

RESOLUTION No. 2010-11-1193

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER, CITY ATTORNEY, AND THE CITY'S CONSULTANTS TO NEGOTIATE A DEVELOPER'S AGREEMENT WITH MIAMI GARDENS TOWN CENTER, LLC, FOR DEVELOPMENT OF THE CITY HALL AND TOWN CENTER, IN ACCORDANCE WITH THE TERM SHEET ATTACHED HERETO AS EXHIBIT "A;" AUTHORIZING THE CITY MANAGER TO TAKE ALL STEPS NECESSARY IN ORDER TO COMMENCE THE PREDEVELOPMENT PHASE AS OUTLINED IN THE TERM SHEET; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Miami Gardens Town Center, LLC ("MGTC") has submitted a proposal to the City of Miami Gardens, for development of the City Hall Site and Town Center Area located on Northwest 27th Avenue, and

WHEREAS, on July 22, 2009, the City Council authorized the City Manager to negotiate with MGTC to determine the viability of the creation of the Miami Gardens Town Center, and

WHEREAS, on October 28, 2009, the City Council authorized the City Manager to create the City of Miami Gardens Leasing Corporation, and

WHEREAS, the parties have negotiated the major terms of the Town Center Proposal, outlined in the Term Sheet attached hereto as Exhibit "A," and

WHEREAS, City Council has made a determination that it would like for MGTC to develop the City Hall Project and Town Center Area based upon the Term Sheet and would like to direct the City Manager and the City Attorney to negotiate a Developer's Agreement, and that it would like to move forward with the Predevelopment Phase as outlined in the Term Sheet,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Council of the City of Miami Gardens hereby directs the City Manager, City Attorney, J. Kevin Lawler, and Jim Brady, the City's Consultants, to negotiate a Developer's Agreement with Miami Gardens Town Center, LLC for development of the City Hall and Town Center in accordance with the Term Sheet Attached hereto as Exhibit "A," with said Development Agreement to be approved by the City Council. The City Council further authorizes the City Manager to take all steps necessary in order to commence the predevelopment phase as outlined in the Term Sheet.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON JANUARY 13, 2010.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Vice Mayor Gilbert
SECOND BY: Councilwoman Watson

VOTE: 4-2

Mayor Shirley Gibson	<u> X </u> (Yes)	<u> </u> (No)
Vice Mayor Oliver Gilbert, III	<u> X </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> X </u> (Yes)	<u> </u> (No)
Councilman Aaron Campbell	<u> </u> (Yes)	<u> </u> (No) (not present)
Councilwoman Barbara Watson	<u> X </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> </u> (Yes)	<u> X </u> (No)
Councilman André Williams	<u> </u> (Yes)	<u> X </u> (No)



City of Miami Gardens Agenda Cover Memo

Council Meeting Date:	January 13, 2010		Item Type: <i>(Enter X in box)</i>	Resolution x	Ordinance	Other
Fiscal Impact: <i>(Enter X in box)</i>	Yes	No	Ordinance Reading: <i>(Enter X in box)</i>	1st Reading		2nd Reading
	X Bond Issue			Public Hearing: <i>(Enter X in box)</i>	Yes	No
Funding Source:	n/a		Advertising Requirement: <i>(Enter X in box)</i>	Yes		No
						x
Contract/P.O. Required: <i>(Enter X in box)</i>	Yes	No	RFP/RFQ/Bid #:	n/a		
		x				
Sponsor Name	City Manager		Department:	City Manager		

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO NEGOTIATE A DEVELOPER'S AGREEMENT WITH MIAMI GARDENS TOWN CENTER, LLC, FOR DEVELOPMENT OF THE CITY HALL AND TOWN CENTER, IN ACCORDANCE WITH THE TERM SHEET ATTACHED HERETO AS EXHIBIT "A;" PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

Staff Summary:

Miami Gardens Town Center, LLC ("MGTC") previously submitted a proposal to the City of Miami Gardens, for development of the City Hall Site and Town Center Area located on Northwest 27th Avenue. On July 22, 2009, City Council authorized the City Manager to negotiate with MGTC to determine the viability of the creation of the Miami Gardens Town Center, and subsequently, on October 28, 2009, the City Council authorized the City Manager to create the City of Miami Gardens Leasing Corporation and City Council also directed the City Manager, City Attorney and J. Kevin Lawler, the City's Consultant, to negotiate with MGTC for development of City Hall and Town Center. The City Manager and City Attorney, along with outside consultants, J. Kevin Lawler and James C. Brady have completed negotiations with the proposed developer on a general Term Sheet outlining a proposed Co- Development Agreement (CDA). If City Council so authorizes, staff will meet with the developer and will bring back a detailed CDA to City Council for consideration.

