



MIAMI BEACH

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

COMMITTEE MEMORANDUM

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

FROM: City Manager Jorge M. Gonzalez

DATE: June 28, 2012

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for June 28, 2012, at 3:00 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

OLD BUSINESS

1. **Discussion regarding a proposed ordinance on ethics guidelines for acceptance of gifts, favors, or services by City Employees** (*April 13, 2011 Commission Item C4I*) (9)

Jose Smith – City Attorney
Hilda Fernandez – Assistant City Manager

NEW BUSINESS

2. **Status Report from the engineering company assigned to do the City's Citywide Stormwater Master Plan** (*December 8, 2010 Commission Item C4F*) (14)

Fred Beckmann – Public Works Director

3. **Approval of scope of services and criteria for outsourcing of Lincoln Road Mall Maintenance Services RFP** (*February 8, 2012 Commission Item R7F*) (46)

Fred Beckman – Public Works Director

4. **Discussion regarding development of criteria and procedures for use of the Commission Chamber** (*April 11, 2012 Commission Item R9E*) (57)

Jorge Gomez – Assistant City Manager

5. Discussion regarding the appropriateness of granting a perpetual sub-surface easement to Collins 3300, LLC and 3420 Collins Avenue, LLC, for a proposed sub-surface parking garage (June 6, 2012 Commission Item C4D) (62)

Fred Beckman – Public Works Director

6. Discussion regarding CDBG funding for fixing storefronts (June 6, 2012 Commission Item C4K) (64)

Kevin Crowder – Economic Development Div Director

7. Discussion regarding advertising on Deco Bike stations (June 6, 2012 Commission Item R5E) (65)

Patricia Walker – Chief Financial Officer

Finance and Citywide Projects Committee Meetings for 2012:

July 9, 2012 (Budget)
July 10, 2012 (Budget)
July 11, 2012 (Budget)
July 12, 2012 (Budget)
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: All Members, Finance and Citywide Projects Committee

FROM: Jose Smith, City Attorney

DATE: June 28, 2012

SUBJECT: **Status Report: Discussion regarding a proposed ordinance on ethics guidelines for acceptance of gifts, favors, or services by City Employees**

Proposed Ticket Distribution Policy

On April 13, 2011, Commissioner Jonah Wolfson referred a matter for discussion to the Finance and Citywide Projects Committee (FCWPC) entitled: *Discussion regarding a proposed ordinance on ethics guidelines for acceptance of gifts, favors, or services by City Employees*. Please see attached (**Attachment A**) referral and correspondence (excluding referenced attachments).

BACKGROUND:

The matter referred by Commissioner Wolfson was heard at the September 26, 2011, FCWPC meeting. The item referred for discussion attempted to more broadly address the issue of potential amendments to City Code relating to gifts, favors or services provided to the City's Officers and Employees, below fair market value, from an entity doing business with the City or from a lobbyist. At that time, the City Attorney advised Committee members that the County's Commission on Ethics was reviewing the issue of complimentary ticket policies; the Committee recommended that the matter be monitored and a status report provided to the Committee. Please see attached Afteraction Report for the September 26, 2011 FCWPC meeting (**Attachment B**).

The discussion on a ticket distribution policy stemmed from an initial investigation by the Miami-Dade Commission on Ethics and Public Trust (COE) and State Attorney's office (SAO) in response to a complaint by the New World Symphony (NWS) about the inclusion of a complimentary ticket program as part of the negotiations of proposed revisions to the "public benefits" section of the NWS's lease with the City for the NWS use of public land. The proposed inclusion of the complimentary ticket program was in keeping with established, negotiated public benefits in other City agreements, subsequent to both State Commission on Ethics opinion, as well as City resolution on the concept.

More specifically, in 1992, the Florida Commission on Ethics issued its Opinion No. 92-33, holding that City of Miami Beach elected officials could legally accept complimentary tickets from the City (obtained via negotiated 'public benefit' clauses in City contracts) to performances taking place at City-owned venues, subject only to the requirement that public disclosure of such ticket receipt be made by the recipient/Officials on quarterly gift disclosure forms (see **Attachment C, Opinion No. 92-33**). In reliance upon the opinion of the State Ethics Commission, the City of Miami Beach adopted its Resolution No. 93-20694, in which the City Commission formally established a procedure for the City's distribution of its tickets to performances taking place at City-owned venues, whereby designated municipal officials and deserving members of the community would receive complimentary tickets to such productions (see **Attachment D, COMB Reso. No. 93-20694**). A complimentary ticket program has been negotiated as part of resulting public benefits programs for other venues with management and/or lease agreements, including the Miami City Ballet and Byron Carlyle Theater.

Based on this longstanding City policy (approved as a resolution by the City Commission) and State Commission on Ethics opinion, upon which the City relied in negotiating complimentary ticket programs as part of public benefits clauses, the SAO closed its case on October 18, 2011, *with a finding of no wrongdoing*, but referred the matter to the COE for further review on the policy elements of the issue.

On March 1, 2012, the COE released a DRAFT “Guidelines and recommendations regarding ‘public benefit’ clauses in certain government contracts.” The focus of the guidelines was on complimentary ticket programs in those public benefits clauses, and what they perceived to be “flawed” policies by several municipalities relating to such. Cities that were researched to develop these recommendations included the City of Miami Beach, Miami, Homestead, Coral Gables and Hialeah. While acknowledging the City of Miami Beach’s prior ethics opinion on the matter, and the City of Miami Beach Resolution that has existed since 1993, the COE raised concerns with the methodology of distribution, in particular when elected officials re-allocate tickets provided to them through complimentary ticket programs in public benefits clauses, as this may appear to serve a personal or political agenda, rather than meet the intended purpose. The recommendations did acknowledge, as well, that elected officials and other City staff may need to attend events in their official capacity. On March 27, 2012, the COE issued an “Addendum” to the guidelines that specifically address the latter (see **Attachment E, COE Draft Guidelines and Addendum**).

The City Attorney’s Office reviewed the COE’s recommended guidelines and on February 28, 2012, I submitted a Memorandum of Law to the COE addressing the issues raised by their guidelines, and challenging the authority of the COE to issue such standards/guidelines. It is my opinion that these are matters of public policy and not subject to review by the COE (**Attachment F**).

CITY ATTORNEY’S OFFICE PROPOSED RESOLUTION

In response to the COE’s recommended guidelines, the City Attorney’s Office developed a proposed resolution establishing a policy for the distribution of tickets received pursuant to a complimentary ticket program in a negotiated public benefit clause. Please refer to the attached “DRAFT” resolution presented for the Committees review and discussion (**Attachment G**). In summary, the key recommended policy points are:

- Delineates the applicability of the policy (when it would apply);
- Establishes what “public purpose” is served by the distribution of tickets;
- Recommends a process for the distribution of tickets received by the City; and
- Delineates disclosure requirements (by the City and by the recipient).

Pursuant to this policy, elected officials and certain City Staff would receive tickets on a limited basis (e.g. only for opening night events), with the balance of the tickets distributed to “deserving organizations or groups” that are identified, through a Committee, once a year as being eligible to receive tickets for their participants. In addition, the proposed resolution provides for a process for tickets to also be distributed to other parties by the City in other circumstances (e.g. visiting dignitaries, to meet contractual obligations relating to a municipal marketing program, to recognize employees).

ADMINISTRATION REVIEW

The Administration was asked to review the attached DRAFT to ensure that the procedures for distribution included in the proposed resolution could be implemented without any administrative difficulty. Many of the elements of the administration of the ticket distribution process being proposed are already in place today.

ATTACHMENTS (A-G)

H:\Administration\Gift Return memos & ticket distribution\FCWPC memo - Ticket policy.doc



MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Jonah Wolfson, Commissioner

DATE: March 14th, 2011

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

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

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

JW/lh

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2011 MAR 16 PM 5:18

Agenda Item C4I
Date 4-13-11

March 12, 2011

MEMORANDUM FOR: Commissioner Jonah Wolfson, City of Miami Beach

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

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

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

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

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

ATTACHMENTS:

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

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

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

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

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

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

[Language added underlined.]

proposed alternatives for the Festival of the Arts.

2. Discussion regarding a proposed ordinance on ethics guidelines for acceptance of gifts, favors, or services by City employees

ACTION

The Committee recommended that Administration monitor the county regarding ethics guidelines for acceptance of gifts, favors or services by elected officials and City Employees and provide a status report to the Finance & Citywide Projects Committee.

Commissioner Jonah Wolfson introduced Frank Del Vecchio, Miami Beach Resident, who presented the item. Mr. Del Vecchio proposed that the City Commission implement a standard of conduct prohibiting the City's Officers and Employees from accepting a gift, favor or service discounted below fair market value for an entity doing business with the City or from a lobbyist. Mr. Del Vecchio provided examples from the United States Department of Justice Ethics Office Handbook on acceptance of gifts by federal employees. Discussion ensued. City Attorney Jose Smith stated that Miami-Dade County is currently reviewing the issue. The Committee recommended that Administration monitor the county regarding this issue and provide a status report to the Finance & Citywide Projects Committee.

3. Discussion regarding Security Alliance

ACTION

The Committee recommended that the Administration begin the Request for Proposals (RFP) process for security services and include the new criteria mentioned in the meeting as part of the evaluation process.

Procurement Division Director Gus Lopez presented the item.

Beginning in or around at least the late 1990's and continuing until in or around March 2007, the defendant, JAMES B. LOFTUS, JR., and Brian W. Ouellette occupied high-level security positions at Rooms To Go ("RTG"), which was a Florida corporation with its principal place of business in the Middle District of Florida. In those positions, the defendant and Ouellette were given substantial discretion by RTG to handle security-related matters entrusted to them.

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

To conceal and cover-up these kickbacks from RTG, the defendant and Ouellette, among other things, secretly prepared sham invoices addressed to Security Alliance and Choice Management which fraudulently sought payment for "consulting" services, and which required that such payments be made indirectly to the defendant and Ouellette

CEO 92-33 -- July 17, 1992

Page 1 of 4

CEO 92-33 -- July 17, 1992

GIFT ACCEPTANCE/DISCLOSURE**CITY COMMISSIONERS RECEIVING TICKETS TO EVENTS AT CITY-OWNED AUDITORIUM**

To: *(Name withheld at the person's request.)*

SUMMARY:

City commissioners have received a gift, not a benefit of office, when the city gives them a block of tickets to performances at a municipally-owned theater, which tickets the city receives as a condition of its lease agreement with the producers. However, there is no indication that the tickets are indirect gifts from a lobbyist or from a partner, firm, employer, or principal of a lobbyist who lobbies the city commission, and there is no indication that the city contract manager is a lobbyist who lobbies the city commission for purposes of Section 112.3148, Florida Statutes. Thus, the members of the city commission may accept the sets of tickets, but where the combined face value of a set of tickets exceeds \$100, the commissioners must disclose them quarterly on CE Form 9. CEO 92-12 is referenced.

QUESTION:

Where a city, by contract, receives tickets to events at the city-owned theater, and where the tickets are divided among the members of the city commission for either their personal use or to distribute to others at their discretion, have the members of the city commission received gifts which are subject to the gift acceptance and disclosure provisions of Section 112.3148, Florida Statutes?

Your question is answered in the affirmative.

In your initial letter of inquiry and through subsequent correspondence and discussions with our staff, we are advised that the City of Miami Beach owns and operates a performing arts theater where Broadway shows, ballets, and concerts are offered to the public. You advise that the City has entered into two different contracts involving performances at the theater. For non-Broadway shows, the City has a contract with a management company which specifies that the City will be provided 26 tickets per performance for every event staged at the theater. For Broadway shows, the City contracts directly with a producer, and that contract requires the producer to give the City 20 tickets for the opening night performance and 10 tickets for each performance during the remainder of the show's run. Thus, for a typical Broadway show, the producer gives the City a total of 170 tickets, and each Commissioner receives 20 tickets.

The distribution of tickets is effected in the following manner. Prior to any show or event, the City Contract Administrator places each Commissioner's allotment of tickets in an envelope, and the envelopes are distributed to the Commissioners by personnel in the Mayor's Office. Commissioners are then free to use or distribute the tickets to others at their discretion. You question the applicability of the gift provisions contained in Section 112.3148, Florida Statutes, as well as the Commission's rules promulgated in Chapter 34-13, Florida Administrative Code, to this situation.

Section 112.312(12), Florida Statutes, contains the following definition of the term "gift":

'Gift,' for purposes of ethics in government and financial disclosure

required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for his benefit or by any other means, for which equal or greater consideration is not given, including:

10. Entrance fees, admission fees, or tickets to events, performances, or facilities.

14. Any other similar service or thing having an attributable value not already provided for in this section.

'Gift' does not include:

1. Salary, benefits, services, fees, commissions, or expenses associated with the recipient's employment.

We are of the view that the tickets provided to the City as a condition of the contracts the City enters into with its management company and producers would not be considered "gifts" to the City, as it appears that they are a part of the consideration the City receives for leasing its auditorium. Even if we did consider the tickets to be gifts to the City, Section 112.3148, Florida Statutes, does not prohibit the giving of gifts to governmental entities. See CEO 92-12.

With regard to the complimentary tickets that the City receives and then distributes to its Commissioners, Rule 34-13.210(2), Florida Administrative Code, provides:

Where the donee is being reimbursed or provided by his public agency for travel or expenses incurred in the performance of public duties, the donee has not received a gift when a public purpose for the expense exists. Salary, benefits, services, fees, or other expenses received by a public officer or employee from his or her public agency do not constitute gifts.

It is our view that these tickets would not be considered "benefits" associated with the City Commissioners' public office. Twenty tickets to a Broadway show was not the type of benefit we had in mind when we promulgated this rule. The use of the term "benefits" in Rule 34-13.210 was intended to convey those benefits typically associated with one's employment, such as health insurance, sick leave, or paid parking. It was not intended to include such perquisites as a large number of tickets to theater performances. Thus, we are of the view that these tickets are not a benefit of office that would preclude them from being considered a gift.

The focus of our discussion then turns to Section 112.3148, Florida Statutes, which provides in relevant part:

(2)(b) Lobbyist means any natural person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a reporting individual or procurement employee or his agency or seeks, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the reporting individual or procurement employee or his agency. With respect to an agency that has established, by rule, ordinance, or law, a registration or other designation process for persons seeking to influence decisionmaking or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, the term "lobbyist" includes only a person who is required to be registered or otherwise designated as a lobbyist in accordance with such rule, ordinance, or law or who was

during the preceding 12 months required to be registered or otherwise designated as a lobbyist in accordance with such rule, ordinance, or law.

(4) A reporting individual or procurement employee or any other person on his behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s. 106.011, or from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that reasonably necessary to arrange for the transfer of custody and ownership of the gift.

(5) A political committee or a committee of continuous existence, as defined in s. 106.011; a lobbyist who lobbies a reporting individual's or procurement employee's agency; the partner, firm, employer, or principal of a lobbyist; or another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist is prohibited from giving, either directly or indirectly, a gift that has a value in excess of \$100 to the reporting individual or procurement employee or any other person on his behalf; however, such person may give a gift having a value in excess of \$100 to a reporting individual or procurement employee if the gift is intended to be transferred to a governmental entity or a charitable organization.

(6)(a) Notwithstanding the provisions of subsection (5), an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, an airport authority, or a school board may give, either directly or indirectly, a gift having a value in excess of \$100 to any reporting individual or procurement employee if a public purpose can be shown for the gift;

(b) Notwithstanding the provisions of subsection (4), a reporting individual or procurement employee may accept a gift having a value in excess of \$100 from an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, an airport authority, or a school board if a public purpose can be shown for the gift;

Subsection 112.3148(4) would prohibit a City Commissioner from accepting a gift with a value in excess of \$100 from a lobbyist who lobbies the City, or from the partner, firm, employer, or principal of a lobbyist. While we recognize that public employees can and do attempt to influence the official actions of the officers of their public agency, we do not believe that the definition of "lobbyist" was intended to encompass such persons or that their duties with respect to their own agencies constitute "lobbying." Nor is there any indication that the City Contract Manager in this instance is acting on behalf of a partner, firm, employer, or principal of a lobbyist who lobbies the City. Accordingly, it is our view that Section 112.3148(4), Florida Statutes, is inapplicable to this scenario.

Subsection 112.3148(5) prohibits a lobbyist who lobbies the City of Miami Beach, or the partner, firm, employer, or principal of a lobbyist, from directly or indirectly giving a gift with a value in excess of \$100 to members of the City Commission. For the reasons stated in the foregoing paragraph, we do

not consider the City Contract Manager as a lobbyist who lobbies the City Commission, or as the partner, firm, employer, or principal of a lobbyist. Thus, Subsection 112.3148(5), is also inapplicable to our analysis.

With regard to Subsection 112.3148(6), Florida Statutes, we construe this provision as an exception to the prohibitions contained in Subsections 112.3148(4) and 112.3148(5), Florida Statutes, for governmental entities who are engaged in lobbying activities. For example, were the City to employ a lobbyist to lobby the Legislature for additional funding for the arts and where the City gave each member of the Legislature theater tickets worth more than \$100, then Section 112.3148(6), Florida Statutes, would be applicable and a public purpose would have to exist both for the City to be able to give the tickets to the members of the Legislature, and for the legislators to be able to accept the tickets. We do not view the situation before us to be one of this type, and we therefore find Section 112.3148(6) to be inapplicable.

As neither Subsections 112.3148(4), (5), nor (6) appear to prohibit the members of the City Commission from accepting the tickets the City receives pursuant to its various contracts, we are of the view that the City Commissioners may accept the tickets but must disclose them in accordance with Subsection 112.3148(8), Florida Statutes. Thus, where the face value of each set of tickets a Commissioner receives exceeds \$100, the Commissioner must disclose the sets of tickets quarterly on CE Form 9, which we have promulgated specifically for this purpose.

Your inquiry is answered accordingly.

RESOLUTION NO. 93-20694

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, PROVIDING THAT COMPLIMENTARY TICKETS FOR PERFORMANCES AND EVENTS AT TOPA AND THE CONVENTION CENTER WHICH WOULD OTHERWISE BE RECEIVED BY THE MAYOR, CITY COMMISSIONERS AND CITY EMPLOYEES SHALL HEREAFTER BE MADE AVAILABLE TO DISADVANTAGED YOUTHS, DISABLED PERSONS, SENIOR CITIZENS AND OTHER INDIVIDUALS WHO DO NOT HAVE THE FINANCIAL ABILITY TO PURCHASE TICKETS FOR CULTURAL EVENTS.

WHEREAS, pursuant to contracts between the City of Miami Beach and producers and promoters of performances and events of the City of Miami Beach Theater of the Performing Arts (TOPA) and the Miami Beach Convention Center, the Mayor, City Commissioners and City employees currently receive tickets for various events and performances occurring at those facilities; and

WHEREAS, the City Commission believes that these tickets should be utilized for the benefit of disadvantaged youths, disabled persons, senior citizens of the City and other individuals who do not have the financial ability to purchase tickets for cultural events; and

WHEREAS, it is fitting and proper that cultural events should continue to be available to disadvantaged youths, disabled persons, our fine senior citizens and other individuals who do not have the financial ability to purchase tickets for cultural events; and

WHEREAS, City sponsored programs for the use and benefit of the disadvantaged youths, disabled persons, senior citizens and other individuals who do not have the financial ability to purchase tickets for cultural events are necessary and proper; and

WHEREAS, organizations, such as the Miami Heat, have created programs for this purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that:

- 1) That the following City Officials shall receive a maximum of four (4) complimentary tickets for one performance of all new productions or events at TOPA and the Convention Center for which such tickets are available:
 - (1) Mayor and City Commissioners
 - (2) City Manager

(3) City Attorney

The following City officials shall receive a maximum of two (2) complimentary tickets for one performance of all new productions or events at TOPA and the Convention Center for which such tickets are available.

(1) Senior Assistant City Manager, Contract Administrator

(2) Chief Deputy City Attorney

2) Any and all remaining tickets shall be donated to disadvantaged youths, disabled persons, senior citizens of Miami Beach and other individuals who do not have the financial ability to purchase tickets for cultural events.

3) The City administration shall develop guidelines and appropriate procedures with regard to the administration of this program and shall submit said guidelines and appropriate procedures to the City Commission for final approval.

PASSED and ADOPTED this 6th day of January, 1992.

ATTEST:

Richard E. Brown
City Clerk

[Signature]
Mayor

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FORM APPROVED
LEGAL DEPT.

By [Signature]

Date 1/8/1992

ROUGH DRAFT, NOT FOR DISTRIBUTION

R-7. RESOLUTIONS (CONTINUED)

- G. DISTRIBUTION OF COMPLIMENTARY TOPA/CONVENTION CENTER EVENT TICKETS.
1. DECEMBER 29, 1992, MEMORANDUM FROM MAYOR SEYMOUR GELBER.
 - a. A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, PROVIDING THAT COMPLIMENTARY TICKETS FOR PERFORMANCES AND EVENTS AT TOPA AND THE CONVENTION CENTER WHICH WOULD OTHERWISE BE RECEIVED BY THE MAYOR, CITY COMMISSIONERS, AND CITY EMPLOYEES, SHALL HEREAFTER BE MADE AVAILABLE AT A DISCOUNT TO SENIOR CITIZENS RESIDING IN MIAMI BEACH, WITH THE REVENUE FROM SAID SALES TO BE ADDED TO THE ONE DOLLAR TICKET SURCHARGE BANK ACCOUNT FOR EXPANDED FUTURE SENIOR CITIZEN DISCOUNTS BY THE ADDITIONAL PURCHASE OF TICKETS FOR GENERAL PERFORMANCES AND RESALE TO SENIOR CITIZENS RESIDING AT MIAMI BEACH AT A DISCOUNT OF 50% OR MORE. (REQUESTED BY MAYOR SEYMOUR GELBER)
 2. DECEMBER 29, 1992, MEMORANDUM FROM CITY ATTORNEY.
 - a. A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, PROVIDING THAT COMPLIMENTARY TICKETS FOR PERFORMANCES AND EVENTS AT TOPA AND THE CONVENTION CENTER WHICH WOULD OTHERWISE BE RECEIVED BY THE MAYOR, CITY COMMISSIONERS, AND CITY EMPLOYEES, SHALL HEREAFTER BE MADE AVAILABLE TO DISADVANTAGED YOUTHS, DISABLED PERSONS, SENIOR CITIZENS, AND OTHER INDIVIDUALS WHO DO NOT HAVE THE FINANCIAL ABILITY TO PURCHASE TICKETS FOR CULTURAL EVENTS. (REQUESTED BY COMMISSIONER NEISEN KASDIN)
 3. DECEMBER 29, 1992, MEMORANDUM FROM CONTRACT ADMINISTRATOR NORMAN LITZ, TO COMMISSIONER SUSAN GOTTLIEB, REGARDING COMMUNITY BENEFIT COMMITTEE (CBC) FOR THE PERFORMING ARTS, WITH RESOLUTIONS, FINANCIAL STATEMENTS, MINUTES, ETC.

ACTION: Joel Arnold, PTG-Florida, Inc. counsel and CBC Chairman, advised that PTG believed that resale of free tickets was improper; that PTG suggested (endorsed by CBC) that the City Manager establish the ticket distribution procedure, with the users afforded an opportunity to discuss any proposed procedure before implementation.

Commissioners offered several suggestions, including:

- That the Commission address the issue of the number of complimentary tickets when considering renewal of the PTG contract. (Comr. Gottlieb)
- That the Commissioners request staff to advise producers that it would no longer accept the tickets. (Comr. Pearlson)
- That the Commission adopt a resolution indicating that it no longer wished to receive these quantities of tickets, and ask a committee to develop a plan for Commission's consideration that would address the issues raised. (Mayor Gelber)
- That the Administration/SMG survey the ticket distribution policy/practice of other such facilities and submit report/recommendation for Commission's consideration. (Comrs. Gottlieb and Kasdin)

In response to Commissioner Gottlieb's inquiry, the City Attorney advised that although no resolution had been adopted creating the policy, it was written into the contracts which were authorized by resolution, thereby approving the receipt of tickets by the City. Commissioner Pearlson expressed concern that under either proposal, the tickets would continue to flow to staff who would be making the contracts with producers.

1. No action taken on proposed resolution.
2. Resolution No. 93-20694 adopted. (Vote: 7-0.)

Commissioner Pearlson advised the Administration that he no longer wished to receive any tickets, and it may direct them as it wished (suggested they be given to the Personnel Director for an employee incentive and employee-of-the-month program which he was attempting to create with the new Personnel Director). Commissioner Gottlieb advised of her 12/23/92 letter to the City Manager stating that she would no longer accept tickets for any event in TOPA; and Commissioner Eisenberg advised that he had sent a similar letter to the Manager.

During the discussion, Commissioner Eisenberg expressed dissatisfaction with the inaccuracy and erroneous impression left to the reader by the *Miami Herald* articles on this matter.

Note: 1/5/93 letter from PTG-Florida, Inc., expressing concerns regarding the proposal to disburse tickets via the Citizens Benefit Committee, submitted at meeting and filed with the records.

Also see related item R-6B.

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST**DRAFT**Guidelines and recommendations regarding "public benefit" clauses in certain government contracts.

Pursuant to the Ethics Commission's enabling ordinance¹ the purpose of the Ethics Commission is to serve as the guardian of the public trust by, among other things, educating the public... elected and appointed officials and other public servants as to the required standards of ethical conduct. The Ethics Commission is empowered to exercise all powers either specifically granted or necessary in the exercise of those enumerated powers. Accordingly, after the conclusion of a joint investigation by the Public Corruption Unit of the Miami-Dade State Attorney's Office (SAO) and the Commission on Ethics (COE); we felt it appropriate to follow up on concerns identified during the investigation and suggest recommendations and guidelines to address those concerns. The investigation involved a grant dispute between the City of Miami Beach (CMB) and the New World Symphony (NWS). The initial complaint was made by a prominent local attorney and former Miami Beach mayor who was also the Chairman of the Board of Trustees of the NWS. The allegation was that the CMB was refusing to pay the NWS monies due under a Grant-in-Aid Agreement (GIAA) unless the NWS provided the Mayor, Commissioners, and CMB Senior Administrative staff with complimentary tickets to NWS performances. The SAO Close-Out memo is attached hereto as Exhibit 1.

Although the joint investigation did not uncover any violation of criminal laws, it did expose flawed policies that have resulted in unwarranted and inappropriate benefits for elected and appointed officials. Elected and appointed officials can exploit these policies which provide them with thousands of dollars worth of tickets to coveted events sponsored by private entities that have a contractual relationship with the local governments which these officials serve. Moreover, further investigation has shown that several other municipalities engage in similar

¹ Section 2-1066 of the Code of Miami-Dade County.

ticket distribution plans. These distribution plans sometimes amount to no more than a thinly disguised form of political favoritism used by elected officials to curry favor with supporters and to build political support. The Commission on Ethics and Public Trust finds these practices troublesome and urges all local governments to consider the recommendations set forth in this report.

The City of Miami Beach:

The investigation found that the practice by the City of receiving complimentary tickets to City-owned venues was officially sanctioned with the passage of CMB Resolution 93-20694, which reads as follows:

A Resolution of the City Commission of the City of Miami Beach, Florida, providing that complimentary tickets for performances and events at TOPA² and the Convention Center which would otherwise be received by the Mayor, City Commissioners, and City employees, shall hereafter be made available to disadvantaged youths, disabled persons, senior citizens and other individuals who do not have the financial ability to purchase tickets for cultural events.

Now, therefore, be it resolved by the City Commission of the City of Miami Beach, Florida, that:

1) The following City officials shall receive a maximum of four (4) complimentary tickets for one performance of all new productions or events at TOPA and the Convention Center:

- (1) Mayor and members of the City Commission*
- (2) City Manager*
- (3) City Attorney*

The following City officials shall receive a maximum of two (2) complimentary tickets for one performance of all new productions or events at TOPA and the Convention Center for which such tickets are available:

- (1) Senior Assistant City Manager, Contract Administrator*
- (2) Chief Deputy City Attorney*

2) Any and all remaining tickets shall be donated to disadvantaged youths, disabled persons, senior citizens of Miami Beach and other individuals who do not have the financial ability to purchase tickets for cultural events.

3) The City administration shall develop guidelines and appropriate procedures with regard to the administration of this program and shall submit said guidelines and appropriate procedures to the City Commission for final

² Theater of the Performing Arts.

approval... (emphasis added)

While CMB Resolution 93-20694 allows for the receipt of complimentary tickets to events at only the TOPA and the Convention Center, both City-owned facilities, this resolution has been used by CMB Commissioners and employees to justify the receipt of complimentary tickets to many events at CMB venues including the NWS.

In 1993, the then City Manager established a "Promotional Ticket Policy." The policy mirrored the resolution's eligibility requirements, stating that the complimentary tickets be first given to the Mayor, the Commission, the City Attorney, the Assistant City Managers, the Chief Deputy City Attorney, and the Contract Administrator, and that any remaining tickets be donated to disadvantaged youths, disabled persons, and senior citizens. The policy also established the following guidelines:

- 1) A committee appointed by the City Manager shall meet to establish a list of organizations and/or groups eligible to receive promotional tickets... the list shall be updated every quarter.*
- 2) A current list of local organizations or civic groups shall be maintained from which a rotation of recipients shall exist.*
- 3) Donated promotional tickets may be used by organizations solely to promote fundraisers...*
- 4) No more than ten (10) promotional tickets shall be issued to any one organization for one show/event.*
- 5) When a representative from an organization receives the tickets he/she will sign a receipt. Organizations will be given a form to be completed and returned to the City Manager's office within two weeks of the show/event... If the organization does not return the completed form, then the City Manager will not issue any more tickets to that organization...*

It should be noted that virtually none of the CMB employees or elected officials (except for one Assistant City Manager) interviewed during the investigation, were aware of the City's own "Promotional Ticket Policy." Not even the current City Manager, who, according to the policy, is responsible for managing the "Promotional Ticket Program," was aware of its existence. Apparently, the only part of the policy implemented was the distribution of complimentary tickets to the Mayor, Commissioners, and CMB senior staff. No record of the appointment of a ticket distribution committee, nor the creation of a list of organizations authorized to receive tickets, was found.

The investigation found that the CMB City Manager acts as the distribution point for all complimentary tickets received by the City. Once tickets come to his office, they are then distributed among the Mayor and City Commissioners. A distribution log is maintained. Once the tickets get into the hands of the elected officials, however, they then have unfettered discretion to do with them what they please. The investigation revealed that many Commissioners kept certain tickets for their personal use. Often, however, Commissioners gave their allotted tickets away to friends, family, staff or other constituents. Certain anecdotal evidence gathered during the course of the investigation suggests that, quite often, the recipients are targeted groups of senior citizens who are made well aware of which Commissioner's beneficence is responsible for the free tickets. The political goodwill derived from these acts of taxpayer subsidized generosity can itself be perceived as a "gift" to the elected official. Utilized by elected officials, this practice is likely to lead to political pandering, including the currying of favor with blocks of potential voters and/or other influential individuals within the electorate.

It is clear that the CMB is not adhering at all to the spirit of its own resolution (93-20694) in that few of the intended recipients i.e. disadvantaged youths, disabled persons, senior citizens of Miami Beach and other individuals who may not have the financial ability to purchase tickets for cultural events, end up benefiting from these free tickets. "Public Benefits" should, in our view, benefit the actual public at large. It is clear that the primary beneficiaries of these "public benefits" are the government officials; this needs to end. Moreover, this type of ticket distribution system appears to be the same type of system, that the Florida State Ethics Commission (FSEC) opined, results in "gifts" being given to elected officials.

