



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: March 1, 2012

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for March 1, 2012, at 3:00 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

OLD BUSINESS

NEW BUSINESS

1. **Selection of Chair for Finance and Citywide Committee**
2. **Discussion concerning City Fees and Charges for Gay Pride 2012**
(July 13, 2011 Commission Item C4G)
Max Sklar – Cultural Arts & Tourism Development Director
3. **Discussion regarding property assessed clean energy (PACE) program** *(October 19, 2011 Commission Item R9H)*
Fred Beckman – Public Works Director
4. **Discussion regarding sanitizer dispensers at City Facilities to lessen illness and increase productivity** *(December 14, 2011 Commission Item C4B)*
Fred Beckman – Public Works Director
5. **Discussion regarding the issuance of Request for Proposals (RFP) for catering and concession services for the Miami Beach Convention Center** *(December 14, 2011 Commission Item R7F)*
Max Sklar – Cultural Arts & Tourism Development Director
6. **Ordinance amending penalty charges for late utility bills** *(January 11, 2012 Commission Item R5A)*

Patricia Walker – Chief Financial Officer

- 7. Discussion regarding consideration of a letter of agreement between the City of Miami Beach and Art Basel Miami Beach outlining terms and conditions for use of public property by Art Basel Miami Beach (February 8, 2012 Commission Item C4D)**

Max Sklar – Cultural Arts & Tourism Development Director

- 8. Discussion regarding updates on the Collins Canal/Bike Path project (February 8, 2012 Commission Item R9S)**

Fred Beckman – Public Works Director

Finance and Citywide Projects Committee Meetings for 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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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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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: March 1, 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 C).

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. There are a maximum number of seven (7) members on the governing board at any given time. At this time, the governing board has reached its maximum of seven (7) members and the City would only be a non-voting member. The City

Attorney is reviewing the Interlocal Agreement to confirm that the City would not have additional liabilities.

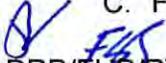
Another option for the City would be to form a separate PACE District with at least one other municipality. Under this option, the City would need to obtain proposals for a third party administrator using the City's procurement process.

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 or to determine if the City should investigate developing a separate 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

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. Cladridge 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

**EXHIBIT A
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. Cogeneration (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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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: March 1, 2012

SUBJECT: Discussion Regarding Sanitizer Dispensers At City Facilities To Lessen Illness And Increase Productivity

BACKGROUND

At its December 14, 2011 Commission meeting, Commissioner Wolfson requested a referral to the Finance and Citywide Projects Committee to discuss sanitizer dispensers at City facilities to lessen illnesses and increase productivity. The Public Work's Property Management Division evaluated potential locations and cost for the installation of hand sanitizer dispensers in various City owned buildings.

ANALYSIS

Property Management completed a review of potential "high traffic public areas" that would be suitable for the installation and monthly service of hand sanitizer dispensing stations, and identified approximately 100 locations that both staff and the public could benefit from having the availability of these dispensing stations. The estimated costs to install dispensers and the annual maintenance are as follows:

100 hand dispensers (ADA approved)	\$ 1,000.00	
Cost of refills for start-up	\$ 1,200.00	
Initial startup cost	\$ 2,200.00	
Estimated annual cost to refill	\$28,800.00	(2 refills monthly per dispenser @ \$12.00 per refill)
Replacement dispensers	\$ 250.00	(estimated 25 replacement dispensers annually)
Total estimated annual cost	\$29,050.00	

CONCLUSION

The above information is provided for discussion by members of the Finance and Citywide Projects Committee


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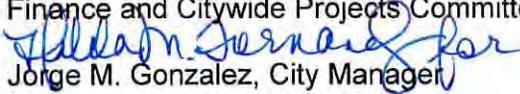


MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM:  Jorge M. Gonzalez, City Manager

DATE: March 1, 2012

SUBJECT: **DISCUSSION REGARDING THE ISSUANCE OF REQUEST FOR PROPOSALS (RFP) FOR CATERING AND CONCESSION SERVICES FOR THE MIAMI BEACH CONVENTION CENTER.**

BACKGROUND

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

During the initial 20 years of the agreement, the Convention Center's food and beverage concessionaire was restricted from hosting local catering events such as banquets, weddings, and galas, when those events did not book an exhibit hall and were not conventions, trade, public or consumer shows. Prior to the issuance of the RFP IN 2006, the social catering restriction was reviewed by several City committees and organizations, and a recommendation was made to remove the prohibition. The City Commission subsequently endorsed the removal of the social catering prohibition; the subsequent RFP allowed for the successful proposer to host local catering events at the Miami Beach Convention Center, and specific attention was given to this area.

Following a review of all proposals received, the RFP Evaluation Committee and the City Administration recommended Centerplate as the top-ranked firm. This recommendation was made in large part due to Centerplate's proposed partnership with Barton G. At the time, Centerplate had formed an exclusive relationship with Barton G., a Miami-based event planning and production company with a strong base of social, corporate and philanthropic clients. On September 6, 2006, the City Commission adopted Resolution No. 2006-26316 authorizing the Mayor and Clerk to execute an agreement upon completion of successful negotiations by the Administration. The terms of the Agreement were retroactive to March 1, 2007 and expires on September 30, 2012. The Agreement also includes two (2) successive, five (5) year renewal options at the City's discretion.

