Qualifying Improvements must be installed by contractors who meet the eligibility criteria set forth for the specific category of work being financed, and who are listed on the Certified Contractors list that may be obtained on-line or from the Administrator. If property owners choose to work with a contractor that is either not a Certified Contractor or who fails to become a Certified Contractor, they will not be eligible for Program financing.
 - d. For a proposed project to qualify for funding, the Certified Contractor must submit evidence that the project fulfills the requirement of providing a savings-to-investment ratio (SIR) of at least one. This means that the energy cost savings attributable to the installation of the Qualifying Improvements must equal the funded cost of those improvements over their useful life.
 - e. Maximum Funding. The Program requires a minimum funding request of \$2,500. The Program will approve maximum funding requests in an amount equal to the lesser of (i) maximum amount allowed under FL law for the property or (ii) the final cost of installing the Qualifying Improvements (including allowable fees) less any federal, state, District and Utility rebates, plus the additional items identified in "Financing Cost; Interest Rate" below. The funding limits are per property per financing request. The Program will not provide financing for any costs in excess of the maximum amounts allowed under FL law. Participants are invited to submit projects that may exceed the basic ratio of cost vs. fair value, based upon the savings-to-investment ratio achieved by the Qualifying Improvements. Such projects may require alternative legal and financial processing.

6. Project Approval.

Upon receipt of a Notice of Approval of a Program application and following notification and/or request for lender acknowledgement (approval), the property owner may select a contractor and proceed to apply for project funding. Following are the steps required to obtain authorization for funding under the Program:

- a. Select a contractor from the Certified Contractor List. This list is available on-line and/or from the Administrator. Applicants may wish to obtain bids and advice from more than one Certified Contractor.
- b. Work with Certified Contractor(s) to determine the scope and cost of your project, analyze its energy and savings and financial benefits to confirm a SIR of at least one, and verify that the proposed work qualifies for funding under the Program. Once Qualifying Improvements are selected, obtain a formal bid from one or more Certified Contractors.
- c. Following review of the project bid(s) select a Certified Contractor to complete the approval process with the Program Administrator. Even if the project requires using more than one Certified Contractor for various aspects of the work (i.e. – retrofit and solar), applicants must select a lead contractor to process the project.
- d. Upon review of the proposed project and the bid(s) submitted for the work, the Administrator will issue either a Project Approval Letter or a Project Denial Letter. This communication will be provided by email unless directed otherwise by the applicant.
- e. Once the project is approved, applicants will be required to execute the Assessment Agreement. This is the contract that authorizes the Administrator and the District to place the assessment on the property that will secure the project financing. The assessment must be in place prior to commencement of construction.
- f. Once the assessment is recorded, applicants will receive a Notice to Proceed. Upon receipt of this notice, applicants can sign construction contracts and authorize commencement of the project. If construction begins prior to receipt of a Notice to Proceed, applicants run the risk of not qualifying for Program funding.

- g. If the project is denied, the Project Denial Letter will outline remedial action that may be available to the applicant.

7. Funding

- a. Once the Certified Contractor has completed installation of the Qualifying Improvements, property owners must submit a funding request and the project verification documents listed below in order to receive funding from the Program. The Administrator will review the funding request and the project verification documents, and produce final Program forms. The final Program forms will be transmitted via email, or by mail if so directed by the property owner. All required forms must be returned to the Administrator prior to funding. The project verification documents and final Program forms are listed below.
 - i. A final sign-off on the building permit for the project from the authorized building official in the appropriate District participating jurisdiction.
 - ii. Final invoices and lien releases from all Certified Contractors (including any sub-contractors) who worked on the project.
 - iii. An executed Project Approval signed and notarized by all property owners. By executing the Project Approval, owners annex their property to the Special Tax District, agree to pay the special assessments in specified amounts for the period specified in the Project Approval, consent to recordation of a Notice of Special Tax Lien against the subject property, and release the Administrator and the District from any liability associated with installation of the Qualifying Improvements or their performance.
 - iv. Utility Authorization to Release Information.
 - v. Assignment of Right to Receive Financing Proceeds form if the payment is to be assigned to someone other than the property owner.
 - vi. Settlement Statement
 - vii. Truth-in-Lending Disclosure Statement
 - viii. FHFA/FNMA/FMAC Status Disclosure Form
- b. If the documents listed above are not submitted to the Administrator within 7 calendar days after transmittal of the final Program forms, the funding request will expire. In that event, an updated funding request will be required. If the interest rate has changed between the date of the original funding request and any subsequent updated funding request, the interest rate will be reset (See "Financing Costs; Interest Rate below).
- c. Upon completion of a final project audit, the Administrator will make a final determination of eligibility of the project and calculation of the final assessment details. Upon acceptance by the property owner, the Administrator and the District will amend the recorded tax lien as appropriate and approve issuance of checks as directed by the property owner
- d. In the event a property owner cancels financing after submitting a request for funding, all expenses incurred by the Program for recording tax liens, preparing bond documents and removing tax liens will be the responsibility of the property owner.