Distribution of tickets obtained through "public benefit" clauses:

We recommend that elected official be entirely removed from the process involving distribution of complimentary tickets. All local government entities that have contractual relationships wherein their municipality receives "public benefits," including, but not limited to, event tickets, should adopt a policy or procedure that insulates elected and appointed officials from involvement in the distribution process of the benefits, and limits their receipt of complimentary tickets to occasions when there is a public purpose served by their attendance.

We underscore that, when public power is executed through government contracts to extract a benefit, such as complimentary tickets, from a private party, there can be no permissible purpose for such a benefit other than a public one. Such publicly obtained assets do not differ in character from any other public property such as tax revenue or public buildings. Use of such assets for anything other than public purposes is ethically and legally problematic.

In light of the City of Miami Beach investigation, the Ethics Commission surveyed the "public benefit" practices in several other municipalities. We learned that, in the City of Miami, tickets are routinely provided to elected officials and the City Manager for events at, among other locales, the James L. Knight Center, Bayfront Park and the Sony Ericsson Tennis Tournament (SETT), through a similar distribution procedure.

An Assistant City Manager advised the COE that in 2011, Commissioners, the Mayor and the City Manager each received two (2) tickets per session for a total of twenty-two (22) sessions plus a parking space for the SETT. A City official advised the COE that the SETT tickets are provided as part of an agreement between the City's Department of Asset Management and Miami-Dade County for use of the Marine Stadium parking lot. One elected official in the City advised that he gives the tickets away to "friends...and other important people." Thus, we see another example of elected officials using the so-called "public benefits," in a manner that inures to their personal or political benefit. In practice, the "public" derives little, if any, benefit, from such a self-interested mode of distribution.

Inquiry into similar practices by the City of Homestead (COH) revealed that COH has lease agreements for the Homestead Sports Complex and the Homestead Speedway (the "Lease Agreements"). For each event held at the complex (pursuant to the City's lease agreement with La Ley Sports at the City of Homestead, Inc.), COH receives: the use of a designated skybox, forty (40) skybox tickets, and twenty (20) parking passes. Pursuant to COH's agreement with Homestead Motorsports Joint Venture and Ralph Sanchez, COH has been granted: eighty (80) complimentary general admission tickets, the use of two (2) skyboxes, and complimentary tickets for each seat in the skyboxes for each event held at the speedway. In addition, employees of COH are granted a twenty-five percent (25%) discount off of the face value of a ticket to all motorsports events held at the speedway. Each eligible employee may purchase a maximum of two (2) discounted tickets.

One COH official advised the COE that such tickets are routinely left in his office and that he then distributes those tickets to City officials. This individual said he would appreciate formal guidance from the Ethics Commission on this issue.

As another example of the often times inappropriate use of these "public benefits," in 2008, a COH Councilperson was advised by the COE that it would be inappropriate for a Councilperson to offer a candidate running for State office the opportunity to hold a fundraiser at the designated City skybox and only be charged the discounted City rate.

An inquiry into the policies of Miami-Dade County's related policies was also made. According to a representative of the Adrienne Arsht Center (AAC), there is no policy that requires the Performing Arts Center to provide a certain number of tickets to each performance to County officials. However, if the Arts Center/AAC has, what they term, "excess inventory," they do contact County Commissioners' offices to obtain the names of non-profit and/or other charity type organizations they can donate the excess inventory tickets to. The tickets themselves do not pass through the hands of County officials. Once again, however, we find that the practice of making the tickets available to a private, non-profit, group upon the mere designation by a single elected official, rather than a neutral, non-political person or entity, is similarly questionable and problematic.

COE interviewed the County's Director of Cultural Affairs who advised that he "scrupulously avoids" having any type of "public benefit" clauses in any of the contracts between the County and any of the cultural arts groups that perform at various County owned facilities. He further advised that many arts groups themselves often provide tickets directly to underprivileged groups on their own but his office does not engage in any distribution of tickets to elected officials nor requires that any number of tickets be provided contractually.

The City of Coral Gables (CG) was asked about its policy concerning the issuance of tickets under similar agreements. The COE found that the Actors Playhouse (Miracle Theater) in CG manages to avoid interference from elected officials in their distribution of public benefit tickets. The Executive Director of the Miracle Theater advised that the Playhouse has a management agreement with CG. In the agreement, the Playhouse agrees to give 500 tickets to the community. According to the Executive Director, the Playhouse gives away thousands of tickets every year to not-for-profit agencies, schools, and other groups that represent individuals

who cannot afford to buy tickets. She advised that the Playhouse recently gave away 60 tickets to Northwestern High School students (value of more than \$1,000.00).

The decision as to which tickets to give away and to whom ultimately lies with the Executive Director. The Executive Director claimed that CG does not interfere with the Playhouse's distribution of the tickets. The City does not monitor the Playhouse's distribution of complimentary tickets. She advised that no tickets go to the City.

When such benefits are provided wholly through the discretion of a non-governmental entity that is not performing a government function, there is no legal prohibition to consider pursuant to the Miami-Dade County Conflict of Interest and Code of Ethics ordinance, provided that there is no connection between the acceptance of the proffered tickets and any action to be taken by the recipients in his or her public role. The acceptance of such tickets by a public official does, of course, subject the official to the gift reporting requirements where the value of the tickets exceeds \$100.00.

Attendance as part of official city/county business:

Investigation also determined that, in addition to the myriad number of tickets provided pursuant to "public benefit" clauses, elected and appointed officials are invited to attend numerous events as a matter of "official city business."

Attendance at "official city business" events generally does not require gift disclosure as long as the elected/appointed official is, in fact, performing some bona fide official function at the event (see generally, FSEC opinion 01-019). However, it should be noted that mere attendance at an event by an elected official does not magically transform the event into official city business. "Official functions" can include, but are not limited to: participating in a ribbon cutting, giving a speech, or leading the pledge of allegiance.

There may also be occasions when, due to the presence of visiting dignitaries or other special invited guests, it will be appropriate for officials to attend an event to socialize with such persons as representatives of the local government. Such occasions, however, should be limited to special occasions rather than regularly scheduled events, and ought to include some official designation by the county/city government to those officials in attendance.

It is unlikely that mere, passive attendance by an elected official to such an event, without either some official role in the event, or, at a minimum, recognition as part of an official program of the event, can be considered attendance at an "official function."

Ramifications under gift rules:

Irrespective of the method of distribution employed by a government entity, elected officials must be cognizant of State and local gift rules when accepting tickets to an event. As previously discussed, if an elected official is attending a function as official city/county business, the value of the ticket or function is not considered a gift and therefore, the elected official is not required to disclose it as such.

It is important to note, however, that in CEO-92-33, the FSEC held that City Commissioners have received a gift, not a benefit of office, when the city gives them a block of tickets to performances at a municipally-owned theater, which tickets the City receives as a condition of its lease agreement with the producers. Where a City, by contract, receives tickets to events at the City-owned theater, and where the tickets are divided among the members of the City Commission for either their personal use or to distribute to others at their discretion, the members of the City Commission receive gifts which are subject to gift acceptance and disclosure provisions.

Also, a ticket received directly from a non-government entity outside of any previous agreement between the entity and the local government, is subject to the disclosure requirements set out in Section 2-11.1(e) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (reproduced below in its entirety).

Lastly, pursuant to Section 112.3148(4), Florida Statutes:

"A reporting individual³...is prohibited from knowingly accepting, directly or indirectly, a gift...from a lobbyist who lobbies the reporting individual's...agency...if he or she knows or reasonably believes that the gift has a value in excess of \$100..."

³ "Reporting individual" includes "(a) (1.) Every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office." Section 112.3145(1), Florida Statutes.

Thus, it is important that elected officials exercise extreme caution in accepting tickets from an individual registered to lobby in their particular government as State law outright prohibits the acceptance of such, if the value is in excess of \$100.00.

Relevant Ordinances:

Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Miami-Dade County Code Section 2-11.1 states in pertinent part:

“(e) Gifts.

(1) *Definition.* The term “gift” shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single sitting or meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift.

(2) *Exceptions.* The provisions of Subsection (e) (1) shall not apply to: (a) Political contributions specifically authorized by state law; (b) Gifts from relatives or members of one’s household; (c) Awards for professional or civic achievement; (d) Material such as books, reports, periodicals or pamphlets which are solely informational or of an advertising nature; (e) Gifts solicited by County employees or departmental personnel on behalf of the County in performance of their official duties for use solely by the County in conducting its official business; (f) Gifts solicited by Commissioners on behalf of the County in performance of their official duties for use solely by the County in conducting its official business; (g) Gifts solicited by Commissioners, or their staff members, on behalf of any nonprofit organization for use solely by that organization where neither the Commissioner nor his or her staff receives any compensation as a result of the solicitation. As used in this subsection, a “nonprofit organization” shall mean any entity described in section 501(c) (3) of the Internal Revenue Code (the “Code”) that is tax exempt under section 501(a) of the Code. As used in this subsection, “compensation” means any money, gift, favor, political contribution, thing of value or other financial benefit.

(3) *Prohibitions.* A person described in Subsection (b) (1) through (6) shall neither solicit nor demand any gift. It is also unlawful for any person or entity to offer, give, or agree to give to any person included in the term defined in Subsection (b) (1) through (6) or for any person included in the term defined in Subsection (b) (1) through (6) to accept or agree to accept from another person or entity, any gift for or because of: (a) An official public action taken or to be taken, or which could be taken; (b) A legal duty performed or to be performed, Or which could be performed; or (c) A legal duty violated or to be violated, or which could be violated by any person included in the term defined in Subsection (b) (1).

(4) *Disclosure.* Any person included in the term defined in Subsection (b) (1) through (6) shall disclose as provided herein any gift, or series of gifts from any one person or entity, having a value in excess of one hundred dollars (\$100.00). Said disclosure shall be made by filing a copy of the disclosure form required by Chapter 112, Florida Statutes, for "local officers" with the Clerk of the Board of County Commissioners simultaneously with the filing of the form with the Secretary of State."

City of Miami Code, Section 2-613 states in pertinent part:

"Every officer, official or employee of the city, including every member of any Board, commission or agency of the city, is expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is or might be awarded, any rebate, gift, money or anything of value whatsoever, except where given for the use and benefit of the city."

Conclusion:

It is important to note that the problem we perceive, i.e., the unfair advantage provided to elected officials utilizing these tickets as an extension of their self-promotional or campaign activities, is not an issue the Ethics Commission has ever addressed in the past. It appears though that there is simply no good reason why event tickets received by a municipality through a contractual "public benefits" clause or through any other understanding between the municipality and a private entity, should pass through the hands of elected officials. It is recommended that these tickets be distributed to the public by an objective, non-political mechanism. Such a neutral process would remove any suggestion of political or other non-public benefit to the officials. This recommendation is not intended to suggest that distribution of complimentary tickets by public officials is an automatic or per se violation of the ethics ordinance or of other applicable ethics rules. It is conceivable that some public officials distribute such benefits in a manner that is non-political and otherwise appropriate. However, the temptations that are inherently likely to cause ethical problems in any distribution of public benefits are heightened by a policy that allows for discretionary distribution of such benefits by politicians without oversight or accountability. The difficulty in fashioning an ethically unassailable policy under these circumstances has led to the recommendations contained in this report.

One of the ways we suggest that tickets be made available to the public is to post an announcement on the city/county's website or other publicly advertised medium, notifying the public of when tickets are available and allowing individuals interested in obtaining them to seek them from a non-political source, for example, the City/County Clerk's office. The tickets could be either given away or sold at a discounted rate. Another method might be to follow the Promotional Ticket Policy that the City of Miami Beach adopted but never implemented. This method would seem to ensure that youth organizations, seniors or low income groups get to reap the majority of the public benefit, consistent with the true intention of such contract provisions. It would deny elected officials the undeserved opportunity to grandstand or otherwise use the giveaway of tickets to further their personal or political agendas. Yet another suggested process is to follow CG's example and remove the government entity from the process entirely.

Again, we reiterate that "public benefits" should not inure to the personal, private benefit of elected and appointed officials. These "public benefit" clauses should not be interpreted as another opportunity for elected and appointed officials to reap "perks of office" or be utilized by them for political or other self-aggrandizing purposes. Public benefits should truly benefit the public-at-large, not just certain influential or well-connected individuals.

We understand that the SEC has opined that officials may receive tickets pursuant to "public benefit" clauses, as long as they report them pursuant to the gift reporting requirements. We want to underscore, by this policy statement, that we believe that elected and appointed officials should have no need to report benefits received under "public benefit" clauses because they should not be the recipients of these benefits in the first place, unless they are being used by them in their official roles, as previously described.

Public benefits should benefit the public; they should not be used by elected officials to ingratiate themselves with supporters. It is unethical, in our view, for officials to dole out benefits meant for the public-at-large in a manner that serves the officials personal interests rather than the public's interest.

We hope that local governments will take these recommendations seriously and expeditiously implement changes in accordance with this report. The frequency with which the issue of distribution of "public benefits" has arisen in the past and continues to arise, including inquiries to this agency, has led to this attempt to clarify and explain the ethical issues involved.

To that end, we hereby resolve to adopt as a set of "best practices" the recommendations set forth in this report.

Moreover, we will continue to examine the ticket distribution policies of local governments to ensure that they are in conformance with applicable ethics rules. While such policies need not be identical, we believe that adherence to the guidelines and recommendations herein would insure such conformance. Further, we will investigate any instance brought before us, where it appears that "public benefits" are being exploited for the benefit of elected or appointed officials for possible violations of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance. In sum, we recommend as follows:

1. Municipalities and local governments may have "public benefit" clauses in contracts between certain entities and the respective cities. The "public benefits" however, should benefit the public-at-large.
2. Tickets or other "public benefits" should be distributed in a non-political, neutral manner with no interference from local officials.
3. If local officials are the recipient of tickets or other benefits, and the value of the benefits exceed \$100.00, the official must comply with gift disclosure rules.
4. Local officials may not accept tickets with a value in excess of \$100.00 from any person registered to lobby the government which they serve. This is prohibited pursuant to Section 112.3148(4), Florida Statutes:

A reporting individual⁴ ...is prohibited from knowingly accepting, directly or indirectly, a gift...from a lobbyist who lobbies the reporting individual's...agency...if he or she knows or reasonably believes that the gift has a value in excess of \$100..."

5. If an official is appearing at an event in his or her official capacity, for a public purpose, the official need not report the attendance at the event as a gift. However, mere passive, spectator attendance at an event will not be regarded as attendance in one's official capacity for a public purpose. Attending an event merely to "be seen" by your constituency is not, in our view, a "public

⁴ "Reporting individual" includes "(a) (1.) Every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office." Section 112.3145(1), Florida Statutes.

purpose". Attendance at "official city business" events generally does not require gift disclosure as long as the elected/appointed official is, in fact, performing some bona fide official function at the event. Although the Miami-Dade County Ethics Commission may not have specifically opined in this area in a formal way, we agree with the rationale of the State Ethics Commission's opinions in FSEC opinions 91-46 and 01-019. Those opinions hold that a public or local officer who claims that [a] trip is not a gift is not relieved of the responsibility of determining that he is in fact giving quid pro quo, that is, that the value of his time and services are equal to or greater than the value of the trip.

Smith, Jose

From: Ramos, Miriam S. (COE) [MSRAMOS@miamidade.gov]
Sent: Tuesday, March 27, 2012 2:46 PM
To: Abbott, Daniel; Aguila, Raul; Alfonsin, Lourdes; Amuchastegui, Fernando; Armstrong, Bart; Barnes, Monica; Bieler, Alison; Bierman, Mitch; Bilzin Sumberg (Christine Bower); Bittner, Warren; Boksner, Aleksandr; Boniske, Nina; Boutsis, Eve; Brisibe, Emomotimi; Britton, Tiffany; Brochin, Robert; Bru, Julie; Caballero, Sylvia; Callejo, Karen; Chiaro, Maria J. ; Citrin, Charles; Cypen, Stephen; Dannheisser, Lynn ; Dickens, Sonia Knighton; Dumas, Carmen; Entin, Monica; Espino, Daniel; Everett, Cynthia; Forte, Iliana; Friedman, Chad; Galdos, Roland; Garcia-Toledo, Vicky; Geller, Joseph; Greco, John; Green, Chris; Greenberg, Murray; Grodnick, William; Hearn, John; Held, Gary; Helfman, Steve ; Herin, John; Hernandez, Elizabeeth; Herrera, Jose Pepe; Hialeah Attorneys; Hill, Marlon; Irizarri, Ramon; Jacobowitz, Jan; Jaramillo-Velez, Elsa; Jimenez, Jose; Kennedy, Harlene; Kuper, Richard; Leen, Craig; Lehr, Bruce; Lenard, Howard; Lloyd-Still, Robert; Maer, Miriam; Marks, Lloyd; Martinez-Esteve, Jorge (CAO); Mehaffey, Kathy; Mendez, Victoria; Meyers, Robert; Min, Barnaby; Moas, Joanna; Monestime, Regine; Morales, Jimmy; Negron, Melissa; Norris-Weeks, Burnadette; Olin, Jean; Ottinot, Hans; Palenzuela, Alexander; Papy, Don; Pepe, Thomas; Pizzi, Michael; Reyes, Ninoshka; Riesberg, Barbara; Rosewald, Rob; Rothstein, Steven; Santiago, Amy; Sarafan, Richard; Seiden, Jan; Sherman, Craig B.; Sibila, Estrella; Siegel, Darcee; Smith, Jose; Suarez-Rivas, Rafael; Switkes, Robert ; Trevarthen, Susan L.; Turner, Debora; Ventura, Ralph; Villalobos, Jose; Vizcaino, Diane; Weiss, Richard Jay; Wendell, Laura K.; Wolfe, Mel; Wolpin, David; Xiques, Veronica
Subject: Ethics Commission meeting summary



For Immediate Release: March 27, 2012
Contact: Joseph Centorino, Executive Director
(305) 350-0613 or centori@miamidade.gov

Ethics Commission supplements guidelines on free event tickets

As a follow up to guidelines it issued earlier this month for the official use of complimentary tickets by public officials, the Miami-Dade Commission on Ethics and Public Trust (COE) today adopted internal guidelines that clarify when a politician appears at a function in an "official capacity." The list of recommended public purposes for attending ticketed events includes hosting dignitaries, visitors and certain residents or groups and performing actions related to the official's position, such as introductions, presentations, ribbon cuttings and speech making.

The addendum to the guidelines* also suggests how public officials should distribute tickets that are received through a contractual agreement with a private entity in order to avoid possible misuse of public resources and bolster confidence in the integrity of government. Distribution may be first-come, first-serve or by a lottery. The tickets could be sold, with the proceeds designated to a public purpose. They could be allocated to non-profit agencies, schools, children's groups or community organizations. The tickets also could be used as rewards for citizens or employees making substantial contributions to the community or local government. The COE will continue to provide opinions to inquiring officials regarding whether other uses are ethically acceptable.

In a related matter, Ethics Commissioners found No Probable Cause to a complaint (C 12-07) that officials in the City of Miami violated County and City Ethics Ordinances by failing to report tickets they had received to events at the Knight Center, Bayfront Park and the Mayor's Ball, but also approved the drafting of a general Letter of Instruction for future reference. That letter will cite the clarification of "public purpose" and emphasize that officials are not entitled to the use of public benefit tickets as a matter of right. Public officials will be reminded they have an obligation to report gifts (which include tickets to events) and that when an official receives two tickets for use with a spouse or partner, they must be disclosed as the total value of the gift.

In other action at today's meeting, probable cause was found that a bus maintenance technician for the Miami-Dade Transit Department violated the "prohibition on outside employment" provision of the Conflict of Interest and Code of Ethics Ordinance. An investigation by the Inspector General's Office had found that Niranjana Seepersaud also worked for American Coach Lines from March 2007 through June of 2010, but failed to obtain a authorization for outside employment and did not file financial disclosure forms each year as required by the Code. After the case was turned over to the Ethics Commission, Seepersaud was told that if he complied with the filing requirement by the end of 2011, no action would be taken. He has failed to do so, and the complaint (C 12-08) will proceed.

Two complaints (C 12-09 and C 12-13) accusing Homestead Mayor Steven Bateman of misspending campaign funds at a liquor store were found "not legally sufficient." The charges are based on state law, which is outside the Ethics Commission's jurisdiction.

The same citizen accused Homestead Councilman Stephen Shelley of "exploitation of official position" by using a photo of himself on the city website for his business website. The city did pay for the original photograph. However, works of government are excluded from copyright protection, are considered in the public domain and can be used by anyone. For that reason, the complaint (C 12-16) was deemed "not legally sufficient."

Seven complaints were filed against Homestead Councilwoman Judy Waldman relating to her re-election campaign last fall. Four of them (C 12-17, C 12-18, C 12-19 and C 12-23) were deemed "not legally sufficient" because they don't violate any laws. Two complaints (C 12-20 and C 12-21) were found "not legally sufficient" because they allege violations of state election laws, which is outside of the jurisdiction of the COE. The final one (C 12-22) does not allege an action that violates the Ethics Code.

No Probable Cause was found to a complaint (C 12-06) accusing a Miami Lakes Council member of exploitation of official position. A resident of the city alleged that Richard Pulido demanded that, as a part of a municipal beautification project, trees be planted in front of his home first, and that he pressured the Town's park staff to provide free use of public land to a flag football league. The investigation found no substance to the charges, and the complaint was dismissed.

A complaint (C 12-03) filed against a lobbyist, John Morse, who registered on behalf of Ascent Healthcare Solutions in September of 2010 but failed to file the required Lobbyist Expenditure Statement by the July 1, 2011, deadline, was dismissed after he completed the form. Investigators learned he had moved out of town and never received the notices, but once they called him and explained his obligations, he responded.

In light of cases like that, which consume investigative resources, the Ethics Commission discussed changing the rule requiring lobbyists to file annual expenditure reports if they spent no funds during the reporting period. A proposed amendment to the Code of Ethics will be forwarded to the County Commission for its consideration.

A liability claims adjuster with Miami-Dade County's Risk Management division may provide consulting and inspection services for private clients, including some governmental entities, if he has permission from his supervisors. The COE response to Request for Opinion 12-07 stated that Kenneth McCoy's private clients cannot have interests adverse to the County or control or maintain property associated with the County. The RQO also recommends that, if granted permission, McCoy provide the names of his private clients to his supervisor.

The Ethics Commission was created in 1996 as an independent agency with advisory and quasi-judicial powers. It is composed of five members, serving staggered terms of four years each. Through a program of education, outreach and enforcement, the Commission seeks to empower the community and bolster public trust.

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*The addendum is posted on MiamiDadeEthics.com

Rhonda Victor Sibilia, Community Outreach Coordinator
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miamidade.gov 
"Delivering Excellence Every Day"

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MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
JOSE SMITH, CITY ATTORNEY

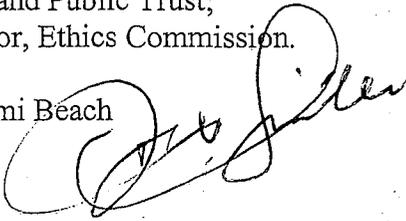
MEMORANDUM

TO: Miami-Dade County Commission on Ethics and Public Trust;
and Joseph Centorino Esq., Executive Director, Ethics Commission.

FROM: Jose Smith, Esq., City Attorney, City of Miami Beach

DATE: February 28, 2012

RE: Miami-Dade County Ethics Commission's Proposed Guidelines and Recommendations regarding "Public Benefits" Clauses in Certain Government Contracts.



As City Attorney for the City of Miami Beach, the following represents my legal analysis of the above-referenced draft Guidelines and Recommendations¹ proposed by Joe Centorino, Executive Director of the Miami-Dade County Commission on Ethics and Public Trust. In essence, Executive Director Centorino has concluded that:

- Tickets to events received by City officials pursuant to "Public Benefits" clauses in City contracts should not be distributed by individual city officials; and
- City officials' acceptance of tickets/attendance at such ticketed events is appropriate only when a public purpose is evidenced by active, official action rather than by "passive spectator attendance".

While it is undisputed that City resources (such as event tickets) may be used only where a "public purpose" exists, a municipality's policy determination concerning the manner of accomplishing such purpose should be left to the discretion of the City's governing body. Absent legislation specifically authorizing the County Ethics Commission to evaluate said policy, such determination is not subject to review by the Ethics Commission. Although Mr. Centorino's Proposed Guidelines address legitimate public concerns, the County Commission has not vested the COE with oversight authority governing a City Commission's determination of "public purpose". For that reason, the Proposed Guidelines are not appropriate for adoption by the COE.

¹ This (undated) draft proposal is entitled: "Guidelines and recommendations regarding 'public benefit' clauses in certain government contracts".

I. INTRODUCTION:

THE CITY OF MIAMI BEACH HAS BEEN A PROVEN LEADER IN GOVERNMENT ETHICS.

Subsequent to the conclusion of the 2011 State Attorney's investigation of the City of Miami Beach's negotiations with New World Symphony (finding no criminal conduct), the Proposed Guidelines were written to address "flawed policies that have resulted in unwarranted and inappropriate benefits for elected and appointed officials"². Although the City recognizes that the Proposal is intended as guidance for all governmental entities subject to the jurisdiction of the County Ethics Commission, the stated genesis for said report unfairly depicts the City of Miami Beach as a transgressor of ethics laws, failing to recognize the great contribution the City has made towards ethics and good government.

For well over the past decade, the City has enacted strict ethics laws supplemental to Federal, State and County legislation to strengthen ethics rules and avoid the skirting of said laws, otherwise achievable due to loopholes or the simple failure of other legislative bodies to so legislate. Included among these novel City-enacted ethics laws have been increased lobbyist restrictions, campaign finance reform, post-service restrictions for elected officials and governmental employees, prohibitions on direct and indirect lobbying activities by appointed and elected government officials, increased prohibited contractual relationships of government employees and officials, increased prohibitions on direct and indirect prohibited business relationships, and enlarging scope of voting conflict proscriptions. Additionally, and most evident of the City's commitment to ethics legislation is the City Charter provision (self-initiated by the City Commission) requiring voter approval before the enactment of any law weakening City ethics laws.

All of the aforesaid measures demonstrate an absolute and unwavering commitment by the City to enact effective ethics laws. Any suggestion that the City has exploited its policies ignores the City's demonstrated resolve towards enacting and enforcing meaningful ethics legislation.

II. FACTUAL BACKGROUND.

THE CITY OF MIAMI BEACH'S TICKET POLICY HAS BEEN IN EFFECT SINCE ITS APPROVAL BY THE STATE ETHICS COMMISSION IN 1993, WITHOUT COMMENT OR CRITICISM FROM COUNTY ETHICS COMMISSION.

The City of Miami Beach ticket policy as embodied in City Resolution No. 93-20694, (signed by then Mayor Seymour Gelber) had as its foundation an opinion from the Florida Commission on Ethics condoning public officials' acceptance of complimentary tickets, conditioned only upon disclosure of tickets received. In State COE 92-33, the tickets were held to constitute permissible gifts to the City commissioners³, which had to be disclosed quarterly if their value

² See, Proposed Policy at page 1, paragraph 2.

exceeded \$100. The basis for the City's request for the opinion was a concern for strict compliance with applicable ethics regulations and a need to ensure legality of the City's contractual process, whereby (in that instance) it negotiated with a theater management company to operate the City's theaters and the City would receive, as partial consideration, tickets per performance for every event staged at the theater.

As reflected in State COE 92-33, the City of Miami Beach made full disclosure to the State Ethics Commission of all relevant facts concerning the manner in which the City negotiated for and received the tickets, and the City's process for distribution and usage of the tickets. Aware of all relevant facts, the State COE determined the ticket policy to be consistent with ethics laws so long as the appropriate disclosure forms were filed reflecting the names of ticket recipients and the value of tickets received⁴. Since the Opinion's issuance in 1992, the City of Miami Beach has relied in good faith upon its holding, and has adhered to its dictate of timely gift disclosure.

Despite the transparency of the City's ticket policy⁵, it has never been questioned by the Miami-Dade County Ethics Commission or anyone else.

III. LEGAL ANALYSIS.

Municipalities in the State of Florida enjoy home rule power, granting them "...governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law." Fla Const. Art VIII, sec. 2 (b).

Home rule municipalities are subject to the additional Constitutional requirement that expenditures of City funds be for a "public purpose". Fla. Const., Art. VII, sec. 10. Accordingly, although a City may enact a policy with regard to its use of public resources, such policy must serve a "public purpose". As will be seen below, the "public purpose" determination by a City carries the presumption of constitutional validity, and is subject only to judicial review.

³ Note: At the May 26, 2011 County Ethics Commission hearing on Complaint 11-04, COE Commissioner Seymour Gelber (after recognizing the City of Miami Beach's well-established ticket policy) stated his belief that the complimentary tickets received by City personnel were not "gifts" and therefore did not require disclosure. Commissioner Gelber further went on to state that the ticket issue was "much ado about nothing".

⁴ In subsequent opinions, the State COE has condoned identical ticket distribution/use policies of the City of Daytona Beach (State COE 05 re: tickets to International Speedway), City of St. Petersburg (State COE 01-19 re: Tropicana Stadium), and the City of Orlando and Orange County (State COE 95-36 re: tickets to Amway Stadium).

⁵ See f.n. #8 herein.

A. THE CITY COMMISSION'S TICKET POLICY IS PRESUMED VALID.

1. POLICY DETERMINATION IS FOR CITY COMMISSION ALONE TO MAKE, NOT THE ETHICS COMMISSION.

What constitutes a public purpose is, in the first instance, a question for the legislature (i.e., City Commission) to determine, and its opinion should be given great weight. Jackson Lumber Co. v. Walton County, 116 So. 771 (1928); State v. Housing Finance Authority of Polk County, 376 So.2d 1158, 1160 (Fla. 1979), holding that the determination of what constitutes a valid public purpose for the expenditure of public funds is a factual determination for the legislative and governing body involved. The question of "public purpose" thus involves the exercise of legislative judgment and is a matter that the Miami Beach City Commission, as the legislative and governing body of the City of Miami Beach, must determine by City Resolution setting forth the requisite legislative findings and intent.

A legislative declaration of public purpose is presumed to be valid, and should be deemed correct unless so clearly erroneous as to be beyond the power of the legislature. Wald v. Sarasota County Health Facilities Authority, 360 So.2d 763 (Fla.1978); Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla.1971); Price v. City of St. Petersburg, 29 So.2d 753 (1947); State v. Monroe County, 3 So.2d 754 (Fla.1941). Unless expressly or impliedly restrained by statute, a municipal corporation has discretion in the choice of means and methods for exercising the powers given it for governmental or public purposes, and the usual limitations upon the actions of municipalities within their legal powers are good faith and reasonableness, not wisdom or perfection. All doubts as to the propriety of means used in the exercise of an undoubted municipal power will be resolved in favor of the municipality. State v. Tampa Waterworks Co., 47 So. 358 (Fla. 1908).

2. THE COURTS, AND NOT THE ETHICS COMMISSION, HAVE POWER TO REVIEW CITY COMMISSION'S POLICY.

When a policy decision is brought into question resting upon the police power, only the courts have the power and duty to inquire whether it is within constitutional limits. It is thus particularly a judicial question whether the legislative determination of "public purpose" comports with constitutional and statutory rights. See, Askew v. Schuster, 331 So.2d 297 (Fla.1976); Art. II, § 3, Fla. Const.; and Liquor Store v. Continental Distilling Corp., 40 So.2d 371, 374 (Fla. 1949).