Convention Center Catering and Concessions Services Agreement

Finance and Citywide Projects Committee

March 21, 2012

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The current Agreement includes the following:

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

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

Convention Center Advisory Board

As previously stated, Centerplate's agreement with the City expires on September 30, 2012. In anticipation of such, the Convention Center Advisory Board (CCAB), at their June 7, 2011 meeting, discussed whether or not the City should exercise a five (5) year renewal option available in the current Agreement, or issue a new Request for Proposals (RFP). The CCAB reviewed Centerplate's history and recommended, by a 6 – 1 vote, that the City issue a new RFP for catering and concession services at the Convention Center. This recommendation was based largely on widespread interest in the contract when the RFP was last issued six (6) years ago and the CCAB felt the City should gauge the level of interest in this contract by issuing a new RFP. The CCAB also felt their client survey scores being the lowest-rated area of the Convention Center's operations was another important reason to issue an RFP.

Finance and Citywide Projects Committee

The Finance and Citywide Projects Committee discussed this item at their October 27, 2011, meeting. The Committee discussed the survey scores overall, and expressed general satisfaction with Centerplate. Staff recommended that, should a renewal be proposed, it be broken down into a smaller term, with year-by-year renewals. In that manner, any performance issues could be addressed. The Committee recommended that the City exercise the option to renew for two (2) years with three one (1) year renewals. The CCAB, at their November 1, 2011 meeting, expressed their concern that they were not given an opportunity to attend the Finance Committee discussion.

City Commission Action

The subject agreement was discussed at the December 14, 2011 City Commission meeting. After discussion of the item, the City Commission directed the Administration to issue an RFP and referred the scope of service to the Finance & Citywide Projects Committee to review the criteria prior to RFP issuance.

SCOPE OF SERVICES

It is the City's intention to operate the highest quality, food and beverage catering and concession

Convention Center Catering and Concessions Services Agreement

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facilities at the MBCC. As such, the City will provide floor space and the current food service equipment listed attached herein, for operation under this Contract Agreement. These high-quality facilities will include, but not be limited to the following at MBCC:

- East Kitchen
- West Kitchen
- Four permanent concession locations (one in each exhibit hall)
- Various identified storage locations

Additionally, the successful proposer shall have access to all fixed and temporary equipment owned by the City for the provision of food and beverages.

Term

The term of the exclusive Food and Beverage Concession Agreement to be awarded shall be for a period of five (5) years, commencing on October 1, 2012, and ending on September 30, 2017. After the third contract year, the City may terminate the agreement with thirty (30) days written notice.

Other Technical Requirements

- A) Proposals shall include an agreement to provide a Capital Reserve Fund of a minimum dollar amount, or 1.5 percent of Annual Gross Sales, whichever greater, to fund repair, maintenance, and replacement of food/beverage service equipment, smallwares, computerized point-of-sale systems, and other leasehold improvements directly associated with the food/beverage service program. Such funds shall be placed in an interest bearing account owned by each operating entity within this contract to be used only underwritten direction and approval of such entity. Any funds unused during any year shall be carried forward with interest until the end of the agreement at which time all unused funds shall immediately become the property of the facility in question.
- B) The Proposer must establish a marketing account into which shall be deposited, at the beginning of each contract year with a minimum dollar amount for promotion of the Miami Beach Convention Center. The Proposed minimum dollar amount, which is subject to negotiations, shall be spent, as agreed upon by the City. Should less than agreed upon dollars be spent from this reserve marketing fund by end of any single contract fiscal year then such remaining sum in this account shall transfer to the City's Convention Center Marketing Fund.
- C) As additional consideration for the granting of the exclusive rights granted to Proposer under this proposal, Proposer shall propose to invest in capital upgrades for the Convention Center of not less than \$1,000,000. The Proposer shall propose a plan to expend its own capital to improve the food and beverage operations at the Miami Beach Convention Center. The plan may include renovations, changes, and/or modifications to improve the existing food and beverage locations and/or purchase and installation of additional furniture, fixtures and equipment mutually agreed upon by the City. All equipment and improvements purchased under this capital investment commitment shall become the property of the City at the conclusion of the initial term of this contract at no cost to the City, unless specified in writing by Proposer and approved in writing by the City. Should any of the required capital investment specified not be expended after all directed improvements have been completed, then such funds will be transferred to the City's Convention Center Capital Fund. The Capital Investment Plan shall be submitted to the City for approval within thirty (30) days of execution of the contract with Proposer.