8. Financing Costs; Interest Rate.

- a. In order to receive funding, property owners agree to pay special assessments in an amount equal to (i) the principal amount received from the Program, (ii) interest on the principal amount received from the Program and (iii) initial and on-going administrative expenses. The District expects to levy special assessments on the owner's property tax bill, although it may bill separately for the Program installments.
- b. Principal. This is the total of all financed project costs. These may include costs associated with implementing the project such as permits, audit expenses, application fees and capitalized interest (see "Capitalized Interest" below).
- c. Interest Rate. The rate of interest charged on the amount funded will be fixed for the full term of the assessment. The rate will be determined on the date of submission of a valid funding request.

Property owners can monitor interest rates on the Program website or by contacting the Administrator.

- d. Capitalized Interest. Because of administrative delays involved in placing the special tax assessments on County tax rolls, the payments may not appear on property tax bills in the first year. In this case the first tax year's tax installment may be added to the assessment. This will be itemized on the Settlement Statement.

9. Repayment Terms; Special Assessments; Foreclosure Terms.

- a. Repayment Terms. Following recordation of the Notice of Assessment, the property owner will be obligated to pay the special assessments specified in the Project Approval and the Notice of Assessment.
- b. Special Assessments and Foreclosure. A property owner must pay the taxes associated with the agreed-upon special assessment regardless of personal financial circumstances, the condition of the property, or the performance of the Qualifying Improvements. Property owners should not apply for financing if they are not certain they can meet the assessment obligations. The failure to pay property taxes in full or in part will result in financial repercussions including penalties, interest and possibly foreclosure. If property owners use an escrow account to pay their property taxes, they must notify the escrow company of the special tax payments. In such cases, property owners will need to increase monthly payments to the escrow account by an amount equivalent to the annual special assessments, divided by 12 months.

10. Compliance with Existing Mortgages.

Recordation of the Notice of Assessment will establish a continuing lien as security for the obligation to pay the special assessments. The lien securing the obligation to pay special assessments will be senior to all private liens, including existing mortgage(s). Many mortgage and loan documents limit the ability of a property owner to place senior liens upon property without the consent of the lender, or authorize the lender to obligate borrowers to prepay the senior obligation. Recently, the Federal Housing Finance Agency has issued policy guidelines that question the validity and assessment status of PACE assessments. Program participants should confirm with their lender(s) that participation in the Program does not adversely impact their rights with respect to any existing loan documents. For residential projects, the Program requires property owners to notify their lenders prior to a funding request, to provide the Administrator with a copy of the letter and proof of mailing and to certify that the lender has not objected to the property participating in the Program. For non-residential projects and residential properties containing more than 4 units, property owners must notify the lender and receive written consent for the priority assessment lien from the lender prior to submitting a funding request. The Administrator provides required forms for lender notification and consent, but ultimate responsibility for addressing issues with existing lenders remains with property owners.

11. Transfer or Resale of the Subject Property.

If Program participants sell their property prior to the end of the agreed-upon special tax period, the new owner will assume the special tax obligation. Ownership of any Qualifying Improvements on the subject property will transfer to the new owner at the close of escrow. Qualifying Improvements financed through the Program may not be removed from the property. Program participants agree to make all legally required disclosures regarding the existence of the special tax lien on the property in connection with any sale.

12. Rebates and Taxes.

Participation in this Program does not reduce rebates available through federal, state, utility sponsored and District rebate programs. More information on available programs can be found on-line or through Certified Contractors and other vendors. Participants should consult with their tax advisors with respect to the state and federal tax benefits and consequences of participating in the Program.

Neither the District nor the Administrator is responsible for the tax considerations of participating in the Program.

13. Changes in State and Federal Law.

The District's ability to continue to finance the Program is subject to a variety of state and federal laws. If those laws or the judicial interpretation thereof changes after a property owner applies for the Program, but before the District fulfills the funding request, the District may be unable to fulfill the request. In such event, the District shall have no liability as a result of any such change in law or judicial interpretation.

14. Changes in Program Terms; Severability.

The District reserves the right to change the Program Terms at any time without notice. However, no such change will affect a participant's obligation to pay special assessments as set forth in the Project Approval. Participation in the Program will be subject to the Program Terms in effect from time to time.