Unlike the courts, which possess jurisdiction to review public policy determinations, agencies such as the Miami-Dade County Ethics Commission may engage in such review only if the authority to do so is granted in the corresponding enabling legislation. As an administrative body, the powers of the Ethics Commission are limited to statutory authorization as set forth in the County Code, and the COE may only act within those grants of power specifically afforded it: "Administrative authorities are creatures of statute and have *only* such powers as the statute confers on them." Fla. AGO 75-120 citing 42 Am. Jur., Public Administrative Law, sec. 68, and State ex rel. Greenberg v. Florida State Board of Dentistry, 297 So.2d 628, at 638 (1 D.C.A. Fla., 1958). Both the State Attorney General and Florida Commission on Ethics have recognized their lack of jurisdiction to review a City's legislative findings governing "public purpose":

...we view this question [expending City funds towards Sister City program] as being primarily a question of whether there is a legitimate public purpose... rather than as being an ethical question. *As there is no issue under the Code of Ethics presented in this situation, we have no authority to decide in an advisory opinion whether the use of City resources in this manner is proper.*

(Emphasis added) State COE 85-13; and see, Fla. AGO 83-5 holding that a “public purpose” determination cannot be delegated to the Attorney General’s Office.

Accordingly, the issue of “public purpose” is not within the purview of the Miami-Dade County Ethics Commission. Neither the Miami-Dade (County Code section 2-11.1) or the related Code provisions enabling the Ethics Commission (County Code Chapter 2, Article LXXVIII) give the COE the legal authority to issue guidelines establishing what is and what is not acceptable justification for a City’s public policy regarding its use of government resources. A thorough review of the County Code fails to reveal any authority, either express or implied⁶, granting unto the Ethics Commission the power to second-guess a City’s public policy determination. See Peck Plaza Condominium v. Division of Florida Land Sales and Condominiums, Department of Business Regulations, 371 So.2d 152 (Fla. 1st DCA 1979).

The only sections of the County Ethics Code relevant to the City’s use of its resources (such as tickets to events it has received via arms-length negotiations) are:

- County Code section 2-11.1 (e) governing “Solicitation of Gifts”; and
- County Code section 2-11.1 (g) governing “Exploitation of Official Position”.

Neither of the above ethics regulations however establish a criteria for “public purpose”. Moreover, both of these Code sections recognize that so long as the actions taken were pursuant to City policy (i.e., City of Miami Beach Resolution No. 93-20694), those Code sections are complied with. (See, County Code section 2-11.1 (e)(2), and (g): “...No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others *except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners*”.

(Emphasis added.) Id. Although the COE may desire to review issues of a City’s public policy determination⁷, absent County Code authorization, the COE lacks such reviewing power. See,

⁶ Although County Code section 2-1066 provides that the COE “...may exercise all those powers either specifically granted herein or necessary in the exercise of those powers herein enumerated”, such implied authority may not warrant the exercise of a substantive power not conferred. Molwin Inv. Co. v. Turner, 167 So. 33 (Fla. 1936); Fla. AGO 73-374. Any implied power must be necessarily implied from a duty which is specifically or expressly imposed by statute. Fla. AGO 75-161; FSU v. Jenkins, 323 So.2d 597 (Fla. 1DCA 1975). Any power to be implied must also be *essential* in order to carry out the expressly granted power or duty imposed, e.g., Fla. AGO 73-374 and 67 C.J.S. *Officers* s. 102.

⁷ However laudable or commendable the actions of the COE, as stated in St. Regis Paper Company v. State, 237 So.2d 797, 799 (Fla. 1st DCA 1970), “(i)t is well settled that a statutory agency does not

Context Development Co. v. Dade County, 374 So.2d 1143 (Fla. 3DCA 1979), in which the Third District Court of Appeal found that Miami-Dade County's DERM did not have the legal authority to issue a particular order as the Director lacked any legislative authority under the Dade Code to require any environmental impact statement from appellant:

...in our opinion, contrary to appellees' contentions, none of appellant's activities as reflected by this record show a violation of the Dade Code provisions relied upon in the cease and desist order. Appellees argue that agricultural use, in and of itself, constitutes a discharge of organic or inorganic matter as chemical compounds into the waters of Dade County within the definition of "nuisance" in the Dade Code. See s 24-3(14)(b), Dade Code. However, ...the important question before us is not whether these activities complained of should or could be forbidden, but rather only whether they have been.

Id. at 1149. Just as in Context, supra, the issue before the COE is whether the City policy violates the County Ethics Code, not whether the City's policy should be subject to review by the Ethics Code. Regardless of its good intentions, the COE may not invoke jurisdiction over a matter when the County Commission has not granted it such power.

3. CONSTITUENTS HAVE ULTIMATE SAY CONCERNING PROPRIETY OF CITY'S TICKET POLICY.

After all legal arguments have rested, the ultimate decider of whether the City's ticket policy is valid and serves the public interest is, of course, the electorate. If indeed City residents object to the present ticket policy, they are free to voice their objections to the governing body, and if, the policy is not amended to reflect the public's concerns, the recourse will undoubtedly be at the ballot box:

Courts will not determine whether or not the action of public officers is wise, economical or advantageous, such questions belonging exclusively to the public officers and boards. If they exercise their powers foolishly or unwisely, *the recourse of their constituents is to go to the ballot box and not to the courts.*

(Emphasis added.) Broward County Rubbish Contractors Ass'n v. Broward County, 112 So.2d 898, 903 (Fla. 2DCA 1959). Accord, Town of Riviera Beach v. State, 53 So.2d 828, 831 (Fla. 1951) citing McQuillin on Municipal Corporations (3rd Ed.), at sec.10.33.

possess any inherent powers; such agency is limited to the powers granted, either expressly or by necessary implication, by the statutes (here the Dade Code) creating them." See e. g., Askew v. Cross Key Waterways, 372 So.2d 913 (Fla.1978); Lewis v. Bank of Pasco County, 346 So.2d 53 (Fla.1976); Sarasota County v. Barg, 302 So.2d 737 (Fla.1974); and Sarasota County v. Beker Phosphate Corp., 322 So.2d 655 (Fla. 1st DCA 1975).

It is significant to note, however, that **the City's residents have not objected** to the City's ticket policy. In a City of vocal, pro-active, government-involved residents with:

- over 41 citizen-volunteer committees (the majority of such committees meeting at least 11 or more time per year),
- 4-6 public meetings per week,
- 1 regularly-scheduled City Commission public meeting per month⁸ (including at least 1 monthly Commission committee meeting),
- approximately 46 public records requests handled on a monthly basis in 2011, and
- 1292 phone requests in 2011 directed to the City's main public information telephone line

there have not been any complaints regarding the City's use of its negotiated tickets. If the citizens had objected to this ticket policy, surely the City Commission would have addressed those concerns prior to the COE's instant review of the matter. In light of the absence of COE jurisdiction over such policy determination it is particularly inappropriate for the COE to insert itself into what is essentially a local issue, especially given the absence of citizen outcry.

B. THE CITY'S TICKET POLICY IS SUPPORTED BY ITS COURSE OF CONDUCT.

While it is clear that the COE lacks jurisdiction to assert that only active participation by City personnel constitutes "public purpose" for purposes of assessing the City of Miami Beach's ticket policy⁹, the following analysis bears upon the City's policy for ticket usage.

Although the City abandoned certain terms of its Resolution 93-20694,¹⁰ the policy's objective of ensuring high-level City personnel presence at such events has been the custom of the City since 1993, and has been unassailed. The fact that this policy has been in effect for almost two decades¹¹, and has not been the subject of prior citizen outcry, is relevant support of the City's legislative policy determination:

In deciding whether such purpose is public or private, courts must be largely influenced by the course and usage of the government, the object for which taxes

⁸ As an undisputable fact, numerous "Public Benefits" clauses have been included within contracts presented to the City Commission in public hearings.

⁹ See Executive Director Centorino's proposal at page 12, para. 5.

¹⁰ No suggestion has been made that the City's noncompliance with implementing terms (such as establishing a City board for non-profit ticket distribution) was due to anything other than inadvertent oversight.

¹¹ See, In re marriage of Larry Lappe and Lynn Lappe, No. 81605. May 1, 1997: "Further, the legislation challenged here has been in existence in this state for over 20 years. In determining whether a statute serves a public purpose, a court "may take into consideration a long course of legislation and usage of the government."

and appropriations have been customarily and by long course of legislation levied and made, and what objects have been considered necessary to the support and for the proper use of the government. *Whatever lawfully pertains to this purpose and is sanctioned by time and the acquiescence of the people*¹² *may well be said to be a public purpose and proper for the maintenance of good government.* (Emphasis added.) Hagler v. Small, 138 N.E. 849 (1923).

Furthermore, what is a “public purpose” is not a static concept, but is flexible and capable of expansion to meet the changing conditions of a complex society. The Florida Supreme Court has recognized this concept and has found that “...[e]ach generation may determine its concept of these things.’ State v. Washington County Development Authority, 178 So.2d 573, 579 (Fla. 1965); State v. City of Tallahassee, 195 So. 402 (1940). See also State v. City of Jacksonville, 50 So.2d 532 (Fla.1951). Indeed, the consensus of modern legislative and judicial thinking (particularly after the State grant of municipal home rule power) is to broaden the scope of activities that may be classified as involving a public purpose.

1. THE CITY OF MIAMI BEACH’S HISTORY OF ENCOURAGING ITS PERSONNEL TO ATTEND PUBLIC FUNCTIONS IN CITY-OWNED VENUES CONTRIBUTES TOWARDS THE CITY’S PROSPERITY.

For over 25 years, the City of Miami Beach has devoted its resources toward economic development¹³ with regard to planning and zoning issues, infrastructure improvement, including the ongoing maintenance and promotion of facilities providing visual performing arts productions and cultural events. The City has deemed it a public need for high-ranking City officials’ attendance at functions of City-owned venues in order to provide them with the opportunity to learn more about the citizens’ concerns and interests as well as the host organizations and their unique issues and needs. The exchange of information facilitated by attending these functions helps City officials be more responsive to these needs. It is consistent with the City’s goal to allow these high-ranking City officials to attend, at City expense, cultural productions and events taking place in the City’s facilities, resulting in increased communication regarding City affairs with the public outside of City Hall, as well as publicizing the productions, and events and thus encouraging public attendance.

The Attorney General’s Office has found that so long as the governing body has approved the use of public resources, public funds may be expended for entertainment expenditures that are

¹² The City’s ticket policy has not been objected to by the public, despite its decades’-long existence. (See, above argument at III (A) 2(b).)

¹³ Economic Development has been statutorily recognized as an appropriate public purpose of municipalities. See Florida Stat. 166.021(8)(b).

(b) The governing body of a municipality may expend public funds to attract and retain business enterprises, and the use of public funds toward the achievement of such economic development goals constitutes a public purpose. The provisions of this chapter which confer powers and duties on the governing body of a municipality, including any powers not specifically prohibited by law that can be exercised by the governing body of a municipality, shall be liberally construed in order to effectively carry out the purposes of this subsection. “ (Emphasis added.) Id.

determined by the body to serve a public purpose. In an early opinion from 1968, the Attorney General addressed the legality of a special district spending public funds for entertainment and, acknowledged the requirement that the Legislature authorize the use of public funds for purposes of hospitality and entertainment. Absent such specific legislative authorization, the Attorney General's office found that the creation of special districts would not in and of itself indicate a need to carry on extensive programs of hospitality and entertainment. See, Fla. AGO 68-12.

2. THE CITY'S TICKET POLICY PROVIDES A PREDOMINANT PUBLIC BENEFIT, AND ANY BENEFIT TO CITY PERSONNEL IS INCIDENTAL AND THUS PROPER.

Finally, the fact that City officials may be incidentally benefitted by use of these tickets does not destroy the public nature of the City's policy. Florida's courts have recognized that the execution of a public purpose that involves the expenditure of money is usually attended with private benefits, and so long as the principal purpose of the enactment is public in nature, it is irrelevant that there will be an incidental benefit to private interests. See, Blackburn v. State Commission on Ethics, 589 So. 2d 431 (Fla. 1st DCA 1991); and Thornber v. City of Fort Walton Beach, 568 So. 2d 914, 917 (Fla. 1990) (defending against recall lawsuit created incidental benefit to elected official while providing primary benefit to public).

IV. CONCLUSION.

The authorities cited above support the legal proposition that the City of Miami Beach may, subject to judicial review, establish policy governing the distribution and usage of its tickets to City-owned venues, which policy carries the presumption of validity. The COE lacks jurisdiction to issue a policy statement stating what is and what is not a lawful "public purpose" with regard to the City's distribution and use of these tickets. It is the City Commission that is the final arbiter of its ticket policy, and not the Ethics Commission.

With regard to the distribution of City tickets to high-ranking City personnel, it is not unreasonable to presume that part of their official duties may be to attend certain high-profile special events (such as Art Basel or the South Beach Wine & Food Festival) that focus national and international attention on the City of Miami Beach and thus promote commerce and tourism. As to those "ordinary" performances or events which do not necessarily garner national attention, there is a public purpose in the presence of City officials at these events as well, and this too is a matter of good faith discretionary decision-making by the City's governing body.

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, REPEALING CITY OF MIAMI BEACH RESOLUTION NO. 93-20694 WHICH ESTABLISHED THE CITY'S COMPLIMENTARY TICKET POLICY, AND SUBSTITUTING THEREFOR A COMPREHENSIVE POLICY STATEMENT OF THE CITY OF MIAMI BEACH REGARDING ITS USE AND DISTRIBUTION OF CITY TICKETS TO EVENTS AND PRODUCTIONS OCCURRING AT CITY-OWNED VENUES AND/OR CITY-SPONSORED EVENTS.

WHEREAS, in 1992, the Florida Commission on Ethics issued its Opinion No. 92-33, holding that City of Miami Beach elected officials could legally accept complimentary tickets from the City (obtained via negotiated 'public benefit' clauses in City contracts) to performances taking place at City-owned venues, subject only to the requirement that public disclosure of such ticket receipt be made by the recipient/Officials on quarterly gift disclosure forms; and

WHEREAS, in reliance upon this opinion of the State Ethics Commission, the City of Miami Beach adopted its Resolution No. 93-20694, in which the City Commission formally established a procedure for the City's distribution of its tickets to performances taking place at City-owned venues, whereby designated municipal officials and deserving members of the community would receive complimentary tickets to such productions; and

WHEREAS, as a result of a 2011 joint investigation by the Miami-Dade State Attorney's Office and the Miami-Dade County Commission on Ethics ("COE") of the City of Miami Beach's negotiations with the New World Symphony (finding no criminal wrongdoing), the COE scrutinized the above-referenced ticket distribution process of the City of Miami Beach as well as that of Coral Gables, Hialeah, Homestead, Miami and Miami-Dade County; and

WHEREAS, the COE consequently issued its "Guidelines and Recommendations regarding 'public benefit' clauses in certain government contracts", which although not legally binding upon the City of Miami Beach's ticket policy determination, have been stated by the COE as a suggested method of "ensuring conformance" with applicable ethics rules; and

WHEREAS, pursuant to the City of Miami Beach's continued commitment as a leader in government ethics, and in recognition of the requirement that municipal resources be devoted primarily to public purposes as determined by the Mayor and City Commission, the City has conducted public meetings for the purpose of evaluating its complimentary ticket policy with the COE's subject Recommendations; and

WHEREAS, having assessed citizen comment and public need, the Mayor and City Commission determine that the continued distribution of complimentary tickets to disadvantaged youths, senior citizens, non-profit organizations and other individuals who may not have the financial ability to purchase tickets to cultural events serves a public purpose, that public purpose is further served via the distribution of tickets to exemplary City employees and other notable members of the community, and that the ability of designated City officials to attend such cultural events as official City representatives for the purpose of monitoring and evaluating such events and the quality of performances therein, and/or monitoring and evaluating the value

of City-sponsored events and their compliance with City policies, agreements and other requirements further serves a public purpose; and

WHEREAS, the City thus hereby establishes the following comprehensive municipal policy regarding its use and distribution of City tickets to events and productions occurring at City-owned venues and/or sponsored by the City, with said comprehensive policy serving as substitution for, and in repeal of, City of Miami Beach Resolution No. 93-20694.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH:

SECTION I. APPLICABILITY OF POLICY

In order to establish a fair, equitable and transparent process for the distribution of its complimentary tickets, the City of Miami Beach thus hereby establishes this Comprehensive Complimentary Ticket Policy. This policy shall apply to tickets or passes for admission to a facility, show, event or performance for an entertainment, recreational, amusement or similar purpose, which are provided to the City of Miami Beach: (i) pursuant to the terms of a contract/agreement/lease for the use of public property within the City's boundaries; (ii) because the City of Miami Beach controls the event; (iii) that is purchased by the City of Miami Beach at fair market value; (iv) or otherwise received from an outside source and which are provided without charge by the City of Miami Beach to personnel as designated herein. Tickets or passes purchased at full face value or fair market value of the ticket, as appropriate, by the official using the tickets are not subject to this Policy.

SECTION II. PUBLIC PURPOSE

The distribution of any ticket by the City of Miami Beach shall promote a public purpose, which purpose shall include¹ the following:

- (a) Economic development of the City, including the promotion/exposure to, marketing and awareness of tourism, nightlife, recreational, educational, and cultural facilities or attractions on City property or awareness of the City as a regional destination, economic asset or business opportunity;
- (b) Promoting or showing City appreciation for programs and services rendered by community and other non profit resources for the benefit of the community, including artistic and cultural organizations and institutions;
- (c) Advertisement and promotion of City-controlled or City-sponsored events, activities, or programs, public facilities and resources;

¹ The County Ethics Commission has issued an "Addendum" to its "Guidelines and Recommendations", outlining specific 'suggested permissible public purposes' for use of public benefits, which grounds are adopted and incorporated herein by reference. (See Exhibit "A", attached hereto.)

(d) Monitoring and evaluation of City venues and the quality of performances therein (in particular, attendance at opening day events at City-owned venues²), and/or monitoring and evaluation of the value of City-sponsored events and their compliance with City policies, agreements and other requirements;

(e) Information gathering and education regarding matters of local, regional and state wide concern that affect the City, including enhancing intergovernmental relations through attendance at events with or by officials from other jurisdictions;

(f) Promoting, encouraging and rewarding educational and athletic achievements by students and officials of local and regional educational institutions;

(g) Promotion of City recognition, visibility and or profile on a local, state, national or worldwide scale, including exchange programs with national and foreign officials and dignitaries, and marketing promotions and agreements with municipal marketing partners;

(h) Attracting and retaining highly qualified employees in City service, including special recognition or reward of meritorious service by a City employee;

(i) Performance of a ceremonial or official function on behalf of the City, not otherwise set forth above.

SECTION III. DISTRIBUTION OF TICKETS

A. General Provisions.

Distribution of tickets shall be in accordance with the public purposes stated in Section II above, and be subject to the following:

1. Such tickets shall not be earmarked by the original donor for use by any particular recipient of tickets. Notwithstanding, any tickets provided to the City pursuant to a negotiated complimentary ticket program in a public benefits clause which delineates a specific deserving organization or group as the recipient of such tickets in the lease, contract or agreement with the City, may be provided by the City to that specifically identified deserving organization or group.
2. The City of Miami Beach determines, in its sole discretion, which individual and/or entity shall receive the tickets, in accordance with the Distribution Process set forth below.
3. No person receiving tickets pursuant to this Policy shall sell or otherwise transfer any ticket, or receive any consideration for the value of any ticket. Nor may such ticket recipient use any ticket for political fundraising purposes. Notwithstanding the preceding, the City may sell any tickets received pursuant to this Policy (if resale by the City is permitted by the donating entity) if the proceeds of such sale are intended for donation to programs and services rendered by community and other non-profit resources for the benefit of the community, including artistic and cultural organizations and institutions;
4. If a ticket recipient cannot use any ticket, that person must notify the City Manager's Office promptly and return the ticket to the City Manager's Office. Failure to do so will

² See COE Addendum, f.n. #1 above.

result in that recipient being ineligible to receive future tickets. Such returned tickets shall be distributed by the City Manager's Office to any of the persons/groups within the distribution categories set forth immediately below in III B (2).

5. All recipients of tickets must sign a form acknowledging the terms and conditions of the City of Miami Beach's Comprehensive Complimentary Ticket Policy, as reflected in this Resolution.

B. Distribution Process.

1. The following City Officials shall each be entitled to receive two (2) tickets to a single performance/event. An Event shall only include one performance during each production engagement or run at the City venues or for the City-sponsored event or other event.
 - Mayor and City Commissioners
 - City Manager
 - City Attorney

2. The remaining tickets shall be distributed as follows:

- a. Deserving Members of the Community (@70% of remaining tickets)

The City Manager shall create an advisory committee to establish a list of deserving organizations and/or groups eligible to receive tickets. Such advisory committee shall meet no less than once each year to review the list of deserving organizations and/or groups eligible to receive tickets. Deserving organizations and/or groups on the list shall be eligible to receive, on a rotating basis, a maximum of four (4) tickets to a single event. The list of deserving organizations and/or groups eligible to receive tickets shall include the following categories:

- Non-profit (legally established tax-exempt) agencies who serve residents of the City of Miami Beach, for distribution to individuals served by the agency;
- Local educational institutions for use by deserving students;
- Senior citizen, disabled persons, and disadvantaged youth who: are residents of the City; do not have the financial ability to purchase tickets; and, participate in any City-sponsored program.

On an annual basis, the advisory committee's recommended list of deserving organizations and/or groups eligible to receive tickets shall be reported to the City Commission.

- b. Others (@15% of remaining tickets)

- i. The City may create a "Special Incentive Award Program" for the purpose of distributing tickets to persons and/or entities that have made special contributions to the community, or to individual civic leaders, including visiting dignitaries. This Program shall have defined criteria, and such criteria shall be provided to the City Commission; or,
- ii. The City may provide the tickets to organizations that assist in promoting and marketing the City through a municipal marketing agreement with the City, to the extent that such use is permitted by the entity providing the tickets.

In the event that no tickets distributed for either (i) or (ii) above, these tickets may be distributed to deserving organizations and/or groups eligible to receive tickets pursuant to the criteria in Section III (B) 2 (a) above.

c. City Employees (@15% of remaining tickets)

The City Manager is authorized to create an "Employee Recognition Program" setting forth defined criteria for the award of tickets to exemplary City employees. This Program shall entitle each selected City employee with two (2) tickets to an event.

City employees may not use tickets for an event if the event conflicts with the employee's work schedule and the employee has not secured the appropriate leave or permission of his Department Head and corresponding Assistant City Manager.

In the event that no City employees are provided or request tickets, these tickets may be distributed to deserving organizations and/or groups eligible to receive tickets pursuant to the criteria in Section III (B) 2 (a) above.

SECTION IV. DISCLOSURE REQUIREMENTS

A. City Disclosure.

The City Manager's Office shall maintain a log detailing the distribution of City tickets pursuant to this Policy. The log detailing the distribution of tickets shall be posted by the City Manager's Office, no less than once every quarter, on the City's website by no later than the 15th day of the month following such quarter. Such posting shall include the following information:

1. The name of the person receiving the tickets or passes, except that if the tickets or passes are distributed to a deserving organization and/or group, only the name, address and description of the deserving organization and/or group, and the number of tickets or passes provided to the deserving organization and/or group, may be posted in lieu of the names of individuals from the deserving organization and/or group that received the tickets;
2. A description of the event;
3. The date of the event;
4. The face value of the tickets provided; and
5. The number of tickets provided.

B. Recipient Disclosure.

1. City personnel receiving complimentary tickets shall disclose their receipt of tickets via the timely filing of gift disclosure forms, in accordance with State Commission on Ethics Opinion No. 92-33 (forms available through City Clerk's Office).
2. Tickets which are provided free of charge may have tax consequences for the recipient and may be reportable and taxable as regular income or as taxable fringe benefits to a recipient. All recipients of tickets must consult with their own tax advisers to determine the reporting requirements for income tax purposes, as well as the tax consequences of any tickets received.

SECTION V. EXCLUSIVITY OF CITY'S COMPREHENSIVE POLICY

A. The matters set forth in this Resolution shall serve as the City's Comprehensive Complimentary Ticket Policy, and it shall be referenced in all future "public benefits" clauses of all City contracts, and shall be further posted prominently on the City's website.

B. City of Miami Beach Resolution No. 93-20694, constituting the City's former policy governing complimentary tickets, is accordingly hereby repealed in its entirety.

PASSED AND ADOPTED THIS _____ day of _____, 2012.

ATTEST:

City Clerk

Mayor Matti Herrera Bower

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: June 28, 2012

SUBJECT: **DISCUSSION ON THE CITYWIDE STORMWATER MASTER PLAN**

The City has recently completed the final draft of a new Stormwater Management Master Plan (SWMMP) that evaluates the existing system and recommends sustainable improvements to provide an appropriate level of service (LOS). (The SWMMP executive summary is included as Attachment A.)

The previous stormwater master plan, prepared in 1997, prioritized drainage basins and provided hydrologic and water quality calculations for the priority basins. The new SWMMP project has created a comprehensive, citywide model, using more powerful software than was available in 1997 that evaluates the existing system, simulates inter-basin flows, and identifies those basins that are experiencing reduced LOS.

This project has developed a computerized hydraulic model of the Flamingo/ Lummus and West Avenue neighborhoods. This task analyzed the existing system in the referenced neighborhoods and identified system deficiencies as well as the improvements required to meet LOS. These improvements have been identified in a schematic fashion that provides one cohesive design for the Flamingo/ Lummus and West Avenue neighborhoods.

The Stormwater Master Plan also accounts for climate change and sea level rise. The consultant made use of a variety of published resources and analyzed historic sea level data. Based on these, several sea level rise curves were prepared and design recommendations are being based upon the Army Corps of Engineers latest intermediate projection for sea level rise over the next 25 years. As a result, for all new projects, a new sea level elevation of 0.50 feet NAVD88 is now being used for stormwater design purposes and an elevation of 3.2 feet NAVD88 as a minimum for seawall elevations. The previously designed criteria were 0.04 feet NAVD 88 for sea level elevation. There was no minimum seawall elevation.

The model has also been used to provide concurrency reviews of recently bid neighborhood improvement projects. These reviews have prompted changes to the stormwater designs of the neighborhoods due to the revised sea level elevation and the inter-basin flows. As a result, the improvements will be more effective in providing the required LOS and more flexible to account for the uncertainty relative to the rate of sea level rise. The neighborhoods reviewed to date are:

- Biscayne Point
- Central Bayshore
- Lower North Bay Road
- Lake Pancoast
- Sunset Islands I & II

In addition, the new criteria are being used in the preparation of the following projects:

- Star Island
- Palm and Hibiscus Islands
- Sunset Islands III & IV
- Sunset Harbour
- Flamingo 6th Street
- 16th Street
- La Gorce

Further, the SWMMP has developed order of magnitude cost estimates for the improvements required that total almost \$200 million in needed infrastructure improvements. (Attachment B) These improvements will need to be made over an estimated span of 25 years, contingent upon the rate of sea level rise.

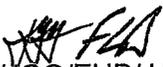
At this time, the City is negotiating with the Florida Department of Transportation to use its proposed stormwater pump stations on Alton Road to assist in alleviating flooding within the Flamingo neighborhood. The ability to use the FDOT pumping stations will reduce the number and size of the pumping stations that the City needs to construct within the Flamingo and West Avenue neighborhoods and could reduce the cost of the improvements by over \$20 million.

CONCLUSION

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

Attachments:

- A – Stormwater Master Plan Executive Summary
- B – Chart of Neighborhood Capital Needs


JMG/JGG/FHB/JJF/RWS

Executive Summary

ES.1 Introduction and Background

On June 9, 2010, the City authorized Camp Dresser & McKee (CDM) to develop a City-wide Comprehensive Stormwater Master Plan (SWMP) in order to evaluate and update its stormwater management practices, infrastructure, funding, and regulatory policies.

Miami Beach is one of 33 municipalities that entered into an Interlocal Agreement (ILA) with Miami-Dade County in 1993, authorizing Miami-Dade County to be the lead permittee in submitting a National Pollutant Discharge Elimination System (NPDES) Stormwater Permit Application. One condition of the ILA requires the City of Miami Beach to develop a SWMP that is consistent with Miami-Dade County's Master Plan. This report is the update and expansion of the SWMP.

The SWMP is intended to be a guide for improving the City's stormwater management system performance for the next 50 years, with considerations to potential sea level rise over this time period. The SWMP will provide a preliminary schedule of prioritized capital improvements necessary to allow the City's stormwater systems to meet the increasing performance and regulatory demands and modernize existing systems while maintaining the high level of service expected in a modern urban environment.

The City of Miami Beach is a highly urbanized coastal community located in southeast Florida and is a major economic resource to the region. Bounded by the Atlantic Ocean and the environmentally sensitive Biscayne Bay Aquatic Preserve, which is also an Outstanding Florida Water (OFW), the study area covers approximately 4,200 acres. The area has relatively low-lying topography that is intersected by intracoastal waterways, and it has a subtropical climate with high intensity rainfall, significant tidal influence, limited soil storage for infiltration, high amounts of impervious area, and limited available surface storage. These factors all contribute to historical and potential future severe rainfall and tidal flooding. The City's stormwater management system consists of approximately 340 outfalls served by swales, inlets, storm drains, culverts, bridges, gravity and pumped injection wells, exfiltration systems, channels, canals, pump stations, and retention-detention storage systems.

ES.2 Program Goals and Objectives

The overall goals of the SWMP are to identify sustainable stormwater management solutions that:

- Protect infrastructure from flooding;
- Preserve environmental and wetland resources;
- Protect and improve water quality;
- Provide aquifer recharge where practicable to protect and enhance existing and potential future water supplies;
- Support harvesting and reuse of stormwater;
- Facilitate operation and maintenance; and
- Provide and support long term financing.

Specific objectives were defined through the initial project meetings, including:

- Quantify and improve flood control level of service (LOS);
- Quantify economic impact of flooding;
- Facilitate and prioritize O&M;
- Augment existing infrastructure for storage and treatment;
- Coordinate and guide priority early-out projects;
- Identify stormwater harvesting-reuse and recharge well opportunities;
- Refine and update ordinances and stormwater utility; and
- Seawall recommendations for anticipated sea level increases over the 50 years.

ES.3 Methodology

As part of this SWMP, surface water hydrologic and hydraulic modeling has been performed using the US EPA Stormwater Management Model (SWMM) to estimate and evaluate flooding LOS and alternative solutions to meet LOS. The process for performing surface water quality and BMP evaluations using the CDM Watershed Management Model (WMM) was used to perform surface water quality and BMP evaluations. Both are public domain tools that are widely used for SWMP applications. As a complement to the engineering evaluation, CDM utilized the FEMA Hazards United States (HAZUS) tool designed to produce loss estimates for use by federal, state, regional and local governments and private enterprises in planning for risk mitigation, emergency preparedness, response and recovery.

Model parameter estimates were checked for validity during actual storm and tidal events throughout the year 2010, as practical. Investigations including photo-archive retrievals, field visits, photography in combination with flood depth measurements and discussions with City staff were performed as part of the validation stage. Storm event rainfall data was retrieved from City of Miami Beach rain gages and tidal data retrieved from National Oceanic and Atmospheric Administration (NOAA).

ES.4 Level of Service (LOS)

The primary purposes of LOS criteria are to protect public safety and property. Program goals are to maintain passable roads for emergency and evacuation traffic, and control flood stages below homes and buildings as practicable. The LOS criteria are first used to identify and define potential problem areas using the stormwater model developed for this study. The LOS criteria are then used to evaluate the effectiveness of improvements. LOS decisions will directly affect the size and cost of proposed improvement alternatives.

CDM evaluated refinements of the current LOS standard as part of the evaluation of the SWMP. The 5-year, 24-hour (5.9 inches) event was eventually evaluated as the critical event to evaluate stormwater system performance. As a test of system performance and for cost-benefit comparisons, CDM also evaluated LOS for the 2-year 24-hour (4.2 inches), the 10- (9.9 inches), 25- (11 inches), and 100- year 72-hour (14 inches) design storms. LOS evaluations were made for road gutter-crown and building elevations where data were available. Meeting the LOS for the SWMP is defined by maximum level of flooding up to the 6-inches above the roadway gutter elevation during the 5-year 24-hour storm event.