- D) In the event of a hurricane or other natural disaster or emergency the Proposer shall be required to be able to provide the following:
- For a three (3) day period without electricity and water available from normal utility services, provide food, drink and drinking water for 1400 persons (three meals a day). Part or all of each meal to be heated, with hot beverages to be available with each meal, with 50% of the meals (700) to be high energy producing and 50% larger than the standard meals, 25% of the meals to be standard and provide normal daily caloric intake and 25% to be considered vegetarian.
 - Proposer is to provide food, beverages, utensils, equipment and supervisory personnel for such operations.
 - Proposer will be required to provide to the City, for the City's review and approval, a menu using the Proposer's normal inventory plus items normally used by the Proposer, so that the Proposer can assure delivery to the Convention Center within twenty four hours after order.
 - All documented costs of supplies, food, labor, and materials used during a hurricane watch or warning, will be repaid to the Proposer by appropriate governmental agencies. The Proposer will be responsible for bearing all costs of possible extra inventory levels, preparation and planning.
- E) Specific Brands/Sponsorships: The City reserves the right to require specific items, specific brands or specific shelf space to be devoted to brands sold at the convention center when an agreement is in place between the City and a vendor giving exclusive rights to serve a particular brand at City facilities.

CORPORATE RESPONSIBILITIES

1. Proposers shall provide a "Corporate Responsibility Plan", which describes in sufficient detail how the Proposer plans and expects to integrate into the Miami Beach community, and fit into the community as a "good corporate citizen". In developing their Plan, Proposer's focus should be to establish a balance between developing opportunities with the City; stimulating and rewarding their employees; developing optimum customer satisfaction; working with and supporting our local community; and sustaining the environment where they operate.
2. Items to include in Proposer's "Corporate Responsibility Plan" should address (but not necessarily be limited to) the following:
 - A. Proposer's approach, and policies and procedures, detailing the hiring and promotion of employees, including the following:
 - In addition to payment of the required hourly Living Wage and the Equal Benefits requirements, both which are required under this RFP, what **other** benefits, programs, and/or other compensation or incentives does the Proposer offer to its employees?
 - B. In addition to subsection (A) above, describe any other programs that Proposer maintains for the welfare and benefit of its employees.
 - C. Is Proposer a responsible corporate citizen and, to that end, what contribution(s) does Proposer make to the community(ies) in which it currently does business?

Describe how Proposer is "making a difference" for the betterment of the community(ies) where it operates. Items to address may include, but not be limited to:

- Participation in local community organizations.
- Membership in local civic and charitable organizations including, in particular, any specific programs and/or initiatives that Proposer has either established or (if established) that Proposer actively participates in.

- D. Is Proposer's firm environmentally conscious; include any efforts and/or programs and/or initiatives that Proposer has established, either within its firm or in the community, which demonstrate Proposer's involvement in, and commitment to the betterment of the environment through sustainability (i.e. "green initiatives").
- E. With regard to the City of Miami Beach, describe in sufficient detail what public benefits, including any specific programs, initiatives, and/or other contributions which Proposer would plan to "give back" to the Miami Beach community should it be awarded this contract. This should include (but not be limited to) Proposer's commitment to hire as many qualified Miami Beach residents as possible

PROPOSAL FORMAT

The City invites proposals from fully qualified and experienced food and beverage management firms. It should be noted that the proposer should have at least ten (10) years of successful experience in facilities of competitive size of the Miami Beach Convention Center as a concessionaire and caterer.

Proposals must contain the following documents, each fully completed, and signed as required. If any items are omitted, Proposers must submit the documentation within five (5) calendar days upon request from the City, or the proposal shall be deemed non-responsive. However, as it relates to the omission of cost or revenue sharing information, the City will not accept said information after the deadline for receipt of proposals.

1. Table of Contents

Outline in sequential order the major areas of the proposal, including enclosures. All pages must be consecutively numbered and correspond to the table of contents.

2. Proposal Points to Address:

Proposer must respond to all minimum requirements listed below. Proposals which do not contain such documentation may be deemed non-responsive.

- a) **Introduction letter** outlining the proposers professional specialization, provide past experience to support the qualifications of the submitter. Interested Proposers should submit documents that provide evidence as to the capability to provide professional food and beverage services.
- b) Proposers must provide **documentation** which demonstrates their ability to meet all of the requirements set forth in this RFP.
- c) **Cost Information:**
Cost and/or revenue sharing information must be submitted with your proposal, and if selected as the successful Proposer, the City will reserve its right to negotiate cost and/or revenue sharing.

Convention Center Catering and Concessions Services Agreement

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d) **Past Performance Information/Client Surveys:**

Past performance information will be collected on all Proposers. Proposers must provide your clients with the Performance Evaluation Letter and Survey attached herein, and request that your clients submit the completed survey to the contact person listed in this RFP. The City reserves the right to verify and confirm any information submitted in this process. Such verification may include, but is not limited to, speaking with current and former clients, review of relevant client documentation, site-visitation, and other independent confirmation of data.

e) **Qualifications of Proposer Team:**

Provide an organizational chart of all personnel and consultants to be used on this project and their qualifications. A resume of each individual, including education, experience, and any other pertinent information shall be included for each team member to be assigned to this project

Proposer shall provide a qualified management team at all venues and provide resumes for all managers and an Executive Chef. Minimal qualifications of all managers presented should include at least five (5) years of senior food management responsibility in the convention center/arena, or restaurant fields, with degrees in hotel/ restaurant management from recognized colleges /universities in that field. Experience may substitute for education on a year-to-year basis.