Key Points of this Term Sheet cover five main areas:

1. Design
 - a. Architect: Developer will solicit three qualified firms to be interviewed by Council with ranking preference, with formal selection by the developer. Fees will be established upfront.

**ITEM K-1) RESOLUTION
Agreement w/ Miami Gardens
Town Center, LLC**

- b. City Controls/Reviews: Provides for the City to have sign off approval on the design, plans and any changes to project details.
 - c. Joint Site Plan: Provides for the joint hiring of a specialized land design firm to create a unified site master plan and design guidelines.
 - d. LEEDS: Specifies that public buildings will be LEEDS certified.
2. Construction
- a. Detailed Agreement: Provides for a detailed Co-development agreement between the City and the developer outlining in detail, the various provisions of the term sheet and other duties and obligations of the parties.
 - b. G-Max Structure: Retains the Builder-at-Risk and Guaranteed Maximum Price structure for the construction contract with the City at competitive market terms.
 - c. Local subs Commitment: Sets an objective of 20% local sub-contracting.
 - d. City approval of drawdown requests to Trustee: Provides that the City will have control via sign-off approval of all bills to the Trustee, and for the retention of a portion of each bill until the project is completed.
 - e. Provides for bonding of the project to ensure completion.
3. Development Fee
- a. Sets Fee: Sets the development services fee at \$2.7 million (\$2.5 mil base + .2 mil incentive) for Phase I activities.
 - b. Integrates with Phase II: Provides for an 'earn out' of 40% of this fee based on commencement of Phase II (the shopping center property).
4. Phase II Commitments
- a. Land commitment including City option: The Term Sheet defines the developer's obligations as to Phase II of the proposed Town Center Development. It provides benchmarks for the developer to meet in order for them to receive the earn out portion (40%) of the Phase I fee. These include the purchase of the property to construct Phase II and an option on behalf of the City to purchase this property if for some reason the developer does not commence Phase II.
5. Funding
- a. Creation of a City Leasing Agency: Provides for the City incorporating a "Miami Gardens Leasing Corporation" to be the owner of the project (City Hall and Police Buildings). Leasing Corporation will arrange for with the Trustee, the sale of Certificates of Participation (COPs) to secure project financing. The leasing Corporation will contract with the City for use of the facility for a period of 30 years, after which the City will purchase the buildings for \$10.
 - b. Bond Attorney: Provides for the City hiring outside bond council. There is an item on the January 13, 2010 Agenda, to utilize the services of Robert Gang, of Greenberg Traug for preliminary bond work. If the Parties are successful in negotiating a Developer's Agreement, it is anticipated that the City will retain the services of Robert Gang for services related to the bond.
 - c. Selection of Underwriter: In order to sell COPs, it is necessary to have an underwriter for the sale. Staff has met with and recommends Loop capital of Chicago. Loop Capital is the nation's largest minority-owned underwriting firm and has a good reputation from Wall Street.
 - d. Build America Bond/Certificates of Participation (BBA/COPs): The financing will be a blend of traditional COPs and Build America Bond COPs in order to take full advantage of the strengths of each process.

- e. Capitalized Interest for construction period: In addition to the hard costs and the costs for the bond issuance, staff is recommending that the City capitalize the interest on the COPs until completion of the project. While this will add the interest into the COP issue, it will push the City's first payment off until we move into the new structure.

Recommendation:

RECOMMENDATION: That City Council authorize staff to negotiate a Co-Development Agreement with MGTC, LLC for Council Approval.

