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COMMITTEE MEMORANDUM

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

FROM: Interim City Manager Kathie G. Brooks

DATE: January 16, 2013

SUBJECT: REPORT OF THE FINANCE AND CITYWIDE PROJECTS
COMMITTEE MEETING ON DECEMBER 20, 2012

The agenda is as follows:

OLD BUSINESS

1. Discussion regarding a proposed marketing program for Sunscreen and an update on other potential marketing partnerships

ACTION

Finance Committee members to meet with Assistant City Manager Max Sklar to go over any questions that can be answered before bringing this discussion back to the next meeting.

Assistant City Manager Max Sklar presented the item.

The Finance and Citywide Projects Committee (FCWPC) met on November 9, 2012 and was provided an update on the City's efforts, in conjunction with the City's municipal marketing consultant, The Superlative Group (TSG), to identify potential municipal marketing partners and opportunities. During the November 9, 2012, FCWPC City staff considered naming rights, as well as a potential sunscreen licensing agreement. The Committee unanimously passed a motion to no longer pursue naming rights of our parks and to research development of a park foundation for consideration by the City Commission. The Committee also directed staff to provide more detailed information on the proposed Sunscreen Licensing agreement.

Max Sklar went on to explain that since the July 26, 2012 FCWPC meeting, TSG has continued negotiations for a licensed sunscreen product. TSG advised prospective proposers of the City's interest in an Exclusive Sunscreen Partner and the availability of opportunities from this partnership. In addition to information on volumes, venues, current pricing, etc., TSG also

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advised the prospective proposers of our interest in securing a partner that provided a minimum annual guarantee, as well as a percentage of net wholesale sales to be credited against the minimum guarantee. TSG recommended a minimum ten-year term for the partnership which is not only consistent with typical exclusive partnerships, but also creates an incentive for the prospective proposer – as the selected partner will have exclusive rights for an extended time – sufficient to amortize any capital investment, and to establish the new brand’s presence in the market.

Attached is a detailed Term Sheet and the summary of the terms:

Proposed Terms:

Terms have been proposed by TSG as a result of their negotiations with Energizer (Banana Boat / Hawaiian Tropic) and a summary of these terms delineate the responsibilities of each party during the term of the Agreement.

Estimated total value:

The estimated total value of the proposed Exclusive Sunscreen Partnership with Energizer over the term of the agreement is, at a minimum, \$ 1,500,000, inclusive of an annual sponsorship fee (\$150,000), 4% licensing fee to be credited against annual sponsorship fee, marketing program to promote product and the City of Miami Beach brand, and potential contribution of apparel to Ocean Rescue. There have been no other offers from competing brands to the City at this time.

The following chart provides a breakdown of the value of the proposed partnership between the City of Miami Beach and Energizer (cash and non-cash):

	1st Year		Over 10-Year Term
Annual Guaranteed Minimum	\$150,000		\$1,500,000
TSG Annual Commission (45%)	\$ (67,500)	Commission includes monitoring	\$ (675,000)
Subtotal - Annual Revenue to City	\$ 82,500		\$ 825,000
4 Golf Rounds Annually	\$ (1,600)	Value of golf rounds	\$ (16,000)
5 Special Event Permits Annually	\$ (2,500)	Capped at a total value of \$,2500	\$ (25,000)
Advertising (5th & Alton Signs) Annually	\$ (4,200)	Value of ads sold by CMB	\$ (42,000)
Net Minimum Annual Revenue to CMB	\$ 74,200		\$ 742,000

Potential Additional Benefits to CMB

Boucher Bros. Annual Towel Replacement	\$ 8,000	Boucher is required to purchase new towels annually	\$ 80,000
Pool/Tennis Umbrella Replacement	\$ 30,000	Umbrellas are not replaced annually	\$ 60,000
Staff Towel Annual Replacement	\$ 2,500	10% Commission to be paid to TSG on budgeted cost avoidance measures, potential for add'l \$4,250 in Commission. (Paddleboards would not be replaced annually.)	\$ 25,000
Paddleboard Replacement	\$ 20,000		\$ 40,000
Ocean Rescue Annual Uniform Replacement	\$ 20,000		\$ 200,000
	\$ 80,500		\$ 405,000