It is important to note that at the Convention Center the minimum acceptable staff must be included in your Proposal:

- General Manager
- Assistant General Manager/Director of Food and Beverage
- Catering Manager
- Concessions Manager
- Beverage Manager
- Director of Sales

f) **Risk-Assessment Plan (RAP):**

All Proposers must submit a Risk-Assessment Plan. The Risk-Assessment Plan must not be longer than two pages front side of page only. The RAP should address the following items in a clear and generic language:

- (1) What risks the project has. (Areas that may cause the Proposers to be a source of dissatisfaction with the owner).
- (2) Explanation of how the risks will be avoided/minimize.
- (3) Propose any options that could increase the value of this project.
- (4) Explain the benefits of the Risk Assessment Plan. Address the quality and performance differences in terms of risk minimization that the City can understand and what benefits the option will provide to the users. No brochures or marketing pieces.

g) **Methodology and Approach:**

It is the intention of the City to provide its food and beverage services and catering concession services at the highest quality with the requirement of the proposer to keep aggregate positive survey scores at or above 93% for each fiscal year end survey calculations. All food and beverage preparation, storage, dispensing, consumption, dining or sales areas are to be kept clean, orderly, and sanitary at all times and in strict accordance with all applicable laws, ordinances, and rules and regulations. The proposer must also describe its philosophy and procedures to ensure cleanliness and upkeep of

Convention Center Catering and Concessions Services Agreement

Finance and Citywide Projects Committee

March 21, 2012

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equipment and work spaces.

Proposers must provide their methodology and approach or a service plan, to ensure that food and beverage services and catering services at the facilities are maintained at the highest quality level. This should include the Proposer's approach to promoting a social catering program at the facility.

Good customer service is essential. The proposer must describe their approach to addressing unique needs, responding to complaints and evaluating customer satisfaction.

Proposer must have implemented an employee training program for one or more facilities or establishments for the following items or areas:

- Employee performance/dress standards
- Customer service/dealing with the public
- Cash handling
- Work place safety/sanitation practices
- Sexual harassment
- Alcohol Awareness

h) Transition Plan

Include a plan to demonstrate smooth and timely transition for staff and transparent changeover for meeting planners' comfort. The details for this plan should be presented in both a narrative form and presented on a time line, and must include the following elements:

1. Staff notification;
2. Meeting planner notification;
3. Training and familiarization of facilities, equipment, services;
4. Management on-site full time;
5. Initiation of Marketing and Sales Program;
6. Vendor notification; and
7. Inventory of food and beverage facilities, fixed equipment and smallwares;
8. Any and all additional take-over procedures your company would implement.

The proposer is asked to give us an example of a venue where you replaced an existing firm or were replaced by a different firm and how you handled the turn-over of this account.

i) Annual Rent

- Guaranteed Minimum Annual Rent – Proposer shall propose a minimum annual base rent of not less than \$1,500,000 annually.
- Percentage Commission- shall be calculated as percentage of Gross Receipts in accordance with the bid percentage proposed.
- Buyout Provision– the successful Proposer may be responsible for any undepreciated food service Furniture, Fixtures and Equipment at the Miami Beach Convention Center.
- Proposer shall be required to provide and shall be the exclusive provider of Food and Beverage Services at the MBCC.
- Waiver of Exclusivity: When requested by the City, the Proposer shall release exclusivity rights for catering, shall incur no costs and shall be entitled to collect a

percentage of gross receipts (or such other lump sum fee as may otherwise be agreed upon between the Proposer and the City). Such percentage or other lump sum fee shall be considered a part of gross receipts for the purpose of determining rent. During City sponsored events, the agreed upon percentage commission to which the Proposer may otherwise be entitled, may be waived by the City.

j) **Scholarship Fund**

Proposer shall propose a minimum amount of funds which will be contributed annually toward the City of Miami Beach Scholarship Fund offered to City of Miami Beach needy resident students pursuing a career in the field of Tourism and Hospitality Management, inclusive of food service management. Said minimum amount of funds will be subject to negotiations with the successful Proposer

k) **Business and Creative Marketing Plan**

The Proposer shall present a detailed operation, marketing and sales promotion plan for food and beverage concession services, catering concession services, local catering, social/gala and local catering at the Miami Beach Convention Center; selected representative menus, prices, portion size where applicable, and description from both formal and buffet catering; and growth potential and growth areas, including revenue projections for all food and beverage concession services and catering concessions services at the Miami Beach Convention Center.

Proposer shall submit examples of detailed marketing and sales promotion plans, which it has developed and utilized at similar facilities. The Proposer shall propose specialty food items and specialty food carts, which it believes can work in Miami Beach as well as any other information, which can demonstrate its ability to deliver superior products and services.

