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**TO:** Honorable Mayor & Members  
Fort Lauderdale City Commission

**FROM:** Lee Feldman, City Manager

**DATE:** September 18, 2012

**TITLE:** Aquatic Complex Developer's Agreement – Guaranteed Maximum Price - \$32,437,434 – Recreational Design & Construction, INC

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**Recommendation**

The City Commission authorize a Developer's Agreement in substantially the same form with Recreational Design & Construction, Inc. for design and construction of the renovation of Aquatic Complex with a guaranteed maximum price of \$32,437,434.

**Background**

In November 2009, the City released a Request for Proposals for the redevelopment of FLAC. RDC was the only respondent to the RFP.

The matter of scope of the redevelopment project was discussed at numerous City Commission Conference meetings and was concluded on April 3, 2012. The attached Developer's Agreement is the result of negotiations with RDC related to the FLAC project.

Significant provisions of the Developer's Agreement are as follows:

- Guaranteed Maximum Price of \$32,437,434.00 (Pool Element - \$24,864,950.00; Parking Garage - \$7,572,484.00). Guaranteed Maximum
- Price is inclusive of Developer's Fee and Design Fees.
- Ninety (90) day due diligence period for RDC to complete testing. At the conclusion RDC can either move forward with the agreement or request an increase in the GMP. If the City does not approve a requested GMP adjustment then RDC will have the right to terminate the agreement. After the due diligence period, RDC may not seek an increase in the GMP for unforeseen conditions.
- Maximum period for Design Phase- 295 Business Days (59 Weeks)
- Maximum period for Construction Phase- 331 Business Days (66 Weeks)
- Establishment of a "savings" account into which will be deposited savings from value engineered components, discounts, rebates and refunds. RDC will be able to draw from the savings account for contingencies. The savings account will be initially funded with a \$250,000 (\$150,000 for pool

and \$100,000 for parking garage) included in the GMP. Upon completion of the project, any money in the savings account in excess of \$250,000 (which will inure to the City) will be split 75% (City)/25% (RDC).

- Savings from the utilization of the Sales Tax Savings Procedure and rebates from the use of the P-Card System will inure only to the City.
- At the 90% Design Level the final GMP (which cannot exceed \$32,437,434.00) will be determined.
- Construction Change Directives can be executed by the City Manager provided that the cumulative amount of such does not exceed five percent (5%) of the GMP and increase the contract time by more than 90 days. Changes in excess of that amount require Commission approval.

Since this item was included (it was ultimately withdrawn from consideration) at the July 10, 2012 Commission meeting, the following changes to the Developer's Agreement were made:

- The Developer's Fee (Section 3.10) was amended to \$4,710,577.80. This was done by amending the pool construction line items to reflect that RDC will be in the role of pool subcontractor and to charge the overhead and profit allocated in the original Developer's Fee to those line items and the addition of a Developer's Contingency. The GMP does not change. Subsequently the Developer's Fee is established at 17.78% and is subject to proportional reduction when the GMP is revised at the 90% stage of design.
- Language was modified in Section 3.10.9 to clarify the use of contingency funds.
- Language was added in Section 11.7.4 to address concerns of the Surety regarding the Performance Bond.

Exhibit D of the Developer's Agreement contains the scope of the project and can be referred to for the specific program elements.

Upon approval by the Commission and the execution of the documents, the following next steps will occur:

- Commencement of Due Diligence period for RDC
- Negotiation of a management agreement for commercial property with RDC
- Negotiation of lease with International Swimming Hall of Fame (ISHOF)
- Commencement of financing of the parking garage component through a parking revenue bond issue

#### Resource Impact

[Put Funding Chart Here – Budget Can Provide]

Attachments:       Exhibit 1- Proposed Developer's Agreement  
                          Exhibit 2 – 6/18/12 Plans and Renderings  
                          Exhibit 3 – Revised GMP  
                          Exhibit 4 – Proposed Schedule

Prepared By: Lee R. Feldman

Department Director: Lee R. Feldman