The City also experiences significant tidal effects, and for this SWMP, CDM evaluated the joint effects of rainfall and tides on flooding and LOS. Based on this joint rainfall and tidal evaluation, CDM proposed a modification of the LOS to the 2-year 24-hour (4.2 inches) storm event as this LOS manages the most frequent rainfall and tidal flooding occurrences in Miami Beach.

ES.5 Proposed Improvements and Project Coordination

Evaluations were performed for project areas to determine the level of infrastructure improvements necessary to meet the 2-year (4.2 inches) and 5-year (5.9 inches) LOS. A tiered BMP treatment train approach was used to identify the most effective solutions for each project area (**Figure ES-1**) and to identify multi-benefit opportunities for flood control, water quality, aquifer recharge, and stormwater harvesting and irrigation use. The tiered approaches were incrementally identified from 1 through 4 and bundled together to determine the economic feasibility of proposed infrastructure improvements. Due to the anticipated significant capital investment, and the stringent permit to discharge into the Biscayne Bay, the City requested CDM to present the alternative solutions in a tiered manner that would allow the City to proceed with specific elements of the BMP treatment train as economic conditions permit allowing for future tiered additions to ultimately meet the full 5-year LOS.

Exhibit B

Stormwater Master Plan Capital Improvement Program (in millions \$)

	0-5 Years	5-10 Years	10-15 Years	15-20 Years	Total
Biscayne Point				11	11
North Shore		11			11
North Shore (72nd Street)			10		10
Normandy Isle			20		20
Upper La Gorce*		11		1	12
Lower La Gorce*	12			2	14
La Gorce Island/Allison Island		9			9
Oceanfront			0.3		0.3
Nautilus				4	4
Sunset Islands 3 & 4*	4				4
Flamingo+	25			59	84
West Avenue	13				13
Total	54	31	30.3	77	192.3

* Under design

+ Does not include \$6M in RDA funding

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MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: June 28, 2012

SUBJECT: **APPROVAL OF SCOPE OF SERVICES AND CRITERIA FOR LINCOLN ROAD MAINTENANCE SERVICES REQUEST FOR PROPOSALS (RFP)**

This memorandum is submitted as a follow-up to the February 8, 2012, City Commission Meeting, wherein a discussion was held on Agenda Item R7F regarding the outsourcing of maintenance services within the Lincoln Road Mall service area. With the exception of the 1100 block of Lincoln Road (between Lenox Avenue and Alton Road), the maintenance services would be provided for the entire length of Lincoln Road, from Collins Avenue to West Avenue, including side streets between 16th and 17th Streets. Refer to Attachment A for a map of the Lincoln Road maintenance service area.

The discussion on Item R7F led to a Motion by Vice-Mayor Weithorn to issue a publicly advertised Request for Proposals (RFP). The Motion was seconded by Commissioner Wolfson and passed by a unanimous vote. The Administration was directed to develop the scope, bring the objective criteria to measure success or failure to the Finance and Citywide Projects Committee (FCWPC) for approval, and submit the RFP for approval at the following Commission meeting.

BACKGROUND

Existing Maintenance Services Managed by City Personnel

Except for the 1100 block of Lincoln Road (between Lenox Avenue and Alton Road), City of Miami Beach personnel, with limited support from temporary labor, provide maintenance services for the entire length of Lincoln Road - from Collins Avenue to West Avenue, including the side streets between Lincoln Lane North and Lincoln Lane South. Maintenance services for the 1100 Block are provided under a management agreement with UIA Management, LLC (UIA).

Maintenance / security services provided or managed by City personnel are as follows:

- Parks and Recreation Dept. Green Space Management Division – Include turf mowing, trimming and edging (30/year); shrub and ground cover pruning (12/year); weed control (40/year); tree/palm pruning (2-3/year); date palm seed removal (4-6/year); mulch

application (2/Year); daily irrigation system checks (5 days, weekly) and repairs as needed; flower installations (3/Year) with additional plants also installed; turf fertilization (3/year); shrub/ground cover granular fertilization (3/year); liquid fertilization (minors) (4/year); tree/palm fertilization (3/year); and litter removal (supplemental to Sanitation Division) once per day, 5 days weekly; and integrated pest management.

- Sanitation Division – Include pressure cleaning of all hard surfaces, with scrubber overlapping pressure cleaners, as well as area garbage cans(5 days, weekly, 15-day rotation); seven-day litter control from 6:10 a.m. to 11:30 p.m., including blowing and sweeping the walkways and emptying garbage and recycling containers; reporting of deficient conditions for follow-up or corrective work by other divisions; and close work with Code Enforcement, Police and Homeless Outreach Team to support a cleaner and safer environment for tourists, residents and business owners.
- Property Management Division – Include painting of all structures, retaining walls and “piano keys”; service and maintenance of all decorative, landscaping and pedestrian street lighting; maintain all electrical service points for vendors; and provide cleaning and chemical treatment of fountains/water features, as well as repair and maintenance of associated electrical, pumping and plumbing systems.
- Police Department – Contracted security services provide two daily shifts / 7-day coverage; each shift staffed by two guards. Split shifts are from 6:00 am to 2:00 pm and 6:00 pm to 2:00 am.

Existing Maintenance Services Managed by UIA Management

On January 2010 the City Commission approved the execution of a Management Agreement between the City and UIA Management, LLC (UIA) for the maintenance of improvements to the 1100 block of Lincoln Road Mall. Under the Maintenance Management Agreement, UIA has provided maintenance, repair and replacement of the water features, landscaping, trees, Pedra Portuguesa stone pavement, lighting, electrical equipment, mechanical systems and sanitation services on the 1100 Block of Lincoln Road. Over the course of the past eighteen (18) months, UIA has met expectations under the terms and conditions of the Agreement. General consensus is that the levels of maintenance, oversight, and repair for the contracted portion of Lincoln Road Mall compare favorably to other Mall areas maintained by City forces.

The Management Agreement of the 1100 block of Lincoln Road Mall was contracted to UIA Management; LLC in accordance with Section 52-6 of the original Development Order for the construction of UIA’s mixed use parking garage facility. The purpose of the Agreement was to evaluate the benefits received by consolidating oversight and management of all maintenance activities under a single entity as an attempt to control costs while improving levels of service and response time. To date, the general consensus is that the contract has been successfully executed. The 1100 block is excluded from the service area.

ANALYSIS

Extending along a nearly 4,000 feet long corridor, Lincoln Road is a major South Florida destination serving tourists, residents and the general public. Maintaining this key thoroughfare clean and well-maintained is essential to helping preserve the City’s status as a world class

destination. For a number of years, the management of maintenance services within the Lincoln Road service area has been provided by the Property Management, Sanitation, and Green Space Management Divisions, with the Police Department managing the contracted security services.

An integrated maintenance service program offers the benefit of competitive pricing while maximizing value and service delivery efficiencies. Following the unanimous vote to issue the RFP for maintenance services, at the February 8th City Commission meeting, staff completed a draft of the scope of work and performance standards that will be included as Section II of the proposed RFP. The draft is provided for your review as Attachment C.

RFP Scope of Work

Section II of the proposed RFP is divided into three main sections:

- Minimum Requirements / Qualifications – The primary objective of the RFP is to enter into a contract with a responsive and responsible Contractor to ensure an ever improving level of cleanliness and maintenance services within the Lincoln Road service area. Key requirements include:
 - *Proven track record of maintenance management in pedestrian-oriented public venues and facilities.*
 - *Ability to develop and implement a quality control / quality assurance plan to ensure that quality control services are provided by its organization, suppliers, sub-Contractors and vendors.*
 - *Demonstrate possession of all necessary attributes to successfully manage the maintenance and expectations of the City, Lincoln Road property and business owners, visitors and the general public.*
 - *Possess and demonstrate successful use of a web-based Computerized Maintenance Management System (CMMS) where all service requests, work orders, and performance measures are entered and tracked.*

- Cost Proposal – The cost proposal format has been structured in a manner that requires the Contractor to provide a detailed breakdown of how it arrived at the value of its proposal; not unlike a unit price contract. Required cost information includes: number of positions, description of duties, hourly rates, and estimated hours per year; description and number of vehicles and equipment, with annual operating expenses; projected quantities of maintenance supplies and costs; projected quantities of repair and replacement parts and unit costs; and projected quantities of plant and shrub replacement expenses and unit costs. The Contractor will also separately list a percentage-based amount for general, administrative, and overhead costs, and profit for each of the major cost categories in the proposal. The major cost categories in the cost proposal section are the following:
 - *Base Proposal – Maintenance Labor Expenses*
 - *Vehicle and Equipment Operating Expenses*
 - *Maintenance Supplies and Consumable Expenses*
 - *Repair and Replacement Parts Expenses*
 - *Plant and Shrub Replacement Expenses*

The cost proposal also includes the following two “Add Alternates” that require the

Contractor to provide similar cost breakdowns as detailed above:

- o Mall Manager Services
- o Security Services

The detailed cost proposal format will make it easier for the Review Panel to: 1) determine the thoroughness of the Contractor in conducting its due diligence with respect to the resources necessary to perform the required services and scope of work; 2) tabulate and compare all submittals, across the various categories, in order to seek clarification of any apparent disparities or deficiencies in the manner in which resources were allocated for the work; and 3) request an explanation of any apparent pricing irregularities, and/or imbalances, across individual items and cost categories.

- Required Services/Scope of Work – The required services and work scope are detailed in the following sub-sections:

- o Pedestrian Surfaces & Side Streets Maintenance
- o Facilities Maintenance
- o Landscaping Services
- o Coordination with Code Enforcement, Police and Homeless Outreach
- o Special Events
- o Miscellaneous Duties

The contract will require the Contractor to have all services supervised under a mutually agreed upon manager, or representative, to be exclusively assigned to the Lincoln Road service area, and whose duties will include responding to any stakeholder issues or complaints; ensuring that the provision of maintenance services is done with minimal disruption and inconvenience to the Lincoln Road Mall business and property owners; and serving as the primary point of contact with the City's contract manager.

The City's contract manager will be appointed by the City Manager and will have responsibilities that include monitoring and documenting Contractor responsiveness and quality of work. The City's contract manager will also coordinate as necessary with the City's appropriate Division(s) in matters requiring certain levels of technical expertise regarding performance and quality standards, as well as coordination of special procurement items.

Performance and Quality Standards

The goal of the City is to improve the actual and perceived cleanliness of the Lincoln Road service area, as well as the timely and effective delivery of maintenance services through the implementation and enforcement of performance and quality standards.

An effective tool for monitoring and evaluating the effectiveness of various targeted City initiatives is the currently used Cleanliness Index assessments described in page 2. In addition to this useful tool, the development of the RFP presented an opportunity to introduce a series of performance standards that are included for the various activities described in the scope of work. The standards address response times that depend on the nature and urgency of the task to be performed.

The Contractor Standards section (RFP Section I, page 13), provides specific requirements

regarding quality of operation, personnel, equipment, supplies, program management, safety regulations, and fines and penalties.

A basic requirement of the RFP will be for the Contractor to submit a detailed Quality Control / Quality Assurance (QA/QC) plan outlining the quality management procedures and responsibilities for the workmanlike and professional performance of the key maintenance and repair processes associated with this Contract (RFP Section J, page 15).

Prior to commencement of the contract, the Contractor shall describe how it will measure quality and performance thresholds for work performed under this Contract. The QC/QA plan will be subject to review and input by the City, and the mutually agreed upon performance and quality measures shall be inputted into a web-based Computerized Maintenance Management System (CMMS).

The requirement for the Contractor to utilize a CMMS, where all service requests, work orders, and performance and quality measures are entered and tracked, will be the key to monitoring the progress and evaluating quality of the maintenance services provided under the contract. The Contractor will be required to provide CMMS "read-only" and management report generating access to the City.

The quality of the work to be performed shall be determined by the Contractor's compliance to the performance and quality standards to be established prior to commencement of the work. Compliance verification shall be accomplished by various methods including random and scheduled inspections by the City's contract manager, City personnel, and outside professionals; input from the various Lincoln Road stakeholders; on-line review of CMMS management reports and data; and the City's examination of documents and records, under its contractual rights.

CONCLUSION

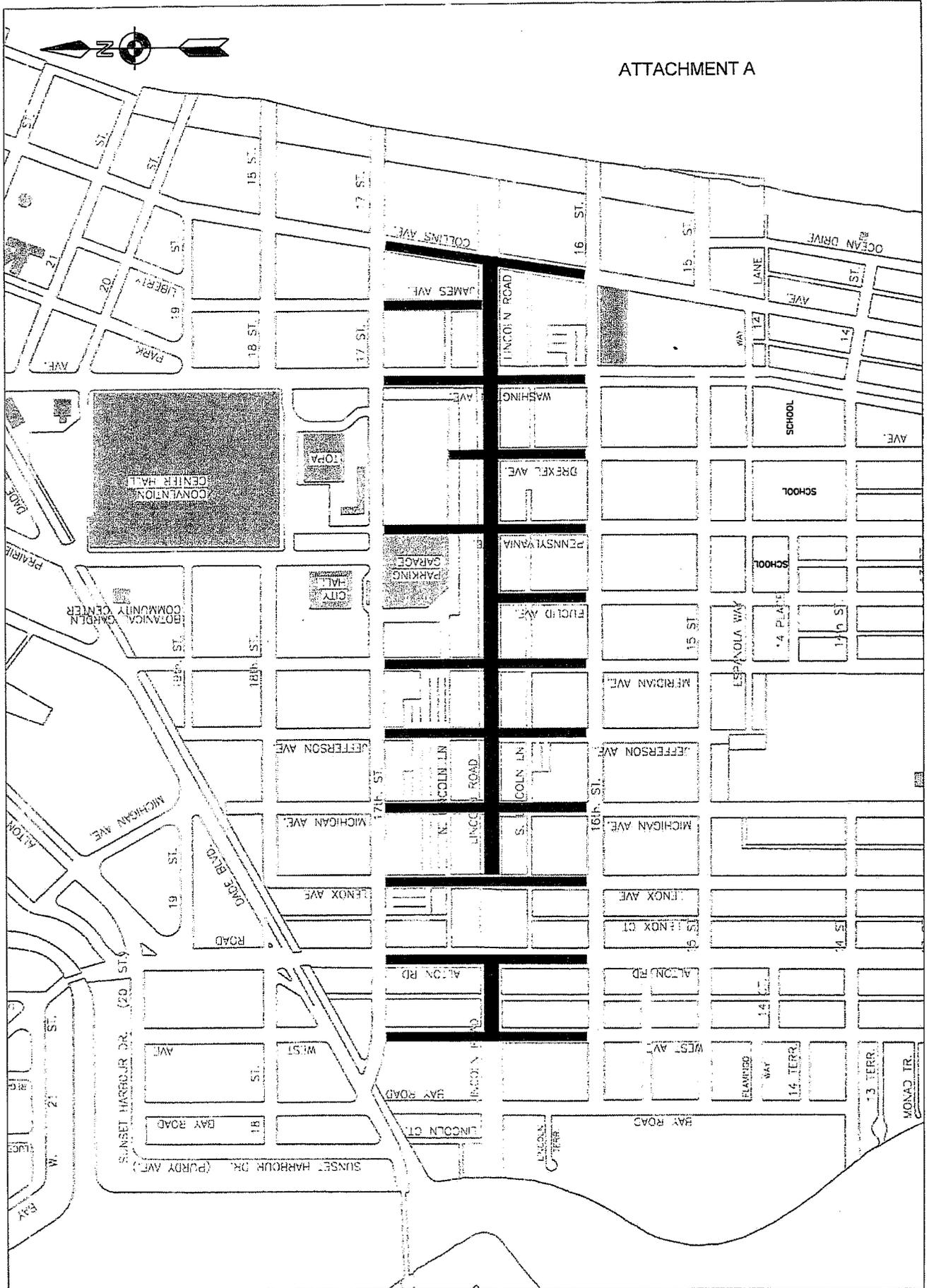
Following the discussion regarding the scope and performance criteria of maintenance services within the Lincoln Road Mall service area, and any further guidance, the Administration recommends that the Finance and Citywide Projects Committee recommend approval to issue an RFP for Lincoln Road service area maintenance services at the next City Commission meeting.

Attachment A: Lincoln Road Mall Service Area Map

Attachment B: Draft of Section II – Requirements and Qualifications / Scope of Work /
Performance Standards of proposed RFP

JMG/CSG/PFB

PROPOSED MAINTENANCE SERVICE AREA TO BE OUTSOURCED

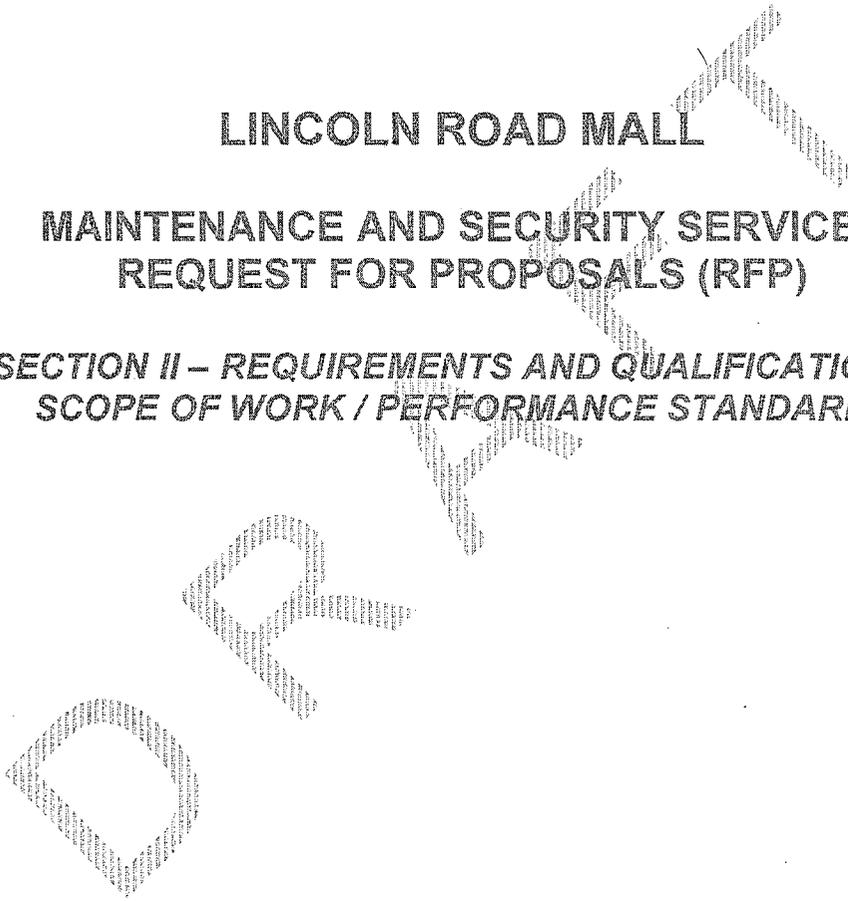


ATTACHMENT A

LINCOLN ROAD MALL

**MAINTENANCE AND SECURITY SERVICES
REQUEST FOR PROPOSALS (RFP)**

**SECTION II – REQUIREMENTS AND QUALIFICATIONS /
SCOPE OF WORK / PERFORMANCE STANDARDS**



SECTION II - MINIMUM REQUIREMENTS / SCOPE OF WORK / PERFORMANCE STANDARDS

MINIMUM REQUIREMENTS/QUALIFICATIONS

The objective of this Request for Proposals is to enter into a contract with a responsible and responsive Contractor to ensure an ever improving level of cleanliness and maintenance services within the Lincoln Road Mall service area. The successful Contractor will be able to recognize and respond to rapidly changing conditions and will have the ability to address unanticipated or changing service needs.

Minimum requirements and qualifications of the successful entity or principal include the following:

1. Provide a verifiable, proven record of successfully providing maintenance and security management services, for not less than three (3) years, in pedestrian-oriented public venues and facilities, such as cultural, entertainment, and shopping districts, educational and medical campuses, and other environments with high pedestrian traffic.
2. Possess the ability to provide maintenance services as outlined herein, throughout the term of the Agreement, and to provide a consistent level of service. This includes the development and implementation of a Quality Control / Quality Assurance Plan to cover all maintenance and security management operations and ensure that quality control services are provided for work accomplished on and off-site by his/her organization, suppliers, sub-contractors, technical service providers, and other vendors.
3. Demonstrate a high level of expertise, technical knowledge, customer service, and innovation to successfully manage the maintenance and security service level expectations of the City, Lincoln Road Mall property and business owners, tourists and the general public, including providing services through inclement weather, and any unforeseeable circumstances.
4. Demonstrated strength in management and service philosophy and ability to hire, train, and manage employees.
5. Possess and demonstrate successful use of a web-based Computerized Maintenance Management System (CMMS) where all service requests and work orders are entered and tracked.
6. **Financial Statements** – The selected Contractor shall have a minimum “A” rating from Standard & Poor or Moody’s as of the due date of this RFP, if the company has a rating by either of those agencies. If the selected Proposer has no such rating because it is a non-profit entity or it is a non-stock organization and it has no long-term debt, then the selected Proposer shall submit financial statements showing a strong financial position, including strong asset to liability ratio, to be determined by the City. Additionally, the Successful Contractor must provide the

City with a 100% Performance Bond.

7. The Contractor shall submit incorporation or other business entity/form documentation with their proposal.
8. The Contractor must provide a drug and alcohol free workplace.
9. The Contractor must have a proven track record of paying its employees as regularly scheduled. Contractors who have failed to pay employees on time will be disqualified and not receive any consideration.
10. The Successful Contractor and its sub-contractors will be responsible for advertising and recruiting help, training personnel, preparing paychecks, payroll taxes, Social Security and Withholding taxes, preparing W-2's, Unemployment and Workmen's Compensation claims and liability insurance. The obligation of the City of Miami Beach will be solely to compensate the Successful Contractor for the number of hours provided monthly in accordance with the contract price schedule. The Successful Contractor will provide a comprehensive Schedule of Values / Payment Schedule to the City's Contract Administrator for review and approval, prior to the commencement of work.

COST PROPOSAL

The Maintenance Labor billing rates (Appendix 1) included in the Base Proposal shall include full compensation for labor, payroll taxes, travel time, and any and all costs associated to the proposer in order to provide the City of Miami Beach with a Best Value Contract for maintenance services within the Lincoln Road Mall service area.

The costs for Vehicle and Equipment Operating Expenses, Maintenance Supplies and Consumables Expenses, Repair and Replacement Parts Expenses, Plant and Shrub Replacement Expenses, and Add Alternate Expenses shall not be included in the Maintenance Labor billing rates and shall be separately listed, as noted below and in Appendices 2 through 7.

BASE PROPOSAL

ITEM	DESCRIPTION	TOTAL
1	Base Proposal - Maintenance Labor Expenses (Appendix 1)	\$ _____
2	Vehicle and Equipment Operating Expenses (Appendix 2)	\$ _____
3	Maintenance Supplies and Consumable Expenses (Appendix 3)	\$ _____
4	Repair and Replacement Parts Expenses (Appendix 4)	\$ _____
5	Plant and Shrub Replacement Expenses (Appendix 5)	\$ _____
TOTAL BASE PROPOSAL AMOUNT - ITEMS 1 THROUGH 5:		\$ _____

ADD ALTERNATES

ITEM	DESCRIPTION	TOTAL
6A	Add Alternate No. 1 - Mall Manager Services Labor, Overhead and Profit (Appendix 6)	\$ _____
6B	Add Alternate No. 1 - Mall Manager Services Vehicle & Equipment Operating Expenses (Appendix 6)	\$ _____
TOTAL - ADD ALTERNATE No. 1, MALL MANAGER SVCS.:		\$ _____
7A	Add Alternate No. 2 - Security Services Labor, Overhead and Profit (Appendix 7)	\$ _____
7B	Add Alternate No. 2 - Security Services Vehicle & Equipment Operating Expenses (Appendix 7)	\$ _____
TOTAL - ADD ALTERNATE No. 2, SECURITY GUARD SVCS.:		\$ _____

REQUIRED SERVICES/SCOPE OF WORK

The contractor shall furnish all necessary personnel, equipment, materials, supplies and water to provide the cleaning and maintenance services that are required herein.

With the exception of the 1100 block of Lincoln Road (between Lenox Avenue and Alton Road), the maintenance service would be provided for the entire length of Lincoln Road, from Collins Avenue to West Avenue, including side streets between 16th and 17th Streets. Refer to *Appendix 8* for a map of the maintenance service area.

The work specified consists of furnishing all labor, machinery, tools, means of transportation, supplies, equipment, materials, services and incidentals necessary to successfully provide the following services:

A. PEDESTRIAN SURFACES & SIDE STREETS MAINTENANCE – Involves service and maintenance activities to provide the prescribed work on all pedestrian surfaces and side streets, including sidewalks, temporary walkways, tree wells, alleyways, and curb and concrete edging as follows:

1. Litter Control and Maintenance (Daily - seven days per week)

- a) Litter and all other debris and animal waste must not be allowed to accumulate and must be removed from the surface as soon as detected by Contractor, but no later than 1 hour after being reported to Contractor. Litter in street gutters should be removed when detected.
- b) All surfaces, walkways and pathways must be swept on a continuous basis.
- c) Spots, gum and other substances must be removed from surfaces as soon as detected by Contractor but no later than 2 hours after being reported to Contractor.
- d) Crews are to spot check all planters and public areas throughout the day and all debris and trash cleared.
- e) Crews are to spot check and clean Lincoln Lane North and Lincoln Lane South Alleys throughout the day.
- f) Crews during evening shifts are to spot check and report any inoperable decorative, landscaping and pedestrian lights.
- g) Weeds must be removed from sidewalks and curbs as detected.
- h) Any deficient, defective, life/safety conditions spotted during the performance of maintenance activities are to be immediately reported to the City's Property Management Division.
- i) Continuous litter control coverage must be maintained between the hours of 6:30am to 11:30pm.
- j) Additional resources shall be provided as needed during special events. Any additional costs resulting from the provision of additional resources during special events shall need prior approval from the City's designee/contract administrator. Special events include, but are not limited to:
 - Sleepless Nights
 - Halloween
 - South Beach & Miami International Film Festivals

- Food & Wine Festival
- Winter Music Conference
- Winter Party
- Gay Pride Weekend
- Swimwear Fashion Week
- Cinco de Mayo
- Fourth of July
- Art Basel
- New Year's Eve
- Hanukkah & Christmas
- St. Patrick's Day
- Retailer Promotional Events

2. Trash Collection and Receptacles (Daily - seven days per week)

- a) Collection of trash and recycling must occur on a continuous basis throughout the day to prevent overflow conditions.
- b) Disposal of trash bags must be timely and stacking of bags on the sidewalks to await collection is prohibited.
- c) All receptacles are to be maintained in a clean condition and surfaces must be cleaned and scrubbed as needed to prevent residue build-up.
- d) All spots and spills identified on surfaces must be removed as soon as detected by Contractor but no later than 2 hours after being reported to Contractor.
- e) Contractor is responsible to ensure proper and lawful disposal of all trash collected.
- f) Contractor is responsible for painting all trash receptacles once a year, or more frequently if needed, following surface preparation and product specifications provided by the City's Sanitation Division.
- g) Replacement of damaged and/or missing trash receptacles shall be coordinated through the City's Sanitation Division.
- h) Repairs and maintenance to be performed as needed. Trash receptacle maintenance includes replacement of broken or missing tops and liners; replacement of missing or broken doors; replacement of missing or damaged door latches; the relocation of trash receptacles; and anchoring of trash receptacles.
- i) Additional resources shall be provided as needed during special events, as previously noted.

3. Pressure Cleaning (Daily - Monday through Friday)

- a) All hard surfaces, including sidewalks, paver areas, ramps, retaining walls, and curb and concrete edging must be hot water/high pressure cleaned using specialized cleaning equipment on a minimum 10-day cycle.
- b) Trash cans within service area, as well as the immediate area around each trash can, must also be pressure cleaned and scrubbed on a daily basis to remove spots, gum, graffiti, and other residue.
- c) Remedial and or corrective spot cleaning work should take place within one day of deficient conditions being reported. The city reserves the right to direct the Contractor to problem areas within the service area.
- d) Any reported hazardous conditions requiring pressure cleaning shall be corrected within two hours. A traffic cone shall be immediately placed over the hazardous

condition.

- e) Contractor shall provide the City a monthly cleaning schedule of all street sections. The pressure washing schedule shall denote daily, weekly and monthly assignments.
- f) The Contractor shall use hot water and environmentally friendly detergents to clean all hard surfaces. The Contractor at his own expense will be responsible for providing the necessary water to achieve a satisfactory cleaning standard.

4. Street Furniture and Fixtures Cleaning (Daily - seven days per week)

- a) Surfaces of all street furniture, fixtures (e.g. light poles, benches, planters, phone booths, electrical boxes, hydrants, news box corrals) and public art must be cleaned and scrubbed on an on-going basis and as needed, in order to be kept clean and free from accumulated residue build-up, dirt, grime, stains, bird droppings and graffiti.
- b) The cleaning methods and cleaning agents shall not harm, discolor or corrode the structure and/or damage any surrounding plant life.
- c) All spots and spills identified on surfaces must be removed as soon as detected by Contractor but no later than 2 hours after being reported to Contractor.
- d) The City's Property Management division should be notified of any damage to, or loss of street furniture, fixtures, or public art.

5. Pedestrian Area Trench Drain Cleaning (Daily - Monday through Friday)

- a) All linear trench drains along Mall pedestrian areas should be inspected on a daily basis and accumulated debris removed.
- b) The City's Property Management division should be immediately notified of any damaged conditions or missing grate sections which may present any hazardous conditions to pedestrians. A traffic cone should be temporarily placed over any hazardous condition and the condition corrected or made pedestrian safe, within 1 hour after being reported, until such time that permanent repairs can be completed.

6. Graffiti / Sticker / Flyer Removal (Daily - seven days per week)

- a) Inspections for graffiti will be performed on a daily basis.
- b) All graffiti, as well as paint, markers, posters, stickers, and flyers will be removed daily from the exterior of all public surfaces (sidewalk surface, light poles, traffic signal and electrical and utility boxes, public telephones, news box corrals, trash receptacles, planters, phone booths, benches, art) and public buildings.
- c) Graffiti must be removed from surfaces as soon as detected by Contractor but no later than 2 hours after being reported to Contractor.
- d) If a graffiti removal effort requires restoration to the original surface, the City's Property Management Division will be notified with recommendations.
- e) Only environmentally safe product will be used in graffiti removal efforts.
- f) The City's Property Management Division will be notified of significant new graffiti on private property, street furniture, fixtures, art and other public facilities and improvements.

Cleanliness Performance Standards

The City's Cleanliness Index for Streets, Sidewalks, Rights-of-Way, Parks, Parking and Alleys program shall be used to evaluate and score the condition of existing facilities. The scores range from "1 – Extremely Clean" to "6 – Extremely Dirty". Refer to *Appendix 9 – City*

of Miami Beach Cleanliness Index Standards for details on the assessment and scoring methodology. The Contractor shall score 1.5 or better on all Cleanliness Index inspections.

B. FACILITIES MAINTENANCE – Involves service and maintenance activities related to structures, retaining walls, electrical and lighting systems and fixtures, aquatic features and other assets located along the public areas as prescribed below:

1. Painting

- a) Structures and retaining/planter walls: Provide on-going painting of all structures and surfaces on a seven week cycle with touch-up as needed. All painted surfaces must be viewed/inspected daily. Retaining walls and other "white" vertical surfaces showing signs of scuff marks or wear must be painted within 24 hours of noting the deficiency. Covers/roof edges and gravel stops showing signs of dirt or deterioration must also be painted within 24 hours of noting the deficiency.
- b) "Piano Keys": Provide on-going painting of all the black & white "Piano Keys" along the Mall on a 12 week cycle with touch-up as needed.
- c) Water Features: Water feature interiors, except those with mosaic finishes, must be painted once every 120 days or more often if deterioration is observed.