Attachment:

Exhibit "A" - Term Sheet

Term Sheet
Town Center Co-Development Agreement between
The City of Miami Gardens and Miami Gardens Town Center LLC

Scope/Purpose

1. The parties to the anticipated developer's agreement are the City of Miami Gardens ("the City") and Miami Gardens Town Center LLC ("MGTC"). The agreement will not be transferable or assignable by either party.
2. The physical scope of development encompassed by this Term Sheet is the various phases depicted on the generalized site plan submitted by MGTC for the City's consideration on July 22, 2009.
3. The purpose of the agreement is to advance the timely public and private development of a core area of the City's Town Center Area in a civic quality, coordinated and unified manner.
4. All development contemplated under the agreement shall be consistent with existing City ordinances and the City's adopted Town Center Development Plan guidelines (reference doc and date).
5. The parties to the agreement affirm that as of January 13, 2010, they own or control substantially all the property associated with Phases I & II. Any property not own or controlled by either of the parties shall not be included in the coordinated development contemplated in this term sheet. Either party may include property acquired or controlled subsequent to the date of the proposed agreement to be included in the coordinated development contemplated in the proposed agreement.
6. The purpose of this term sheet is to define the basic business arrangements, requirements, responsibilities and obligations between the parties; this term sheet is intended to be the basis for the parties to prepare and execute more definitive, binding agreements. The parties intend to memorialize this term sheet into a comprehensive Co-Development Agreement; the Co-Development Agreement shall include a Development Services agreement with MGTC regarding Phase I (City owned property).
7. The Pre-Development Period shall commence upon the City Council's authorization for negotiation of the Developer's Agreement.
8. The parties agree that it may be in their respective interests to initiate some of the work program complemented in the Pre-Development Period in advance of its formal commencement. In the event the parties agree to advance some of the work program prior to the formal commencement of the Pre-Development Period, the parties will enter into a separate, interim agreement, defining the scope of work to be performed, the maximum in third party costs which may be incurred and the apportionment of third party costs between the parties.
9. Any costs or direct expenditures incurred by MGTC with respect to planning and development of City owned property (Phase 1) prior to execution of the Co-Development Agreement are non-reimbursable by the City.

Pre-development

1. During the Pre-Development Period, the parties will:
 - a. Devise and agree upon an overall, unified site development plan for Phases I & II, including but not limited to scale and intensity of development, common area public improvements, if any, architectural design and vernacular guidelines, and sequencing of development expressed in terms of outside development dates.
 - b. Agree upon, select and retain the services of a qualified 'town center' planning/design firm for creating the unified site development plan. MGTC will retain the services of the town center planner on behalf of itself and the City. The direct costs associated with the services of the town center planner shall be split 60% to the City and 40% to MGTC).
 - c. Hold meeting(s)/design review session(s) with the City's appointed contact(s) to solicit guidance and concurrence on the overall site plan as well meet with elected officials of the City for advisory/informational purposes.
 - d. Negotiate and draft the complete terms of a Co-Development Agreement, with a target date for approval and execution by February 26, 2010.
 - e. Prepare and agree upon sequencing and timetable and associated responsibilities for all major actions requisite to the timely commencement of Phase I.
 - f. Commence (and complete, as practical) the selection and retention of an architectural firm to perform design services for City improvements on the Phase 1 property.
2. During the Pre-Development Period, the City will:
 - a. Complete its due diligence and associated investigations on the most advantageous approach to the financing of improvements on the Phase I land, and if practical, formalize arrangements for an underwriter for financing purposes.
 - b. Establish a qualified entity for the purpose of financing the land and improvements associated with Phase I.
 - c. Appoint an individual as the main point of contact for MGTC to work with on items related to the Pre-Development Period.
 - d. Establish the basis for transfer of City owned property to the City's entity upon completion of financing and the City's lease of improvements from the entity constructed from the proceeds of the financing.
 - e. Continue to refine its physical requirements for improvements to be constructed in Phase I, including gross building areas for a new City Hall, the new police station headquarters and associated parking, applicable building footprints/floor plates, public areas and vehicular access, loading and servicing as well as pedestrian circulation.
 - f. Address off-site infrastructure upgrade requirements for Phase I, including funding and timing of construction.
 - g. Decide whether to acquire and include the 'Mint property' in Phase I, and if affirmative, on what terms.

