

Exhibit 4

before April 30 of each year and that each statement must cover the calendar year immediately preceding the filing.

4. The Finance Director did not certify a list of businesses doing business with the City for any of the years 2004 through 2007. Electronic data maintained by the Department of Finance was not certified to the Ethics Board, and it was not compiled to adhere to or follow the Ethics Code's definition of "doing business."

5. In recent months, I and others in the Law Department have provided guidance to City agencies for the compilation of a certified list of persons (including business entities) "doing business" with the City in 2008. Among other things, I prepared a Communication to all City Agencies that was sent to the heads of all City Agencies for the purpose of obtaining information and submitting it to the office of the Finance Director. A copy of the Communication, dated March 4, 2009, and sent out over the name of the Chief of Staff, is attached hereto as Exhibit "A."

6. In order to prepare the Communication, and to provide appropriate guidance to the City Agencies and ultimately all those subject financial disclosure requirements as to identification of persons doing business with the City, it was necessary for me to consider which activities constitute "doing business" and which individuals or entities are embraced within the meaning of "persons" doing such business.

A. **Doing Business.** Section 2-5 of the Ethics Code defines "business with the City" as any one or combination of "sales, purchases, leases or contracts to, from or with the City or any Agency that ... is made or entered into during the reporting period for which a disclosure statement is required ... and involves \$5,000 or more on a cumulative

basis.” The Section also provides that “the total consideration committed to be paid as of the award or execution of a contract or lease” is included as of the time of execution “regardless of the period over which payments [pursuant to the contract or lease] are to be made.” Under this definition, a person does business with the City when the person executes a contract or lease with the City and not when payments are made thereafter. The only exceptions are sales or purchases to or from the City, above \$5,000 in a reporting period (calendar year), because they are specifically included in the definition, but these exceptions do not apply to other kinds of payments or transactions pursuant to a contract, such as tax or fee payments, construction draws, rental payments and loan repayments.

B. Persons. Under the definitions in Sections 2-4, 2-5 and 2-22 of the Ethics Code, the person that does business with the City, for purposes of disclosure of gifts by public officials and other public servants pursuant to Section 7-23, is the entity or individual that is the party to the sale, purchase, lease or contract with the City. When the party to the transaction with the City is a business entity, as provided in Section 2-22, the person doing business with the City is the entity that is the party to the transaction. The entity’s parents, subsidiaries, affiliates, owners, operators or subcontractors are not persons doing business with the City.

7. Consistent with the principles set forth in the preceding paragraph of this Affidavit, the Communication that I prepared for assembling the information for the 2008 certified list, and which was disseminated to the heads of City Agencies for their guidance,

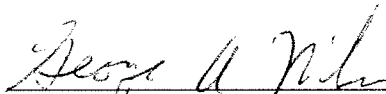
provided, in pertinent part, that the Agencies should provide the Department of Finance the names of, “All persons (including business entities and individuals) with whom your agency ‘did business’ at any time during 2008 by reason of their either making ‘sales’ to or ‘purchases’ from the City during the year or entering into leases or contracts with the City during the year,” and that, “if the party with whom the City does business is an entity, you should report that business only by the name of entity, not by the name of its parent or subsidiary companies or the name of the individual who runs the entity ...”


8. As part of my duties as City Solicitor, I and other members of the Law Department have also reviewed and analyzed the Ethics Code for the purposes of securing compliance with the Ethics Code and making recommendations for changes to the Ethics Code. Among the provisions that I reviewed and analyzed for these purposes was Section 7-23(B)(2)(ii), relating to disclosure of gifts by public servants from “persons” that are “regulated” by the City.

A. **Persons.** Section 7-23 (B)(2)(ii) provides for public servants to disclose gifts from “a person regulated by the City.” The defined term “person” is the same term used in Section 7-23(B)(2)(iii) in connection with reporting gifts from a person doing business with the City. Since these two interrelated portions of the same section use the same operative word for the same purpose, principles of construction and common sense dictate that the word have the same meaning in both instances. Thus, for purposes of the requirement that a public servant report gifts from a “person” regulated by the City, the “person” that is regulated is the party that applies for, or is the subject of, the regulatory

action. As in the case of an entity doing business with the City, when the party that is regulated is a business entity, as provided in Section 2-22, the business entity is the person that is regulated by the City. The entity's parents, subsidiaries, affiliates, owners or operators are not persons regulated by the City.

