



Legislation Text

File #: 16-065, **Version:** 1

TO: Mayor and Commissioners
FROM: Noel Pfeffer, City Attorney
DATE: January 5, 2016

DISCUSSION: LEGAL STATUS OF AGREEMENT BETWEEN THE CITY AND MATCH POINT, INC., GRANTING MATCH POINT, INC. A LICENSE FOR PROFESSIONAL TENNIS TOURNAMENT EVENTS AT THE CITY'S TENNIS CENTER

Recommended Action:

Motion to authorize the City Attorney and Special Counsel to file the appropriate legal action to determine the validity of the MatchPoint Agreement if an amicable resolution cannot otherwise be achieved.

Background:

During previous discussions, the City Commission, by consensus, directed the City Attorney to evaluate the validity and enforceability of the existing agreements with Match Point, Inc. ("MatchPoint"). The initial agreement, entered into by the City in 2005, and amended numerous times over the years, grants a long term license (through 2030) to MatchPoint to manage and operate the City's tennis center for major professional tennis tournaments. The agreements require the City to maintain the tennis stadium and other City facilities in a specified state of repair, provide parking, office space, and other City equipment, all at no cost to MatchPoint. In addition, the agreements require the City to pay MatchPoint in excess of \$1.5 million dollars annually as consideration for the management and operation of professional tennis events. This annual payment is subject to an automatic percentage increase each year. The City is entitled to sell sponsorships and keep parking revenues.

Attached to this memorandum is a legal opinion prepared by Weiss Serota Helfman Cole & Bierman providing a history of the agreements, an overview of the contract terms, and the firm's legal analysis of the theories why the agreements may be void. This firm was selected to review this matter because the issues identified in the MatchPoint agreements are analogous to the recent litigation handled by this firm regarding the Waste Management procurement issues.

As the Commission will recall, an amendment to extend the term to the then existing Waste Management agreement was declared void by the court because the City failed to comply with its

competitive bidding requirements when entering into a contract extension. A review of the available records for the MatchPoint agreements similarly do not reflect any attempt by the City Commission to address or consider the then existing City competitive procurement requirements in connection with the selection and award of MatchPoint. As explained in greater detail in the attached memorandum, Special Counsel believes, based on the record available and applicable Florida case law there is a “considerable chance” for a judicial determination that the agreement is void.

Should the Commission wish to pursue this matter further, the City Attorney and Special Counsel recommend Alternative 1 outlined in the attached Special Counsel memorandum (filing a declaratory action to ask a court to determine whether the agreement is void). During the pendency of an action seeking a declaratory action, the City should consider continuing to perform all of its contractual obligations under the agreements to minimize any claims against the City. Although, Special Counsel has stated it believes there is a considerable chance for a successful judicial determination that the agreements are void, there are also defensive strategies available to MatchPoint as disclosed in the attached memorandum from Special Counsel. Also, because of the age of this agreement, it is possible there may be additional information and documents which are no longer in the City’s possession and which may affect these opinions.

This legal exercise is limited to an analysis of the enforceability of the existing agreements. Current City policy is for this property to remain as a tennis facility and this office has not considered or evaluated any other use of the property. The City Attorney also recommends that before taking any formal legal action, the City first meet with MatchPoint to discuss a possible resolution that would not require litigation.