



# MIAMIBEACH

BUDGET AND PERFORMANCE IMPROVEMENT  
Internal Audit Division

## INTERNAL AUDIT REPORT

TO: Jorge M. Gonzalez, City Manager  
VIA: Kathie G. Brooks, Budget and Performance Improvement Director  
FROM: James J. Sutter, Internal Auditor

DATE: January 7, 2011  
AUDIT: Ballet Valet Parking Company, LTD – Contract Compliance Regarding Parking License Rental Fees and Lease Payments.  
PERIOD: October 01, 2007 through December 31, 2009

This report is the result of a scheduled audit to review the accountability and accuracy of parking space license rental fees and lease rental assessed for the two agreements (Parking and Lease) with the Ballet Valet Parking Company. In addition, the audit would review the sufficiency of internal controls with respect to the license rental fee revenues and lease rental, as well as, documentation with respect to the Ballet Valet Parking Company, LTD "Parking" and "Lease" agreements.

### INTRODUCTION

On July 14, 1993, the Mayor and City Commission conceptually approved a Letter of Intent submitted by Ballet Valet Parking Company, LTD. outlining the general terms for development and construction of a new five-level parking structure, which would also include new retail store fronts, and further authorized the administration to proceed with negotiations of a definite agreement outlining the specific terms of the project. Subsequently, a licensed general contracting firm, McCarthy Brothers Company was selected by Ballet Valet. Both, Ballet Valet and McCarthy Brothers, successfully negotiated with the City administration an Acquisition, Construction and Development Agreement setting forth the respective rights and obligations of the parties with respect to the acquisition of the property, the construction of the garage, the construction of the retail space, and the operation, maintenance and opening of the garage to the public.

Approval of the Acquisition, Construction and Development Agreement was ratified by the Mayor and City Commission under Resolution No. 94-21099 executed on March 30, 1994. Funding for the project and the acquisition of the land and air rights was secured under bonds issued to the City of Gulf Breeze, Florida, the repayment of which was secured by the City's electric franchise fees.

Overall, the project consisted of an acquisition by the City of certain land, air space and easements owned by Ballet Valet Parking Company, LTD. for the construction of a 646 space parking garage. The Garage was built by Ballet Valet Parking Company, LTD. and McCarthy Brothers Company, referred as "GC" on the contract, a licensed general contractor. The garage, currently located on 7<sup>th</sup> Street between Washington and Collins Avenues was to be, and is owned and operated by the City of Miami Beach and open to the general public.

Following conditions and stipulations on the Acquisition, Construction and Development agreement, as a result of negotiations, two other separate agreements were made, entered into, and documented. The two agreements were the "Parking Agreement" and the "Lease Agreement". Both agreements were made on August 11, 1997.

With the Parking Agreement, the City agreed to license to Ballet Valet Parking Company, LTD. the use of no less than 150 parking spaces, and at Ballet Valet's option, up to a maximum of 25% (646 x 25% = 162) of the total parking spaces in the garage each year. At the same time, Ballet Valet

would pay the City on a monthly basis, a base license rate of \$75.00 (indexed yearly) per parking space licensed, as stated on the agreement. Also provided on the contract, the parking spaces licensed to Ballet Valet would not be specifically designated or assigned and would be accessed on the same conditions as other Licensees of parking spaces in the garage, except as to the rate charged. The City has no obligation to leave empty at all times the total number of parking spaces licensed under the contract. The use of the licensed parking spaces was restricted for tenants, guests and customers of properties owned by Anthony Goldman or his heirs (collectively "Goldman Properties"). The right to use of the parking spaces which are the subject of the Parking Agreement shall not be transferable upon sale of any of the Goldman Properties or any interest therein which reduces Goldman's ownership interest to less than 50%. This agreement is to remain in effect for 30 years with the tenant's option to renew for two successive 30 year terms, subject to adjustments in the base license rate among other things. Overall monitoring of this contract is currently under the Parking Department's administration responsibilities.