Describe in detail how the services and their creative marketing program will be provided at the facility as well as your methodology for social/gala catering to include local catering strengths.

l) **Compensation and Cost Data**

Provide a commission proposal for the following:

Miami Beach Convention Center

- Food and Non-Alcoholic Beverage Sales
- Catering/Banquet Sales
- Concession Sales
- Alcoholic Beverage Sales
- Catering/Banquet Sales
- Concession Sales

EVALUATION/SELECTION PROCESS

The procedure for response evaluation and selection will be as follows:

- RFP issued.
- Receipt of responses.
- Opening and listing of all responses received.
- An Evaluation Committee, appointed by the City Manager, shall meet to evaluate each response in accordance with the requirements of this RFP. If further information is desired,

respondents may be requested to make additional written submissions or oral presentations to the Evaluation Committee.

- The Evaluation Committee will recommend to the City Manager the response(s) which the Evaluation Committee deems to be in the best interest of the City by using the following criteria for selection:
 - A) Financial: (percentage = 20%)
 - Financial capability to perform the services outlined in the RFP;
 - Proposed commissions or services within maximum cost guidelines parallel to the goals and requirements of the City;
 - Commission proposal and other additional financial considerations; and
 - Provision of (availability of) daily financial data for each venue in a recognized GAAP format.
 - B) Experience and qualifications and Past Performance Based on Client Surveys: (percentage = 25%)
 - Experience and qualifications of the Proposer in a comparable size, high-quality convention center, arena and/or restaurant food/beverage operations pertaining to catering /banqueting, concessions, special services, suite/club catering, bar services, restaurants, including VIP and other similar services;
 - Management team's experience and qualifications; and
 - Volume and quality of surveys submitted by clients.
 - C) Operational expertise and procedures: (percentage = 30%)
 - Staff training/manual procedures;
 - Approach to customer service and maintenance of quality standards;
 - Ability to provide back-up management expertise on short notice;
 - Cash control computer system and interfaces to be provided;
 - Risk Assessment Plan(s); and
 - Service Plan(s)
 - D) Business and Creative Marketing Plan (percentage = 25%)
 - Business and Marketing plans as presented for food and beverage, social/gala and catering concession services.
 - The City may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations.
 - After considering the recommendation(s) of the Evaluation Committee, the City Manager shall recommend to the City Commission the response or responses acceptance of which the City Manager deems to be in the best interest of the City.
 - The City Commission shall consider the City Manager's recommendation(s) in light of the recommendation(s) and evaluation of the Evaluation Committee and, if appropriate, approve the City Manager's recommendation(s). The City Commission may reject City Manager's recommendation(s) and select another response or responses. In any case, City Commission shall select the response or responses acceptance of which the City Commission deems to be in the best interest of the City. The City Commission may also reject all proposals.

Convention Center Catering and Concessions Services Agreement

Finance and Citywide Projects Committee

March 21, 2012

Page 10 of 10

- Negotiations between the selected respondent and the City take place to arrive at a contract price. If the City Commission has so directed, the City may proceed to negotiate a contract price with a respondent other than the top ranked respondent if the negotiations with the top ranked respondent fail to produce a mutually acceptable contract price within a reasonable period of time.
- A proposed contract or contracts are presented to the City Commission for approval, modification and approval, or rejection.
- If and when a contract or contracts acceptable to the respective parties is approved by the City Commission, the Mayor and City Clerk sign the contract(s) after the selected respondent(s) has (have) done so.

RFP TIMETABLE

The anticipated schedule for this RFP and contract approval is as follows:

- | | |
|---|-----------------|
| • RFP Issued | March 9, 2012 |
| • Pre-Proposal Submission Meeting | March 23, 2012 |
| • Deadline for receipt of questions | TBD |
| • Deadline for receipt of responses / Proposals | April 27, 2012 |
| • Evaluation committee meetings | May 2012 |
| • Commission Approval/
Authorization of negotiations | June 6, 2012 |
| • Contract negotiations | June/July 2012 |
| • Projected contract start date | October 1, 2012 |

CONCLUSION

The Administration is seeking input from the Finance and Citywide Projects Committee on the proposed scope of services prior to RFP issuance.

JMG/HMF/MAS

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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: March 1, 2012

SUBJECT: Discussion regarding the reduction of a utility bill's penalty percentage.

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

Presently, a one-time ten percent penalty is added to the current portion of all past due water, sewer and stormwater utility bills (utility bills). No additional interest or penalties are charged.

On October 19, 2011, at a meeting of the F&CWPC, the Committee unanimously recommended removing the one-time 10% penalty on the current portion and instead adopted a recurring monthly charge of 1.5% on any portion of the account balance that is past due.

This recommendation came after penalties and interest from other utility companies were presented. The Committee recommended charging 1.5% to be consistent with other utility companies, such as Florida Power and Light and TECO – Peoples Gas.

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

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

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

Previously, the Committee increased the days allowed for payment of a utility bill from 15 to 21 days, to be consistent with other utility companies.