3. During the Pre-Development Period, MGTC will:
 - a. Provide oversight management for the site development planning process for Phase I & II.
 - b. Contract for the services of a qualified 'town center' planning/design firm.
 - c. Prepare concept development plans and specifications for Phases I & II.
 - d. Identify and review any off-site public infrastructure required to support development on Phase II.
 - e. Prepare a schedule for the commencement of construction on Phases I & II, and milestones to benchmark progress prior to construction.
 - f. Prepare updated construction and project cost estimates for Phase I.
 - g. Submit for consideration and approval by the City, a management plan for development services for Phase I, including specification of personnel resources and their respective responsibilities.
 - h. Provide, if requested by the City, an assignment agreement for the purchase of the 'Mint property'.
 - i. Demonstrate to the City's satisfaction that MGTC has the financial resources and capability to develop Phase II.
4. Each of the parties will be responsible for their own costs during the Pre-Development Period. Where costs are jointly incurred, the parties will allocate these costs based on agreed upon ratios. MGTC shall submit an invoice monthly for reimbursement of costs incurred on behalf of the City; invoices submitted to the City by MGTC shall be payable within 30 days.
5. The Pre-Development Period will end upon the earlier of the adoption of a site development plan and associated design guidelines for Phases I & II, and each party's satisfaction of their respective pre-development obligations or the signing of the Co-Development Agreement.
6. By agreement the parties may elect to commence certain parts of the work program and services contemplated for Phase 1 (primarily architectural and engineering). The agreement would encompass: (i) services to be performed; (ii) maximum expenditure obligation; (iii) invoicing and payment; and (iv) timing and deliverables.
7. Prior to the completion of the Pre-Development Period, the City will make a determination as to the viability (and associated cost) of financing the improvements in Phase I and their attendant budgetary implications to the City. In the event the City elects not proceed, all agreements between the City and MGTC shall terminate, and neither party shall have any continuing or residual obligation to the other. The City will reimburse MGTC for all agreed upon, unpaid expenses.

Phase I (City property)

1. Phase I will commence upon the City's approval and each parties execution of a Co-Development Agreement.
2. Funding of the City's obligations for Phase I will be from the proceeds of a financing sponsored by the City. Prior the closing of the financing, the City may elect to directly fund (and then reimburse itself) selected costs associated with Phase 1. (It is currently contemplated that the City will likely use a combination of Certificates of Participation ("COPs") and Build American Bonds ("BABs"); however, the City in its sole discretion

shall make the final determination of the most feasible and cost effective structure for financing.)

3. Subject to the City's approval, MGTC shall be responsible for the retention of architectural and related engineering services for improvements (the city hall, police station, parking deck and public assembly areas) on the Phase I property. MGTC shall request at least three (3) qualified firms (or consortium of firms) to prepare a statement of qualifications and a single page cost to perform bid sheet. MGTC shall review this information with the City. Each architectural firm will be requested to make a presentation of their qualifications and capabilities to as soon as practical after the execution of Developer's Agreement by the parties. The City will provide MGTC its ranked preferences among these firms. MGTC will then be responsible for selection of the project architect and negotiation of an architectural services agreement, subject to final approval by the City.
4. The agreement for architectural services with the project architect shall provide for periodic review and approval of major design elements of the buildings and major exterior public spaces by the City, including but not limited, to conceptual design, schematic design, design development, and any material changes to the design or engineering of approved plans/design during construction drawings. The City shall also have final approval of all major interior spaces, including specification of materials and level of improvements. The monthly cost for architectural/engineering services will be billed to the City from MGTC, without mark-up for administrative or overhead cost, which may be incurred by MGTC.
5. The City desire is to incorporate, as feasible, contemporary environmentally friendly ('green') features into the public buildings constructed in Phase I, including Leadership in Energy and Environmental Design ("LEED") certification. In consultation with the project architect, various levels of LEED practices and standards will be explored, and with the City's approval, incorporated into the design and construction of the Phase I buildings.
6. The Co-Development Agreement will include a specific provision for 'development services' to be performed by MGTC on behalf of the City for Phase I, including but not limited to:
 - a. The management plan and personnel to be assigned for oversight of the development process; MGTC agrees that all senior personnel assigned to management of the project shall have substantial experience in the ground up development of comparably sized or larger projects.
 - b. The timeline for commencement and completion of improvements, including all major interim and completion milestones.
 - c. MGTC's responsibilities for managing development approvals and permitting for Phase I.
 - d. Procedures for quality control/assurance during the term of the agreement.
 - e. Procedures for invoicing and payment of third party vendors and the construction contract.
 - f. MGTC's compensation for development services inclusive of all administrative and overhead costs shall be a fee of \$2,500,000 plus a \$200,000 Performance Bonus to be defined in the final Co-development agreement. During Phase 1, 60% of the fee shall be payable to MGTC ratably each month during the development period. The remaining 40% ("the deferred fee") shall be earned at

the commencement of construction on Phase II. The deferred fee shall be paid as follows: (i) 75 % (30 % of the total fee) shall be paid ratably monthly from that point forward till the end of the development period, and (ii) 25% (10% of the total fee) shall be paid at sign-off of the punch-list items by the City for Phase I.