Under the Lease Agreement, the City agreed to lease to Ballet Valet Parking Company, LTD a total of 3,286 square feet comprised of 2,213 square feet of Loading Dock, 166 square feet of Trash Room, and 907 square feet of Storage Room. A base rent subject to changes in the Consumer Price Index (CPI), as stipulated on the agreement, was agreed to be paid monthly on the first day of each calendar month (currently \$1,903.21 per month). Any portion of the premises utilized by the tenant for parking was to be solely for loading and unloading trucks or other vehicles in connection with the tenant's utilization of the retail space. This agreement is to remain in effect, unless cancelled before for 30 years ending on July 31, 2027 with the tenant's option to extend the term of this lease for two consecutive thirty year periods provided that certain conditions, as specified on the agreement, are met. Monitoring of billings and collection of revenues under this agreement is currently under the responsibilities of the City's Office of Real Estate, Housing and Community Development.

## **OVERALL OPINION**

As a result of our audit in reference to licensed parking rental fees and lease payments, we conclude that sufficient supporting documentation was maintained by both, the Parking Department and the Office of Real Estate, Housing & Community Development regarding the calculation and assessment of applicable rental revenues. Furthermore, adequate segregation of duties was observed regarding the billing, collection, and recording of rental revenues under both agreements. However, despite the successes, some areas were identified in need of corrective action under both agreements (Parking and Lease Agreements). The areas in need of corrective action have been separated according to the corresponding agreement and managing department.

### **Parking agreement areas in need of corrective action:**

1. Two Invoices totaling \$23,250 were not issued for 155 licensed parking spaces during 2008.
2. Amounts resulting from annual adjustments based upon the Consumer Price Index, as specified in the agreement, were not performed, communicated, billed and/or collected from the Licensee.
3. Replacement charges for 155 replaced cards were not charged to the Licensee.
4. Amounts corresponding to ten (10) additional parking licenses granted on December 1, 2009 were not charged for the same month.
5. Three cards have been issued to the Licensee in excess of the maximum allowed, contradicting contract specifications.
6. Copies of a signed Annual Resale Certificate for Sales Tax was not requested and kept in file by the Parking Department for exempted Licensed parking rental fees.

7. Monthly rental payments to the City were not received in advance, in contradiction to section 1 of the Parking Agreement.
8. A written request for any increase or decrease in the number of licensed spaces was not documented and received 30 days prior to the anniversary of the Parking Agreement, as specified in the agreement.

**Lease agreement areas in need of corrective action:**

9. Index adjustments for the Base Rent were not calculated as stated on the Lease Agreement.
10. Monthly rental payments are not being submitted by the first date of each month, as required by the Lease Agreement.

**PURPOSE**

The purpose of this audit is to review compliance with provisions in the "Parking Agreement" and "Lease Agreement" as it relates to the integrity, reliability, and accuracy of rental fees, records, and data; to ensure that fees are properly and timely collected and accounted for; and to verify that sufficient documentation and accountability of issued cards is maintained.

**SCOPE**

1. Verify that proper controls are in place to ensure the integrity, reliability, and accuracy of licensed parking fees, records, and data.
2. Ensure that fees are properly and timely collected and accounted for.
3. Verify that sufficient documentation and accountability of issued cards is maintained.

**FINDINGS, RECOMMENDATIONS, AND MANAGEMENT RESPONSES**

In order to make a distinction between the findings for each of the contracts considered in this audit the following two sections have been created:

- Parking Agreement
- Lease Agreement

Audit findings will be grouped under the corresponding agreement considering that monitoring and oversight of these contracts is performed by two different City Department.

**PARKING AGREEMENT**

1. Finding – *Two Invoices totaling \$23,250 were not issued for 155 licensed parking spaces during 2008.*

Licensed parking fees have been historically billed in arrears by the Parking Department. Invoices created at the beginning of each month would consider revenues earned for the previous month (Ex: Invoice dated October, 2007 would be billing licensed parking revenues earned in September, 2007). Under this premise, Internal Audit verified all invoices issued and outstanding balances from the Licensee during the audit period. Results from this review found that invoices for earned license rental fees during January and March of 2008 were not issued by the Parking Department or paid by the Licensee. However, it is relevant to mention that all invoiced parking license rental fees were paid by the Licensee, as invoiced.

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Recommendation(s)

The Parking Department should prepare and send an invoice to the Licensee for the amount of \$23,250.00 for the two months not previously billed or paid. In addition, the Parking department should exercise additional due care and implement review procedures to ensure that monthly invoices are created and sent timely, in accordance with Parking Agreement requirements, as well as monitor payments received for those invoices. In addition, adding appropriate descriptions on the City's Financial System invoices regarding which month is being billed should help in reconciling any outstanding amounts. Monthly account reconciliation should help to ensure the accuracy and reliability of invoiced and/or outstanding fees.