Potential Additional Annual Benefits to Energizer

Logo Placement Ocean Rescue Vehicles	\$ 520,000	Value of impressions	\$ 5,200,000
Annual Sampling Permits Value	\$ 40,000	Energizer does not currently sample product in CMB, no loss of revenue.	\$ 400,000

*** Energizer to Pay CMB Annual License/Royalty Fee of 4% of Net Wholesale Sales**

Pursuant to the terms of the City's Agreement with TSG, TSG is entitled to 45% commission on licensing agreements (to include contract monitoring). The total amount to be paid to TSG will be calculated once the payment schedule is determined for the cash components of the agreement above.

During the FCWPC meeting Commissioner Exposito also requested the Administration contact the Boucher Brothers as the City's beach concessionaire to determine any potential impact to their operation. City staff spoke to the Boucher Brothers about the agreement who expressed a concern with the agreement, because they are also considering their own sunscreen line and this potential agreement would prohibit their development of this.

It is important to note that the goal of this sunscreen licensing agreement is for the City to partner with Energizer to develop, produce, distribute and market a Miami Beach Sunscreen globally. Energizer would pay the City an annual license fee of 4% of net wholesale sales, which has the potential to significantly exceed the annual guaranteed minimum being proposed. The global distribution of the product has an additional marketing value to the City's brand.

Commissioner Jorge Exposito asked if they can calculate the estimated value for the things they are asking for to make a proper determination. Commissioner Michael Gongora stated that the logo placement being given more consideration seeing that it appears to be worth a lot more and that we could be looking at the

wrong thing to brand. Chairperson Deede Weithorn stated that quality control needs to be discussed if we are putting the City's name on something. Commissioner Exposito asked for an explanation on what net of wholesale means. Chairperson Weithorn requested a copy of the Boucher Brothers contract and that Finance Committee members meet with Assistant City Manager Max Sklar to go over any questions that can be answered before bringing this discussion back to the next meeting

NEW BUSINESS

2. Discussion regarding the motions made by the Quality of Education Committee during their September meeting

ACTION

The Committee recommended funding the City's proportionate share of the estimated \$62,000 for a full time registered nurse with benefits subject to the other two neighboring municipalities also contributing their proportionate share of the expenses. The City's proportionate share is approximately \$29,000. This is to be done for one year and analyzed again when preparing the operating budget going forward.

Commissioner Jerry Libbin presented the item and gave a brief history of the item.

Commissioner Libbin then added that the Chamber of Commerce got involved with the EDNA Health Initiative in which they pledged 100% of the proceeds to the funding of the nurse if they mobilized the community enough to win the contest they ended up finishing first in the nation. A \$30,000 award was won that they pledged would go to nursing initiative. Commissioner Libbin stated that he is asking for \$65,000 from the City of Miami Beach to go with the \$30,000 that the Chamber of Commerce already has to go to the Health Trust to get a nurse for the schools for one year. Chairperson Deede Weithorn stated that as much as she would want to do this, it's not in this year's budget. Commissioner Michael Gongora stated it's a good cause but was confused on understanding of the request per the memo. Interim City Manager Kathie G. Brooks stated if you look at the contract it clearly states that the district would be responsible for the nurse practitioners. Chairperson Weithorn asked what would be the budget line item that would be used to fund this or where would the money come from. Ruth K. Broad Bay Harbor PTA Vice President Tamar Oppenheimer stated there's an immediate concern of solving this problem. In the interim, one idea was if the school district could pay 15 professional staff members to be trained on CPR. Through these discussions, the idea of needing a nurse came up. Commissioner Exposito asked if they had reached out to Bay Harbor, Bal Harbor and Surfside to see if they were willing to fund their proportionate share. He stated it is important to know the response from the other municipalities so that everyone is responsible for their proportionate share. It would appear that Miami Beach would end up funding all the schools without the assistance of the other councils

as oppose to joining forces. Chairperson Weithorn stated it would be unfair to the citizens of this City to ask them to subsidize the children of more than one Municipality, but that she's willing to give the pro rata share for one year putting the pressure on the other Cities to step up and do their part. Commissioner Exposito made a recommendation to find some funding from the increased boat show cost, but Commissioner Libbin stated the School Board does not allow this type of funding to the PTA. Quality Task Force Healthcare Education Committee representative Karen Rico stated that her main concern is that the door does not get closed on this issue.

