

**CITY OF RIVIERA BEACH CITY COUNCIL
AGENDA ITEM SUMMARY**

MEETING DATE: June 20, 2012

AGENDA ITEM SUMMARY NO. L12-062-1

- AWARDS / PRESENTATIONS / PETITIONS
- CONSENT
- PUBLIC HEARING
- ORDINANCE ON SECOND READING
- ORDINANCE ON FIRST HEARING

- REGULAR
- RESOLUTION
- DISCUSSION & DELIBERATION
- BOARD APPOINTMENT
- WORKSHOP

SUBJECT: A Resolution of the City Council of the City of Riviera Beach, Palm Beach County, Florida, directing City staff to give to Viking Developers, LLC., the Master Developer, notice of its intention to negotiate an agreement regarding certain project elements in accordance with the approved Master Developer Agreement; and authorizing staff to move forward with development of the concept elements.

RECOMMENDATION / MOTION: Motion to approve the resolution.

◆ City Attorney <i>PHL 6/13/12</i>	Library
◆ City Clerk	Marina
◆ Community Development <i>MMK 6-13-12</i>	Police
◆ Finance <i>KA</i>	Public Works
Fire	Purchasing
Human Resources	Recreation & Parks
◆ Interim Assistant City Manager	Utilities District

APPROVED BY CITY MANAGER: *Ruth L. Jones*

DATE: 6-13-12

Originating Dept. Legal <i>PHR</i>	Costs: <u>\$0</u> Current FY: _____ Funding Source: <input type="checkbox"/> Capital Projects Fund <input type="checkbox"/> Operating <input type="checkbox"/> Other:	City Council Actions: <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/conditions <input type="checkbox"/> Denied _____ <input type="checkbox"/> Tabled to _____ <input type="checkbox"/> Referred to Staff _____
Advertised: Date: Paper: <input checked="" type="checkbox"/> Not Required	Affected Parties <input type="checkbox"/> Notified <input checked="" type="checkbox"/> Not Required	Attachments: 1. FIA 2. Resolution 3. Viking Master Development Agreement

SUMMARY: The City of Riviera Beach, the Community Redevelopment Agency, and Viking Developers, LLC, entered into a Master Developer Agreement in July, 2010, which provided the terms and conditions for the development of the City's Marina District (Marine District South). The agreement provides in sections 2.04 and 2.05, that the development of the Marina District is comprised of 19 separate project elements and when appropriate any party can give notice to another party that it is prepared to enter negotiations to develop any of the project elements with said negotiations to commence within sixty (60) days.

The City and CRA are prepared to commence development of elements of the Marina District, such as Bicentennial Park, Newcomb Hall, the Tiki Restaurant, a parking facility, and a public market, all of which constitute necessary public improvements required for the development of private uses in the Marina District. The City and CRA are requesting authorization to give written notice to Viking Developers, LLC of the City's intention to negotiate an agreement with them regarding development of the areas and if negotiations fail or Viking determines that is not interested in developing the elements, then staff is authorized to move forward with development plans.

RECOMMENDATION: Staff recommends that the City Council approve the attached resolution.

Item No. 2

EXHIBIT A-1

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact: 60 day Notice Viking Developers

Fiscal Years	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Capital Expenditures	NA				
Operating Costs					
External Revenues					
Program Income (City)					
In-Kind Match (City)					
NET FISCAL IMPACT	NA				

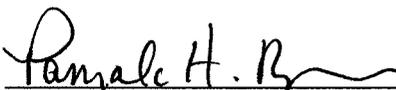
NO. ADDITIONAL FTE
POSITIONS (Cumulative)

Is Item Included in Current Budget? NA Yes _____ No _____
Budget Account No.: Fund Dept/Div. Org. Object

Reporting Category

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:



Pamala H. Ryan, City Attorney

III. REVIEW COMMENTS

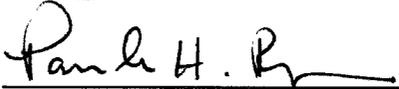
A. Finance Department and/or Purchasing/Intergovernmental Relations/Grants Comments:



Finance Department

Purchasing and Grants

B. Other Department Review:



Pamala H. Ryan, City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, DIRECTING CITY STAFF TO GIVE NOTICE TO VIKING DEVELOPERS, LLC., THE MASTER DEVELOPER, NOTICE OF ITS INTENTION TO NEGOTIATE AN AGREEMENT REGARDING CERTAIN PROJECT ELEMENTS IN ACCORDANCE WITH THE APPROVED MASTER DEVELOPER AGREEMENT; AUTHORIZING STAFF TO MOVE FORWARD WITH DEVELOPMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach ("City"), the Community Redevelopment Agency ("the Agency"), and Viking Developers, LLC, entered into a Master Developer Agreement (the "Agreement") which provided the terms and conditions for the development of the City's Marina District; and

WHEREAS, the Agreement provides in sections 2.04 and 2.05, that the development of the Marina District is comprised of 19 separate project elements and when appropriate any party can give notice to another party that it is prepared to enter negotiations to develop any of the project elements and said negotiations are to commence within sixty (60) days; and

WHEREAS, City staff and Agency staff are prepared to commence development of Bicentennial Park, Newcomb Hall, the Tiki Restaurant, a parking facility, and a public market, all of which constitute necessary public improvements required for the development of private uses in the Marina District.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

SECTION 1. City staff is authorized to give written notice to the Developer of the City's intention to negotiate an agreement with the Developer regarding the following elements of the Concept Plan:

- a. Bicentennial Park
- b. Newcomb Hall
- c. the Tiki Restaurant
- d. a parking facility
- e. a public market

SECTION 2. City staff is authorized to move forward with the development of the above elements as authorized in section 2.06 of the Agreement should the Developer choose not to develop the elements in accordance with the Agreement.

SECTION 3. That this resolution shall take effect immediately upon its passage and approval by City Council.

RESOLUTION NO.: _____
PAGE -2-

PASSED and APPROVED this _____ day of June, 2012.

APPROVED:

THOMAS A. MASTERS
MAYOR

BILLIE E. BROOKS
CHAIRPERSON

ATTEST:

CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

DAWN S. PARDO
CHAIR PRO TEM

JUDY L. DAVIS
COUNCILPERSON

CEDRICK A. THOMAS
COUNCILPERSON

SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: _____

SECONDED BY: _____

B. BROOKS _____

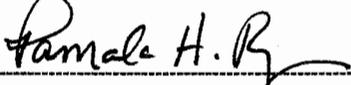
D. PARDO _____

J. DAVIS _____

C. THOMAS _____

S. LOWE _____

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 6/13/12

EXECUTION COPY

MASTER DEVELOPMENT AGREEMENT

By and Among

the

CITY OF RIVIERA BEACH, FLORIDA,
a Florida municipal corporation

and

**THE RIVIERA BEACH
COMMUNITY REDEVELOPMENT AGENCY,**
a body corporate and politic created pursuant to
Part III, Chapter 163, Florida Statutes

and

VIKING DEVELOPERS, LLC
a Florida limited liability company



MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement ("Agreement") is made this 28th day of July, 2010, by and among THE CITY OF RIVIERA BEACH, FLORIDA, a Florida municipal corporation ("City"), THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY ("Agency"), created by the City of Riviera Beach pursuant to Chapter 163, Part III of the Florida Statutes, and VIKING DEVELOPERS, LLC, a Florida limited liability company, its successors and assigns ("Developer" or "Viking").

WITNESSETH:

WHEREAS, the City and Agency seek the redevelopment of certain property located within the Marina District as a community redevelopment project ("Project") pursuant to the City's Community Redevelopment Plan ("CRA Plan"); and

WHEREAS, the Project is located in the Marina District bordered to the east by the Intracoastal waterway, bordered to the west by Broadway/U.S. Highway 1, bordered to the south by East 11th Street and bordered to the north by East 15th Street and the northern boundary of Bicentennial Park; and includes the City marina docks and uplands, and additional property that includes streets, sidewalks, parking areas, improved and unimproved land, and recreation areas (the additional property includes properties owned by City, collectively, "City Property," properties owned by CRA, collectively, "CRA Property," as well as properties owned by Developer, collectively, "Developer Property,") together are collectively called the "Project Site," described on Exhibit "A" attached hereto excluding Element 16 (Port Parking Garage); and

WHEREAS, on June 30, 2008, the Agency and the City issued Request for Proposals No. CRA 2008-001 ("RFP") soliciting a developer or developers to develop, lease, construct, operate, and manage the Project; and

WHEREAS, only one (1) developer, (Viking Developers, LLC) responded to the RFP; and