Management's Response(s)

In December 2008, the Parking Department transitioned its issuance of invoices from a manual process to "Auto Bill" which resides in the "Eden" Financial Management System in the City's Finance Department. Unbeknownst to the Parking Department, the Auto Bill monthly cycle must be initiated manually. Unfortunately, neither the Finance Department nor the Parking Department initiated the Auto Bill cycle for the Ballet Valet account for the months of January and March 2008. Internal Audit also identified that Ballet Valet has paid all other invoices in full and timely. The Parking Department has contacted representatives of Ballet Valet to confirm that the payments in question were in fact not made. If this is indeed the case, an invoice for the outstanding balance (\$23,250.00) will be forwarded to Ballet Valet for payment.

2. Finding – *Annual adjustments based upon the Consumer Price Index, as specified in the agreement, were not performed, communicated, billed and/or collected from the Licensee.*

Paragraph one (1) of the Parking agreement states that "Initially, the Base License Rate per parking space licensed to BV shall be \$75.00 per month fixed for two (2) years from the date of this agreement. Thereafter, the Base License Rate shall be subject to adjustments as provided in this Agreement, provided, however, that the Base License Rate shall never be less than \$75.00 per month for the duration of this Parking Agreement inclusive of any renewal periods". However, results from our testing showed that Base License rates have not been indexed subsequent to the first two years. As a result, the following revenues were not invoiced and collected from the Licensee:

Fiscal Year	# of Months at the applicable Rate	# of Licensed Parking Spaces	Applicable Indexed Rate Per Space	Applicable Monthly License Rental Fee	Total Fiscal Year Fee Indexed	Total Fiscal Year Fees Not Indexed	Revenue Difference
FY 08	10	155	\$ 75.00	\$116,250.00	\$140,197.50*	\$ 139,500.00*	\$ 697.50
	2	155	\$ 77.25	\$ 23,947.50			
FY 09	10	155	\$ 77.25	\$119,737.50	\$144,404.20	\$ 139,500.00	\$ 4,904.20
	2	155	\$ 79.57	\$ 24,666.70			
FY 10	3	155	\$ 79.57	\$ 37,000.05	\$ 37,000.05	\$ 34,875.00	\$ 2,125.05
							<u>\$ 7,726.75</u>

\*: The amounts reflected assume twelve (12) monthly invoices based on the number of parking spaces licensed at the applicable rate. Actual amounts collected varied, as supported by finding number one (1) above where license rental fees for two (2) months were not billed or paid. The difference reflected strictly shows revenues not billed or collected as a result of rates not indexed.

Recommendation(s)

The Parking Department should seek guidance regarding compliance to bond covenants, as well as other operational areas for consistency. Once guidance is provided, the Parking Department should consider whether or not it is reasonable to bill retroactively licensed parking fees not charged as a result of not properly indexing the base license rate, as required by the Parking Agreement. At a minimum and should the contract provisions prevail, going forward, the base license rate should be indexed and charged at the current indexed applicable base license rate. Annually thereafter, the Parking Department should adjust the base license rate, as specified in the agreement to ensure compliance to the Parking Agreement and verify that all applicable fees are accurately assessed and collected.

Management's Response(s)

The City's Parking Rate Ordinance does not provide for any automatic adjustments; escalator clauses; or any other provision to increase parking rates. Additionally, bond covenants may pre-empt the assessment of varying fees for different users at a facility where bond proceeds were used to fund the construction of the facility. The Parking Department is seeking clarification and guidance from the City Attorney's Office and the City's Finance Department in order to determine the appropriate course of action.

3. Finding – *Replacement charges for 155 replaced cards were not charged to the Licensee.*  
As supported by chapter 106 of the City Code and Parking Department Policies, a twenty five (25) dollars access card replacement charge would be assessed for each lost access card replaced. On December 1, 2009 a total of one hundred fifty five (155) access cards were replaced and an additional ten (10) were issued to the Licensee. However, none of the replaced cards have been returned as of March 1<sup>st</sup>, 2010. Additionally, a total of \$3,875.00 associated with the replacement of the one hundred fifty five (155) access cards was not accessed by the Parking Department or paid by the Licensee as of March 1, 2010.