VI. FINANCIAL MODEL

1. Barclay's Capital:

Ygrene and Barclay's Capital ("Barclays") have agreed that Barclays will provide interim (warehouse) financing and long term (bond) financing for the District program. Ygrene will form an affiliated corporation ("Ygrene Funding") to provide credit administration and underwriting services for this funding agreement. Besides providing assessment funding that will respond to virtually any level of demand, the Barclay's agreement finances the administrative, marketing, legal and other costs of operating PACE programs. Like other financing programs, PACE is subject to market forces and interest rate fluctuations that will require adjustments of rates and terms during operation of the Program to maintain viability.

2. Operating Capital:

Ygrene's initial target interest rate for property owners participating in the District program is 7.00% ("Program Interest Rate"). This is based on a current estimated cost of funds from Ygrene Funding of 6.50% (the estimated "Funding Rate"). This example results in an interest rate spread of one half of one percent (0.5%) to provide for the operating and administrative costs of the District program ("Operating Capital"). Ygrene uses the Operating Capital for program administration, marketing and program development, legal and bond counsel, District cost reimbursement, overhead and profit.

The actual Funding Rate is calculated as the on-the-run U.S. Treasury 10-year bond rate plus 3.25%. If the Funding Rate increases, the Program Interest Rate will increase by a like amount to provide adequate Operating Capital. Ygrene will endeavor to keep the Program Interest Rate as low as possible.

3. Fee Schedule:

In addition to the Operating Capital, Ygrene relies on Program fees to fund operations. This fee structure minimizes up-front costs for property owners.

Residential property fees:

<u>Fee Description</u>	<u>Amount</u>	<u>Collected</u>
Initial application:	\$ 50.00	with application
Processing & Underwriting:	\$ 125.00	at disbursement
Energy audit:	\$ 50.00	at disbursement
Jurisdiction cost recovery:	\$ 100.00	at disbursement
Recording & Disbursement:	\$ 95.00	at disbursement
Insurance:	TBD	TBD

Commercial/Industrial property fees:

<u>Fee Description</u>	<u>Amount</u>	<u>Collected</u>
Initial application:	Waived	N/A
Processing & Underwriting:	\$ 250.00	at disbursement
Energy Audit:	TBD	at disbursement
Jurisdiction cost recovery:	\$ 100.00	at disbursement
Recording & Disbursement:	\$ 250.00	at disbursement
Insurance:	TBD	TBD

This fee schedule is subject to change and must be approved by the District prior to the Commencement Date. Fees for energy audits are paid directly to contractors, are included in the project cost, and on commercial/industrial properties will be priced on a case-by-case basis. Insurance fees and methods of collection are under review and must be approved by the District prior to the Commencement Date. Of the fees listed, only the residential application fee is collected directly from property owners. The fee is waived when a Certified Contractor submits the application on a property owner's behalf. The remaining fees are paid through the assessment funding.

In the event either the District or its constituent members enacts fees or other charges that have the effect of increasing Administrator's costs for providing the Services, Administrator may increase the fee provided for in this schedule to offset the increased costs.

4. Contractor Training & Administration:

Funding for program operations is enhanced by a 3.0% Project Oversight fee charged to Certified Contractors to reimburse the Program for training, lead generation, marketing services, Energy Center meeting space and services, etc.

5. Carbon Credits/Offsets

Ygrene will aggregate and accumulate carbon credits that result from PACE projects financed through the Program. A possible future source of Program revenue could result from the development of a market for these credits.

VII. PROGRAM FORMS

Following is a partial list of forms and documents that may be required for the establishment, operation, administration, financing and reporting for the District PACE Program. These forms are maintained through a document management program that allows ongoing, password-protected access for authorized District representatives. Forms will be added, edited and deleted as necessary for the operation of the District program.

Interlocal Agreement
Task List
Program Report

PACE Frequently Asked Questions
Schedule of Fees
List of Qualifying Improvements
Assessment Underwriting Terms
Application & Documentation Checklist
Application Form
Financing Agreement
Truth in Lending Form
FHFA/FNMA/FMAC PACE Status Disclosure Form
Lender Notification (Residential)
Lender Notification and Acknowledgement (Commercial & Industrial)
Project Bid & Contract Form
Funding Request Checklist
Utility Authorization Form
Closing Checklist
Utility Authorization Form
Closing Checklist

Notice of Assessment
Assessment Agreement
FL Assessment Underwriting Terms
Underwriting Policy
Project Submission Checklist
Project Approval Letter
Project Denial Letter
Notice to Proceed
Draw Request Form
Lien Release Form
Change Order Request Form
Final Building Permit Checklist
Assignment of Right to Receive Financing Proceeds
Wire Request Form
Escrow Instructions
Appraisal Report
Project Energy Savings Calculations & CO2e Reductions Form
SIR Report

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Discussion Item

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