WHEREAS, on September 10, 2008, the Agency and the City, after a public review process, selected Viking as the developer for the Marina District, accepted Viking's Conceptual Master Development Plan, and directed Agency and City staff to negotiate the terms under which the Developer would develop the Project in accordance with the general requirements of the RFP; and

WHEREAS, the Agency and City accepted and approved an amended Conceptual Master Development Plan (hereinafter "Concept Plan") at duly called public meetings held on February

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10, 2010 and February 17, 2010, respectively (described on Exhibit "B"), and authorized staff to negotiate and finalize the necessary and appropriate definitive agreements; and

WHEREAS, the Concept Plan is currently comprised of nineteen (19) separate project elements as described on Exhibit "B" as may from time to time be amended; and

WHEREAS, the Developer will cooperate with the City and Agency to implement the Concept Plan, and will negotiate specific agreements for the separate project elements as appropriate and necessary to effectuate the implementation of the Concept Plan; and

WHEREAS, the parties acknowledge that any future development activities in the Project area must be coordinated to insure their compliance and consistency with the Concept Plan, and the parties mutually agree to cooperate to achieve such coordination; and

WHEREAS, in anticipation of entering into an agreement with the City and Agency, to carry out the RFP, the Developer has procured several engineering and design services which the City will utilize in the development of the Marina District; and

WHEREAS, the Concept Plan calls for a multi-phased, mixed use development, and the parties agree to the development of the Concept Plan as provided herein.

NOW, THEREFORE, it is hereby mutually agreed by and between the Parties hereto that this Agreement is made upon the terms and conditions hereinafter set forth.

ARTICLE 1

RECITALS

1.01 Recitals. The foregoing recitals are true and correct and incorporated herein as a part of this Agreement.

ARTICLE 2

DESIGNATION OF MASTER DEVELOPER AND PHASING OF DEVELOPMENT

2.01 The City and CRA hereby designate Viking Developers, LLC as the Master Developer.

2.02 The phasing of the development of the 19 project elements (as revised) is designed to follow such sequencing as when the market conditions and demand are deemed by the parties to be appropriate to proceed with an individual project element, and the specific terms and conditions for each project element shall be delineated in a separate agreement(s). Notwithstanding the above, Viking specifically agrees to use its best efforts to assist the City and

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CRA with the development of the parking garage, Newcomb Hall, Bicentennial Park, and Public Boating Facility project elements by initiating a strategy with the City and CRA for each said development element.

2.03. The City/CRA will provide the Developer with Architectural and Design Guidelines for development of the Marina District. The guidelines may be updated by the City/CRA from time to time, and will ensure that all projects within the Marina District have a coordinated design theme and similar architecture.

2.04 When deemed appropriate by any of the parties, notice shall be given in writing to proceed in negotiations for the development of any of the 19 project elements.

2.05 Within sixty (60) days of notice of a party's request to negotiate an agreement for the development of a project element, the parties shall commence negotiations.

2.06 If the parties are unable to reach an agreement within thirty (30) days of initiating negotiations, then either party may elect not to participate in the development of the subject project element. Notice of said election shall be given in writing to the other party, and the Developer shall be relieved of further responsibility with respect to that project element.

ARTICLE 3

OBLIGATIONS PRE-DEVELOPMENT

3.01 The parties acknowledge and mutually agree that in anticipation of entering into an agreement with the City and Agency, to carry out the RFP, the Developer has procured several engineering and design services which the City will utilize in the development of the Marina District (more particularly described in Exhibit "C"), which engineering and design services provided the requisite documentation utilized by the City in its application for grant funding; and which grant funding was awarded to the City by the Florida Inland Navigation District (F.I.N.D.) for the purpose of engineering and design services in the furtherance of the Conceptual Plan.

3.02 Upon execution by the last party to this Agreement, the Developer shall assign to City the documents set forth on Exhibit "C." The Developer makes no warranties or representations with respect to the suitability, accuracy, or quality of the services or the work product, but rather assigns to the City all rights it may have with respect to the existing plans, the work product and the additional services.

3.03 Developer agrees to retain professionals to perform additional engineering and design services (more particularly described in Exhibit "D") which services are necessary for the City to pursue additional grant funds for the purpose of construction services and permitting in the furtherance of the Conceptual Plan and other site development requirements. The City shall

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designate an individual who shall be responsible for interacting with the Developer and Developer's professionals in the performance of the work.