Recommendation(s)

In the future, the Parking Department should consider the implementation, documentation, and adherence to policies requiring the Licensee to return access cards being replaced before or at the same time that a new replacement card is activated and issued. In the event that cards being replaced are not returned, then the Parking Department should ensure that all cards being replaced are disconnected and then issue the new replacements upon receipt of the applicable access card replacement fees.

Management's Response(s)

Over the period of March to July 2010, the Parking Department received 107 access cards from Ballet Valet equating to a value of \$2,675. Subsequently in August of 2010, Ballet Valet submitted a payment in the amount of \$1,200 which equates to a grand total of \$3,875; thus satisfying the outstanding balance for replacement access cards issued to Ballet Valet.

4. Finding – *Amounts corresponding to ten (10) additional parking licenses granted on December 1, 2009 were not charged for the same month.*  
On December 1, 2009, one hundred and sixty-five (165) Parking spaces were licensed to the Licensee; ten (10) parking licenses more than the previous one hundred fifty-five (155) replaced. However, license rental fees related to the additional ten (10) licensed spaces were not charged for the month of December, 2009. Consequently, a total of \$795.70, at the indexed base rate, was not invoiced or paid.

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Subsequent to Internal Audit's finding, the Parking Department corrected the January, 2010 invoice to reflect charges for the ten (10) additional cards. However, the base license rate used was not indexed, departing from contract provisions, as stated in finding number two (2) above.

Recommendation(s)

Licensed parking rental fees for the month of December, 2009, in the amount of \$795.70 should be billed to the Licensee as soon as possible. Also, subsequent to implementing the recommendation for finding number two (2) above, the Parking Department should exercise additional care to ensure that all applicable license rental fees are billed and corrected according to the number of issued active access cards/parking spaces. A monthly review and reconciliation of the accounts receivable should also be considered, as stated in finding number one (1) of this report.

Management's Response(s)

An invoice in the amount of \$750.00 is being submitted to Ballet Valet for ten (10) additional (165 instead of 155) access cards for the month of December 2009. The balance, \$45.70, which is the incremental amount between the current monthly rate and the indexed rate, shall be invoiced if/when it is deemed to be appropriate as a result of audit finding No. 2 above.

5. Finding – *Three cards have been issued to the Licensee in excess of the maximum allowed contradicting contract specifications.*

Paragraph one (1) of the Parking Agreement states that "*Ballet Valet shall obtain and pay for no less than 150 parking spaces and, at its option, up to a maximum of 25% of the total parking spaces in the Garage each year*". Considering that there are a total of six hundred forty-six (646) parking spaces in the garage, the maximum allowable number of licensed parking spaces is one hundred and sixty-two (162) spaces ( $646 \times 25\% = 162$ ). Currently, one hundred and sixty-five (165) spaces are being licensed; three (3) spaces more than allowed by the contract.

Recommendation(s)

In order to comply with requirements set forth in the Parking Agreement, the Parking Department should immediately deactivate/invalidate the three (3) access cards issued in excess of the maximum number of allowable licensed parking spaces and request them to be returned. Concurrently, billing for the license rental fees corresponding to these three (3) access cards/parking spaces should be stopped.

It is relevant to further mention that although the Licensee may choose to participate in the "*Facility Specific Monthly Parking Program*" established and administered by the City, different rules and policies apply to this program, since is not governed by the contract. Any access card/permit issued under this program would have to be account, individual, and vehicle specific, as well as non-transferable.

Management's Response(s)

An additional number of access cards above and beyond what is stipulated in the Agreement may be issued to Ballet Valet under a monthly parking program already established and if the Parking Department, in its sole and absolute discretion, determines that there is sufficient capacity to allow said additional utilization (access cards). The Parking Department shall notify Ballet Valet that any number of access cards issued above and beyond the number of access cards stipulated in the Agreement may be revoked upon a fifteen (15) day notice.

