

TO: Finance and Economic Resiliency Committee

FROM: Raul J. Aguila, City Attorney

DATE: April 17, 2020

SUBJECT: **REFERRAL TO THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE TO DISCUSS A PROPOSED MARINA REDEVELOPMENT PROJECT TO UPGRADE AND IMPROVE THE CITY'S MIAMI BEACH MARINA AND RELATED FACILITIES, VIA A PROPOSED AMENDMENT TO, AND EXTENSION OF, THE CITY'S MIAMI BEACH MARINA LEASE WITH MIAMI BEACH MARINA ASSOCIATES, LTD., AS WELL AS A PROPOSED SALE OF THE AIR RIGHTS ABOVE THE UPLAND PORTION OF THE MARINA LEASED PREMISES AT 300 ALTON ROAD, FOR THE DEVELOPMENT OF A MIXED USE PROJECT, WITH RESIDENTIAL, RETAIL AND COMMERCIAL USES, AND WITH THE FOREGOING SUBJECT TO AN INDEPENDENT THIRD-PARTY APPRAISAL OF THE VARIOUS COMPONENTS OF THE TRANSACTION, AND NEGOTIATION OF ADDITIONAL REVENUES AND OTHER PUBLIC BENEFITS TO BE PROVIDED TO THE CITY AS PART OF THE TRANSACTION**

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This item was referred to the Finance and Economic Resiliency Committee ("Finance Committee") on March 18, 2020.

### **BACKGROUND**

In 1983, the Mayor and City Commission adopted Resolution No. 83-17385, approving a lease agreement for the operation and maintenance of the Miami Beach Marina and the upland property located at 300 Alton Road, to be used solely as a boat port, marina and recreation facility offering dockage, mooring and other marina related services for use by the general public (the "Miami Beach Marina"), which lease has been amended on four separate occasions over the years, with the most recent amendment being executed in 1998, over 22 years ago (collectively, as amended, the "Marina Lease" or "Lease").

The current lessee is Miami Beach Marina Associates, Ltd. (the "Lessee"). The Lease provides for an initial term expiring January 1, 2022, and provides the Lessee with the right to renew three (3) times, for a period of ten (10) years for each renewal term.

The Lessee has proposed undertaking a redevelopment project for the Miami Beach Marina, to include major improvements to the upland property at 300 Alton Road and the associated baywalk, as well as significant enhancements to the Miami Beach

Marina facilities, which will address resiliency, sea level rise and other needed capital improvements.

The proposal would involve a modification and extension of the Lease (including the term of the Lease), as well as a proposed sale of the air rights above the upland portion of the leased premises, for development of a mixed use project, to include residential, retail and commercial uses. Accordingly, the proposal would “reopen” the Lease – which has not been amended in over 20 years -- for re-negotiation, and thereby provide the City Commission with the opportunity to upgrade the Marina facilities and baywalk area, increase the revenues the City receives under the Lease, and obtain other public benefits in consideration for the proposed transaction. The foregoing would be subject to an independent third-party appraisal of the various components of the transaction, and negotiation of additional revenues and other public benefits to be provided to the City as part of the transaction, to be reviewed by the Finance and Economic Resiliency Committee, and ultimately, by the City Commission, following two readings and public hearings.

The City Commission’s March 18, 2020 referral initiated the review process under Chapter 82 of the City Code with respect to the sale or lease of City-owned property.

If the proposed transaction is approved by the City Commission, the project would require approval by a majority of the voters voting in a Citywide referendum, pursuant to Section 1.03(b)(1) of the City Charter.

#### **UPDATE**

Due to the COVID-19 public health emergency, Developer did not submit its initial term sheet to the City until March 30, 2020. The initial term sheet is attached as **Exhibit “A.”**

On or about April 8, 2020, the Developer and City executed a reimbursement agreement to cover City’s transaction costs up to the not to exceed amount of \$170,000, including the costs to the City of engaging appraisers, outside counsel, and other City consultants that may be required in connection with the transaction.

Since March 30, 2020, City staff has attempted to schedule meetings internally to review the term sheet, and has also attempted to schedule meetings with the Developer to commence discussions and review of the Developer’s term sheet. Each of these meetings has had to be canceled to address emergency matters requiring staff’s immediate attention.

A preliminary issues list, reflecting the City Attorney’s Office’s initial comments on the Developer’s initial term sheet, is attached hereto as **Exhibit “B.”** The preliminary issues list is being shared with the Developer and with the Committee simultaneously, in view of the Committee’s desire to commence discussions about this transaction at the

April 17, 2020 Finance Committee meeting.

As the preliminary issues list makes clear, this is an extremely complex transaction involving the negotiation and drafting of an Amended and Restated Lease Agreement, Development Agreement, Purchase and Sale Agreement, and Reciprocal Easement Agreement. Several aspects of the transaction will require voter referendum approval, including but not limited to the proposed sale of the air rights over the City's Marina property, and separately, the long-term lease of the Marina premises.

If the City Commission desires to conduct the necessary community outreach, negotiate and finalize the necessary agreements in order to place the transaction on the November, 2020 ballot, the timeline is aggressive, as all agreements will need to be completely negotiated, finalized and approved (following two public hearings) by July, 2020. Due to the COVID-19 public emergency, the Developer and staff have already lost one month since the City Commission's initial referral on March 18, 2020.

The attached preliminary comments merely represent staff's initial comments. This is by no means an exhaustive list, as there are a number of additional issues that will require separate review and discussion, including but not limited to land use and potential F.A.R. issues.

In addition, staff has ordered the necessary appraisals that will be required with regard to the valuation of the air rights and the proposed long-term extension of the lease term.

As the appraisals will take approximately 4 weeks, and as discussions between the parties are merely commencing, I recommend that this transaction stay in the Finance Committee for now.

RJA:RAP/ag