Painting Performance Standards

- Touch-up painting on structures and retaining walls to be completed within 24 hours of being reported, weather permitting.
- Contractor will develop a painting schedule to be reviewed and approved by the City's Property Management Division.
- Contractor will submit to the City's Property Management Division a painting quality control / quality assurance plan.

2. Lighting & Electrical

- a) Decorative lighting: Conduct weekly inspections (including evening spot-checks for proper operation of lighting) of all above ground electrical components and fixtures. Provide all necessary repairs and replacements to maintain circuits and fixtures in compliance with code requirements.
- b) Landscaping Lighting: Conduct weekly inspections (including evening spot-checks for proper operation of lighting) of all above ground electrical components and fixtures. Provide all necessary repairs and replacements to maintain circuits and fixtures in compliance with code requirements.
- c) Pedestrian Lighting: Conduct weekly inspections (including evening spot-checks for proper operation of lighting) of all above ground electrical components and fixtures. Provide all necessary repairs and replacements to maintain circuits and fixtures in compliance with code requirements. Burned-out bulbs in pedestrian lighting fixtures to be replaced within one day of being reported.
- d) Electrical Service Points: Conduct weekly inspection of all above ground electrical components and fixtures of vendor service points. Provide all necessary repairs and replacements to maintain circuits and fixtures in compliance with code requirements.

Lighting & Electrical Performance Standards

Burned-out bulbs in pedestrian, decorative, and landscape lighting fixtures are to be

replaced within 24 hours of being reported. Out of service electrical outlets must be repaired within eight hours of being reported. Inoperable electrical service points for vendors must be placed back in service within four hours of being reported. Life/safety conditions must be made safe within one hour of being reported. The Contractor shall contact the City's designee/contract manager so that purchase or procurement of replacement parts and fixtures can be coordinated through the City's Property Management Division.

3. Aquatic Features and Fountains (Daily - Monday through Friday)

All equipment supporting water features must be kept operational at all times. Provide daily inspections and maintenance of water features including water clarity, chemical levels, pump maintenance and cleaning of pools. Water features to be checked for overall appearance and water levels, skimmers and pump baskets to be cleaned, and timers to be checked and reset as needed.

Aquatic Features and Fountains Performance Standards

Systems that cease to operate, must be repaired on the same day, unless the required repair parts are special order or on back order. Should that occur, the City's representative must be notified immediately and provided with the anticipated date of repair. The Contractor shall contact the City's designee/contract manager so that purchase of replacement parts can be coordinated through the City's Property Management Division.

4. Street Furniture and Signage

The Contractor is responsible for the maintenance and repair of the City's street furniture. The Contractor shall inspect all pieces of street furniture within the service area on a daily basis to determine maintenance needs and is responsible for the maintenance and repair activities. This includes problems caused by accidents, vandalism and general wear and tear and applies to items including benches / seats, guard rails and cycle racks. In the case of street furniture maintained and repaired by others, such as directory signs and bus benches or shelters, the Contractor shall contact the City's designee/contract manager for follow up with the appropriate vendor.

For missing traffic control signs, the Contractor must immediately report the location to the Police Department and the City's designee/contract manager. The Contractor must monitor the location to verify that temporary "Stop" signs are placed by the Police Department within one hour of being reported. The Contractor shall also contact the City's Engineering Division, in the Public Works Department, so that arrangements can be made with the Miami-Dade Public Works Department to replace or repair missing or damaged traffic signs.

In the case of missing or damaged "Parking" signs, the Contractor must immediately report the locations to the Parking Department for replacement or repair, and notify the City's designee/contract manager. Depending on the type of sign, the Parking Dept. may be able to replace within 24-hours, but typically should not take longer than three days.

In the case of damaged or missing litter bin or trash receptacles, the Contractor shall contact the City's designee/contract manager so that replacement can be coordinated through the City's Sanitation Division within 24 hours. Missing or damaged news boxes should be reported to the Public Works Department Right-of-Way Manager for follow up and the City's designee/contract manager notified.

In the case of damaged or missing street furniture, the Contractor shall contact the City's designee/contract manager so that replacement can be coordinated through the City's Property Management Division.

Street Furniture and Signage Performance Standards

Refer to standards noted above.

5. Integrated Pest Management

Contractor shall use Integrated Pest Management (IPM) practices that aid in preventing the presence or proliferation of insect and diseases. The Contractor shall provide IPM and extermination services, including furnishing all supervision, labor, materials and equipment necessary to accomplish the monitoring, management and pest removal components of the pest management program.

Services include the setting of rodent traps throughout the service area, including furnishing all supervision, labor, materials and equipment necessary to accomplish the monitoring, management and pest removal components of the program. Please refer to *Appendix 10 – GreenSpace Management Division Grounds Maintenance Service Technical Specifications* for additional IPS criteria regarding the application of pesticides, insecticides and herbicides.

- a) Inspections: The Contractor shall perform monthly inspections and provide proper identification, management and treatment of pests consistent with IPM principles in order to maintain control and to prevent infestations. If at any time an infestation appears, the Contractor shall furnish immediate extermination services upon request from the City's designee/contract manager.
- b) Certification: The Contractor's and/or sub-contractor firm's employees who may provide services under this Contract must be licensed and certified by the Florida Department of Agriculture – Board of Pesticide Control to apply pesticides.
- c) Chemical Application: Application of extermination agents shall be performed in accordance with the State of Florida's pesticide regulations and Federal and Local laws. The Contractor shall submit proof of pesticide applicators license to the City's designee/contract manager. OSHA Material Safety Data Sheets for products used must be provided to the City's designee/contract manager prior to application of any chemical. Material Safety Data Sheets shall also be provided to the Project Coordinator and kept in the logbook for the location where product is being used.
- d) Pesticides: The City requires an IPM approach to pest control and environmentally friendly pest control methods which are not toxic to humans.
- e) Reporting: As part of the services provided under this contract, the collection and transmittal of data collected by the contractor during the work is crucial to the effectiveness in managing the IPM. Contractor must propose reporting and recordkeeping plans to enable City to monitor Contractor's work in a timely and efficient manner.

As a minimum, within a week of completion of each treatment cycle, Contractor is required to:

- 1) Collect and submit the extermination and/or application log with a spreadsheet summary highlighting troubled areas; and
- 2) Provide a general summary report that shall include but not be limited to:
 - A brief narrative discussing the findings as they relate to an increase or new infestations by location, including recommendation for treatment or preventative measures.
 - Discuss any findings of deficiencies due to lack of access, inadequate or improper treatments, or recommendations of change to a more effective chemical
- 3) Contractor must reports in hard-copy format and by e-mail in electronic spreadsheet format to the City's designee/contract administrator as well as entering the into a Computer Maintenance Management System. City will review and approve the reporting format.

Pest Management Performance Standards

The Contractor's performance will be evaluated in accordance with the approved pest management plan. If pests appear between scheduled treatment, the Contractor may be called back to treat the areas where the problem occurred.

6. Computer Maintenance Management System

The Contractor shall maintain a web-based computerized maintenance management system (CMMS) where all service requests and work orders are entered and tracked. The CMMS shall have service request/work order status reporting capabilities. The contractor shall provide "read-only" and management report generating access to the City.

C. LANDSCAPING SERVICES – Involves service and maintenance activities to provide complete landscape maintenance services as prescribed below:

1. Turf mowing, trimming and edging (30 times/year)
2. Shrub and ground cover pruning (12 times/year)
3. Weed control (30 times/year)
4. Tree/palm pruning (2-3 times/year)
5. Date/palm seed removal (4-6 times/year)
6. Mulch application (2 times/year)
7. Irrigation system checks and repairs (Daily)
8. Flower and additional plant installations (3 times/year)
9. Turf fertilization (3 times/year)
10. Shrub/ground cover granular fertilization (3 times/year)
11. Liquid fertilization - minors (3 times/year)
12. Tree/palm fertilization (3 times/year)
13. Litter removal (Daily - supplemental to other litter control activities)
14. Specialized orchid care (Monthly)

- 15. Tree well repairs/services (As needed)
- 16. Insect and plant disease management

Landscaping Services Performance Standards

All landscape services relating to planting, pruning, fertilization, etc. shall strictly adhere to the American National Standards Institute "ANSI A300 Standards for Tree Care Operations". All tree work shall be done or directly supervised, by an International Society of Arboriculture Certified Arborist.

The following documents are incorporated herein by reference or appendix:

- ANSI A300 Standards for Tree Care Operations (<http://www.tcia.org/standards/A300.htm>)
- CMB GreenSpace Management Division Grounds Maintenance Service Technical Specs (*Appendix 10*)

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D. MALL MANAGEMENT SERVICES (ADD ALTERNATE NO. 1)

Contractor shall provide full-time Mall Manager shift coverage from 7:00am to 11pm, seven days per week. The Mall Manager shall provide centralized management and coordination to enhance the delivery and quality of maintenance and security services, with minimal disruption to the Lincoln Road Mall business and property owners. The Mall Manager shall be the City's point of contact for all activities and work covered under this Contract. The Contractor shall make provisions for emergency contact services during off hours.

1. Minimum Requirements

The City shall have final approval authority on the individual(s) proposed by the Contractor to serve in a Mall Manager capacity. Minimum Requirements shall include, but not be limited to, the following:

- a) Providing a verifiable, proven record of successfully providing maintenance and security management services, for not less than three (3) years, in pedestrian-oriented public venues and facilities, such as cultural, entertainment, and shopping districts, educational and medical campuses, and other environments with high pedestrian traffic.
- b) Ability to direct and coordinate the activities of staff and contract personnel and evaluate their performance.
- c) Act as liaison between City staff, maintenance and security services personnel, and business and property owners, and tenants along Lincoln Road.
- d) Possess superior communication and interpersonal skills with a high degree of human relations skills
- e) Demonstrate a high level of expertise, technical knowledge, customer service, and innovation to successfully manage the maintenance and security service level expectations of the City, Lincoln Road Mall property and business owners, tourists and the general public, including providing services through inclement weather, and any unforeseeable circumstances.
- f) Possess strong organizational and management skills.
- g) Ability to identify and prioritize repair and capital maintenance project priorities and collaborate with City staff in the development of annual capital budget requests.

E. SECURITY GUARD SERVICES (ADD ALTERNATE NO. 2)

Contractor shall provide security guard services staffed by personnel having the experience, qualifications, ability, capability, capacity, and past proven performance in providing high quality, unarmed security guard services. Security guards shall have the qualifications and training to issue warnings as the City determines to be warranted to include: a) dog off leash laws; b) pooper scooper laws; littering; and d) skateboarding within the Lincoln Road Mall service area. Contractor shall submit incorporation or other business entity/form documentation of the security guard services provider as part of their proposal. Security guard services provider shall have provided continuous and successful security guard services for a minimum of five (5) years.

Refer to *Appendix 11* for Security Guard Services minimum requirements/qualifications and scope of services.

F. COORDINATION WITH CODE ENFORCEMENT, POLICE, HOMELESS OUTREACH TEAM

All Contractor personnel will be asked to report any obvious health and safety issues, including but not limited to damaged structures, pavers, overflowing public or private dumpsters, loitering vagrants, aggressive panhandling or any other conditions that may cause concern.

G. SPECIAL EVENTS

1. The Contractor shall be responsible for providing the equipment, personnel and supplies in order to maintain the City's standard of cleanliness as described herein during all special events. The City, at its own discretion may authorize overtime for certain events, such as noted previously in section A1, and as it deems necessary in order to maintain baseline cleanliness standards. The contractor shall provide a cost per man-hour as a special event overtime rate. Under no circumstances will overtime be permitted or paid without prior written consent by the City's designee/contract manager.

H. MISCELLANEOUS DUTIES

1. The Contractor shall, during the provision of the outlined services, document and report defective City or public utility systems such as but not limited to: burned out street lights; missing or damaged street lights; damaged street light control, electrical, and communication cabinets; defective public telephones; defective traffic signals; missing or damaged street signs; missing or damaged manhole, hand hole, meter box, utility box, valve box, and other covers; damaged newsstand boxes; broken and/or leaking fire hydrants; and other miscellaneous items in the public right-of-way and pedestrian areas requiring attention.
2. Should the contractor encounter any of these or other similar situations, he shall have

available the appropriate telephone numbers of the responsible utility company and/or public agency, and he will call them to repair the defective equipment. The City's designee/contract manager must also be notified.

3. A record and follow-up of these calls shall be maintained by the Contractor in the CMMS, and submitted to the City's designee/contract manager.

I. CONTRACTOR STANDARDS

1. **Quality of Operation:** The Contractor shall provide all maintenance services required herein in a workmanlike and professional manner; shall conform to professional and industry standards; shall keep all areas in a clean, orderly and safe condition; and satisfactory to the City at all times. The Contractor agrees to be bound by all applicable Federal, State, City, and Municipal laws, ordinances and regulations to the same extent as if said requirements were expressly written herein. In the event that the Contractor is unable to meet the City's cleanliness standards or scope of services required herein to the satisfaction of the City, the City reserves the right to increase the hours of operation and/or required staff at no additional cost to the City.

2. Personnel

- a) The services to be provided pursuant to this contract shall be supervised by a Manager assigned exclusively to the Lincoln Road Mall service area who will be accountable to carry out the responsibilities as set forth in the required scope of services. The Manager will be stationed at a City office location, or a mutually agreed upon location within the service area, or at close proximity to the service area. The Manager will be responsible for responding to stakeholder complaints regarding all services provided by this contract. The Manager, or a mutually agreed upon representative must be on call 24 hours a day.
- b) The Contractor must also provide a proposed staffing plan detailing the number of workers, man-hours, shift schedules, routing schedules, and job tasks for each worker during all hours of operation. This plan must include coverage of the entire service area for all services required pursuant to this proposal. The Contractor must provide an adequate number of employees and man-hours in order to complete the services provided for herein to the City.
- c) The Contractor's employees shall be clean, courteous, qualified, efficient and neat. The Contractor shall not employ any person or persons in or about the service area who shall use improper language or act in a loud or boisterous or otherwise improper or inefficient manner. The Contractor agrees to remove from service any employee whose conduct the City determines to be detrimental to the best interests of the City and Lincoln Road Mall business and property owners and stakeholders.
- d) All contractor personnel will have friendly, positive customer service attitude when approached and must always be ready to provide reasonable assistance to the general public. Personnel should be trained in order to be able to provide simple directions to parking facilities and various attractions and general area destinations. Some training may be facilitated by, and at the discretion of, the

City.

- e) All employees shall wear clean uniforms at all times. Uniforms shall consist of shirts, pants, hats, appropriate footwear, and cold/wet weather gear (when necessary). Each uniform shall display the _____ name and logo only and the uniform shall be approved by the City. The cost of the uniforms shall be the responsibility of the Contractor.

3. Equipment

The City recommends the following equipment (or its equivalent) to be available for use by the Contractor's personnel on a daily basis and as appropriate to the task:

- a) Pickup trucks
- b) John Deere Gator
- c) Blowers
- d) String Trimmers
- e) Mechanical litter vacuums
- f) Hot water/pressure washing units with a minimum 200 gallon water tank
- g) Sidewalk cleaner
- h) Radios for communication with each employee on shift
- i) Trash cans with rollers
- j) Brooms & pans
- k) Rakes

Alternative to this recommended equipment list may be made at the discretion of the proposer so long as the appropriate specifications and product information is provided to the City in advance.

All specified equipment purchased for this contract shall be used by the Contractor for the performance of this contract and shall have the (Lincoln Road Mall?) name and City logo prominently displayed. The proposer must submit a list of all equipment, with quantities, which is intended to be used in connection of the performance of this contract.

The contractor shall maintain, in accordance with the manufacturer's specifications and maintenance requirements, all equipment herein specified and purchased.

4. Supplies

- a) The Contractor shall bear at its own expense all costs of operating and furnishing these maintenance services and shall pay all costs connected with the fulfillment of this contract.
- b) The Contractor will be required to supply and furnish at its sole cost and expense any and all cleaning supplies; disinfectants; paint brushes, rollers & solvents; gum removal solutions; pads; paper towels; trash bags; environmentally friendly detergents; and all other supplies that will be necessary for the proper execution of the maintenance services herein specified.
- c) All products and supplies used and furnished must conform to the highest industry standards.
- d) The Contractor will be responsible for supplying garbage bags that are sturdy

enough to handle the garbage demand. The contractor will also be responsible for providing garbage carts for litter abatement personnel. Personnel will not be allowed to utilize public trash receptacles as a means of disposing of trash.

5. Program Management

- a) The contractor shall have in place a comprehensive management program to respond to stakeholder or City requests for service or other maintenance issues that affect the overall appearance and cleanliness of the Lincoln Road mall and adjoining side streets within the service area. It is expected that the response to most service needs, including non-maintenance activities, will occur within 24 hours or less, or as otherwise specified elsewhere within the contract documents.
- b) The program should include both Preventive maintenance (PM) and Reactive Maintenance (RM). It is required that PM will be performed on a regular basis. The contractor will be responsible for maintaining the baseline cleaning standards in the event of unforeseen equipment failures or breakdowns. The proposer should account for anticipated equipment maintenance and the effect on day to day operations.
- c) Service efficiency requires that maintenance activities are organized with clear and distinct managerial oversight. All equipment should be periodically upgraded in keeping with current industry standards and usage.

6. Safety Regulations

The Contractor and its sub-contractors shall adhere to the Occupational Safety and Health Administration's (OSHA's) most recently published Safety and Health Regulations and general Occupational Safety and Health Standards, where applicable.

7. Fines and Penalties

The City reserves the right to levy fines against the Contractor when it has been determined that the Contractor is not meeting the necessary work requirements. The table below depicts areas where fines will be levied.

<i>Work Activity</i>	<i>Grace Period</i>	<i>Comments</i>
Equipment (deficiencies)	72 hours	\$500/day after grace period
Personnel shortages	2 hours	\$50/hour after grace period
Communication deficiencies	48 hours	\$250/hour after grace period
Personnel dress code concerns	2 hours	\$50/hour after grace period

If additional time is required, a written request must be submitted for approval to the City's designee/contract manager prior to the end of the grace period.

J. QUALITY CONTROL / QUALITY ASSURANCE (QC/QA)

The goal of the City is to improve the actual and perceived cleanliness of the Lincoln Road Mall and adjacent cross streets within the service area through a continuous quality improvement program driven by the Contractors' QC/QA Management Plan.

1. QC/QA Management Plan

The proposer shall submit a detailed plan outlining the quality management procedures

and responsibilities for the workmanlike and professional performance of the key maintenance and repair processes associated with this Contract. The proposer shall describe how it will measure quality and performance thresholds for work performed under this Contract. The mutually agreed QC/QA Management plan will be subject to review and input by the City.

2. Quality Control Plan

The proposer shall list all subcontractors and suppliers and describe the system that it will use to manage, control, and document its own, sub-contractors' and suppliers' activities to comply with all contract requirements.

3. Quality Assurance Plan

The Contractor shall identify what specific activities shall be monitored; describe the performance standards and measures associated with these activities that will be used to determine if the work performed by the Contractor's personnel or by sub-contractor personnel meets the requirements and intent of the Contract; and provide a format for reporting the results of the QC plan as part of a monthly activity report. The Contractor shall update online maintenance logs every 24hrs with daily maintenance information for reporting to the City.

K. CONTRACTOR RISK ASSESSMENT / VALUE ADDED SERVICES (RAP/VAS) PLAN

As part of its submittal, the Contractor shall include a separate RAP/VAS Plan. The Plan should reflect the Contractor's ability to: 1) pre-plan by identifying potential risks associated with the performance of the work under this Contract, as well as the Contractor's plan to minimize those risks; and 2) propose any value added options that could increase the value (expectation and/or quality) of their work. The risks identified are those that the contractor may not directly control and that may negatively impact the Contractor's ability to provide maintenance services with minimal disruption to the Lincoln Road Mall business and property owners. The description of the risks identified in the Plan should not have any additional cost or time, but are risks that the Contractor will try to minimize during the performance of work covered under this Contract. The City reserves the right to accept or reject any of the risk or value-added options identified. A sample format for the RAP/VAS Plan is included as *Appendix 12*.

1. The RAP/VAS Plan shall be used to:

- a) Assist the City in prioritizing firms based on their ability to understand potential risks associated with performing the work under this Contract and their plan to mitigate those risks.
- b) Provide high-performing vendors the opportunity to differentiate themselves due to their experience and expertise through value-added offerings.
- c) Give the competitive edge to experienced companies who have successfully provided, or are currently providing similar work, and who can effectively manage the delivery of services to the benefit of all stakeholders.

2. Value Added Options should:

- a) Demonstrate how the Contractor would differentiate itself from other proposers.
- b) List all options with a brief description of how they add value to the City and other stakeholders.
- c) Identify if each item will: increase or decrease cost; impact service delivery schedule; and positively affect expectations. Cost impact of any proposed value

added option should not be included in the Base Proposal Price.

L. CONDITION ASSESSMENT SURVEY AND ASSET INVENTORY

The successful Contractor shall conduct a condition assessment and inventory of assets within the Lincoln Road Mall Service Area prior to commencement of Contract. The Contractor shall submit a cost proposal for the work for review by the City. The cost proposal for the condition assessment and inventory of assets shall be subject to negotiation and include the qualifications and experience of the individual or sub-contractor that will provide service as well as a breakdown of the costs to provide such service.

M. REPORTING REQUIREMENTS

1. Daily Activity Report

The Contractor shall update online maintenance logs every 24 hours with daily maintenance information for reporting to the City.

2. Monthly Activity Report

- a) The Contractor shall provide a monthly activity report which shall be submitted to the City's designee/contract manager by the 10th day of each month.
- b) The monthly activity report shall include, but not be limited to the following information: a general description of the work performed in the prior month, including picture; the number of linear block faces pressure washed and associated man-hours; a monthly log of special requests from the City's designee/contract manager, or outside stakeholders, including outcome or current status; number of graffiti marks removed; number of trash receptacles cleaned; number of gum spots removed; incidents of vandalism or damage to public property; description of any special projects; maintenance and repair activities completed and/or current status, by discipline; and other performance metrics as determined by the City.
- c) The monthly report shall also include a work plan to adequately address Continuous Quality Improvement goals in the Contractor's QC/QA management plan.
- d) The City reserves the right to add, delete or modify the data collected in order to adequately monitor performance of the Contractor.

3. Annual Report

- a) The contractor shall also provide an annual report with an established work plan and goals for the upcoming calendar year and quarterly reports including updates of the annual work plan and goals.

4. Minimum Requirements

- a) The minimum requirements of these reports may be modified as needed by mutual written consent of both parties.

- b) It is important to note that the Contractor's invoices will not be honored unless all of the information and documentation regarding the monthly work activities, maintenance and repair records, and required reports have been received and approved by the City's designee/contract manager.

N. SUPERVISOR DUTIES

The Successful Contractor's supervisors shall manage the work of its employees and sub-contractors, and suppliers operating within the Lincoln Road Mall service area, with a focus on: ensuring the safety of the public from maintenance, repair, construction, and related activities; completing all tasks and activities effectively and efficiently; minimizing disruption to the operations of the active businesses; limiting inconvenience to residents and visitors that may result from the execution of activities; and fostering a culture of positive customer service attitude, among employees when approached by the general public. Essential duties include:

1. Supervising and assisting skilled and semi-skilled workers in the maintenance, repair, and construction of city facilities, installations and equipment.
2. Conduct daily visual inspection of assigned personnel, verifying all posts are manned and properly staffed, and personnel is fully equipped and in proper uniform.
3. Estimating costs involved in various types of maintenance, repair and construction activities.
4. Maintaining accurate work records of time, parts and materials involved in job assignments.
5. Entering and updating into the CMMS, the status and progress of all service requests and work orders, as well as any circumstances that may impact the general public and business owners.
6. Inspecting all work in progress and, upon completion, determining if work meets all quality standards and specifications.
7. Planning and supervising work assignments.
8. Arranging for and supervising the movement of tools, equipment and workers to and from assignments and work sites.
9. If needed, having the ability to drive/operate the vehicles, equipment, and tools necessary to complete the work.
10. Recommending for purchase necessary parts, supplies, and materials.
11. Preparing progress reports on work assignments.
12. Insuring proper inventory of equipment, tools and supplies.
13. Performing related work as required.
14. Coordinating with proper City of Miami Beach designees, departments, contract administrator(s) as needed to ensure that all regular and event assignments are properly staffed. In some instances, this requires daily contact with City of Miami Beach staff to learn of authorized activities.

O. PERFORMANCE EVALUATION MEETINGS

The Successful Contractor will assign Contract Manager to meet with the City of Miami Beach Contract Administrator on a daily basis, if required. Regularly scheduled meetings will be held on a monthly basis. Additionally, a meeting will be held whenever a Contract Discrepancy Report is issued by the City Contract Administrator.

A mutual effort will be made to resolve all problems identified. The written minutes of these

meetings will be signed by the Successful Contractor's Contract Administrator and the City's Contract Administrator, and a copy will be forwarded to the Procurement Director. Should the Successful Contractor not concur with the minutes, he will state in writing to the Procurement Director any areas wherein he does not concur.

Fine assessment procedure:

Once a violation which has the possibility of a fine assessment is identified and written notification of intent to fine ("Contract Discrepancy Report") is issued to the Successful Contractor. The Successful Contractor will have seven (7) days to provide a written response to the CMB Contract Administrator.

The Contract Administrator will review all written documents, conduct a cursory investigation if the needed and a final determination will be forwarded to the Successful Contractor and the CMB Procurement Dept. Security Contract Administrator's decision is final.

P. OVERTIME

No overtime for either regularly scheduled or special events will be paid by City of Miami Beach for personnel supplied by the Successful Contractor unless pre-approved by the City's designee(s) and/or contract administrator.

Q. EXPENDITURES

The Successful Contractor understands that any expenditure that it makes, or prepares to make in order to perform the Services required by the City of Miami Beach, is a business risk which the Successful Contractor must assume.

R. PERSONNEL PROBATION

The City's Contract Administrator or designated representative personnel may observe each employee of the Successful Contractor for a period of thirty (30) consecutive days. If during this probation, the City of Miami Beach is not satisfied with the performance of that employee, the City of Miami Beach will notify the vendor of such performance and the vendor will replace such employees immediately.

Additionally, the City of Miami Beach reserves the right to demand in writing that the Successful Contractor relieve an employee from a duty assignment, and/or ban the employee from further service under the contract, at the sole discretion of the City of Miami Beach.

S. LICENSES AND PERMITS

Successful Contractor will abide by all ordinances and laws pertaining to his operation and will secure, at his expense, all licenses and permits necessary for these operations.

T. SERVICE EXCELLENCE STANDARDS

Excellent Customer Service is the standard of the City of Miami Beach. As contract employees of the City, all personnel will be required to conduct themselves in a professional, courteous, and ethical manner at all times and adhere to the City's Service Excellence standards.

U. CONTRACTOR RESPONSIBILITY FOR DAMAGES AND ACCIDENTS

The Successful Contractor will at all times guard against damage to or loss of property to the City and will replace or repair any loss or damage unless the damage is caused by the City of Miami Beach, another Successful Contractor and/or contractors. The City of Miami Beach may withhold payment or make such deductions as it might deem necessary to insure reimbursement for loss or damage to property through negligence of the Successful Contractor, its employees or agents.

1. Contractor shall accept full responsibility for all work and services provided under this Contract against all loss or damage of whatsoever nature sustained, and shall promptly repair any damage done from any cause whatsoever.
2. Contractor shall be responsible for all materials, plants, equipment, and supplies provided under this Contract. In the event any such materials, plants, equipment, and supplies are lost, stolen, damaged or destroyed prior to final acceptance by the City, Contractor shall replace same without cost to City.
3. All incidents of damage, loss, theft and destruction of materials, plants, equipment, and supplies provided under this Contract shall be logged into the CMMS.

V. ASSIGNMENT OF CONTRACT

Successful Contractor will not assign, transfer, convey or otherwise dispose of the Contract, or of any or all of its rights, title or interest therein, or its power to execute such Contract to any person, company or corporation without prior **written consent of the City of Miami Beach**.

RECORDS

The Successful Contractor will submit all invoices to the City of Miami Beach containing an itemized employee time record, to include the employee name and hours worked/shift, for the time period identified on the invoice. The computerized printout from the downloaded sensors will accompany the weekly invoices. These printouts will be the same date and time frame of the submitted invoices and submitted in a hard copy, digital or any predetermined format(s).

All correspondence, records, vouchers and books of account insofar as work done under this Contract is concerned, will be open to inspection, by an authorized City of Miami Beach representative, during the course of the Contract and for a period of two (2) years after expiration of the Contract.

The Successful Contractor will maintain accurate and complete records of personnel criteria, training criteria and biographical data of all personnel affiliated with this Contract. The Successful Contractor will keep on file a separate personnel file for each employee employed under the Miami Beach contract. This file will specifically, along with the above mentioned criteria, include:

- Personal information of the employee, sex/race/ DOB/ and social security number.
- Copies of Florida Drivers license.
- Copies or notification of all discipline actions taken by the vendor or City of Miami Beach. This will include all verbal or written documentation of warnings or discipline.

- Proof of successful Background Check, Drug Screen, and Polygraph examination.

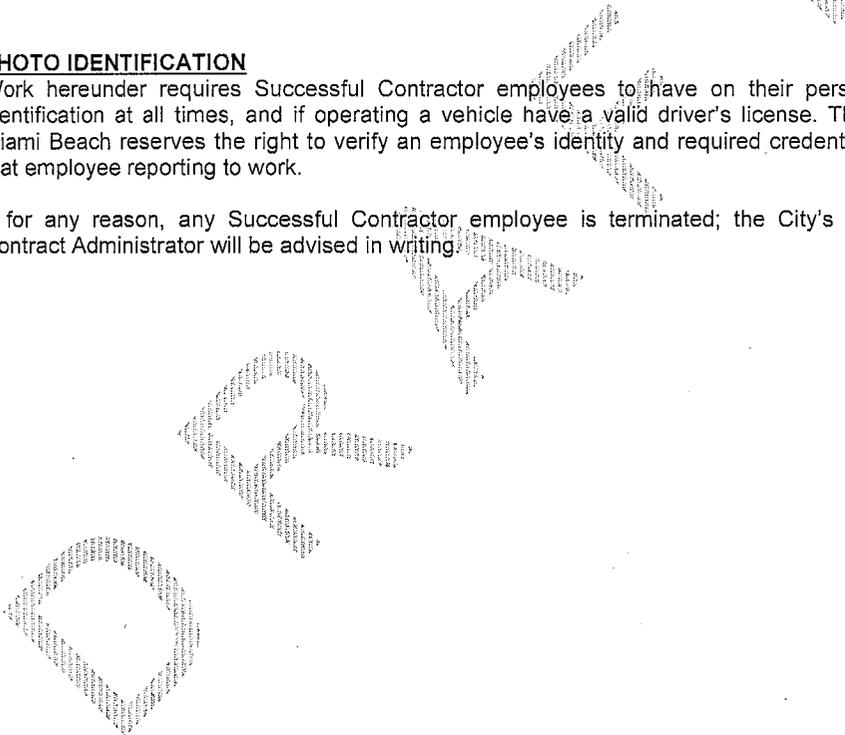
The City reserves the right to perform audit investigations of the Successful Contractor payroll and related records of employees assigned to the City of Miami Beach to ascertain that such employees' records indicate payment received for the specific hours worked for the City. Such audit will be at the discretion of and at the option of the City.