At the December 14, 2011 City of Miami Beach Commission meeting, upon first reading, the Commission unanimously voted to remove the one-time 10% penalty on the current portion and instead adopt a recurring monthly charge of 1.5% on any invoice that is past due, up to a cap of 10% per invoice.

After consultation with our EDEN Utility Billing System software provider, Tyler Technologies, the City has been informed that the proposed methodology is not available; however, other methods are available.

At the January 11, 2012 City of Miami Beach Commission meeting, upon second reading of the Ordinance, the Commission unanimously voted to open and continue, and refer back the item to the F&CWPC. The Commission was concerned that this item may be inadvertently incentivizing customers not to pay their utility bill, by getting an inexpensive loan. The Commission further asked for a summary of customers that were late three or more times during the past year, included below for your review.

**City of Miami Beach
Utility Billing Customers
Calendar Year 2011**

Penalties Issued	
No. of Occurances	No. Penalties
3	570
4	383
5	344
6	271
7	244
8	208
9	197
10	157
11	112
12	337
	2,823

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

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

DATE: March 1, 2012

SUBJECT: Referral To The Finance And Citywide Projects Committee - Discussion Regarding Consideration Of A Letter Agreement Between The City Of Miami Beach And Art Basel Miami Beach Outlining Terms And Conditions For Use Of Public Property By Art Basel Miami Beach.

ADMINISTRATION RECOMMENDATION

Refer the subject to the Finance And Citywide Projects Committee for discussion.

SUMMARY

Art Basel Miami Beach (ABMB) was established in 2000 as the sister event of Switzerland's Art Basel, the world's most prestigious art fair for the past 39 years. In just ten years, ABMB has become the preeminent contemporary art fair in the western hemisphere, and an established destination for artists, galleries, collectors, museum groups and other individuals interested in top-notch art. Each year, ABMB spends millions of dollars producing the fair and economists have estimated \$400 million to \$500 million in related economic impact as a result of the fair.

As ABMB grew in popularity, so did the number of requests for temporary art displays or for use of public property in the immediate area of the convention center. The City and ABMB informally established an Art Basel Miami Beach Zone to protect the ABMB brand and limit third party use of public property in this area. The boundaries of the zone include 23rd Street to the north; Lincoln Lane South to the south; Alton road to the west; and the Atlantic Ocean to the east.

At this time, the City and ABMB would like to formally memorialize the Art Basel Miami Beach Zone. In order to accomplish this, an amendment to the Special Event Guidelines is required. The Special Event Guidelines would need to be amended to establish an "Art Basel Miami Beach Zone" which, if such recommended amendment is approved by the Mayor and City Commission, would provide for the following:

- a.) The establishment of a zone, the effective term and duration of which is **only** intended to run concurrent with the actual ABMB Event dates for years 2011, 2012, 2013, and 2014, as same are set forth in the ABMB License, and which zone is intended to be bounded by **23rd Street** to the north; by **Lincoln Lane South** to the south; by **Alton road** to the west; and by **the Atlantic Ocean** to the east (hereinafter the ABMB Zone).

- b.) The ABMB Zone, if approved, shall be established for the purpose of precluding the City from issuing a special event permit for the use of public property within the ABMB Zone during the term/duration that such Zone is in effect, without first obtaining the prior written consent of MCH. Accordingly, the City shall provide MCH with at least **thirty (30)** calendar days prior written notice of any special event applications received by the City for the use of public property within the Zone during the ABMB Event date(s) (the City's Approval Request). MCH shall have ten (10) calendar days from the date of the City's Approval Request to approve or deny the Request. MCH's approval or denial of the Request must be in writing and, if a denial, must specifically set forth the reason(s) therefore. In the event that MCH fails to approve or deny a Request within the ten (10) day time period and, further, in accordance with the procedures set forth herein, then MCH shall have waived its right to deny such Request, and the City may proceed with the event (that was the subject of such Request) as if approved by MCH, and without any further notice and/or other obligation to MCH.
- c.) Notwithstanding the establishment of the ABMB Zone, and/or any other term or condition in this letter of understanding, (i) special events held on private property, and (ii) demonstrations, pickets, and free speech activities, as such terms are defined in the Guidelines, and as same may be amended from time to time, shall be **EXEMPT** from the requirements of this letter of understanding and, accordingly, shall **NOT** require MCH's approval.
1. The City shall use reasonable commercial efforts to inform MCH of any applications for use of public property outside the Art Basel Miami Beach Zone that the City may receive for the installation and/or display of art and/or art works on public City-owned property during the term/duration of, the ABMB Event for, respectively years 2011, 2012, 2013, and/or 2014.
 2. The City shall take into consideration the needs and requirements of the ABMB Event as plans for the City's proposed expansion and renovation of the MBCC are developed.

The Administration is seeking direction from the Finance and Citywide Projects Committee on this subject before drafting amendments to the Special Event Guidelines to reflect the ABMB Zone.