B. Regulated. The term “regulated,” while not defined in the Baltimore City Ethics Code, has been interpreted by the Court of Special Appeals in the context of the Carroll County ethics law. In Carroll County Ethics Com’n v. Lennon, 119 Md. App. 49 (1998), the court held that a real estate developer is regulated by a county agency at the time when the agency deliberates upon and renders a decision on an application by the developer. The holding of the Lennon case incorporates the same bright line test for determining when a person is deemed to be regulated for purposes of an ethics law as the test for doing business set forth in Section 2-5 of the Baltimore City Ethics Code.


George A. Nilson

FROM	NAME & TITLE	Demaune Millard, Chief of Staff	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Mayor's Office, 250 City Hall		
	SUBJECT	Communication to all City Agencies - Certified List of Persons Doing Business with City in 2008 Under Ethics Code		

TO All City Agencies, Mayor's Office

DATE:

March 4, 2009

The Finance Director is required to certify annually to the Ethics Board a list of all persons (including business entities) doing business with the City during the preceding calendar year reporting period. The certification will be made this year on or before April 1, 2009 so that the information on the list will be available to people preparing their required financial disclosure forms by April 30th. The primary portion of the certified list will consist of an electronically searchable database of Board of Estimates meetings held during 2008, but because not every single "covered transaction" goes through the Board of Estimates, we must obtain on behalf of the Finance Director the additional information requested in this communication. Accordingly, please submit to Ms. Tammy Horton, Special Assistant to the Director in the office of the Finance Director no later than **March 20, 2009** the following information (**except for** all "sales, purchases, leases or contracts" that you are certain were approved by the Board of Estimates during 2008):

All persons (including business entities and individuals) with whom your agency "did business" at any time during 2008 by reasons of their either making "sales" to or "purchases" from the City during the year **or** entering into leases or contracts with the City during the year.

Note the following:

- all agencies whose heads receive this communication are considered City Agencies for purposes of the Ethics Code, and business done with or through them **MUST** be reported;
- "Mayor & City Council agencies" do not have to report payments by the City for purchases of goods and services since Finance already has that information for 2008 on its "vendor list";
- all payments to the City for the purchase of goods and services must be reported and if one purchaser has purchased more than \$5,000 worth of goods or services, you need only report the name of the purchaser – examples would include vehicles and other goods or property purchased from the City as surplus;
- if the party with whom the City does business is an entity, you should report that business only by the name of the entity, not by the name of its parent or subsidiary companies or the name of the individual who runs the entity;

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EXHIBIT A

- if you are certain that reportable transactions are already reflected in agendas of and approvals by the Board of Estimates during 2008, then you are **not** required to report them in response to this communication to the Finance Director; you may *omit de minimus* transactions where you are reasonably confident that the person involved did not engage in transactions with all City agencies during 2008 involving over \$5,000; and If you are uncertain as to whether to list a person/transaction, err on the side of inclusion not exclusion.

Please submit your list, arranged alphabetically by the name of the person with whom the City did business, giving the name of the “person” and the total amount of the consideration involved in the 2008 transactions (if above \$5,000, you may simply so indicate). Please indicate how much of that amount is in sales, how much is in purchases, how much is in leases or other contracts, and please give the dates of leases and contracts. In attributing dollar amounts to leases and contracts, please report the **total** amount of consideration potentially payable over the term(s) of the lease or contract. Your list should be submitted electronically, and may only be submitted in hard copy format if that makes the submission significantly less burdensome for you. The submission should give the name of the person responsible for creating it and who can answer any questions that may arise. If you have no information to submit, please so advise Ms. Horton in the Finance Department.

Your agency will be asked to submit this information in future years – and you may wish to put in place a system for collecting the information “as you go” to simplify submission early next year.

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