7. The City will assist MGTC with DERM and the Fire Department permitting/approvals. The City will also place the review of plans for Phase I on a "fast track" through the City's building department, including designation of personnel to coordinate and assist in expediting plan review on a priority basis.
8. As part of the 'development services' rendered by MGTC, it shall enter into a construction contract with H.A. Contracting Corp ("the Contractor") for construction manager at risk, Guaranteed Maxim Price ("GMP") in AIA 102 contract form (or a substantially equivalent AGC Document 565), including, but not limited to:
 - a. Pre construction services and costing.
 - b. Basis for arriving at a final GMP, including an agreed upon 'contingency' amount.
 - c. The allocation and distribution of any 'savings' in the event the final project cost is less than the GMP.
 - d. A construction and delivery schedule, subject to the approval of the City.
 - e. Open book accounting and review procedures.
 - f. MWBE percentage targets and compliance monitoring.
 - g. Contractor financial adequacy and construction bond.
 - h. Contractor overhead/general conditions and profit at competitive rates for comparable sized projects in SE Florida.
 - i. Invoicing and payment procedures/authorization.
 - j. The amount of profit retention and conditions for payment of the retention.
9. The construction contract with H.A. Contractors shall be subject to final approval by the City.
10. During construction, the City may directly employ (or retain the outside services) of a construction manager to monitor the performance of the Contractor and the MGTC.

Phase II

1. Prior to the commencement of MGTC's 'development services' or receipt of any payments, MGTC shall demonstrate to the City's satisfaction that it has purchased the existing shopping center property associated with Phase II or has a binding Purchase and Sale agreement for this property. If MGTC has not purchased the existing shopping center property prior to the commencement of its 'development services or within a reasonable time period thereafter, the City may terminate the Co-Development Agreement, recover any fees paid to MGTC and pursue whatever other equitable remedies are available at law.
2. Upon purchase of the land and improvements on the property (existing shopping center) associated with Phase II, MGTC agrees to proceed with development before the certificate of occupancy is received on Phase I.
3. In the event, MGTC does not proceed with construction on Phase II and decides to sell the yet to be redeveloped Phase II property, the City shall have a first right of refusal to purchase the property for a one year period, commencing upon the City's physical occupancy of Phase I.

4. If MGTC does not commence construction on Phase II prior to the certificate of occupancy on Phase I, except for conditions involving 'acts of God' or materially adverse capital market conditions, MGTC shall forfeit its unearned development fee ('the deferred fee') as liquidated damages. In the event construction is not commenced due to either acts of God or materially adverse capital market conditions, MGTC shall have up to six (6) months to commence construction prior to forfeiting the unearned portion of the development fee.

Other Development Considerations¹

1. MGTC agrees that all new development in any future phases, on property owned by MGTC, shall be consistent with design/architectural guidelines agreed upon by the parties in the Pre-Development Period and shall be reviewed and accepted by the City prior to moving forward on the development.
2. The City agrees to use its best efforts to pursue the adoption of a Community Redevelopment Area ("CRA") for the Town Center area, if the same shall be deemed to be economically feasible for the City. In the event the City is successful in establishing a Town Center CRA, the City agrees to work with MGTC to secure the application of Tax Increment Revenue or other tools available to the City/CRA to assist in offsetting costs of the project presuming that the same is consistent with the CRA Plan to be approved by the City.
3. the request of MGTC, the City agrees to create a special assessment district (SAD) on the property owned by the developer and the City agrees to utilize the funds generated by this SAD to assist in off-setting the horizontal infrastructure needs of this project
4. The City agrees to work with MGTC on other economic development concepts that will assist with facilitating and enhancing public-private investment in all future phases of development.

¹ All terms in this section exceed the terms of reference approved by the City Council for negotiations with MGTC. The terms addressed in this section have been included at the request of MGTC for consideration by the City.