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: March 1, 2012

SUBJECT: Discussion of Collins Canal Seawall Repair/Dade Boulevard Bike Path

Background

At its February 8, 2011 meeting, the City Commission directed staff to update the Finance and Citywide Projects Committee on the status of the repair of the Collins Canal seawall and the construction of a bike path adjacent to Dade Boulevard (Attachment A).

Funding

Approximately 3,100 feet of seawall on the north side of the Collins Canal, between West Avenue and Convention Center Drive, is in poor condition and requires replacement. The City received a grant for this work in the amount of \$1,383,885. The City is also constructing approximately 5,000 feet of bike path along this corridor from 17th Street to Park Avenue with a grant in the amount of \$2,873,896. Both grants will expire on July 31, 2012. These grants were extended once, and the City must continue to show progress by submitting construction invoices in order not to place them in jeopardy. (Attachment B)

Status

The project is fully permitted and has been approved by the Historic Preservation Board. It has also been endorsed by the Transportation and Parking Committee, the Disability Access Committee, the Bikeways Committee, the Belle Isle Residents Association, the Miami Beach Convention Center, the Greater Miami & The Beaches Hotel Association, and the Miami Beach Senior High PTSA.

The contractor, Harbour Construction (The firm recognized for its work at the Botanical Garden.), is presently on schedule to complete the work in early July. Presently, it is constructing the seawall on the block between 17th Street and Alton Road. It demobilized for the Boat Show and then remobilized after the Boat Show.

At the request of the City, the contractor is leaving the block that contains a 650-foot section that is too narrow to plant trees, returning to it at the end of the project. While continuing the work, the City is pursuing two designs in parallel that could provide for trees in that area:

- Planting mangroves in the canal
- Shifting the Dade Boulevard curb to the north to provide a planting area

Planting Mangroves

FCWPC – Collins Canal Repair/Dade Boulevard Bike Path

March 1, 2012

Page 2 of 2

The City met with the regulatory agencies about planting mangroves in the Collins Canal during the permitting process. At that time, the Florida Department of Environmental Protection (FDEP) had indicated that it would not be allowed due to concerns over sea grass habitat and the reduction in the navigable width of the canal.

Since that time, certain residents have put staff in contact with the County Coastal Habitat Restoration Coordinator. After numerous meetings, he indicated that he would assist in an attempt to obtain approval from FDEP and the Army Corps of Engineers. As a result, the City is putting together a conceptual plan of the proposed planting for further discussions with these agencies. It should be noted that this effort will have a long permitting process that will last six months to one year.

At this time, the number and locations of mangroves is not determined. Further, the means by which the seedlings and young plants will be protected from the current in the canal is undecided. As a result, no cost estimate can be generated at this time.

Shifting Dade Boulevard

On February 15, 2012, the City submitted a feasibility study for removal of a left turn lane into Publix and for shifting the Dade Boulevard travel lanes to the north. Field data indicate that this left turn lane into Publix, which is adjacent to the western end of the 650-foot non-landscaped area is lightly used. It typically takes the County several weeks to review and respond to City requests. It is believed that the County will have questions and comments that must be addressed before it will issue an approval or denial of the concept. Plans would then need to be developed and permitted. This effort would take three to four months.

Should the County ultimately approve the removal of the turn lane and approve the shift, it is estimated that the cost of this work would be \$2,000,000 to \$2,500,000. At this time, the project is currently \$1,200,000 million under budget. Therefore, a funding shortfall of \$800,000 to \$1,300,000 would exist for this resident requested additional scope of work.

