

6C-2

Agenda Item #:

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: August 15, 2006

Consent  
 Ordinance

Regular  
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

**Motion and Title:** Staff requests Board direction: on 2002 \$50 Million Recreational and Cultural General Obligation Bond Referendum funding for the City of Lake Worth Municipal Beach Redevelopment project.

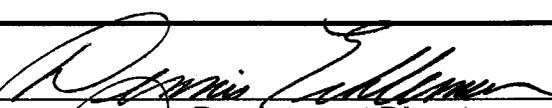
**Summary:** In 2002, County voters approved a \$50 Million Recreational and Cultural General Obligation Bond Referendum, including \$5 million for the City of Lake Worth's redevelopment of its municipal beach. In an effort to encourage the City to reach agreement on a redevelopment approach, the Board established a deadline of May 12, 2006, for the City to submit definitive plans to move this project forward. The Board later extended the deadline to July 31, 2006, at the request of the City. On July 27, 2006, the City Commission approved business terms for a beach redevelopment project with Greater Bay Group, LLC. Attorneys for the City and the developer are preparing a development agreement and land lease and City staff expect to present the documents to the City Commission on September 5, 2006.

County staff are meeting with the City and evaluating the redevelopment project and the proposed use of the bond funds to determine if the use is consistent with Board direction and bond covenants. If an acceptable project scope for the County bond funds is identified, an interlocal agreement between the City and the County can be prepared and presented to the Board in a subsequent Board item. However, since the City has failed to meet the deadline established by the Board, staff is requesting Board direction regarding this matter. District 7 (PK)

**Background and Policy Issues:** Several years have passed since voters approved a Countywide referendum for a \$50 Million Recreational and Cultural General Obligation Bond Issue. The Bond included \$5 million for the City of Lake Worth's municipal beach redevelopment project. This project, to date, has failed to move forward and meet previous Board directed deadlines for County funding.

The proposed municipal beach redevelopment project includes redevelopment of both the public beachfront park, pool, and the commercial restaurant and retail building space. Since the County's bond funds are required to serve public recreational or cultural purposes only, the commercial redevelopment component of the project needs to be funded from other sources.

**Attachments:** City of Lake Worth Agenda Item for approval of Business Terms with Greater Bay Group, LLC.

Recommended by:  Department Director	7/31/06 Date
Approved by:  Assistant County Administrator	8/7/06 Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	\$ 0	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
<b>NET FISCAL IMPACT</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

# ADDITIONAL FTE POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included in Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Budget Account No.: Fund \_\_\_\_\_ Depart \_\_\_\_\_ Unit \_\_\_\_\_  
 Object \_\_\_\_\_ Program \_\_\_\_\_

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

There is no fiscal impact from this item.

**C. Departmental Fiscal Review:**

*ckopelakis*

**III. REVIEW COMMENTS:**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

*8/2/06*  
 OFMB *mg 8/2/06*

*John H. Webster 8/4/06*  
 Contract Dev. and Control

**B. Legal Sufficiency:**

*Paul F. [Signature] 8/4/06*  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

REVISED 10/95  
 ADM FORM 01

This summary is not to be used as a basis for payment.

NB-A  
07-27-06



City of **LAKE WORTH**

**7 NORTH DIXIE HIGHWAY  
LAKE WORTH, FLORIDA 33460-3787**

[www.lakeworth.org](http://www.lakeworth.org)

Where the Tropics Begin

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OFFICE OF THE  
CITY MANAGER

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**MEMORANDUM**

**TO:** Honorable Mayor, Vice Mayor and City Commissioners  
**FROM:** Paul C. Boyer, Jr., City Manager  
**DATE:** July 27, 2006  
**SUBJECT:** Lake Worth Beach Redevelopment

**RECOMMENDATION:**

Approve the agreed upon business terms with The Greater Bay Group LLC, authorize staff to direct legal counsel to prepare a development agreement and a land lease incorporating said business terms for future consideration by the City Commission; and direct staff to inform Palm Beach County of this action.

**EXPLANATION:**

On January 3, 2006 the City Commission authorized staff to issue a request for statements of qualification and conceptual proposals for a public/private partnership to redevelop the Lake Worth beach property. On March 20, 2006 the City Purchasing Department received two responses to the solicitation, and on April 20, the City Commission authorized negotiations with the Greater Bay Group LLC (Greater Bay).

On July 18, 2006 it was recommended to the City Commission that the proposal from Greater Bay be rejected as insufficient and direct staff to negotiate an interlocal agreement with Palm Beach County for project funding. At that meeting the City Commission directed staff to resume negotiations only if Greater Bay can provide the information requested in the RFP and the Letter of Intent no later than Thursday, July 20<sup>th</sup> at 5pm in the City Manager's office.

On July 20, 2006 at 4:30pm Greater Bay delivered a package of information addressing the points in the RFP and Letter of Intent. The package included a financing plan, information on property management, information on the design team, conceptual plans, a description of project phasing, a project schedule, construction cost estimates, cash flow, background on building size, description of proposed uses, and a status on draft agreements.

Items that were not included in this package as requested in the RFP and Letter of Intent are specifics regarding selected property managers and their qualifications (the package included information on a company that Greater Bay is in preliminary discussions with to manage the parking); and specifics in the cash flow including a detailed breakdown of the lease rates and profit to the developer. In addition, although the package identifies some types of uses it also defines them as destination oriented, and the RFP and Letter of Intent indicates that because of the zoning, uses in the building should be ancillary and incidental to the beach as a principal use.