3.04 City agrees to reimburse Developer for costs incurred and or advanced for engineering and design services as set forth in Paragraphs 3.01 and 3.03 hereof, within thirty (30) days of receipt of invoice from Developer for engineering and design services as listed on Exhibits "C" and "D" for the amounts specified therein, provided payment for said reimbursement shall not be unreasonably delayed or withheld for a period not to exceed one hundred eighty (180) days from receipt of invoice.

ARTICLE 4

TRANSFER AND ASSIGNMENT OF DEVELOPMENT RIGHTS

4.01 In furtherance of the design, construction and completion of the Project, the Developer shall retain the right to transfer and assign all of its development rights for the development of any and all elements, and the phases thereof, of the Project as depicted on the Concept Plan (as may from time to time be amended), subject to acceptance and approval by the City and Agency.

4.02 The Developer, as assignor, shall deliver to City and Agency an agreement of assignment between Developer and assignee prior to final approval of any assignment by City and Agency.

4.03 City and Agency shall not unreasonably withhold, delay or condition its approval of the Developer's assignment. Upon any such assignment of development rights executed by Developer and approved by the City and Agency, Developer shall have no liability with respect to the development of the project elements subject to the assignment, but rather the City and Agency shall look solely to the assignee for the performance of any obligations under any applicable development agreement.

ARTICLE 5

EFFECTIVENESS AND TERMINATION

5.01 Effectiveness and Termination.

(a) This Agreement shall be effective as of the Effective Date, which date shall be the date on which the last of the Parties execute this Agreement ("Effective Date").

(b) This Agreement shall expire on the Expiration Date, which date shall be the earlier of (i) the issuance of a final certificate of occupancy for the final phase of development or (ii) the termination of this Agreement by the parties.

ARTICLE 6

NOTICES, CONSENTS AND APPROVALS

6.01 Service of Notice and Other Communications.

(a) Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the Parties by the other or whenever either of the Parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication ("Notice") shall be in writing and shall be effective for any purpose only if given or served by certified or registered U.S. mail, postage prepaid, return receipt requested, personal delivery with a signed receipt or by a recognized national courier service, addressed as follows:

If to Developer: Viking Developers, LLC
1550 Avenue C
Riviera Beach, FL 33404
Attn: Michael Clark, Vice President

with a copy to: William L. Mueller
General Counsel
Viking Group
4 Executive Campus, Suite 200
Cherry Hill, NJ 08002-4105

If to Owner: The City of Riviera Beach, Florida
Attention: City Manager
600 W. Blue Heron Boulevard
Riviera Beach, Florida 33404

With a copy to: The Riviera Beach Community
Redevelopment Agency
2001 Broadway, Suite 300
Riviera Beach, Florida 33404
Attention: Executive Director

Any such Notice may be given, in the manner provided in this Article, (i) on either Party's behalf by its attorneys designated by such Party by notice hereunder, and (ii) at Developer's request, on its behalf by any other Person designated in such request.



(b) Every Notice shall be effective on the date actually received, as indicated on the receipt therefor or on the date delivery thereof is refused by the recipient thereof. All references in this Agreement to the "date" of a Notice shall mean the effective date, as provided herein.

6.02 Consents and Approvals.

(a) All consents and approvals which may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting by a Party of any consent to or approval of any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the Party whose consent was required of its right to require such consent or approval for any other act, except as expressly set forth herein to the contrary.

(b) Unless expressly provided or otherwise, all consents and approvals which may be given by a Party under this Agreement shall not (whether or not so indicated elsewhere in this Agreement) be unreasonably withheld, delayed or conditioned by such Party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving Party shall, together with notice of such disapproval, submit to the requesting Party a written statement setting forth with specificity its reasons for such disapproval.

ARTICLE 7

MISCELLANEOUS

7.01 Governing Law and Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, without regard to principles of conflict of laws. Venue of all proceedings in connection herewith shall be exclusively in Palm Beach County, Florida.

7.02 References.

(a) The captions of this Agreement are for the purpose of convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

(b) The use herein of the words "successors and assigns" or "successors or assigns" of City and Agency or Developer shall be deemed to include the heirs, legal representatives and assigns of any individual City and Agency or Developer.

EXECUTION COPY

(c) Nothing in this Agreement or in the Parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of Agency or the City in the discharge of its police or governmental powers.

(d) All references in this Agreement to the terms "herein," "hereunder" and words of similar import shall refer to this Agreement, as distinguished from the paragraph, Section or Article within which such term is located.