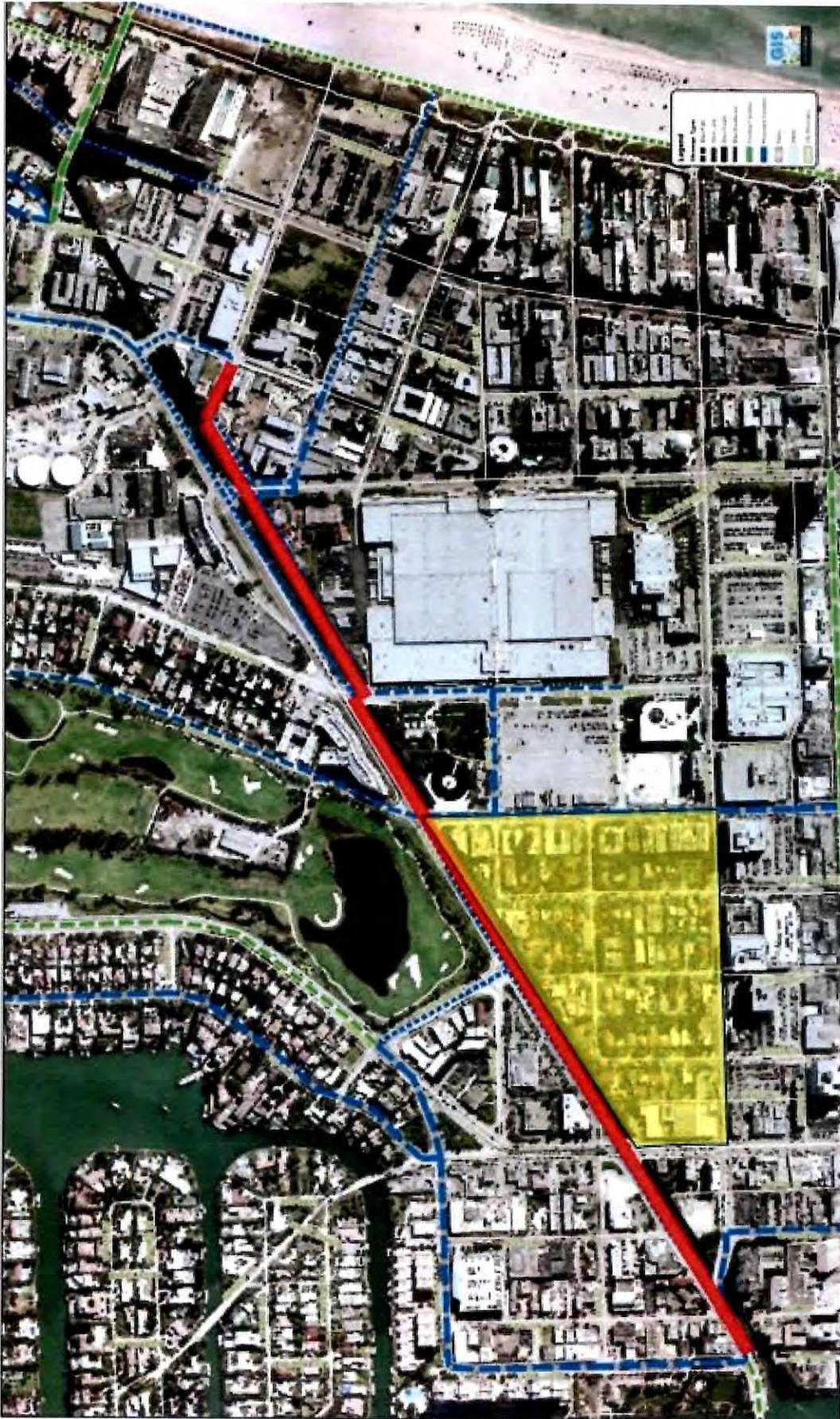
Conclusion

The above information is provided for discussion by members of the Finance and Citywide Project Committee.

Attachments:

- A. Aerial photo of proposed Dade Boulevard Bike Path
- B. Email from FDOT regarding grant funding


DRB/FHB/RMS



From: Iglesias, Danny [Danny.Iglesias@dot.state.fl.us]
Sent: Tuesday, February 07, 2012 11:22 AM
To: Diaz, Hermes
Cc: Saltrick, Richard; Vazquez, Fernando
Subject: RE: Dade Blvd Bike Path Grant & Seawall 251-251-1 & 405-583-1

Hermes

I would not stop work on this project because as I have mentioned before during our conversation, the time extensions are generally granted during delays to the project due to unforeseen conditions. I would suggest that the city pursue this option of moving the curb as a separate project in order not to delay this LAP project so we do not risk jeopardizing the federal funds

Sincerely,

Danny Iglesias
Sr. Project Manager

Florida Dept. of Transportation
1000 NW 111 Ave.
Miami, Florida 33172
305-470-5289 **Phone**
Danny.Iglesias@dot.state.fl.us **Email**

From: Diaz, Hermes [<mailto:HermesDiaz@miamibeachfl.gov>]
Sent: Tuesday, February 07, 2012 10:34 AM
To: Iglesias, Danny
Cc: Saltrick, Richard
Subject: Dade Blvd Bike Path Grant & Seawall 251-251-1 & 405-583-1

Hi Danny;

As you know, the Dade Blvd. Bike Path and seawall project is currently under construction. About 60% of the project lies adjacent to the historic Palm View Neighborhood in Miami Beach. Some residents have shown concern about the fact that as designed, there will be no space for a tree canopy cover along a 650' stretch of the bike path between Alton Road and Meridian Avenue. Also, they would like to mitigate the mangroves that are being removed on site rather than pay a mitigation fee. The City is exploring the possibility of moving the curb along Dade Blvd. further north to accommodate a landscape strip along the bike path. We have also had conversations with local, State, and Federal agencies regarding the planting of mangroves along the canal banks. Because our current grant extension expires on July 31, 2012, the City has proposed to look into these alternatives as a separate project after the grant funded work is completed. Some residents however, insist that we could get another extension and put the construction of the Bike Path for this section of the road on hold until all these issues are resolved and their concerns are addressed. We estimate that finalizing the design, obtaining all permits, and securing funding for this additional work could take anywhere between 6 months to 1 year. We are concerned that putting this section of the project on hold would jeopardize our grant. We would like your opinion on this matter.

Sincerely;

MIAMIBEACH

Hermes Diaz, P.E., *Civil Engineer III*