The Committee recommended funding the City's proportionate share of the estimated \$62,000 for a full time registered nurse with benefits subject to the other two neighboring municipalities also contributing their proportionate share of the expenses. The City's proportionate share is approximately \$29,000. This is to be done for one year and analyzed again when preparing the operating budget going forward.

3. Discussion concerning the Lease for the Miami-Dade Gay and Lesbian Chamber of Commerce Foundation located at Historic City Hall at 1130 Washington Avenue

ACTION

Item Deferred.

4. Discussion regarding to consider A Request for Rent Relief from Penn 17, LLC., regarding the retail space at the Pennsylvania Avenue parking garage

ACTION

This item was moved with no recommendation except conceptually since it has to go to before the Commission for final approval. The Finance Committee provided parameters' that must be negotiated with the tenant regarding rent deferral which should be less than one year, no rent abatement and the tenant is to provide a timeline for the re-opening of the restaurant. Upon completion of the negotiations, the agreement should be brought to the January Commission meeting for approval.

Anna Parekh Real Estate, Housing & Community Development Director presented the item.

She went on to explain that on December 12, 2012, the City Commission referred the matter to the City's Finance and Citywide Projects Committee (FCWPC) for

discussion, subject to the Tenant remitting all outstanding rent amounts due for October, November and December. Subsequent to the Commission meeting, the Tenant informed staff that it wasn't in a position to remit rent for the three-month period and instead offered to pay one-month's rent in exchange for the Committee's consideration of its request for additional rent relief. This request was formally transmitted in writing from Tenant's Legal Counsel on December 14th. On December 17, FCWPC Chairperson, Commissioner Weithorn agreed to the Tenant's request, subject to the rent being remitted via wire transfer or cashier's check prior to the Committee meeting. Payment for October's rent was received on December 19, 2012.

On December 17, 2012, the Tenant informed staff that it had closed the restaurant with the intent of reopening in February, 2012 under a new name and new concept. The Tenant also informed staff that given the amount of money and time it had invested in the Premises, that it was fully committed to keeping its lease and was hopeful it could negotiate favorable terms with the City to do so.

The Administration is therefore requesting input and direction from the City's Finance and Citywide Projects Committee as to the Tenant's requests.

Chairperson Deede Weithorn began by thanking the tenant for making a good faith payment of rent to meet with the Finance Committee. Chief Deputy City Attorney Raul Aguila stated that the relief the tenant is asking for is a portion of their security deposit be applied to their past due rent for November and December and commencing January 1, 2012 they be given a 50% rent abatement for one year and that the legal department does not agree with this.

Commissioner Jorge Exposito asked if the cost was known for the replacement of the A/C units. Cooper Avenue Partner Amir Ben-Zion stated that it is in the range of \$60-65,000. We are trying to do everything necessary to hold on to our lease. Currently, we have closed the doors indefinitely until the A/C units have been replaced and then we will have a re-grand opening under Cooper or a new name. Chairperson Weithorn asked how long it would take to get another tenant into the space in which Real Estate, Housing & Community Development Director Anna Parekh stated it would take a couple of months. Chairperson Weithorn stated she would need a letter of credit to give some of these concessions. Cooper Avenue Partner Amir Ben-Zion responded that a line of credit does not exist in this line of business, but they have made many improvements to the property. Commissioner Michael Gongora stated it's not all the City's fault and would like to see what they have proven with some of their other businesses. Cooper Avenue Partner Amir Ben-Zion stated that if they can agree with the City, they would release the City of any legal liabilities. City Attorney Jose Smith stated that after speaking with staff, it's the City's position is that that they did nothing wrong and that all A/C issues are the responsibility of the tenant. Commissioner Michael Gongora agreed and stated that the City did nothing wrong, but that it would be better to work something out with the current tenant. City Attorney Smith stated legal suggest instead of rent abatement, that it be rent deferral so that the City gets paid at the end and not waive the rent completely for 2013. Commissioner Gongora is against using the security deposit because that would leave nothing if the tenant decided to leave. Interim