6. Finding – *Copies of a signed Annual Resale Certificate for Sales Tax was not requested and kept in file by the Parking Department for exempted Licensed parking rental fees.* Accordingly and in compliance to Florida Department of Revenue requirements, applicable sales taxes should be assessed on the corresponding license rental fee for those spaces not sub-leased/rented and used by the Licensee or any of the authorized parties. Currently, no annual copies of Resale Certificate for Sales Tax is being kept on file by the Parking Department, and all license rental fees have been exempted from sales tax using an annual resale certificate number provided.

Recommendation(s)

The Parking Department should identify the number of spaces sub-leased/rented, as well as the ones used by the Licensee. Applicable sales taxes should be assessed on the corresponding license rental fee for those spaces not sub-leased/rented and used by the Licensee or any of the authorized parties. Additionally, annual copies of the Annual Resale Certificate for Sales Tax, signed by an authorized officer, should be kept in file by the Parking Department to document exempted license rental fees.

Management's Response(s)

Ballet Valet may sublease/rent granted parking rights to their tenants, guests, and customers of properties owned by Ballet Valet. Additionally, effective immediately, all access cards shall be assessed sales tax at the point of sale to Ballet Valet.

7. Finding – *Monthly rental payments to the City were not received in advance, in contradiction to section 1 of the Parking Agreement*  
Paragraph one (1) of the Parking Agreement states that *"Ballet Valet shall pay to the City monthly in advance a monthly fee consisting of the Base License Rate per parking space, plus applicable taxes"*. In addition, paragraph twelve (12) of the agreement requires that *"the monthly fee shall be due and payable in advance at the offices of the City in accordance with paragraph one (1) on the 1<sup>st</sup> day of the month immediately preceding the calendar month for which such monthly fee is to be applied. The obligation of Ballet Valet to pay the monthly fee and any other obligations hereunder for each month during the initial term and any renewal term hereof is absolute and shall not be dependent upon the use and non-use of the parking spaces."*

Recommendation(s)

In order to comply with the agreement provisions, the Parking Department should cease historical practices of invoicing license rental fees in arrears (invoice on current month license rental fees for last month). Invoices should be created and issued the month before, in order to comply with the agreement and provide sufficient time for the Licensee to comply by submitting payment on the first day of each month, as stated on the Parking Agreement. The Parking Department should consider issuing an official statement in writing reminding the Licensee regarding payment requirements and timelines. Additional remediation options have been provided in the agreement (Ex: Paragraph 11, page 6 of the agreement).

Management's Response(s)

Agreed, effective January 1, 2011, the Parking Department will issuance invoices to the Licensee one month before the effective period. A communication will be sent to the Licensee notifying them of the same.

8. Finding – *A written request for any increase or decrease in the number of licensed spaces was not documented and received 30 days prior to the anniversary of the Parking Agreement, as specified in the agreement.*

Paragraph one (1) of the Parking Agreement stipulates that *“Ballet Valet shall notify the City in writing annually, not less than 30 days prior to each anniversary of the Parking Agreement as to the number of parking spaces, subject to the aforesaid minimum and maximum criteria, it will contract for in the forthcoming year. If no timely written notice is received by the City from Ballet Valet, the Ballet Valet shall be deemed to have selected the same number of parking spaces as were licensed during the previous year”*. Despite these provisions, on December 1, 2009 additional parking spaces were granted without a formal written request and in contradiction to the aforementioned contract provisions.

Recommendation(s)

Both, the Parking Department and the Licensee, should coordinate to ensure that compliance to Parking Agreement provisions is achieved. The Parking Department should consider issuing an official statement in writing reminding the Licensee of timely request requirements.

Management’s Response(s)

Agreed, the Parking Department shall remind the Licensee of their requirement to submit their requests timely pursuant to the Agreement; however, the Parking Department shall reserve the right to amend the number of licensed spaces, if it is in the best interest of the City.

**LEASE AGREEMENT**

9. Finding – *Index adjustments for the Base Rent were not calculated as stated on the Lease Agreement.*

According to the Lease Agreement, *“ the Base Rent shall be subject to annual adjustments based upon the Consumer Price Index for Wage Earners and Clerical Workers, Miami, Florida (1982-1984=100) published by the Bureau of Labor Statistics of the United States (“CPI”). The “Base Number” shall be the index for that month and year which is two (2) months prior to the commencement date of this Lease (the “Base Month”). The “Current Number” shall mean the latest index published for the Base Month of each calendar year during the term of this Lease by the Bureau of Labor Statistics”*. It further states that *“if the Current Number exceeds the Base Number, then the Base Rent shall be multiplied by a fraction, the numerator of which is the Current Number and the denominator of which is the Base number and the product shall thereupon be deemed to be the Base Rent for the forthcoming year”*.