Successful Contractor will be required to provide in a hard copy, digital or any predetermined format(s), any/all records in its possession which contain information concerning hours worked and payment received based on the contractor's invoices to the City of Miami Beach. All required documentation and personnel files will be readily available for inspection by any authorized City of Miami Beach representative, during initial research and during the course of this Contract. Failure to have the required documentation will be deemed as non-compliance to the Terms and Conditions of the contract.

PHOTO IDENTIFICATION

Work hereunder requires Successful Contractor employees to have on their person photo identification at all times, and if operating a vehicle have a valid driver's license. The City of Miami Beach reserves the right to verify an employee's identity and required credentials, upon that employee reporting to work.

If for any reason, any Successful Contractor employee is terminated; the City's designee/ Contract Administrator will be advised in writing.





APPENDIX 1: BASE PROPOSAL - MAINTENANCE LABOR EXPENSES, OVERHEAD AND PROFIT

Base Proposal - Maintenance Labor Expenses, Overhead and Profit						
Position Title	Description of Duties	No. of Positions	Hourly Billing Rate	Est. Hours / Year	Total Annual Cost	
1			Regular:			\$
			Overtime:			\$
2			Regular:			\$
			Overtime:			\$
3			Regular:			\$
			Overtime:			\$
4			Regular:			\$
			Overtime:			\$
5			Regular:			\$
			Overtime:			\$
6			Regular:			\$
			Overtime:			\$
7			Regular:			\$
			Overtime:			\$
8			Regular:			\$
			Overtime:			\$
9			Regular:			\$
			Overtime:			\$
10			Regular:			\$
			Overtime:			\$
11			Regular:			\$
			Overtime:			\$
12			Regular:			\$
			Overtime:			\$
13			Regular:			\$
			Overtime:			\$
14			Regular:			\$
			Overtime:			\$
15			Regular:			\$
			Overtime:			\$
16			Regular:			\$
			Overtime:			\$
17			Regular:			\$
			Overtime:			\$
18			Regular:			\$
			Overtime:			\$
19			Regular:			\$
			Overtime:			\$
20			Regular:			\$
			Overtime:			\$
Total Positions:			Total Regular Hours:			\$
			Total Overtime Hours:			\$
TOTAL:						\$
General Administration & Overhead Costs:					____%	\$
Profit:					____%	\$
GRAND TOTAL - MAINTENANCE SERVICES LABOR EXPENSES, OVERHEAD AND PROFIT:						\$

APPENDIX 2: VEHICLE AND EQUIPMENT OPERATING EXPENSES

Vehicle and Equipment Operating Expenses				
Vehicle / Equipment - Model	Utilization	Quantity	Annual Operating Expense	Total Annual Cost
1			\$	\$
2			\$	\$
3			\$	\$
4			\$	\$
5			\$	\$
6			\$	\$
7			\$	\$
8			\$	\$
9			\$	\$
10			\$	\$
11			\$	\$
12			\$	\$
13			\$	\$
14			\$	\$
15			\$	\$
16			\$	\$
17			\$	\$
18			\$	\$
19			\$	\$
20			\$	\$
			TOTAL:	\$
General Administration & Overhead Costs:			_____ %	\$
			Profit:	\$
GRAND TOTAL - VEHICLE AND EQUIPMENT OPERATING EXPENSES:				\$

APPENDIX 3: MAINTENANCE SUPPLIES AND CONSUMABLES EXPENSES

Maintenance Supplies and Consumables Expenses				
Description	Utilization	Quantity	Unit Cost	Total Annual Cost
1			\$	\$
2			\$	\$
3			\$	\$
4			\$	\$
5			\$	\$
6			\$	\$
7			\$	\$
8			\$	\$
9			\$	\$
10			\$	\$
11			\$	\$
12			\$	\$
13			\$	\$
14			\$	\$
15			\$	\$
16			\$	\$
17			\$	\$
18			\$	\$
19			\$	\$
20			\$	\$
21			\$	\$
22			\$	\$
23			\$	\$
24			\$	\$
25			\$	\$
26			\$	\$
27			\$	\$
28			\$	\$
29			\$	\$
30			\$	\$
31			\$	\$

Maintenance Supplies and Consumables Expenses

	Description	Utilization	Quantity	Unit Cost	Total Annual Cost
32				\$	\$
33				\$	\$
34				\$	\$
35				\$	\$
36				\$	\$
37				\$	\$
38				\$	\$
39				\$	\$
40				\$	\$
41				\$	\$
42				\$	\$
43				\$	\$
44				\$	\$
45				\$	\$
46					
47					
48					
49					
50					
51					
52				\$	\$
53					
54					
55					
56					
57					
58				\$	\$
59				\$	\$
60				\$	\$
			TOTAL:		\$
				General Administration & Overhead Costs:	\$
				Profit:	\$
GRAND TOTAL - SUPPLIES AND CONSUMABLES EXPENSES:					\$

APPENDIX 4: REPAIR AND REPLACEMENT PARTS EXPENSES

Repair and Replacement Parts Expenses					
	Description	Utilization	Quantity	Unit Cost	Total Annual Cost
1.				\$	\$
2.				\$	\$
3.				\$	\$
4.				\$	\$
5.				\$	\$
6.				\$	\$
7.				\$	\$
8.				\$	\$
9.				\$	\$
10.				\$	\$
11.				\$	\$
12.				\$	\$
13.				\$	\$
14.				\$	\$
15.				\$	\$
16.				\$	\$
17.				\$	\$
18.				\$	\$
19.				\$	\$
20.				\$	\$

Repair and Replacement Parts Expenses

	Description	Utilization	Quantity	Unit Cost	Total Annual Cost
21				\$	\$
22				\$	\$
23				\$	\$
24				\$	\$
25				\$	\$
26				\$	\$
27				\$	\$
28				\$	\$
29				\$	\$
30				\$	\$
31				\$	\$
32				\$	\$
33				\$	\$
34				\$	\$
35				\$	\$
36				\$	\$
37				\$	\$
38				\$	\$
39				\$	\$
40				\$	\$
41				\$	\$

Repair and Replacement Parts Expenses

	Description	Utilization	Quantity	Unit Cost	Total Annual Cost
42				\$	\$
43				\$	\$
44				\$	\$
45				\$	\$
46				\$	\$
47				\$	\$
48				\$	\$
49				\$	\$
50				\$	\$
51				\$	\$
52				\$	\$
53				\$	\$
54				\$	\$
55				\$	\$
56				\$	\$
57				\$	\$
58				\$	\$
59				\$	\$
60				\$	\$
61				\$	\$
62				\$	\$

Repair and Replacement Parts Expenses

	Description	Utilization	Quantity	Unit Cost	Total Annual Cost
63				\$	\$
64				\$	\$
65				\$	\$
66				\$	\$
67				\$	\$
68				\$	\$
69				\$	\$
70				\$	\$
71				\$	\$
72				\$	\$
73				\$	\$
74				\$	\$
75				\$	\$
76				\$	\$
77				\$	\$
78				\$	\$
79				\$	\$
80				\$	\$
81				\$	\$
82				\$	\$
83				\$	\$

Repair and Replacement Parts Expenses

	Description	Utilization	Quantity	Unit Cost	Total Annual Cost
84				\$	\$
85				\$	\$
86				\$	\$
87				\$	\$
88				\$	\$
89				\$	\$
90				\$	\$
91				\$	\$
92				\$	\$
93				\$	\$
94				\$	\$
95				\$	\$
96				\$	\$
97				\$	\$
98				\$	\$
99				\$	\$
100				\$	\$
101				\$	\$
102				\$	\$
103				\$	\$
104				\$	\$

Repair and Replacement Parts Expenses

	Description	Utilization	Quantity	Unit Cost	Total Annual Cost
105				\$	\$
106				\$	\$
107				\$	\$
108				\$	\$
109				\$	\$
110				\$	\$
111				\$	\$
112				\$	\$
113				\$	\$
114				\$	\$
115				\$	\$
116				\$	\$
117				\$	\$
118				\$	\$
119				\$	\$
120				\$	\$
121				\$	\$
122				\$	\$
123				\$	\$
124				\$	\$
125				\$	\$

Repair and Replacement Parts Expenses

	Description	Utilization	Quantity	Unit Cost	Total Annual Cost
126				\$	\$
127				\$	\$
128				\$	\$
129				\$	\$
130				\$	\$
131				\$	\$
132				\$	\$
133				\$	\$
134				\$	\$
135				\$	\$
136				\$	\$
137				\$	\$
138				\$	\$
139				\$	\$
140				\$	\$
141				\$	\$
142				\$	\$
143				\$	\$
144				\$	\$
145				\$	\$
146				\$	\$

Repair and Replacement Parts Expenses

	Description	Utilization	Quantity	Unit Cost	Total Annual Cost
147				\$	\$
148				\$	\$
149				\$	\$
150				\$	\$
151				\$	\$
152				\$	\$
153				\$	\$
154				\$	\$
155				\$	\$
156				\$	\$
157				\$	\$
158				\$	\$
159				\$	\$
160				\$	\$
161				\$	\$
162				\$	\$
163				\$	\$
164				\$	\$
165				\$	\$
166				\$	\$
167				\$	\$

Repair and Replacement Parts Expenses

	Description	Utilization	Quantity	Unit Cost	Total Annual Cost
168				\$	\$
169				\$	\$
170				\$	\$
171				\$	\$
172				\$	\$
173				\$	\$
174				\$	\$
175				\$	\$
176				\$	\$
177				\$	\$
178				\$	\$
179				\$	\$
180				\$	\$
181				\$	\$
182				\$	\$
183				\$	\$
184				\$	\$
185				\$	\$
186				\$	\$
187				\$	\$
188				\$	\$

Repair and Replacement Parts Expenses				
Description	Utilization	Quantity	Unit Cost	Total Annual Cost
189			\$	\$
190			\$	\$
191			\$	\$
192			\$	\$
193			\$	\$
194			\$	\$
195			\$	\$
196			\$	\$
197			\$	\$
198			\$	\$
199			\$	\$
200			\$	\$
201			\$	\$
202			\$	\$
203			\$	\$
204			\$	\$
205			\$	\$
TOTAL:				\$
General Administration & Overhead Costs:				\$
Profit:				\$
GRAND TOTAL - REPAIR AND REPLACEMENT PART EXPENSES:				\$

APPENDIX 5: PLANT AND SHRUB REPLACEMENT EXPENSES

Plant and Shrub Replacement Expenses					
	Description	Location	Quantity	Unit Cost	Total Annual Cost
1				\$	\$
2				\$	\$
3				\$	\$
4				\$	\$
5				\$	\$
6				\$	\$
7				\$	\$
8				\$	\$
9				\$	\$
10				\$	\$
11				\$	\$
12				\$	\$
13				\$	\$
14				\$	\$
15				\$	\$
16				\$	\$
17				\$	\$
18				\$	\$
19				\$	\$

Plant and Shrub Replacement Expenses

	Description	Location	Quantity	Unit Cost	Total Annual Cost
20				\$	\$
21				\$	\$
22				\$	\$
23				\$	\$
24				\$	\$
25				\$	\$
26				\$	\$
27				\$	\$
28				\$	\$
29				\$	\$
30				\$	\$
31				\$	\$
32					
33				\$	\$
34				\$	\$
35				\$	\$
TOTAL:					\$
General Administration & Overhead Costs:					\$
Profit:					\$
GRAND TOTAL - SUPPLIES AND CONSUMABLES EXPENSES:					\$

APPENDIX 6: ADD ALTERNATE NO. 1 - MALL MANAGEMENT SERVICES

6A - Mall Manager Services - Labor, Overhead and Profit						
Position Title	Description of Duties	No. of Positions	Hourly Billing Rate		Est. Hours / Year	Total Annual Cost
			Regular:	Overtime:		
MALL MANAGER		2	Regular:		5,840	\$
			Overtime:			\$
			Regular:		0	\$
			Overtime:			\$
Total Positions:			Total Regular Hours:		5,840	\$
			Total Overtime Hours:			\$
TOTAL:					5,840	\$
General Administration & Overhead Costs:					_____ %	\$
Profit:					_____ %	\$
GRAND TOTAL - MALL MANAGER SERVICES LABOR, OVERHEAD AND PROFIT:						\$

6B - Mall Manager Services: Vehicle and Equipment Operating Expenses				
Vehicle / Equipment - Model	Utilization	Quantity	Annual Operating Expense	Total Annual Cost
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
General Administration & Overhead Costs:			_____ %	\$
Profit:			_____ %	\$
GRAND TOTAL - MALL MANAGER SERVICES VEHICLE AND EQUIPMENT OPERATING EXPENSES:				\$

APPENDIX 7: ADD ALTERNATE NO. 2 - SECURITY GUARD SERVICES

7A - Security Guard Services - Labor, Overhead and Profit						
Position Title	Description of Duties	No. of Positions	Hourly Billing Rate		Est. Hours / Year	Total Annual Cost
SECURITY GUARD		4	Regular:		11,680	\$
			Overtime:			\$
SUPERVISOR	Note: Supervisor can be an area supervisor, but must be able to monitor security guards and respond to site within 15 minutes.	2	Regular:			\$
			Overtime:			\$
Total Positions:		6	Total Regular Hours:			\$
			Total Overtime Hours:			\$
TOTAL:						\$
General Administration & Overhead Costs:					_____ %	\$
Profit:					_____ %	\$
GRAND TOTAL - MALL MANAGER SERVICES LABOR, OVERHEAD AND PROFIT:						\$

6B - Security Guard Services: Vehicle and Equipment Operating Expenses				
Vehicle / Equipment - Model	Utilization	Quantity	Annual Operating Expense	Total Annual Cost
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
General Administration & Overhead Costs:			_____ %	\$
Profit:			_____ %	\$
GRAND TOTAL - MALL MANAGER SERVICES VEHICLE AND EQUIPMENT OPERATING EXPENSES:				\$

COST PROPOSAL SUMMARY

BASE PROPOSAL

ITEM	DESCRIPTION	TOTAL
1	Base Proposal - Maintenance Labor (Appendix 1)	\$ _____
2	Vehicle and Equipment Operating Expenses (Appendix 2)	\$ _____
3	Maintenance Supplies and Consumable Expenses (Appendix 3)	\$ _____
4	Repair and Replacement Parts Expenses (Appendix 4)	\$ _____
5	Plant and Shrub Replacement Expenses (Appendix 5)	\$ _____
TOTAL BASE PROPOSAL AMOUNT - ITEMS 1 THROUGH 5:		\$ _____

ADD ALTERNATES

ITEM	DESCRIPTION	TOTAL
6A	Add Alternate No. 1 - Mall Manager Services Labor, Overhead and Profit (Appendix 6)	\$ _____
6B	Add Alternate No. 1 - Mall Manager Services Vehicle & Equipment Operating Expenses (Appendix 6)	\$ _____
TOTAL - ADD ALTERNATE No. 1, MALL MANAGER SVCS.:		\$ _____
7A	Add Alternate No. 2 - Security Services Labor, Overhead and Profit (Appendix 7)	\$ _____
7B	Add Alternate No. 2 - Security Services Vehicle & Equipment Operating Expenses (Appendix 7)	\$ _____
TOTAL - ADD ALTERNATE No. 2, SECURITY GUARD SVCS.:		\$ _____

**APPENDIX 8
LINCOLN ROAD MALL SERVICE AREA MAP**

PROPOSED MAINTENANCE SERVICE AREA TO BE OUTSOURCED



APPENDIX 9
CITY OF MIAMI BEACH CLEANLINESS INDEX STANDARDS

Cleanliness Index for Streets, Sidewalks, Right-of-Ways, Parks, Parking, and Alleys

	Can	Organic Material	Fecal Matter	
1 Extremely Clean	<ul style="list-style-type: none"> No litter and/or debris on entire block face. 	<ul style="list-style-type: none"> Can is in good working order and none are no more than 3/4 full. Can is in a clean condition free of items, such as stickers, graffiti. 	<ul style="list-style-type: none"> Isolated instances of small fresh organic material, such as leaves, branches, etc., cover the paved area. No large organic material, such as tree limbs or palm fronds on the ground. 	<ul style="list-style-type: none"> Fecal matter is not visible.
2 Clean	<ul style="list-style-type: none"> Isolated pieces of litter on the entire assessed area. The area is not void of litter, but may contain an isolated incidence of litter. 	<ul style="list-style-type: none"> Can is in good working order and none are no more than 3/4 full. There is isolated piece of trash outside of the can. Can is in a clean condition free of items, such as stickers, graffiti. 	<ul style="list-style-type: none"> Less than 10% of a 10 step distance paved area is covered by small organic materials, but occurring no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then add 1 point. No large organic material on the ground. 	<ul style="list-style-type: none"> Past-residue of fecal matter. It seems that an attempt was made to clean the fecal matter, but residue was left behind.
3 Somewhat Clean	<ul style="list-style-type: none"> Small to moderate amounts of litter. In a 10 step distance the litter accumulation should account to less than 10 small pieces or 2-4 pieces of large litter, but occurring in no more than 10% of the entire assessed area. If the litter density is occurring between 10-25% of the assessed area, then add 1 point from the rating scale. If the litter density is occurring more than 25% of the assessed area, then add 2 points from the rating scale. <p><i>Guideline:</i> Is the litter something you notice, but your eye is not constantly drawn to it? The area has a clean appearance, but does need some attention.</p>	<ul style="list-style-type: none"> Can is functioning, but is full with trash, which can be seen from the eye level. There is no litter above the rain guard. There is some residue from past garbage. Can is in a clean condition, but may have one small isolated instance of a sticker or graffiti, which the eye is not drawn to it. 	<ul style="list-style-type: none"> Between 10% - 30% of a 10 step paved area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then add 1 point. Between 1 and 3 pieces of large organic materials is on the ground. Isolated case of organic material accumulation caused by standing water and poor drainage. 	<ul style="list-style-type: none"> One instance of fecal matter is present on the public area.

Cleanliness Index for Streets, Sidewalks, Right-of-Ways, Parks, Parking, and Alleys

	Trash/Litter	Can	Organic Materials	Fecal Matter
4 Somewhat Dirty	<ul style="list-style-type: none"> Consistently scattered trash. In a 10 step distance the trash accumulation should account to more than 10 pieces of small litter or over 4 pieces of large litter occurring in no more than 10% of the entire assessed area. If the litter density is occurring between 10-25% of the assessed area, then add 1 point from the rating scale. If the litter density is occurring more than 25% of the assessed area, then add 2 points from the rating scale. <p><i>Guideline:</i> Trash or litter is obvious and your eye is constantly drawn to it.</p>	<ul style="list-style-type: none"> Can is full and there is trash above the rain guard. In some cases, there is evidence that there is improper use by the residents. Can is in a working condition, but contains items such as stickers or graffiti on them. Can has some damage, such as dents, but is usable. 	<ul style="list-style-type: none"> Between 30% - 50% of a 10 step paved area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then add 1 point. Between 4 and 10 pieces of large organic materials is on the ground. 2 to 3 instances of organic material accumulation caused by standing water and poor drainage. The organic material is beginning to turn brown. 	<ul style="list-style-type: none"> Two instances of fecal matter are present on the public area.
5 Dirty	<ul style="list-style-type: none"> Consistent accumulation of trash. In a 10 step distance there are multiple piles of trash consisting of more than 10 pieces of small litter or over 4 pieces of large litter. If the litter density is occurring between 10-25% of the assessed area, then add 1 point from the rating scale. 	<ul style="list-style-type: none"> Can is full and there is trash above the rain guard and beginning to overflow since there is no room to put additional trash. There may be evidence of improper use by the residents. Can has considerable damage, but is usable. A large area of the can contains items such as stickers or graffiti on them. 	<ul style="list-style-type: none"> Over 50% of a 10 step paved area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then add 1 point. Over 10 pieces of large organic materials is on the ground. 3-4 instances of organic material accumulation caused by standing water and poor drainage. Faint foul odor is present due to standing water. The organic material has been on the ground for some time and has turned brown. 	<ul style="list-style-type: none"> Three instances of fecal matter are present on the public area.

Cleanliness Index for Streets, Sidewalks, Right-of-Ways, Parks, Parking, and Alleys

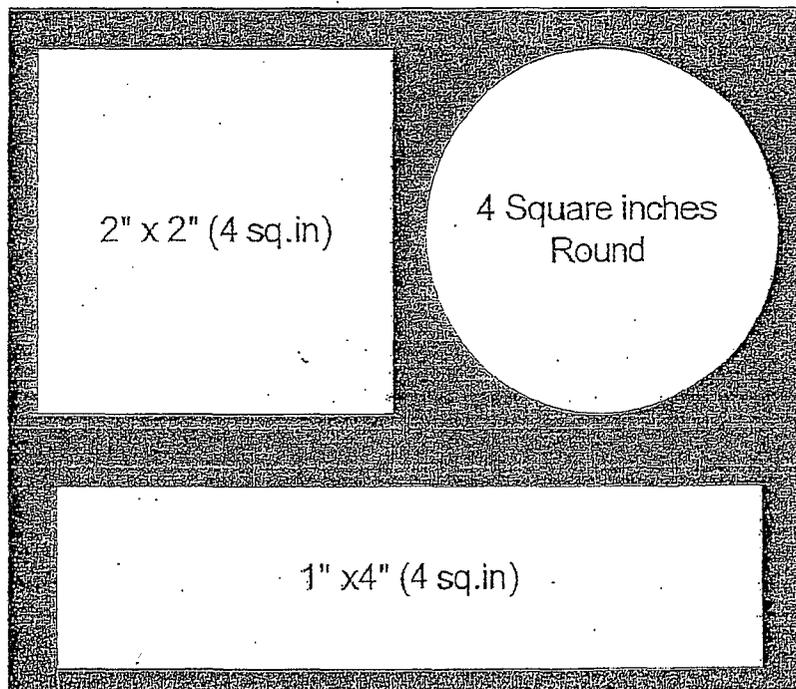
	Trash	Litter	Organic Material	Fecal Matter
<p style="text-align: center;">6 Extremely Dirty</p>	<p>Area is blocked by an accumulation of trash and litter. Illegal dumping may be evident. Hazardous materials on the street.</p> <p><i>Guideline:</i> This area has been neglected for a long time and needs help. Heavy equipment will be required to clean this area. The area may also be affected due to other circumstances (i.e. nearby constructions sites, homeless activity, etc.)</p>	<ul style="list-style-type: none"> • Can is full and trash has overflowed to the ground. In some cases, there is a rat/rodent/insect infestation. • Can is damaged and needs to be replaced. • Can is covered of items such as stickers or graffiti. 	<ul style="list-style-type: none"> • 90-100% of a 10 step paved area is covered with organic material. The organic material has been on the ground for some time and has turned brown. • Over 5 instances of organic material accumulation caused by standing water and poor drainage. • Strong foul odor is present due to standing water. 	<ul style="list-style-type: none"> • Four or more instances of fecal matter are present on the public area.

City of Miami Beach
Public Area Cleanliness Index

The cleanliness index makes references to small and large litter, which can directly affect the cleanliness score of a public area. The definition used to distinguish the difference between small and large litter came from the Florida Center for Solid and Hazardous Waste Management (the Center). Each year the Center conducts a roadside litter survey for the State of Florida and is funded through the Florida Department of Environmental Protection (FDEP). Starting in 1993, the Florida Legislature designated the Center and funded the litter survey to measure progress toward the state's litter reduction goal as defined in the Solid Waste Management Act.

Using the Center's definition for litter, items or pieces of items four square inches or larger in size are classified as "large litter," and items or pieces of items under four square inches are classified as "small litter." As a reference, the figure below contains three templates of 4 square inch areas in a rectangle, square, and round shape are depicted in the figure below. If the litter fits in any of these areas, then it is considered small litter. If the litter is too big to fit in any of these areas, then it is considered large litter.

The two tables following the templates contain examples of small versus large litter or trash.



Templates for Small Litter Distinctions

Examples of Small Litter

- Cigarette butts
- Bottle caps
- Straws
- Candy packaging and wrappers
- Polyfoam packing materials
- Plastic expresso coffee cups

City of Miami Beach
Public Area Cleanliness Index

Examples of Large Litter

- Beer cans
- Beer bottles
- Soft drink (glass)
- Soft drink (cans)
- Soft drink (plastic)
- Sport drink (glass)
- Sport drink (plastic)
- Wine / Liquor (glass)
- Wine / Liquor (plastic/other)
- Milk / Juice (Plastic)
- Milk / Juice (Glass)
- Six pack plastic rings
- Plastic drink cups
- Paper Cups (Hot)
- Paper Cups (Cold)
- Polystyrene cups (foam)
- Cup lids
- Plastic retail bags
- Paper retail bags
- Paper bags – fast food
- Plastic bags – not retail
- Paper bags – not retail
- Zipper bags /sandwich bags
- Cardboard boxes
- Paperboard (cereal type)
- Paper beverage cases
- Plastic jars / bottles/ lids
- Glass jars / bottles misc.
- Cans – steel
- Cans – aluminum
- Aerosol cans
- Paper food wrap
- Utensils
- Napkins
- Paper fast food plates
- Poly fast food plates
- Clothing
- Printed materials (newspapers, flyers, books, etc.)

APPENDIX 10

CMB GreenSpace Division Grounds Maintenance Service Technical Specifications

4 TECHNICAL SPECIFICATIONS

4.1 PURPOSE

These specifications designate the manner in which basic maintenance tasks will be performed in order to achieve the overall Quality Objective, which is to maintain the landscaping, irrigation, pedestrian walking surfaces, hardscape planters/structures, water features, electrical service and furniture on the listed sites in a vigorous, healthy, growing, safe, clean, and attractive condition throughout the year.

4.2 STANDARDS AND REFERENCES

The Contractor's Representative shall be well versed in Florida maintenance operations and procedures. All employees shall be competent and skilled in their particular job in order to insure that they properly perform the work assigned.

The following organizations provide standards and publications which may be used as a guide for conducting grounds maintenance and services, under the Contract:

- A. Florida Cooperative Extension Services, 18710 SW 288th Street, Homestead, Florida, 33030.
- B. Florida Turf-Grass Association, Inc., 302 Graham Avenue, Orlando, Florida, 32803-6399.
- C. National Recreation and Park Association, 1601 N. Kent Street, Arlington, Virginia, 22209.
- D. Florida Recreation and Park Association, 1406 Hays Street, Suite 1, Tallahassee, Florida, 32301.
- E. Florida Department of Transportation, "Manual on Traffic Controls and Safe Practices for Street & Highway Construction, Maintenance and Utility Operations."

4.3 MATERIALS

All materials supplied and used by Contractors shall be the best kind available and used in accordance with manufacturer's directions. Commercial products such as fertilizers, pesticides, cleaning chemicals, water treatment chemicals, paint, and epoxy coverings shall bear the manufacturer's label and guaranteed analysis. City inspectors may require tests and reject materials not meeting these specifications or manufacturer's guarantee.

4.3.1 Replacement

Any plants which are damaged or die as a result of improper maintenance or lack of sufficient maintenance shall be replaced by the Contractor, at no cost to the City,

within 10 calendar days upon discovery by the Contractor or notification by the City. The following criteria shall be used to determine if replacement is necessary.

4.3.1.1 Plants are not in a healthy growing condition and this renders them below the minimum quality standard (Fla.#1).

4.3.1.2 There is a question of any plants ability to thrive after the end of the thirty four (34) month maintenance period that would render it below the minimum quality standard (Fla.# 1).

4.3.1.3 The plant material is dead.

4.3.2 The ten (10) calendar days may be extended due to seasonal conditions, availability, preparation time such as root pruning, etc., only if approved by the City, in advance. The extended time shall be negotiated between all parties concerned, but must receive final approval by the City. After the 10 day replacement period, the City may perform the work and withhold monies due to the Contractor for materials and labor costs.

4.3.3 Size, Quality and Grade of Replacement

4.3.3.1 Replacement material shall be of the same brand, species, quality and grade as that of the material to be replaced, or it shall conform to the Florida Grades & Standards for nursery plants Florida #1 Quality, whichever is higher. The size of the replacement plants shall not be necessarily the same size as the original specified plant at its initial planting. The replacement shall be of equal size to the plant to be replaced at the time it has been determined that it must be replaced. However, if for some reason, the plant to be replaced is smaller than the size to be replaced, the replacement shall be at least equal to the original size when the maintenance period began.

4.3.3.2 Plants shall be sound, healthy, and vigorous, free from plant disease, insect pests or their eggs, and shall have normal root systems and comply with all State and local regulations governing these matters, and shall be free from any noxious weeds.

4.3.3.3 All trees shall be measured six (6) inches above ground surface.

4.3.3.4 Shape and Form: Plant materials shall be symmetrical, and/or typical for variety and species.

4.3.3.5 All plant materials must be provided from a licensed nursery and shall be subject to acceptance as to quality by the Project Manager.

4.3.3.6 Replacements shall be guaranteed for the length of the Contract, or six (6) months, whichever is greater.

4.3.3.7 The Contractor shall be responsible for hand watering the replacement (if required), for 42 calendar days after planting.

4.3.4 Water

Should Contractor supply water, the water shall be fresh (non-salt), and containing no harmful levels of pollutants or chemicals.

4.3.5 Soil

4.3.5.1 Any soil supplied by Contractors shall be good, clean, friable top soil (or soil mix), free from any toxic, noxious or objectionable materials, including rocks, lime rock, plant parts or seeds.

4.3.5.2 "Planting Soil Mix" shall be equal parts of Sphagnum peat moss, coarse sand, and composted organic matter, sterilized.

4.3.5.3 "Muck-sand-soil" shall be 70 percent muck and 30 percent coarse sand.

4.3.6 Fertilizer

All fertilizer shall be the best commercial grade and except free flowing liquids, shall be delivered to site and be dry when processed for application. Fertilizers shall be in appropriate containers and tagged. Special permission from the Project Manager is required to use bulk fertilizers.

The Contractor shall submit copies of the manufacturer's specifications for all fertilizer including data substantiating that the proposed materials comply with specified requirements.

4.3.7 Pesticides - (insecticides, fungicides, herbicides, etc.):

Insecticides & Fungicides shall be only those which are approved or recommended for use near open water bodies and those specified. Only the Federal Environmental Protection Agency (EPA) approved products shall be used.

All pesticides are to be registered and approved for use by the Florida Department of Agriculture.

Submit on an as needed basis, a schedule of spraying and dusting materials to be used to control pests and disease infestation, the reason for their use and the method to be used to apply the materials and the method of application before it is delivered and used on the project. The need for pest and disease control, will be determined by the Contractor's Horticulturist and approved by the City, Also, if requested by the City, the Contractor will furnish documentation that the implementation of these control measures for pests and disease infestation is in strict compliance with all Federal, State, and Local Regulations.

4.3.8 Miscellaneous Materials

Mulch shall be Amerigrow Recycling's shredded, round-wood, recycled mulch Pine Bark Brown in color.. Other mulch types may be required upon request by the City. Alternative mulch types will be readily available on the wholesale market, be of equal or lesser wholesale cost or increased costs to be paid by City.

4.4 EQUIPMENT

Equipment supplied by Contractor shall be designed for or suited to the specific maintenance task in which it is to be used. Equipment will not be used in areas or to perform tasks where damage will result to the landscapes or sites.

Contractor shall maintain supplied equipment in a good appearance and all equipment shall be maintained in a safe, operational and clean condition.

Upon specific request by the City, the Contractor will supply a current list of supplied equipment used by the Contractor, including item, model, manufacturer, year manufactured, and serial numbers. The Project Manager or his designee shall have the right to reject the use of any specific piece of supplied equipment on the site, by notification to Contractor.

4.5 COMPLETION OF WORK

All work is to be completed in a continuous manner. That is all mowing, edging, weed control, trimming, litter removal, pressure cleaning, water feature maintenance, repairs etc. shall be completed before leaving the job site.