City Manager Kathie G. Brooks stated she does not recommend touching the security deposit. Commissioner Jorge Exposito stated he wants to make sure the process is done correctly and that this issue doesn't resurface in the future. In the meantime, in an effort of good faith, the City will not take any legal action until the Commission meeting. City Attorney Smith stated he does not want to waive any rights the City might have until he speaks to Jeffrey Rynor, the tenant's legal counsel. Real Estate, Housing & Community Development Director Anna Parekh clarified that the Commission is suggesting deferral of rent and not 50% off for one year. Commissioner Gongora also stated that a shorter time frame of 6 months seems like enough time or by March for any agreement made. Chairperson Weithorn stated that this item was moved with no recommendation except conceptually since it has to go to before the Commission for final approval. The Finance Committee provided parameters' that must be negotiated with the tenant regarding rent deferral which should be less than one year, no rent abatement and the tenant is to provide a timeline for the re-opening of the restaurant. Upon completion of the negotiations, the agreement should be brought to the January Commission meeting for approval.

- 5. Discussion to consider two lease agreements: one lease with State Representative David Richardson for 690 Square Feet of office space consisting of Suites 402A and 402B located at 1701 Meridian Avenue; And another lease with Commissioner Bruno Barreiro for 412 Square Feet of office space located on The Ground Floor of City Hall; Said discussion to Include the Setting and Advertising of Public Hearings for the January 16, 2013, Commission Meeting**

ACTION

The Committee recommended entering into a Lease Agreement with Representative David Richardson (and/or the Florida House of Representatives) for the use of 541 square feet of space located on the 4th floor of 1701 Meridian Avenue, for the total annual rent of \$3,732 (or \$397/mo). Also entering into a Lease Agreement with Commissioner Bruno Barreiro (and/or the Miami-Dade Board of County Commissioners) for the use of 412 square feet of space currently occupied in the ground floor of City Hall, 1700 Convention Center Drive, for one dollar per year.

Anna Parekh Real Estate, Housing & Community Development Director presented this item.

While the City could command fair market rents for the use of the two spaces, the current use of ground floor space by Commissioner Barreiro, and the proposed use of office space on the 4th floor by Representative Richardson facilitate enhanced public service to constituents. The City's contribution in making City space available for Miami Beach residents to meet with their County and State elected officials outweighs the benefits of collecting fair market rent for these properties.

Therefore, the Administration recommends that the F&CWPC accept the Administration's following recommendations, which would be subject to the City Commission's approval:

- Approve the City entering into a Lease Agreement with Representative David Richardson (and/or the Florida House of Representatives) for the use of 541 square feet of space located on the 4th floor of 1701 Meridian Avenue, for the total annual rent of \$3,732 (or \$397/mo). The recommended rent represents \$6.90 per square foot to cover the City's common area maintenance costs and insurance expenses.
- Approve the City entering into a Lease Agreement with Commissioner Bruno Barreiro (and/or the Miami-Dade Board of County Commissioners) for the use of 412 square feet of space currently occupied in the ground floor of City Hall, 1700 Convention Center Drive, for one dollar per year. The one dollar represents legal consideration and is intended to honor the previously agreed upon terms for the use of the space. The recommendation to enter into a formal Lease Agreement is intended for the purpose of memorializing the agreement for the use of the space.

Chairperson Weithorn stated she needed an understanding of the amount of space that would be used by Representative Richardson. Assistant City Manager Max Sklar clarified that Representative Richardson would not be occupying both spaces at the same time. The space that former Congresswoman Ros-Lehtinen occupied is a temporary space right now until the VCA moves out of the space they are currently in and then Representative Richardson will move into that space. Commissioner Michael Gongora stated he is in favor of both representatives occupying office space as elected officials serving our constituents. Commissioner Jorge Exposito stated there is a benefit to having a State Representative in the office space.

