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MEMORANDUM

TO: Mayor Marty Kiar

FROM: Andrew J. Meyers, Chief Deputy County Attorney

DATE: September 30, 2016

RE: **Waiver of Corkage Fee in Connection with 2016 Mayors' Gala
CAO File: 16-11E (Gifts)**

You and municipal mayors within the County are hosting the 2016 Mayors' Gala, with all of the event's net proceeds benefitting the United Way of Broward County. This fundraising event has been formally approved by the Broward County Commission. The event is being held at the Broward County Convention Center, which is managed by SMG pursuant to a contract between SMG and the County. In order to maximize the event's net proceeds, offers to provide goods and services for free or at reduced rates are being accepted (these, in essence, are in-kind charitable contributions to the United Way of Broward County). SMG customarily charges a corkage fee that is paid, per bottle, whenever alcoholic beverages from an outside vendor are used in connection with an event at the Convention Center. SMG has offered to waive this fee, again for the purpose of maximizing the event's net proceeds. You have asked us to analyze whether such waiver creates any concern under state or County ethics provisions. As stated below, it does not, and SMG's offer may therefore be accepted.

Because SMG is a County vendor, your ability to accept any gift from SMG is limited by state ethics law and limited even more significantly by the County's ethics code. However, we do not view this corkage fee waiver as a gift to you. We believe it is a gift from SMG to the United Way of Broward County. Alternatively, to the extent it could be considered a gift to you, you would only be accepting the gift on behalf of Broward County (which has formally approved the event) or on behalf of the United Way of Broward County. The state ethics code recognizes that, although generally a public officer may not under state law accept gifts from vendors valued at more than \$100, this restriction does not apply where the public officer is accepting the gift on behalf of the officer's governmental entity or on behalf of a charitable organization, provided the public officer does not maintain custody over or otherwise obtain any personal benefit from the gift. Section 112.3148(4), Florida Statutes (2016). To the extent the corkage fee waiver could be considered a gift to you, we believe this statutory section would permit you to accept it under both state law and the County ethics code.

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Because we do not view the corkage fee waiver as any gift to you, SMG's offer may be accepted and you do not have any obligation to reimburse any amount or disclose any gift. Additionally, given the County's prior formal approval of this charitable event, and given that the gift is benefitting only the United Way of Broward County, we do not believe any further action is required by the County Commission to formally accept SMG's offer.

Thank you for allowing us to analyze this matter. If we can be of further assistance, please let us know.

/s/ Andrew J. Meyers
Chief Deputy County Attorney