Results from Internal Audit’s testing found that a different Consumer Price Index criterion was used to compute the indexed monthly Base Rent. Instead of using the agreement specified *“Wage Earners and Clerical Workers, Miami, Florida (1982-1984=100)”* index, a slightly different index area (*“South Eastern Region”*) was used by the Office of Real Estate, Housing & Community Development resulting in less than material differences in the monthly Base Rent. The following table helps to illustrate and quantify such differences:



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Fiscal Year	# of Months	Applicable Monthly Base Rent	Total Fiscal Year Base Rent per Agreement Specifications	Amounts Invoiced and Paid	Difference
FY 08	10	\$ 1,793.96	\$ 21,635.17	\$ 20,631.76	\$ 1,003.41
	2	\$ 1,847.78			
FY 09	10	\$ 1,847.78	\$ 22,284.22	\$ 21,144.96	\$ 1,139.26
	2	\$ 1,903.21			
FY 10	3	\$ 1,903.21	\$ 5,709.64	\$ 5,286.24	\$ 423.40
					<u>\$ 2,566.07</u>

Recommendation(s)

The Office of Real Estate, Housing & Community Development, in charge of the revenue collection aspect of this agreement, should consider whether or not it is feasible to invoice retroactively the difference of \$2,566.07, as a result of calculations of monthly Base Rent using a different index than the one required by the agreement. However, going forward, Base Rent calculations should be corrected to comply with agreement specifications.

Management's Response(s)

The Office of REH&CD concurs and will forward a copy of the final audit report along with correspondence requesting payment of past monies owed pursuant with OBPI's calculations (including additional monies owed for the months of January-July 2010 which were not part of the audit). Base Rent calculations, as calculated by OBPI, have been implemented as of August 2010.

10. Finding – *Monthly rental payments are not being submitted by the first date of each month, as required by the Lease Agreement.*

According to the Lease Agreement, "base rent shall be payable monthly commencing August 1, 1997 and monthly thereafter on the first day of each calendar month through July 31, 2027". Of the thirteen (13) monthly rental payments reviewed out of twenty-seven (27) total payment of our audit period, all thirteen payments were submitted late averaging 27 days after the due date. In addition, it states that "the occurrence of any of the following shall constitute an event of default hereunder: (i) if Tenant shall fail to pay any installment of Base Rent or any other amount due and payable when due, whether or not such payment shall have been demanded".

Additional default occurrences were described there under. However, it is relevant to further mentions that, although not by the first day of each month, all monthly base rents have been paid by the Tenant, as invoiced.

Recommendation(s):

Although other remediation options are provided in the Lease Agreement, an official statement in writing reminding the Tenant about payment and timeliness requirements should be sufficient. If compliance is not achieved through this means, then additional remediation options have been provided in Section 16 of the Lease Agreement for further consideration.

Management's Response (Office of Real Estate, Housing & Community Development)

The Office of REH&CD agrees with OBPI's recommendation and will notify the Tenant accordingly.

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## EXIT CONFERENCE

An exit meeting with the City's Office of Real Estate Housing & Community Development was held on August 9, 2010 to discuss the audit report and to solicit management responses noted above. Attendees included Anna Parekh, Director, Office of Real Estate, Housing & Community Development and Robert Reboso, Redevelopment Specialist - Asset Management, James Sutter, Internal Auditor and Fidel Miranda, Auditor. A separate exit meeting was held August 13, 2010 with the City's Parking Department attended by Saul Frances, Parking Director, Charles Adams, Parking Assistant Director, Greeten Steele, Senior Administrative Manager, Rocio Rodriguez Finance Analysis III, and Raul Soria, Financial Analyst III. Management responses were received shortly thereafter. All were in agreement with the contents of this report.

Audit performed by Fidel Miranda, Auditor

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cc: Jorge Gomez, Assistant City Manager  
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Charles Adams, Parking Assistant Director  
Robert Reboso, Redevelopment Specialist - Asset Management