Chairperson Weithorn made a motion to Approve the City entering into a Lease Agreement with Representative David Richardson (and/or the Florida House of Representatives) for the use of 541 square feet of space located on the 4th floor of 1701 Meridian Avenue, for the total annual rent of \$3,732 (or \$397/mo). The recommended rent represents \$6.90 per square foot to cover the City's common area maintenance costs and insurance expenses. Also to approve the City entering into a Lease Agreement with Commissioner Bruno Barreiro (and/or the Miami-Dade Board of County Commissioners) for the use of 412 square feet of space currently occupied in the ground floor of City Hall, 1700 Convention Center Drive, for one dollar per year. The one dollar represents legal consideration and is intended to honor the previously agreed upon terms for the use of the space. The recommendation to enter into a formal Lease Agreement is intended for the purpose of memorializing the agreement for the use of the space. Commissioner Exposito seconded the motion and it passed.

6. Discussion regarding the issuance of a request for proposals for the Installation and Operation of Citywide automated teller machines at

various City-Owned properties and facilities, approved by the City Commission on March 21, 2012

ACTION

The Committee recommended that an Industry or Peer Review process be conducted prior to the issuance of an RFP.

Anna Parekh Real Estate, Housing & Community Development Director presented this item.

In light of the stated concerns about proceeding with an RFP for ATM services, the Administration believes that an Industry or Peer Review process should be conducted prior to the issuance of an RFP and that until that process or another course of action is determined by the City Commission, that the direction to issue an RFP for ATMs be rescinded.

Assistant City Manager Max Sklar added that City Code prohibits the ATM machines from being visible in the right of way which can create a challenge for identifying potential locations. Chairperson Deede Weithorn asked why the RFP could not be issued and see what type of response is received. Real Estate, Housing & Community Development Director Anna Parekh responded that a peer review can be done to see if there's a need for the services. Chairperson Weithorn stated their will be minimum, requirements because there has been a change in the compliance rules with regards to banking. Interim City Manager Kathie G. Brooks stated her concerns as to what is the objective in putting out the ATMs. Commissioner Jorge Exposito stated that his concerns are with the issue of fraud and safety. The Committee recommends that an Industry or Peer Review process be conducted prior to the issuance of an RFP.

7. Discussion of the current management and operations of the City of Miami Beach golf courses, clubhouses and related facilities and options/direction for the future management agreement

ACTION

The Committee recommended waiving competitive bidding and re-awarding the contract to Professional Course Management II, LTD to manage the golf course under the new terms of their agreement.

Kevin Smith Parks and Recreation Director presented this item.

He then proceeded to go over the fee structure included in the previous management and operations agreements between the City of Miami Beach and Professional Course Management (PCM) that was as based on an annual management fee of \$125,000 per golf course plus a 10% incentive fee earned

only after revenue of \$1.875M is attained at each golf course individually, and the debt service at each golf course is addressed. The 10% incentive was subsequently modified in the summer of 2010 in the form of a voluntary reduction to 8%, by PCM. This represented a savings to the City in FY 2010-11 of approximately \$40,000 and \$36,000 in FY 2011-12. This goodwill gesture by PCM was in recognition of the challenges the City was facing in light of the financial crisis and recession we were in at that time and for consideration of the City agreeing to extend the current agreement for the remaining available time.

He then went over the worksheet outlining the current terms of the agreement, including the voluntary reduction of incentive fee mentioned above, and the negotiated proposed terms agreed to by PCM for future years' management agreement, contemplated to be for 3 years, plus two (2) one year extensions. Additionally, we have also included a column outlining potential savings, based on historical averages of prior year actual to the negotiated terms.

Below is a summary of the key points that were discussed and negotiated:

- Yearly Management Fee charge per Golf Course (Miami Beach, Par 3 and Normandy)
- Incentive Fee percentage
- Incentive Fee Revenue thresholds
- Debt Service Provision (must cover Debt Service to earn full Incentive fee)
- A capped Incentive Fee
- Incentive Fee "pay-back" if Revenues are not met

<u>Yearly Management Fee:</u>	<u>Current</u>	<u>Proposed</u>
Miami Beach	\$ 125,000	\$ 125,000 plus CPI or 3% yearly
Normandy	\$ 125,000	\$ 125,000 no CPI or yearly adjustment
Par 3	-0-	-0-

(Please note that the estimated fee to manage a new Par 3 golf course to be included at no cost by PCM is estimated between \$36,000 and \$48,000 annually.)