4.6 GROUNDS MAINTENANCE FUNCTIONS AND TASKS:

4.6.1 Turf Care

Maintain turf areas in a healthy, growing green and trim condition by performing the following operation:

4.6.1.1 Site Preparation

The Contractor shall prior to mowing retrieve materials and dispose waste to include, and not be limited to, papers, glass, bottles, cans, fallen tree limbs and/or fronds, and all other deleterious materials found on the sites listed herein. Should the Contractor have knowledge of, the existence of hazardous wastes upon lands covered by the provisions of this agreement, Contractor shall not remove same from the premises but shall have a duty to immediately notify the City in writing.

4.6.1.2 Mowing General

4.6.1.2.1 Mowing shall be performed in a workmanlike manner that insures a smooth surface appearance without scalping or leaving any "missed" uncut grass. Special care will be required to avoid scalping swales and top of berms.

4.6.1.2.2 Reel mowers (NA)

4.6.1.2.3 Rotary mowers will be used on St. Augustine and Bahia grass.

4.6.1.2.4 All mowers are to be adjustable and adjusted to the proper cutting height and level for the kind of grass and current condition of the turf. Mower blade height adjustment is to be measured from a level floor surface to the parallel and level plane of the mower blade.

4.6.1.2.5 All mower blades are to be sharp enough to cut, rather than to tear grass blades. Mower blades shall be sharpened prior to each mowing.

4.6.1.2.6 All litter and debris is to be removed from turf before mowing to avoid shredding that will damage turf appearance, or items that may be propelled by mower blades.

4.6.1.2.7 Mowing will be done carefully so as not to "bark" trees or shrubs, or to introduce weeds into ground cover beds, or to damage sprinkler heads, curbs, or other facilities.

4.6.1.2.8 Grass clippings or debris caused by mowing or trimming will be removed from the turf or from adjacent walks, drives, gutters and curbs or surfaces on the same day as mowed or trimmed.

4.6.1.2.9 Mowing will not be done when weather or other conditions will result in damaged turf.

4.6.1.3 Mowing Specifics

4.6.1.3.1 St. Augustine Grass

Mow only with a rotary mower a minimum of once per week during the growing season of May through the end of September and at other full service visits, as needed, throughout the year.

4.6.1.3.2 Non-athletic field

Turf shall be mowed at 3 1/2 to 4" above soil level with a mower designed for use in the specific circumstances. Remove clippings from areas if excessive clippings result from the mowing operation.

4.6.1.3.3 Seashore Paspalum, Bermuda and Zoysia **(NA)**

4.6.1.4 Trimming and Edging

Contractor shall trim and properly edge all shrub and flower beds as well as trees, curbs, walks, lighting and all other obstacles in the landscape and remove clippings. Paved areas (hard edges) shall be edged **every mowing** with respect to the turf type adjacent to the edging. Edging of beds and the tree rings (soft edging) shall be executed not less than **every other mowing** with respect to the turf type adjacent to the edging. Turf edging at shrub beds, flower beds, ground cover beds, hedges, or around trees (where "edging" rather than "trimming" is directed), shall be edged with a manual or mechanical edger to a neat vertical uniform line. Rotary nylon "fish line" cutters are not to be used for vertical edging. Edge grass at plant bed lines to keep grass from growing toward shrubs, keep the width of sod as it was originally placed. Care shall be taken to avoid damage of ground cover weed barrier. Grass will be trimmed at the same height as adjacent turf is mowed, and to remove all grass leaves from around all obstacles and vertical surfaces in the turf, such as posts, walls, fences, etc. Particular attention will be given to trimming around sprinkler heads and other irrigation system components to assure their proper water delivery function. The mechanical line trimmers are not to be used within eighteen (18") inches of tree or palm trunks and are not to be used in lieu of a trim mower, to mow large areas of grass. Note: Damage to property or existing vegetation by improper trimming or edging shall be repaired or replaced within 48 hours at Contractor's expense. All walks and other paved areas littered in the lawn maintenance process shall be vacuumed, swept, or blown off while the mowing, edging, or trimming is in process so that the appearance suffers for the least amount of time. Shell, mulch, gravel or other porous walk ways shall be raked clean with a fan rake.

Blowers are not to be used on shell, mulch or sand walk ways.. Landscape lighting shall be wiped, blown off or vacuumed as needed to prevent accumulation of clippings and dead insects. Landscape areas shall be raked and cleaned of clippings, leaves, sticks, twigs, and all litter **during each service visit.**

Materials cleaned from grounds may not be disposed on-site, and must be removed from locations at Contractor's expense.

A copy for approval of a completed mowing schedule will be provided to the City's representative in a timely manner as requested.

4.6.2 Pruning Shrubs and Ground Cover Plants Bed Area Maintenance

All shrubs and ground cover plants growing in the work areas shall be pruned, **as required**, to maintain plants in a healthy, growing, flowering condition and to maintain plant growth within reasonable bounds to prevent encroachment of passageways, walks, streets, view of signs or any manner deemed objectionable by the Project Manager.

4.6.2.1 Bed Area Maintenance

The Contractor shall keep the bedded areas free of dead plants, leaves, and branches at all times. All beds shall be vertically edged, and kept weed free at all times. Edge grass at plant bed lines to keep grass from growing toward shrubs, keep the width of sod as it was originally placed. Landscape edging where used must be kept in place, and vertical as it was originally installed.

4.6.2.2 Shrubs

All shrub material shall be pruned a **minimum of once per month** to insure the best shape, health, and character of the individual plant. Mechanical trimming may only be utilized when the health or appearance of the plant will not be damaged by the mechanical trimmers.

4.6.2.2.1 - Bougainvillea (NA)

4.6.2.3 Groundcover

All groundcover material shall be pruned a **minimum of once per month** to insure the best shape, health, and character of the individual plant. Groundcover plants shall be selectively cut back to encourage lateral growth and kept inbounds and out of other plantings, walkways, lighting, etc. Mechanical trimmings may only be utilized when the health or appearance of the plant will not be damaged by the mechanical trimmers.

4.6.3 Trees and Palm Pruning

Trees and palms are to be maintained in a healthy, growing, safe, attractive condition and species and function in the landscape or as specifically directed by the Project Manager

4.6.3.1 Pruning

All pruning shall be in compliance with the most recent tree maintenance standards as published in the American National Standards Institute (ANSI) A300 Standards for Tree Care Operations. All tree pruning must be done by an ISA certified arborist or under the direct, on-site supervision of an ISA certified arborist.

Natural Shaping and Thinning

Trees will be inspected and evaluated monthly, and pruning scheduled as needed for health, development of structural strength, public safety, maintenance of clearances. Pruning in general shall consist of the removal of dead, broken, fungus infected, superfluous, and intertwining branches, vines, and the removal of dead or decaying stumps and other undesirable growth. Palms shall be pruned as needed to remove fruit, inflorescence, dead fronds and weak stalks. In order to prevent the spread of disease and reduce the possibility of nutrient deficiencies, only dead, brown fronds should be removed under normal circumstances. Whenever live plant tissue is being cut, including for example, diseased, broken or mostly dead fronds or fruits or inflorescences, tools shall be disinfected. Disinfect tools between palms by soaking in a (5.25%) - 25% dilution Chlorine bleach and water solution for a minimum of **5 minutes**. Certain Washingtonia Palms will be an exception to the pruning practices of normal palm maintenance when existing dead fronds are maintained as determined by the City Project Manager. Palms shall not be excessively pruned, i.e., above the horizontal plane with the ground, or the 3 o'clock/9 o'clock crown positions. No feather dusters.

Pruning will also be required from time to time to remove damaged branches from storms, frost, pruning to prevent encroachment of branches over streets, into private property, obscuring view of signs or traffic, particularly at a road intersection, or interference with lighting, etc.

Tree branches shall be pruned up to seven (7') feet over walkways and in areas so designated by the Project Manager. All tree pruning shall be accomplished in accordance with the most recent American National Standards Institute (ANSI) A300 Standards for Tree Care Operations Cuts should be made with sharp and proper tools.

All branches, dead wood, and cuttings shall be removed from the job site at time of pruning and disposed of in an acceptable manner. All lawn and shrub areas damaged by pruning equipment shall be restored.

4.6.3.2 Staking and Guying - and Tree Set-Up

Maintain existing and adjust tree stakes, guy wires and hoses or blocks, until trees are capable of standing vertical and/or resisting normal winds. Under normal circumstances, all bracing, webbing, etc should be removed no more

than 1 year after planting. If, at the end of the year, trees are not firmly rooted, the tree should be examined for circling roots and should be replaced if circling roots are found. Trees with circling roots should not be planted.

4.6.3.2.1 The Contractor shall be responsible for the complete removal and replacement of those trees lost due to the Contractor's faulty maintenance or negligence, as determined by the Project Manager.

4.6.3.2.2 Replacement shall be made by the Contractor in the kind and size of tree determined by the Project Manager.

Where there is a difference in value between the tree lost and the replacement tree, this difference will be deducted from the Contract payment. In all cases, the value of the tree lost shall be determined by the Project Manager using the latest "Plant Finder" value determination.

4.6.3.2.3 All trees that have died or have been blown or knocked over are to be reported immediately upon discovery to the Project Manager.

4.6.3.2.4 With prior approval from the Project Manager, with direct input from a staff or City of Miami Beach certified Arborist, it is the Contractor's responsibility to remove and properly dispose of all dead or injured trees and/or weed trees such as but not limited to Florida Holly or Melaleucana or Australian Pine. Contractor shall set and support trees that have been knocked or blown over.

4.6.3.2.5 The Contractor shall be responsible for removing all graffiti, signs, posters, boards, supports and any other material(s) attached or fastened to trees, or from elsewhere on the project site, as directed by the Project Manager. No fixtures, signs, etc. can be attached to trees in a manner that will damage the tree. No screws, nails, bolts, un-adjustable wires, etc.

4.6.4 Weed Control

4.6.4.1 All landscape areas within the specified area, including lawns, shrub and ground cover beds, planters, and areas covered with concrete, pavers, gravel or shell, shall be kept free of all weeds at all times. This means complete removal of all weed growth shall be **accomplished at each service visit**. For the purpose of this specification, a weed will be considered as any undesirable or misplaced plant. Weeds shall be controlled either by hand, mechanical, or chemical methods. The Project Manager may restrict the use of chemical or mechanical weed control in certain areas. Mechanical weed control shall not disturb the mulch layer so as to expose the underlying soil. Herbicides shall not be used in areas populated by Sea Oats.

- 4.6.4.1.1 Weeds are to be mowed, trimmed, or edged from turf areas as a part of turf care operations.
- 4.6.4.1.2 Weeds are to be manually removed from shrub, hedge, ground cover or flower beds, unless chemical or mechanical means are specifically authorized by the Project Manager. Persistent weed growth such as the growth of sedges shall be killed with "round up" whenever possible.
- 4.6.4.1.3 Weeds are to be removed from walkways, curbs, expansion joints, and along fence lines and guardrails at **each service** or as otherwise directed by the Project Manager.
- 4.6.4.2. If infestations cannot be controlled by hand-pulling, or herbicide use will damage or kill the shrubs or ground-covers, the bed may be excavated, after removing all plants. Then, weeds may be destroyed **before** replanting by any of the following methods:
 - 4.6.4.2.1 Sterilize the soil, or
 - 4.6.4.2.2 Allow weeds to reestablish a vegetative top and treat with a systemic herbicide, at least two (2) applications, about two (2) weeks apart, or until there is a 90% kill.
 - 4.6.4.2.3 After the kill, apply, immediately after replanting, a pre-emergent herbicide, such as Treflan or prior to replanting a ground cover fabric.
- 4.6.4.3 If it is determined by the City that the Contractor responsible for maintenance allows weed infestations to spread beyond the ability to control them, then the removal, treatment, and replacement of the planting bed shall be done as described above by the Contractor at no cost to the City. Soil which exhibits significant weed growth within one (1) month after planting, (20% ground coverage of the bed by weeds) shall be considered as previously weed-infested.

4.6.5 Litter Control

- 4.6.5.1 Contractor Generated Trash: The Contractor shall promptly remove all debris generated by his pruning, trimming, weeding, edging, and other work required in the specifications. Storm drains shall be kept clear and free of debris. Debris must be disposed of at an authorized site for commercial use. Neighborhood trash transfer stations or road side piles are not considered authorized sites. The Contractor shall clean driveways and paved areas with suitable equipment immediately after working in them. All cuttings are to be removed on same day as cut.
- 4.6.5.2 Litter Removal: Litter to be removed from all turf areas, landscape beds, walk ways and all hard surfaces within the site grounds daily in a continuous manner during all service hours as specified.

4.6.6 Fertilization and Soil Testing

The fertilizer used shall be a commercial grade product and recommended for use on each plant type. Specific requirements should be determined by soil test results, soil type, and time of year. Applications shall proceed continuously once begun until all areas have been completed. In the event fertilizer is thrown on hard surfaces, it shall be removed immediately to prevent staining.

Contractor shall have the soil tested four (4) times yearly to determine required additives, and more often if necessary to diagnose problem areas. Apply Lime or Sulfur as required to adjust pH. The Contractor shall provide the City with annual fertilization schedules at the beginning of each contract year and shall inform the Project Manager at least three (3) days in advance before beginning any fertilization.

4.6.6.1 Turf

4.6.6.1.1 Bermuda and Seashore Paspalum **(NA)**

4.6.6.1.2 St Augustine

St. Augustine turf areas that contain palms shall be fertilized three (3) times per year; with "Palm Special Fertilizer" with the formulation of 8N-2P₂O₅-12K₂O +4Mg with micronutrients. 100% of the N, K, and Mg must be slow release with micronutrients in a water soluble form, applied according to label rates.

For all other turf grass areas; Applications to be made the first week of the following months: April, July, and October. The N< P< K ratios shall vary with the time of year of the application and results of the soil analysis.

The approximate N, P, K ratios should be:

- One (1) application of a 5:2:1 ratio with a post-emergent weed control;
- One (1) application of a 10:1:2 ratio with Insecticide, and one application being a blanket application of insecticide;
- One (1) application of a 3:1:3 ratio;

4.6.6.2 Groundcover, & Shrubs

The fertilizer for all planted shrubs and groundcovers shall meet appropriate horticultural standards with an N, P, K ratio of 3:1:2, unless soil conditions or plant species dictate differently, with at least 60% of the nitrogen from a non-water soluble organic source.

All shrubs and groundcovers shall be fertilized by broadcasting by hand over the beds three (3) times per year during the first week of April, July and October .

The Contractor shall establish a program that will fertilize all shrubs and groundcover, describing the type of fertilizer required for each type of plant and the time of year this work will be undertaken. A copy for approval of the fertilization schedules shall be provided to the City no less than one (1) month prior to application. Any plants damaged by over-fertilization or nutrient deficiencies shall be replaced at the Contractor's expense. Changes in fertilization rates, methods and composition must be approved by the City in writing.

4.6.6.3 Fertilization Trees, & Palms

The fertilizer for all the planted trees shall meet proper horticultural standards with a slow release organic fertilizer with a salt index of less than 50, and a N, P, K ratio of 3:1:2 or 3:1:3 (e.g. 12-4-8 or 15-5-15,).

All Trees 5" caliper or under shall be fertilized three times yearly: April, July and October applying 1 pound of Nitrogen per 1000 square feet of area of root zone (drip line plus 50%).

All palms shall be fertilized four (4) times per year; every three (3) months; during the first week of January, April, July and October, applying "Palm Special Fertilizer" with the formulation of 8N-2P₂O₅-12K₂O +4Mg with micronutrients. 100% of the N, K, and Mg must be slow release with micronutrients in a water soluble form. The fertilizer shall be broadcast evenly under canopy area at a rate of 1.5 lbs of fertilizer (not N) per 100 sq. ft. The Contractor shall establish a program that will fertilize all trees and palms, describing the type of fertilizer required for each type of plant and the time of year this work will be undertaken. A copy for approval of the fertilization schedules shall be provided to the City no less than one (1) month prior to application. Any trees damaged by over-fertilization or by the use of wrong type of fertilizer shall be replaced at the Contractor's expense. Changes in fertilization rates, methods, and composition must be approved by the City in writing.

4.6.7 General Use of Chemicals

The Contractor shall submit a list of all chemical herbicides and pesticides proposed for use under this Contract for approval by the Project Manager, including MSDS sheets for each item. Materials included on this list shall be limited to chemicals approved by the State of Florida, the Department of Agriculture, and the Florida Department of Transportation, and shall include the exact brand name and generic formulation. The use of any chemical on the list shall be based on the recommendations of and be performed under the direction of a Certified Pest Control Operator. No chemical herbicide or pesticide shall be applied until use is approved, in writing, by the Project Manager as appropriate for the purpose and area proposed.

4.6.8 Disease and Pest Control

To control or eradicate infestations by chewing or sucking insects, leaf miners, fire ants, and other pests and diseases, spray affected plants with chemical sprays and combinations of sprays suitable for that particular pest when the infestation or infection becomes evident and as often thereafter as necessary. Contractor shall be fully licensed to spray pesticide. Contractor shall use Integrated Pest Management (IPM) practices that aid in preventing the presence or proliferation of insect and diseases. Insects in Bermuda grass shall be controlled by both curative and preventative measures. Timing will be critical on mole cricket applications and frequencies of application will be as needed to successfully control their infestations. **Nematode samples** will be taken at least two (2) times each year in January and June and action shall be taken per the recommendation of the IFAS lab results to control the populations. This lab report shall be submitted to the City for their review as soon as it is received.

4.6.9 Application of Herbicides and Insecticides

Contractor may apply various herbicides by means of spray type devices to aid in the control of unwanted weeds and vegetation. All applications shall be performed by persons holding a valid herbicide application license as issued by the State of Florida and shall be done in accordance with the herbicide manufacturer's recommended rates and all applicable Federal, State, County and Municipal regulations. Herbicides may be used only with prior approval by the City as to type location, and method of application.

4.6.9.1 The Contractor shall exercise extreme care so as not to over spray and effect areas not intended for treatment.

Areas adversely affected by such over spray shall be restored by the Contractor at his expense.

4.6.9.2 The Contractor shall advise the Project Manager within four (4) days after disease or insect infestation is found. He shall identify the disease or insect and recommend control measures to be taken, and, upon approval of the Project Manager, the Contractor shall supply and implement the approved control measures, exercising extreme caution in application of all spray material, dusts or other materials utilized. Approved control measures shall be continued until the disease, or insect is controlled to the satisfaction of the Project Manager.

4.6.9.3 When a chemical is being applied, the person using it shall have in their possession all labeling associated with the chemical. Also, the chemical shall be applied as indicated on the said labeling. A specimen label and the Material Safety Data Sheet for each product shall be supplied to the City.

4.6.9.4 All insecticides shall be applied by an operator licensed pursuant to Chapter 487 of the Florida Statutes. The operator shall have the license/certification in his or her possession when insecticides are being applied. The

implementation of control measures for pests and disease infestations shall be in strict compliance with all federal and local regulations. Upon request, the Contractor shall furnish documentation of such compliance.

4.6.9.5 The spraying of insecticides and other such chemicals are to be confined to the individual plant. Spraying techniques which may introduce the material being sprayed beyond the immediate area of the individual plant are strictly prohibited.

4.6.9.6 Spray or dust material on foliage only during calm days. Do not apply when leaves are wet, when rain is expected within 3-4 hours after spraying, or when temperatures exceed 88 degrees Fahrenheit. Spray at times when traffic is lightest (i.e., early mornings or weekends). Use a spreader-sticker to aid in adherence and absorption of the material. Wash material off of pavements and buildings immediately after applying.

4.6.9.7 The Contractor shall utilize all safeguards necessary during disease or insect control operations to ensure safety to the public and the employees of the Contractor.

4.6.9.8 Copies of Current Material Safety Data Sheets (MSDS) for all chemicals used for pest control under this Contract shall be provided to the Project Manager before the use of said chemicals.

4.6.10 Bermuda 'Celebration' and Seashore Paspalum 'Sea Isle Supreme' (NA)

4.6.11 Verticutting, Aeration, Spiking and Topdressing (NA)

4.6.12 Turf Renovations

Turf renovations may be required if conditions warrant such a procedure and will be an extra charge. Conditions which warrant renovation include, areas thinned out or damaged turf resulting from natural burnout, traffic, and any area which has area becomes unsightly.

Proper watering, fertilization and pest management will be critical during and after renovation. Any irrigation damaged because of turf renovation will be repaired at Contractor's expense.

4.6.13 Irrigation System Maintenance and Watering

Contractor will be responsible for the operation and maintenance of the automatic/manual irrigation systems and for setting and adjusting the timer to insure proper watering of all plant material in the landscape.

The Contractor is expected to be knowledgeable and familiar with the existing irrigation systems at the time of bid submittal and capable of programming all controllers and making all repairs. This includes the programming and maintenance of Motorola computerized irrigation controllers, if installed; and IRRInet and Scorpio controllers, which are in use within the contract service area. Contractor must have, within six (6) months of award of contract,

a full time Irrigation Technician or Irrigation Supervisor that has obtained a Certificate of Completion of a Motorola IRRInet and Scorpio Controllers Level 1 Turf Programming training course.

Contractor will be responsible under this agreement for the labor and supervision to make irrigation repairs to the lateral line, risers and sprinkler heads up to one inch (1") in diameter as required to keep the system operating. Major repairs to main lines, valves, pumps and in-take piping shall be reimbursed by the City. **Reimbursable repair work shall require authorization by the City prior to commencement.**

Prior to commencement of the maintenance program, the Contractor shall have twenty-five (25) days from start of contract to inspect the irrigation system and report present damage or incorrect operation and coverage to the City. The Contractor will be responsible for the integrity of the system after this initial inspection report and subsequent repairs.

The timers shall be checked once a week or more frequently as may be required. The Contractor will also, at least once a month, fully operate all the irrigation zones and replace, repair or clean all irrigation heads, lines, valves, valve boxes, filters and controllers as needed. Any equipment damaged by the Contractor's operation shall be replaced with the same equipment and by the same manufacturer.

Grass shall be cut back around all irrigation heads and valve boxes at least once per month or more often as required to keep them clearly visible and fully operational.

The irrigation shall be capable of providing 1-1/2" of water to all lawns and shrub beds each week or as often as required to provide for a uniform lush green landscape appearance. System shall be adjusted during the various seasons.

The Contractor shall be required to make all repairs within a minimum 24 hour time period or sooner as directed by the City's representative. Any form of damage to the irrigation system must be reported to the City's representative immediately upon discovery.

Irrigate as necessary during of little or no rainfall using the automatic irrigation system and any supplemental watering necessary to apply proper amount of water to keep the plant material in optimum health. Under normal conditions; irrigate deep and infrequently (2 – 3 times weekly) to promote a good root system. Water early mornings within watering restriction s. Avoid watering in the evenings.

Supplemental watering may be required in elevated turf areas or as needed to compensate for wind drift or other areas of inadequate irrigation coverage.

The Contractor is required to ensure adherence to all local watering restriction ordinances. It will be the responsibility of the Contractor to pay Fines levied due to lack of compliance.

Supplemental watering may require a large portable water tank, impact sprinklers, and additional hose to be supplied by Contractor.

A written irrigation schedule will be provided by the Contractor and any operation of irrigation outside the previously approved scheduled time must have the advance approval of the City.

Contractor shall be responsible for controlling the amount of water used for irrigation and any damage or costs that result from over-watering or insufficient watering shall be the responsibility of the Contractor.

4.6.14 Watering

During periods when the irrigation system is not operational, either due to breakdown of the system, or an extended electric power failure, it shall be the responsibility of the Contractor.

4.6.14.1 Supply of water suitable for irrigation shall be the Client's responsibility. Distribution of the water to the plants shall be the responsibility of the Contractor. Contractor shall use hand watering, water trucks, portable pumps, etc. as required to distribute the water.

4.6.14.2 Apply water in quantities and at intervals necessary to maintain the plants in a healthy growing condition.

4.6.15 Irrigation System

Shall be constantly maintained and adjusted to insure that no water from the system hits the road or other hard surface.

4.6.16 Mulching Beds

4.6.15.1 Replenish mulch in shrub beds as required to cover areas of bare soil, especially at the edge of the bed and in places where the shrub canopy has not grown together to shade the soil. Add mulch around tree trunks in sod areas. Mulch shall be added to maintain **a constant three (3) inches thickness**. Do not pile against tree trunks and shrub stems.

4.6.15.2 Use Amerigrow Recycling's shredded "round -wood" mulch "Pine Bark Brown" color. Grade "A" Cypress mulch, Melaleuca mulch or other mulches may be used as designated and approved by the City.

4.6.17 Sand Removal / Policing:

Cleaning of debris within the confines of the sites by blowing, sweeping, or vacuuming or other means must be performed as required to keep paved, bricked or concrete surfaces clean and neat at all times.

4.6.18 Flowering Hanging Baskets N/A

4.6.19 Maintenance of Vehicular and Pedestrian Traffic

Contractor shall schedule and conduct the work at times and in a manner which shall not interfere with normal pedestrian traffic on adjacent sidewalks or vehicular traffic on adjacent streets, and shall not cause annoyance to residents near the site or users of the site. During periods of peak rush hour traffic, the Contractor will not block or impede arterial or collector streets.

APPENDIX 11 SECURITY GUARD SERVICES – SCOPE OF SERVICES

MINIMUM REQUIREMENTS / QUALIFICATIONS

- a) The Security Guard Contractor shall submit incorporation or other business entity/form documentation with their proposal. Contractor shall have provided continuous and successful security guard services for a minimum of five (5) years.
- b) The Security Guard Contractor must provide a drug and alcohol free workplace.
- c) The Security Guard Contractor must have a proven track record of paying its employees as regularly scheduled. Security Guard Contractors who have failed to pay its employees on time will be disqualified and not receive any consideration.**
- d) The minimum requirements of the Unarmed Security Guards are as follows.

BASIC UNARMED SECURITY GUARDS

- a. A minimum of 40 hours of training as required by the State of Florida Department of Licensing pursuant to Section 493.6123 (1) F.S., and must possess a Florida Class "D" License and a minimum of 16 hours of site-specific training at their assigned post.
- b. Specialized training, as requested by the City of Miami Beach Police Department, on an as needed basis per post assignments (e.g. building evacuations, hurricane evacuations, training, traffic control, etc.).
- c. Pass a Florida Department of Law Enforcement (FDLE) criminal background check.
- d. Ability to write a report to document incidents as required.
- e. Ability to follow all the terms and conditions in the City of Miami Beach Post Order Bid Manual.
- f. Ability to speak English (multilingual desirable) and write all reports in English.
- g. Ability to communicate, provide information, and gives directions in a courteous matter to tourists and residents.
- h. Pass a drug screening test.
- i. Ability to respond to and take command of emergency situation.
- j. Ability to provide effective access control and maintain a safe and secure environment.
- k. Ability to provide protection with professionalism.
- l. Ability to provide a professional level of personal interaction services.
- m. Trained and certified in first aid and rendering Cardiopulmonary Resuscitation (CPR).
- n. Trained in the use of Automated External Defibrillators (AEDs).
- o. Physically capable of pursuing and detaining individuals who have committed criminal acts.
- p. Have a minimum of 6 months of security officer experience, law enforcement or equivalent military training.

SCOPE OF SERVICES

The Successful Contractor will provide the following:

- Contracted 16-hour per day, seven days per week, security services during two daily shifts; each shift staffed by two security guards. Split shifts are from 6:00 am to 2:00 pm and 6:00 pm to 2:00 am, on duty within the Lincoln Road Mall service area limits. Supervisors will be able to respond to any site within 15 minutes. A list must be submitted in writing, identifying the name of each roving shift supervisor, and all security personnel under their supervision, to the City's designee / contract administrator and the Miami Beach Police Department (MBPD).
- A written street/park lighting report, where applicable, forwarded to the MBPD within 48 hours of any "lights out" occurrence.
- All drug screening, background checks, and psychological testing of employees assigned to Miami Beach posts at the Successful Contractor expense.
- All sensors/readers at contracted posts to ensure that security officers are making required rounds at assigned frequencies and times and provide a weekly computerized printout downloaded from sensors installed at each post to the Police Department. The location of the sensors will be submitted to the MBPD for approval.
- A supervisor, who will be required to meet with the MBPD, authorized representative, upon request.
- All uniforms, radios, rain gear, traffic vests, tools and equipment necessary to perform the required security services in accordance with the bid documents.
- Uninterrupted services under all conditions, to include but not limited to the threat of a strike or the actuality to the threat of a strike or the actuality of a strike, adverse weather conditions, a disaster, or emergency situations, at the agreed upon hourly contractual rate.
- Compliance by their personnel assigned to City of Miami Beach posts with the Security Contractor's Post Order and Rules and Regulations Manual.
- Any holiday and sick-time pay to assigned personnel.
- A written quarterly statistical analysis report of security incidents forwarded to the City of Miami Beach Police Department on a quarterly basis.
- Certify in writing, the names of all employees who will provide security services to the City of Miami Beach. Copies of State license(s) will be kept in employee personnel file for immediate viewing if necessary and produced in hard copy within five business days (excluding weekends and holidays) upon receipt of request from the MBPD.

The City reserves the right to take any action necessary to ensure that the security forces are fully staffed in order to protect the City of Miami Beach property, personnel, and assets. This may include contractual arrangements with other contractors for the purpose of obtaining additional resources in the event that the Successful Contractor cannot perform.

If such arrangements are deemed necessary, then the Successful Contractor may, at the sole discretion of the City of Miami Beach, be terminated, and any cost incurred by the City of Miami Beach may be withheld from funds owed to the Successful Contractor.

The City of Miami Beach reserves the right to bar an employee from a duty assignment, and /or bar the employee from further service under this Contract.

The Successful Contractor will be responsible for advertising and recruiting help, training the

security guards, preparing paychecks, payroll taxes, Social Security and Withholding taxes, preparing W-2's, Unemployment and Workmen's Compensation claims and liability insurance. The obligation of the City of Miami Beach will be solely to compensate the Successful Contractor for the number of hours provided monthly in accordance with the contract price schedule. The Successful Contractor will provide a Schedule of Values/Payment Schedule to the City's Contract Administrator for review and approval, prior to the commencement of work.

Safeguards for the City's protection will be made a part of this new contract. Should the Successful Contractor provide security guards employed by a sub-contractor, the Successful Contractor will be required to provide a Labor and Materials (Payment Bond), in the amount of \$100,000. The successful contractor will also provide an Employee Dishonesty Bond in the amount of \$25,000. Additionally, the City reserves the right to deduct payment(s) in an amount specified in the bid/contract documents for either non-qualified security guard, and/or for unsatisfactory performance in accordance with the specified Terms and Conditions of the RFP.

RECORDS

The Successful Contractor will submit all invoices to the City of Miami Beach containing an itemized employee time record, to include the employee name and hours worked/shift, for the time period identified on the invoice. The computerized printout from the downloaded sensors will accompany the weekly invoices. These printouts will be the same date and time frame of the submitted invoices and submitted in a hard copy, digital or any predetermined format(s).

All correspondence, records, vouchers and books of account insofar as work done under this Contract is concerned, will be open to inspection, by an authorized City of Miami Beach representative, during the course of the Contract and for a period of two (2) years after expiration of the Contract.

The Successful Contractor will maintain accurate and complete records of personnel criteria, training criteria and biographical data of all personnel affiliated with this Contract. The Successful Contractor will keep on file a separate personnel file for each employee employed under the Miami Beach contract. This file will specifically, along with the above mentioned criteria, include:

- Personal information of the employee, sex/race/ DOB/ and social security number.
- Copies of Florida Drivers license and security guard class "D" license.
- Copies or notification of all discipline actions taken by the vendor or City of Miami Beach. This will include all verbal or written documentation of warnings or discipline.
- Proof of successful Background Check, Drug Screen, and Polygraph examination.