7.03 Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of City, Agency, Developer, and their respective successors and assigns.

7.04 Disclaimer as to Governmental Authority.

Nothing in this Agreement shall be construed, interpreted or applied in such a manner as will constitute contracting away or waiver of any governmental police power by the Agency or the City.

[SIGNATURES ON FOLLOWING PAGE]



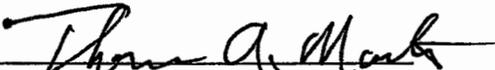
EXECUTION

IN WITNESS WHEREOF, City and Agency and Developer, intending to be legally bound, have executed this Agreement as of the day and year first above written.

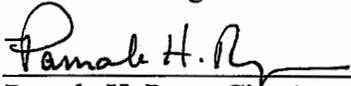
CITY OF RIVIERA BEACH, FLORIDA

ATTEST:

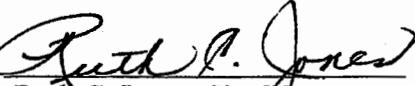
By: 
Carrie E. Ward, City Clerk

By: 
Thomas A. Masters, Mayor

As to Form and Legal Sufficiency

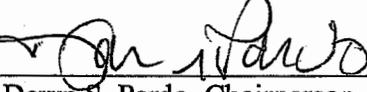
By: 
Pamala H. Ryan, City Attorney

As to Terms and Conditions

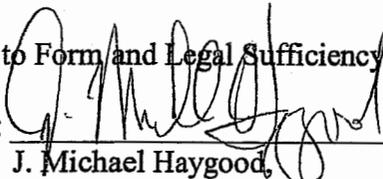
By: 
Ruth C. Jones, City Manager

Date: 6/4/10

RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY

By: 
Dawn S. Pardo, Chairperson

As to Form and Legal Sufficiency

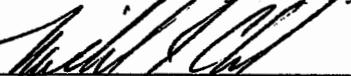
By: 
J. Michael Haygood,
CRA Attorney

As to Terms and Conditions

By: 
Scott Evans,
CRA Interim Executive Director

Date: 7/28/2010

Viking Developers, LLC
a Florida limited liability company

By: 
Name: Michael J. Clark
Title: V.P.