<u>Incentive Fee</u>	<u>Current</u>	<u>Proposed</u>
Miami Beach	8% over \$1.875M (after Debt Service)	Cap of \$125,000 to \$ 3.9M in Revenue plus 5% over \$ 4M in revenues
Normandy	8% over \$ 1.875M (after Debt Service)	7% over \$1.8M in revenues
Par 3	-0-	-0-

<u>Debt Service Provision</u>	<u>Current</u>	<u>Proposed</u>
Miami Beach	Must meet Debt Service (\$ 800,000)	Same
Normandy	Must meet Debt Service (\$ 400,000)	Eliminated

Par 3

n/a

n/a

Incentive Fee “pay-back” Provision

	<u>Current</u>	<u>Proposed</u>
Miami Beach	No	Approx. 8% of revenues below \$ 3.9M
Normandy	No	No
Par 3	No	No

Assuming a yearly revenue stream at the Miami Beach Golf Club of \$ 4 Million and yearly estimated revenue of \$ 1.8 Million at the Normandy Golf Club, the anticipated average yearly net savings to the City would amount to \$ 25,000 from the current agreement and approximately \$75,000 per year from the original agreement(s).

Professional Course Management II, Ltd. has successfully managed and operated the City’s golf courses and clubhouses since October 1, 2001. The current agreement expired on September 30, 2012 and we are now on a month-to-month with them as authorized by the City Commission on September 12, 2012. After extensive good faith efforts between the City and PCM to negotiate a new fee structure with additional benefits to the city in consideration of waving competitive bidding process, as directed by this Committee on July 10, 2012, the Administration and PCM have reached the following terms for a fee arrangement that:

- Caps the incentive paid to PCM when certain revenue thresholds are met;
- Provides for a “pay-back” provision when revenue thresholds are NOT met;
- Incentivizes PCM at a lower rate than the current agreement provides for on higher revenues collected;
- And based on historical averages, saves the City an average of:
 - \$ 25,000 per year based on the current fee structure with the voluntary reduction currently in place, or
 - \$ 75,000 per year based on the original Agreement.

The Administration is seeking the guidance and direction of the Finance and Citywide Projects Committee to assess and evaluate the success of this contractual relationship with Professional Course Management II, LTD., and to discuss the options and future actions for the on-going management and operations of the City’s Golf Courses, Clubhouses and Related Facilities. At this time the options are to:

- Direct the Administration to prepare a Request For Proposals (RFP) for the Management and Operations of the City’s Golf Courses, Clubhouses and Related Facilities to be issued as soon as possible; or
- Direct the Administration to prepare a Commission action recommending the waiving the competitive bidding process and prepare a new agreement with Professional Course Management for the continued

management and operations of the City's Golf Courses, Clubhouses and Related Facilities based on the terms negotiated with the intention of having an agreement ready as soon as possible.

Chairperson Deede Weithorn asked for an explanation of the 90% increase in water in which Parks and Recreation Director Kevin Smith stated that the water bills had been previously charged to City and the full allocation wasn't hitting the golf course. A full audit was done to adjust this properly.

Parks and Recreation Director Kevin Smith went on to explain that the Premier Card generates almost a million dollars or more during the summer for having the membership. Commissioner Jerry Libbin asked for a comparable detail on the cost breakdown of expenses versus the revenue that is being generated. Commissioner Michael Gongora asked if the management fee could remain flat if they agreed to waive competitive bidding. President of P.C.M. Johnny La Ponzina responded that they cannot agree to that because he believes that a cost of living index is only fair going forward, with the rate being flat for the last 10 years. Chairperson Deede Weithorn stated due to the success of their relationship with the City that this has justified waiving competitive bidding and the Premier Card is an integral part of the golf course. A motion was made by Commissioner Jorge Exposito to waive competitive bidding and continue to use Professional Course Management II, LTD to manage the golf course under the new terms of their agreement. Motion was second by Chairperson Weithorn.