The City reserves the right to perform audit investigations of the Successful Contractor payroll and related records of employees assigned to the City of Miami Beach to ascertain that such employees' records indicate payment received for the specific hours worked for the City. Such audit will be at the discretion of and at the option of the City.

Successful Contractor will be required to provide in a hard copy, digital or any predetermined format(s), any/all records in its possession which contain information concerning hours worked and payment received based on the contractor's invoices to the City of Miami Beach. All required

documentation and personnel files will be readily available for inspection by any authorized City of Miami Beach representative, during initial research and during the course of this Contract. Failure to have the required documentation will be deemed as non-compliance to the Terms and Conditions of the contract.

Each guard must have their individual "D" and "G" license in their possession while performing work for the City of Miami Beach, and if operating a vehicle have a valid driver's license.

Work Force and Work Assignments

Unarmed security guards will be provided to work various locations, including patrolling numerous City of Miami Beach facilities. All Security Guards will be required to carry 2-way radios and electronic scanner wards unless specifically exempted by the City of Miami Beach Contract Administrator.

Regular Security Officer Duties

1. All security personnel furnished by the Successful Contractor to Miami Beach will be required to monitor the City facilities approved by the City for services, by walking the Facility, riding a golf cart and/or whatever other means the City of Miami Beach considers best for each facility and/or location.
2. All security personnel furnished by Successful Contractor to the City of Miami Beach will provide all phases of building and personnel security, personal property protection and vehicle protection, both within and out of the facility. This will include, but not limited to, making rounds and clock rounds of assigned areas and key locations; checking lights; assuring locks of gates and doors.
3. The Successful Contractor's personnel will take proper steps to prevent unauthorized entrance and access to the Facility or contents thereof.
4. While fulfilling regular security duties, Successful Contractor's personnel may detain any person using reasonably necessary measures, in or about the premises, until said personnel is able to turn such person(s) over to the police.
5. Reporting in detail daily reports to employee's Supervisor verbally and in writing, in a prescribed manner, regarding the performance of his/her shift and special reports regarding any problems or incidents occurring during his/her shift of all unusual situations and circumstances. Such daily reports will be submitted to the City of Miami Beach on a weekly basis.
6. Conducting and/or undertaking initial incident investigations and submitting appropriate detail reports to the City of Miami Beach without undue delay. Special incident reports will be submitted to the City of Miami Beach the following business day.
7. All security personnel furnished to City of Miami Beach will give instructions or information to visitors upon request, or direct them to the appropriate administrative office if any questions cannot be answered. Security personnel will, escort from time to time, patrons to their vehicles at patron's request.
8. Utilizing their two-way radio, security personnel must contact their supervisor or their base station, which can contact and dispatch police if the need arises.
9. The Successful Contractor and their assigned personnel will follow all terms, conditions, and procedures as outline in the attached "Post Orders for the City of Miami Beach Security Guard Contracts.

10. Responding to alarms, suspicious activities, fires, injuries, security incidents or any emergency situation.
11. Performing any other duties or functions not specifically outlined or set forth above but which are identified as falling within the scope and realm of a security officer's responsibilities.
12. The Successful Contractor will provide an adequate supply of flashlights and batteries, raingear, uniforms, clipboards and any other personnel equipment required for the Security Guard to perform their duties.
13. The Successful Contractor will provide all related forms, pencils, pens and miscellaneous office supplies.
14. All equipment utilized by the Successful Contractor in the execution of this contract shall be maintained by the Successful Contractor.
15. All Successful Contractor personnel will read, understand and follow the attached "Current Security" Posts for the City of Miami Beach Security Guard Contracts.

Supervisor Duties

The Successful Contractor's supervisors in charge of its employees to the City of Miami Beach shall:

1. Review the day or night activities and report in writing to the proper City of Miami Beach authorities any unusual incident.
2. Insure proper inventory of keys, electronic key cards and supplies.
3. Coordinate with proper City of Miami Beach designees all security operations and services for regular and event assignments to insure that all are properly staffed. In some instances, this requires daily contact with City of Miami Beach staff to learn of authorized activities.
4. Conduct daily visual inspection of assigned personnel verifying all post are manned and all security guard are fully equipped and in proper uniform. Additional locations may be added and some existing locations may be deleted from service requirements.
5. Install scanner buttons where directed by the City of Miami Beach Contract Administrator.
6. Provide weekly downloads of all the City of Miami Beach Posts where scanner buttons are installed. The downloaded information will accompany the weekly invoices.

Service Locations and Assignment Hours

It will be the sole discretion of the City of Miami Beach as to number of guards and hours of services needed. The City of Miami Beach reserves the right to add other possible locations and to change the required hours of service during the term of the Contract.

Overtime

No overtime for either regularly scheduled or special event guards will be paid by City of Miami Beach for security personnel supplied by the Successful Contractor unless pre-approved by the Police Department Contract Administrator.

Personnel Probation

The City's Contract Administrator or designated representative personnel may observe each employee of the Successful Contractor for a period of thirty (30) consecutive days. If during this probation, the City of Miami Beach is not satisfied with the performance of that employee, the City of Miami Beach will notify the vendor of such performance and the vendor will replace such employees immediately.

Additionally, the City of Miami Beach reserves the right to demand in writing that the Successful Contractor relieve an employee from a duty assignment, and/or ban the employee from further service under the contract, at the sole discretion of the City of Miami Beach.

Personnel must not be employed by the Successful Contractor under the Contract if they have currently or have in the past been involved in:

- a. Military conduct resulting in dishonorable or undesirable discharge.
- b. Any pattern of irresponsible behavior, including but not limited to unreasonable driving or a problem employment record.
- c. Personnel employed by Successful Contractor to provide services for the City of Miami Beach must successfully complete a polygraph examination, to be conducted at the Successful Contractor's expense, prior to assignment, and whose minimum testing parameters will include:
 1. Nature of discharge from military service.
 2. Substance abuse (drug and alcohol).
 3. Child abuse and/or molestation.
 4. Convictions (misdemeanors and/or felony).
 5. Dismissal other than layoff.

Uniforms

All security personnel furnished to the City of Miami Beach will be well groomed and neatly uniformed. Each guard supplied by the Successful Contractor will wear a nameplate bearing the guard's name. Successful Contractor's name will appear either on guard's nameplate or as a patch on guard's uniform. Uniforms will be readily distinguishable from the City of Miami Beach Police uniforms.

Training

The Successful Contractor is required to provide training to all field personnel in order that the City of Miami Beach may be assured said personnel are capable of assuming the responsibilities of respective assignments.

The cost for such training will be considered as a part of the Successful Contractor's operational expenses and should be considered when proposing overall hourly rate. The time spent by staff in such a program, though required, is not billable to the City of Miami Beach. All security personnel are to successfully complete and pass such training course prior to assumption of duty under this contract. This training course, to be developed or made available by the Successful Contractor, is to include minimum requirements for subject matter and hours of instruction, and must be approved by the City of Miami Beach. The City of Miami Beach evaluation of proposed training will include, but not be limited to, previews of techniques and methods of instruction, quality of instructions, motivation, adequacy of classroom and supportive adjunct training materials, test content, and individual retentiveness.

All formal training is to be administered by persons, corporations, and/or institutions that have been expressly approved by the City of Miami Beach. A written certification of each employee's training will be made available as part of the employee's personnel file. The Successful Contractor's supervisors must have also completed required training and worked for six (6) continuous months as

an actual guard; additionally, basic supervisory skills are required, as well as an overall knowledge of operations, locations, etc.

The Successful Contractor is required to ensure that all security guards providing traffic control services are certified.

Assignment of Contract

Successful Contractor will **not** assign, transfer, convey or otherwise dispose of the Contract, or of any or all of its rights, title or interest therein, or its power to execute such Contract to any person, company or corporation without prior **written consent of the City of Miami Beach**.

Protection of Property

The Successful Contractor will at all times guard against damage to or loss of property to the City and will replace or repair any loss or damage unless the damage is caused by The City of Miami Beach, another Successful Contractor and/or contractors. The City of Miami Beach may withhold payment or make such deductions as it might deem necessary to insure reimbursement for loss or damage to property through negligence of the Successful Contractor, its employees or agents.

Expenditures

The Successful Contractor understands that any expenditure that it makes, or prepares to make in order to perform the Services required by the City of Miami Beach, is a business risk which the Successful Contractor must assume.

Fine

Fines may be imposed on the Successful Contractor for violations by its personnel by deducting the amount of the fine from a subsequent invoice for that location. Notice of a violation and the intent to impose a fine will be given to the Successful Contractor by sending a copy of the site representative's report, through the Contract Administrator, promptly after the site representative submits it. This allows the Successful Contractor time to bring any extenuating circumstances to the site and contract administrator's attention. All fines are assessed by the City of Miami Beach Contract Administrator, whose decisions are final.

Violations that may result in a fine includes but are not limited to those listed below. Fines imposed will be **\$100.00** per infraction.

Management/Administrative Violations:

1. Not properly equipped for specific detail;
2. No radio or inoperative radio;
3. No scanner wand, improper scanning buttons, failure to fix inoperative scanning Buttons;
4. Leaving an abandoned post unattended or failure to fill post assignment within one and one half (1-1/2) hours of scheduled event;
5. Lack of contract supervision;
6. Excessive hours on duty (more than 10 hour shift not approved in advance by the Contract Administrator;

7. Assigning any guard previously suspended from duty by the Contract Administrator;
8. Failure to follow all Vendor Rules and Regulations; and Incidents where Vendor Rules and Regulations where discipline was insufficient.

Violations that may result in a fine include but are not limited to those listed below. Fines imposed will be **\$100.00** per infraction.

Security Officer Violations:

1. Inappropriate behavior (reading, lounging, inattention, etc.);
2. Failing to make a report promptly;
3. Improper clock rounds;
4. Failing to follow post orders;
5. Improper or badly soiled uniforms;
6. Acts of theft or vandalism; and
7. Failure to adhere to City of Miami Beach policies, procedures and locations guidelines.

Security Officer Significant Violations (\$250.00):

1. Late for duty;
2. Sleeping on duty;
3. Abandoning post;
4. Participating or attempting to; in any criminal act; and
5. Any action that would cause the City harm, physically, financially, or in repetition.

Repeated violations of any type at the same location will be taken as proof of a general incapacity on the part of the Successful Contractor to perform in accordance with contract requirements.

PRE-AWARD INSPECTION OF FACILITY

The Successful Contractor will have the personnel, equipment and organization necessary to satisfactorily provide the services required in this contract to include, but not limited to:

- Performing required background checks on all guards and to provide all required training and supervision. Successful Contractor will provide written documentation, which states in detail, that these requirements have been met, prior to the assignment of security personnel.
- Radios are to be utilized by all assigned security personnel. The Successful Contractor will maintain a South Florida office with supervisory personnel reachable by telephone (only) on a 24-hour basis.

1. Communication Equipment and Communications Services to be provided

The Successful Contractor will be responsible for the following:

- a. **HAND-HELD RADIOS**
Two-way hand-held radios, licensed for use by the Federal Communications Commission (FCC), will be provided by the Successful Contractor to all on-duty

contract security officers and supervisors as required unless otherwise accepted by the City of Miami Beach Police Department Contract Administrator.

b. **SUCCESSFUL CONTRACTOR CENTRAL DISPATCH**

The Successful Contractor will provide a centralized dispatching service through use of a local (Miami Beach) base station manned by experienced personnel on a 24-hour per day basis, to include a taped back-up system. A mobile transmitter/receiver, operated by field personnel, **will not** be considered sufficient to adequately provide such service.

Successful Contractor personnel must be available at the Miami Beach Central Dispatch Station who has the ability and authority to take immediate action on behalf of the Successful Contractor, as required. The Successful Contractor will provide the names, with all pertinent information of these assigned personnel, to the City's Contract Administrator.

2. System Quality

The Successful Contractor will at all times, have high quality radio communications (transmitting and receiving). The Successful Contractor will be totally responsible for providing and maintaining required system quality, as follows:

- A. The Successful Contractor will provide/lease a network of transceivers and repeaters of sufficient strength and capacity to service all sites specifically identified in this Invitation to Bid.
- B. The Successful Contractor must provide/lease an exclusive radio frequency operated exclusively by the Contractor. Radios will have printout identification and emergency capability.
- C. The Successful Contractor must implement a program of maintenance and repair for all equipment to be used in the performance of this contract. Such a program will ensure the optimum performance of all equipment at all times, thereby, allowing the system to meet the service requirements and quality standards specified above.

The Successful Contractor will ensure that all radio equipment has sufficient operating power at all times during a tour of duty. It may be necessary for the Successful Contractor to implement a system by which fresh batteries, adequate supply of flashlights or charged radios, are delivered to the posts in order to meet this requirement.

3. Evaluation of Radio Communications System

All aspects of the Successful Contractor's radio communications system will be evaluated by the City of Miami Beach prior to award of Contract. Should the system be judged inadequate to provide service within the contractual standards specified herein, and the Successful Contractor is unable and/or unwilling to make changes deemed necessary by the City of Miami Beach, then the Successful Contractor will be considered non-responsive to the required Terms and Conditions of this Contract. Likewise, should there be a deterioration of performance during the term of this contract, and the Successful Contractor is unable or

unwilling to make the required improvements, the City of Miami Beach may terminate, in accordance with the **Termination for Default Clause** of this Contract. The City of Miami Beach will address, in writing to the Contractor, any/all identified inadequacies of the required radio communications, and prior to any termination procedures.

PROVIDED BY THE CITY OF MIAMI BEACH

The City of Miami Beach will provide to Successful Contractor, for the duration of the contract, the Post Order and Rules and Regulation Manual. Changes to Post Orders, if needed, will be provided by the Contract Administrator through written addendum to these orders.

Should the City elect to acquire the services of the Unarmed Security Guards (Code Enforcement) for the issuance of warnings and violations as the City determines to be warranted, the City will provide guidance, training and direction on the applicability of the Miami Beach City Code requirements, including reporting requirements.

PERFORMANCE OF CONTRACT

This contract may be terminated upon thirty days written notice to the Successful Contractor due to lack of performance and after Successful Contractor fails to correct deficiencies after written notification.

Performance items include, but are not limited to the following:

- A. Security Guard timeliness in responding to assigned post;
- B. Security Guard dressed incomplete uniform, to include (serviceable radio, fire arm, etc.);
- C. Security Guard completion of all assignments, in a timely manner;
- D. Successful Contractor not providing required training to all assigned security guards;
- E. Successful Contractor not providing the required trained supervisory personnel;
- F. Successful Contractor to ensure compliance of Miami Beach Security Contractor's Post Orders Manual;
- G. Successful Contractor reporting of any/all missing City supplies, equipment, property; and
- H. Excessive non-compliance incidences.

Additionally, the City of Miami Beach reserves the right to have any security guards removed from Miami Beach assigned posts for violation of the Post Orders Manual. The City of Miami Beach Police Department will not pay Successful Contractor billing charges for times in excess of thirty (30) minutes between security officer rounds made between sensors, unless there are extenuating circumstances or this requirement is waived by the City of Miami Beach Police Department on a post by post basis.

APPENDIX 12
CONTRACTOR RISK ASSESSMENT / VALUE ADDED SERVICES (RAP/VAS) PLAN

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Discussion Item

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MIAMI BEACH

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: June 28, 2012

SUBJECT: **DISCUSSION ON POLICY CONSIDERATION REGARDING THE GRANTING OF SUBTERRANEAN OR AERIAL RIGHTS OVER PUBLIC PROPERTY**

BACKGROUND

At the June 6, 2012 meeting, the City Commission referred a proposal for a subsurface perpetual easement underneath 34th Street (Attachment A) to the Land Use and Development Committee (LUDC) and the Finance and Citywide Projects Committee (FCWPC) for discussion. On a similar track, a proposed revocable permit for an aerial bridge across Ocean Court (Attachment B) was referred to the LUDC. However, the City Administration believes that policy direction should be provided on the precedent created by both requested easements to use the air rights over and subsurface rights underneath public property.

At its June 13, 2012 meeting, the LUDC discussed the policy question regarding the proper method for effectuating these requests, whether by revocable permit or easement or other instrument, and possibly including financial remuneration to the City. The Committee discussed the appraisal cost, suggesting that the fee for the application could include the cost of the appraisal. The Committee discussed setting the required public hearings, sending the issue of appraisal and methodology to Finance. The Committee then discussed thresholds for future approvals, expressing that large projects should probably have a public hearing, but smaller ones might not need it. Finally, the Committee voted 3-0 in favor of advancing both of these projects.

The Waronker and Rosen firm is preparing appraisals of the proposed easements at a cost of \$5,000 for the aerial easement and \$4,250 for the subterranean easement. Estimates of their values are due to the City on July 6, 2012.

ANALYSIS

To serve as a point of departure for the committees, the Administration is providing (Attachment C) as a sample of how the City of Miami regulates requests for public easements.

As an alternative, the City could require the Applicant to pay the fee simple value of the easement area as determined by a certified general appraiser.

CONCLUSION

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

Attachments:

- A – Sketch and Legal description of the proposed subterranean easement
- B – Sketch and Legal description of the proposed aerial easement
- C – City of Miami Code Sec. 55-14


JMGMGG/FHB/JFR/DW

4341 S.W. 62nd Avenue
Davie, Florida 33314



STONER & ASSOCIATES, INC.

SURVEYORS - MAPPERS
Florida Licensed Survey
and Mapping Business No. 6633

Tel. (954) 585-0997
Fax (954) 585-3927

RECORDING AREA

LEGAL DESCRIPTION OF:

A PARCEL OF LAND

**LYING IN SECTION 26, TOWNSHIP 53 SOUTH, RANGE 42 EAST
CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA**

A PARCEL OF LAND BEING A PORTION OF SECTION 26, TOWNSHIP 53 SOUTH, RANGE 42 EAST, LYING WITHIN THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA; ALSO, BEING PART OF 34th STREET, A PUBLIC DEDICATED RIGHT OF WAY WITHIN SAID CITY OF MIAMI BEACH; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 7, BLOCK 20 OF THE AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 5, PAGES 7 AND 8, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

THENCE NORTH 82°28'02" WEST, ALONG THE NORTH LINE OF LOT 7 AND ALSO ALONG THE SOUTH RIGHT OF WAY LINE FOR SAID 34th STREET, A DISTANCE OF 15.79 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE NORTH 82°28'02" WEST, ALONG THE NORTH LINE OF LOTS 7 AND 10 OF SAID BLOCK 20 AND ALSO ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 93.92 FEET;

THENCE NORTH 07°31'57" EAST, A DISTANCE OF 6.42 FEET;

THENCE NORTH 14°57'34" EAST, A DISTANCE OF 27.45 FEET;

THENCE NORTH 07°31'57" EAST, A DISTANCE OF 16.22 FEET TO A POINT ON THE SOUTH LINE OF LOT 17, BLOCK 22, OF SAID PLAT OF AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY AND ALSO TO A POINT ON THE NORTH RIGHT OF WAY LINE FOR SAID 34th STREET;

THENCE SOUTH 82°35'19" EAST, ALONG THE SOUTH LINE OF LOTS 17 AND 10 OF SAID BLOCK 22 AND ALONG SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 89.77 FEET;

THENCE SOUTH 07°31'57" WEST, A DISTANCE OF 50.04 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA, CONTAINING 4,555 SQUARE FEET (0.1046 ACRES), MORE OR LESS.

NOTES:

1. THE PROPERTY SHOWN HEREON WAS NOT ABSTRACTED FOR OWNERSHIP, RIGHTS-OF-WAY, EASEMENTS OR OTHER MATTERS OF RECORD BY STONER & ASSOCIATES, INC..
2. THIS SKETCH DOES NOT REPRESENT A FIELD SURVEY. (THIS IS NOT A SURVEY).
3. THIS SKETCH OF DESCRIPTION WAS PREPARED BY THIS FIRM WITHOUT THE BENEFIT OF A TITLE SEARCH. AND WAS BASED ON:
 - A. AMENDED MAP OF THE OCEAN FRONT PROPERTY OF THE MIAMI BEACH IMPROVEMENT COMPANY, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 5, PAGES 7 & 8, MIAMI-DADE COUNTY, FLORIDA.
 - B. STONER & ASSOCIATES, INC. PROJECTS NUMBER 04-6545, 08-7228, 11-7613, 11-7729
 - C. SKETCH PROVIDED BY CLIENT.
4. THE BEARINGS SHOWN HEREON ARE BASED ON N.29°57'53"E., ALONG THE BASELINE OF STATE ROAD A1A (INDIAN CREEK DRIVE), AS SHOWN ON FLORIDA DEPARTMENT OF TRANSPORTATION PROJECT NETWORK CONTROL SHEET, FINANCIAL PROJECT ID. 414641-1-52-01, BETWEEN BASELINE STATIONS 51+40.33 AND 53+97.73.

CERTIFICATE:

THIS IS TO CERTIFY THAT THE SKETCH AND LEGAL DESCRIPTION SHOWN HEREON IS ACCURATE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS SKETCH AND LEGAL DESCRIPTION MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.07, FLORIDA STATUTES.

REVISIONS	DATE	BY
1 REVISE EASEMENT PER CLIENT	03/07/12	WDLR

WALTER DE LA ROCHA

PROFESSIONAL SURVEYOR AND MAPPER NO. 6081 - STATE OF FLORIDA

THE MATERIAL SHOWN HEREON IS THE PROPERTY OF STONER & ASSOCIATES, INC. AND SHALL NOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT PERMISSION OF STONER & ASSOCIATES, INC. COPYRIGHT © 2012

DATE OF SKETCH:	DRAWN BY	CHECKED BY	FIELD BOOK
02/22/12	WDLR	JDS	N/A

SEAL
NOT VALID UNLESS
SEALED HERE WITH
AN EMBOSSED
SURVEYOR'S SEAL

SHEET 1 OF 2

SKETCH NO.
11-7735 UGE



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Florida Licensed Survey
and Mapping Business No. 6633

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Davie, Florida 33314

Tel. (954) 585-0997
Fax (954) 585-3927

RECORDING AREA

SKETCH OF DESCRIPTION OF: A PARCEL OF LAND LYING IN SECTION 26, TOWNSHIP 53 SOUTH, RANGE 42 EAST CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA



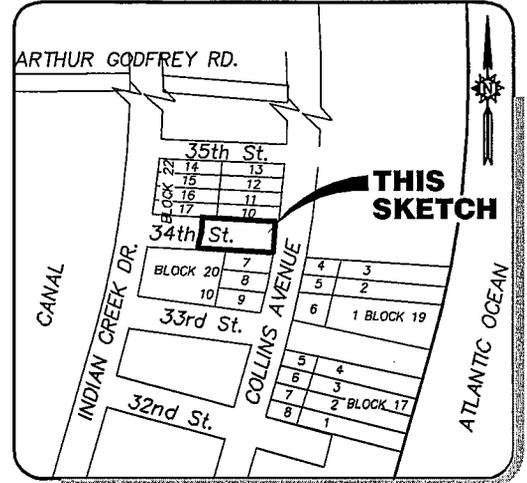
SCALE: 1" = 40'



GRAPHIC SCALE

LEGEND:

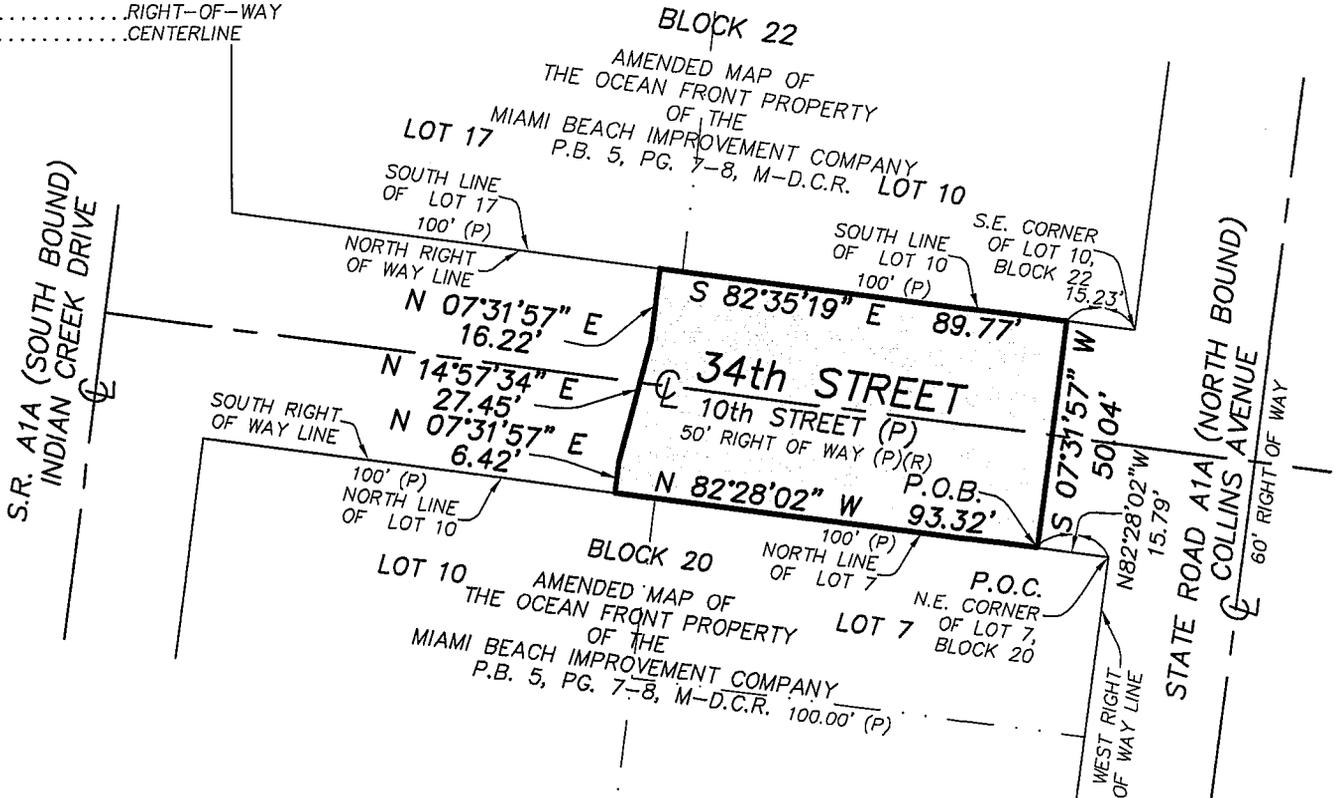
- P.B..... PLAT BOOK
- PG..... PAGE
- M-D.C.R..... MIAMI-DADE COUNTY RECORDS
- P.O.C..... POINT OF COMMENCEMENT
- P.O.B..... POINT OF BEGINNING
- (P)..... PER PLAT
- (R)..... PER RECORDS
- R/W..... RIGHT-OF-WAY
- Ⓞ..... CENTERLINE



VICINITY MAP

(NOT TO SCALE)

NOTE:
SEE SHEET 1 FOR THE LEGAL DESCRIPTION OF
THE SKETCH GRAPHICALLY SHOWN HEREON.



Sec. 55-14. - Encroachments on or in rights-of-way, public easements, private easements or emergency access easements; exceptions.

- (a) No building or any other type of structure shall be permitted on or in any right-of-way, public easement or emergency access easement, except required or approved utility installations, or as may be permitted under the Florida Building Code or chapter 54.
- (b) The city commission, by resolution, may permit an encroachment which does not unduly restrict use of the right-of-way, public easement or emergency access easement area where such encroachment is a necessary essential element in the construction of an otherwise authorized pedestrian and/or vehicular overpass above or underpass below said right-of-way, public easement or emergency access easement area subject to payment of a one time user fee in accordance with subsection (c) hereinbelow and to the recording of a covenant to run with the land executed by the property owner in accordance with subsection (d) hereinbelow, with the payment by the owner of the requisite user fee including, but not limited to, the preparation and recording of said covenant.
- (c) Calculation of user fee. The user fee shall be calculated as follows:
 - (1) Property owner must obtain a certified appraisal for the land value of the two properties from a certified general appraiser approved by the city. The land value per square foot of building shall be determined by dividing the total market value of the land comprising the entire project site by the maximum amount of building square footage that can be constructed by right as permitted by the applicable city zoning ordinance(s).
 - (2) The estimated value of the aerial or subterranean rights shall be determined by multiplying the land value per square foot of building determined in subsection (c)(1), by the total square footage of the proposed passageway(s) including multiple levels.
- (d) Covenant to run with the land. The covenant to run with the land (covenant) shall be in a form acceptable to the city attorney. The provisions of the covenant shall include but not be limited to:
 - (1) Maintenance of the overpass or underpass by the property owner in accordance with the Florida Building Code and the City Charter and Code.
 - (2) Restoration or removal of the encroachment by the property owner within 30 days of written notification by the director of the department of public works to properly maintain, restore, or remove the overpass or underpass, as applicable.
 - (3) In the event of failure of the property owner to restore, maintain or remove the overpass or underpass, when notified, the city manager may contract for the restoration or removal of the overpass or underpass, and place a special assessment lien against the owner's abutting private property for the unpaid cost of the restoration or removal. These unpaid costs and expenses incurred by the city or its agents shall constitute, and are hereby imposed as, special assessment liens against the abutting private real property of the owner, and until fully paid and discharged, or barred by law, shall remain liens equal in rank and dignity with liens of city and county ad valorem taxes and superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved. Such fees shall become delinquent if not fully paid within 60 days after their due date. The total outstanding balance of delinquent fees and related charges shall bear an interest charge of one percent per month, on any and all of the outstanding balance of the fees due, and if not fully paid with all accrued interest by the due date will continue to accrue interest at the rate of one percent per month. Unpaid and delinquent fees, together with accrued interest, shall remain and constitute special assessment liens against the private property owner's abutting real property involved which is deriving a benefit under this chapter. Such special assessment liens for the repair, maintenance, removal or restoration costs and interest and costs thereon may be enforced by any of the methods provided in F.S. ch. 85, or in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions of F.S. ch. 173, or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. The owner shall pay all costs of collection, including reasonable attorney fees, court costs, and abstracting and related lien expenses imposed by this chapter.
 - (4) Provision of an insurance policy, in an amount determined by the city's risk manager, naming the city as an additional insured for public liability and property damage. This insurance shall be in effect as long as the encroachment exists in the right-of-way, public easement or emergency access easement. If the property owner fails to continue to provide the insurance coverage, the city shall have the right to secure a similar insurance policy in its name and place a special assessment lien against the owner's abutting private property as set forth above in subsection (c)(3), for the total cost of the premium.
 - (5) The property owner shall hold harmless and indemnify the city, its officials and employees from any claims for damage or loss to property and injury to persons of any nature whatsoever arising out of the use, construction, maintenance or removal of the overpass or underpass and from and against any claims which may arise out of the granting of permission for the encroachment or any activity performed under the terms of the covenant.
- (e) The city manager or designee may permit an encroachment into a private easement, where said encroachment is not a safety hazard, subject to receipt by the city of written consent of the holder(s) of the private easement(s), written releases from all benefited specified individuals or public or private entities, or a certification that no such benefited individuals or public or private entities exist within the easement, recommendations of approval from the departments of police, public works, fire-rescue, general services administration, planning, building and zoning, and an executed hold harmless and indemnification agreement for the benefit of the city in a form acceptable to the city attorney, with the herein exceptions being subject to compliance with all other requirements of law.
- (f) The user fee required under this section shall not apply to governmental entities and agencies, including state, county and city departments or instrumentalities that are exempted from payment of this user fee.

(Ord. No. 9584, § 1, 3-24-83; Ord. No. 10367, § 1, 1-14-88; Ord. No. 10730, § 1, 5-24-90; Ord. No. 11008, § 2, 10-8-92; Code 1980, § 54.5-15; Ord. No. 13060, § 2, 3-12-09)

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