LIST OF EXHIBITS

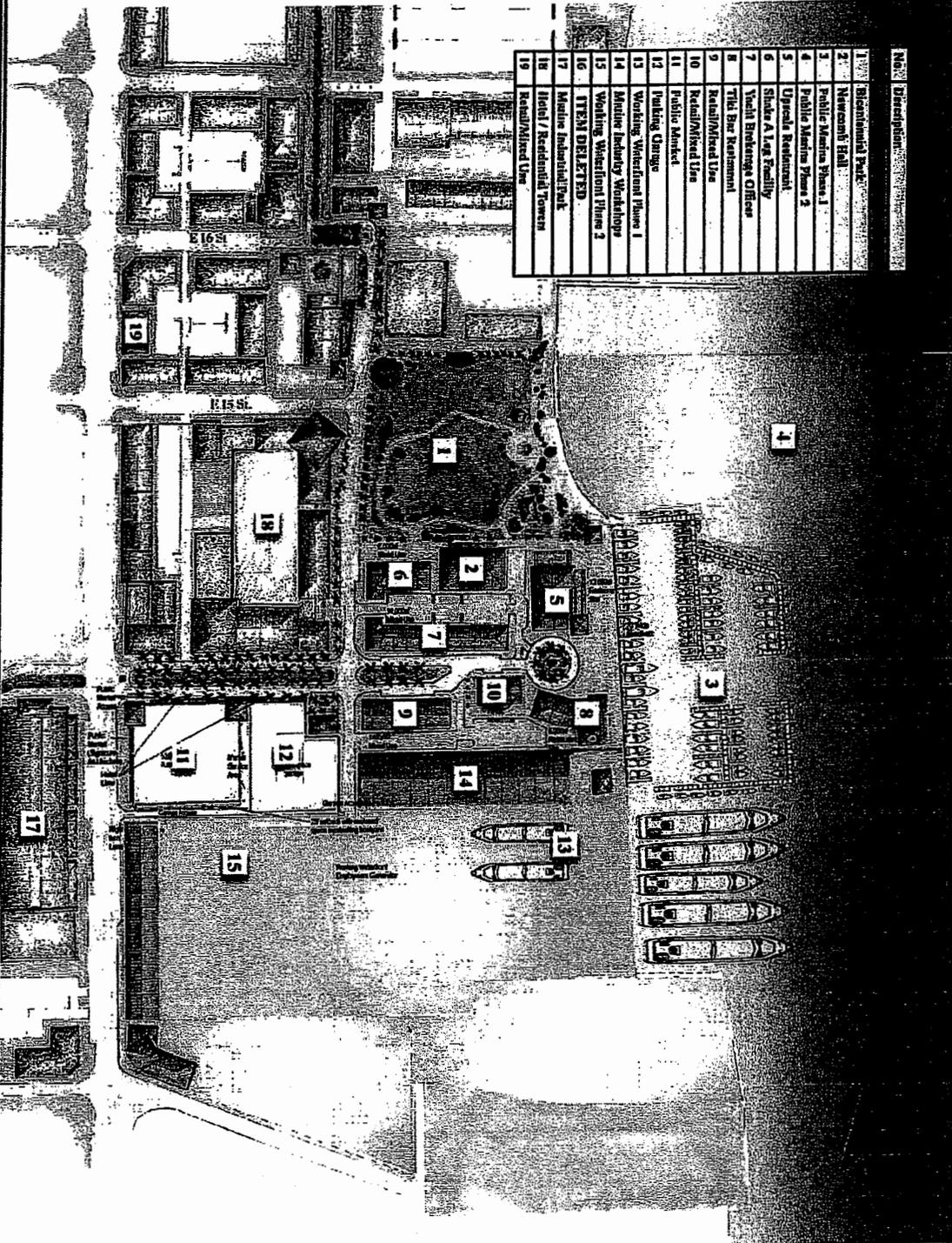
Master Development Agreement

- A. PROJECT SITE
- B. CONCEPTUAL MASTER DEVELOPMENT PLAN
- C. ENGINEERING AND DESIGN SERVICES AND FEES FOR WORK PRODUCT – PART I
- D. ENGINEERING AND DESIGN SERVICES AND FEES FOR WORK PRODUCT – PART II

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EXHIBIT B

PROJECT ELEMENTS



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EXHIBIT C

ENGINEERING & DESIGN SERVICES

MARINE ENGINEERING

Task	Description	Cost
PART I		
1	SAV (submerged aquatic vegetation/seagrass) survey and report of entire marina basin	24,000.00
2	FIND Phase I grant application & assemble supporting information	40,000.00
	PowerPoint presentations on grant program	
	Dock Layout & cost estimate	
	Design for replacement drystack & cost estimate	
	Fueling system requirements & cost estimate	
	Survey of surrounding marina occupancy and rates	
3	Current study of ICWW and adjacent area (CSA)	20,131.00
4	Geotechnical studies and soil analysis (Dunkelberger)	27,000.00
5	Water Quality study (MRI)	18,505.00
6	Conceptual designs of marina configurations & presentation	4,000.00
	Subtotal Part I Costs	133,636.00
CIVIL ENGINEERING		
Task	Description	Cost
PART I		
1	Boundary and Topographic Survey of the Marina District	56,380.00
2	Hydrographic Survey	65,000.00
3	Conceptual Storm Sewer Analysis & Layout	25,000.00
	Includes: researching existing drainage, meetings & discussions with SFWMD & DEP	
	Research existing permits for 13th St. & Marina, flood routing, drainage plan & cost est.	
4	Conceptual Plans for Domestic Water & Sanitary Sewer Includes:	35,000.00
	research estimated capacity current & future requirements, meetings & discussions	
	w/ City Utility Dist., prepare preliminary plan for new pump station & explore feasibility of	
	relocating existing domestic water storage tank	
5	Conceptual Grading Plans, preliminary cut & fill calculations and cost estimates	15,000.00
6	Traffic Analysis and Parking Requirement Study	20,000.00
	Includes: Preliminary plan for temporary surface parking, shared parking analysis	
	and trip generation and distribution analysis	
	Subtotal Part I Costs	216,380.00
	Total Reimbursement Amount...PART I.....	\$ 350,016.00

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EXHIBIT D

ONGOING ENGINEERING & DESIGN SERVICES

MARINE ENGINEERING

PART II

Phase II FIND Construction Grant Application (ongoing)..... 40,000.00

CIVIL ENGINEERING

PART II

Phase II FIND Construction Grant Application (ongoing)..... 36,750.00

Total Reimbursement Amount.....Part II..... \$ 76,750.00

MR