Subsequent to the City Commission action on July 20, 2006, legal counsel for the City was consulted regarding schedule and the ability to complete agreements in time for the meeting proposed on July 27, 2006. In addition other legal counsel were contacted to determine if they could provide services supplementary to what could be provided by existing counsel but those contacted were not available. It was determined that counsel from Boose, Casey, Ciklin, et al could represent the City for negotiations on Monday July 24, and Tuesday July 25, 2006, and that legal counsel for Greater Bay was available by telephone. Consequently, due to the limited availability of legal counsel for both the City and Greater Bay during the time allotted it was determined that finalizing a development agreement and ground lease was not possible. It was also determined however, that there would be sufficient time and availability of legal counsel to agree on the principal deal points and on the form of agreement that would be appropriate for the project.

Commencing at 10am on July 24, 2006 representatives of Greater Bay and the City met in the City Hall Conference room with members of the public present and the proceedings being lead by moderator Wes Blackman, Chairman of the Planning and Zoning Board. The discussion focused on the draft business terms that were previously discussed by the two parties during the meetings of May 24 and May 25, 2006. Each deal point was discussed again in detail and modifications were made in accordance with the discussion. A final set of business terms was agreed upon at approximately 2:00 p.m. on July 25, 2006 and was initialed by City Manager Paul Boyer and Greater Bay representative Peter Willard. This document is attached for information and reference.

Also discussed during the two days of meetings was the form of agreements which would be utilized and into which the agreed upon business terms would be incorporated. In that regard, a development agreement will be finalized by the attorneys for both parties incorporating the agreed upon business terms along with the information submitted by Greater Bay on July 20, 2006. The development agreement will also attach a proposed construction contract as well as lease agreement, and the construction contract would not be finalized until a final price for construction is determined by Greater Bay and agreed upon by the City.

Therefore, subsequent items that would need to be considered by the City Commission include a finalized development agreement, a finalized construction agreement, and a finalized ground lease. In addition, since the property managers have not yet been selected, Greater Bay offered that the City would have the right to approve the management companies prior to being engaged for service on the property. Also, because the proposal from Greater Bay includes uses that may be considered destinations rather than ancillary uses contrary to the language of the RFP and Letter of Intent, a determination will need to be made if such uses are allowable under the current zoning and land use, and/or if a change in zoning is appropriate.

**PROGRAM IMPACT:**

The recommended action will enable redevelopment of the Beach property to move forward.

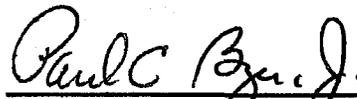
**FISCAL IMPACT:**

This action will secure the \$5 million project funding from Palm Beach County. Additional fiscal impacts include the cost for negotiation of a development agreement to be determined. The agreed business terms do provide the opportunity for redevelopment of the beach that Greater Bay has valued at over \$19 million with no debt related expenses for the city. In addition it places the city in a revenue neutral position in that Greater Bay has agreed to pay an annual lease payment of \$500,000 in the first year with annual increases based on the CPI-U capped at no more than 5% annually.

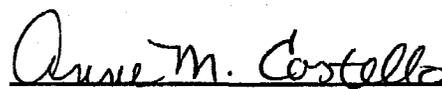
**ALTERNATIVES:**

None recommended. The City does retain the ability to reject the agreed business terms and proceed with a vastly scaled down project thereby securing the \$5 million in County funding.

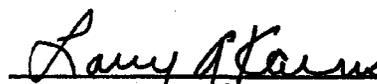
Prepared &  
Recommended by:

  
\_\_\_\_\_  
Paul C. Boyer, Jr., City Manager

Reviewed by:

  
\_\_\_\_\_  
Anne M. Costello, Finance Director

Reviewed by:

  
\_\_\_\_\_  
Larry A. Kafns, City Attorney

**CITY OF LAKE WORTH  
BEACH & CASINO**

**Greater Bay Construction  
AGREED UPON BUSINESS TERMS**

The following are general terms proposed between the City of Lake Worth, Florida ("City") and Greater Bay Group LLC ("Developer"), that will need to be finalized and serve as a basis for agreement(s) (to include the AIA document A121 CMc – 2003 with associated 201 General Conditions modified as appropriate to accommodate the specifics of the Project as hereinafter defined) between the parties for design, permitting, construction and lease/management of the Beach & Casino project.

The Project is generally defined as the demolition of all site and building improvements (except the swimming pool tank and pier/restaurant) and reconstruction of driveways and parking, landscaping, underground utilities, beachside promenade/boardwalk, park improvements, parking platform, and "Casino" building consisting of approximately 40,000 square feet of net leasable space on two floors, plus an outdoor café of approximately 800 square feet and three retail bays adjacent to the lifeguard building of approximately 2,970 square feet ("Project"). The Project is illustrated by the conceptual site plan prepared by The Architectural Group and dated July 6, 2006 together with the conceptual floor plans prepared by The Architectural Group and dated July 20, 2006 together with the Developers phasing plan for construction dated July 21, 2006.

Management shall include marketing; leasing; customer and tenant relations; landscape maintenance; building maintenance; parking lot and lighting maintenance, repair and replacement of damaged, destroyed or worn out landscaping, building elements, parking and all site improvement; site security, etc.

Developer's Obligations

- Engage the services of design professionals and specialty consultants as needed to design the Project as conceptualized
- Engage the services of a management company or companies to provide lease-up and on-going management services for the Project (subject to the City's right to approve the management companies to be engaged by the Developer)
- Secure all Project financing (except that which will be provided by the City through the County bond funds, the FRDAP Grant, and the Beach reserve fund) for which the Developer will be solely responsible and will be secured by an assignment of the Ground Lease between the City and Developer, and during the construction period an assignment of the Development Agreement between the City and Developer, assignment of contractor agreements, and assignment of tenant leases / rents
- Complete design drawings sufficient for permitting and construction of the Project

  
REVISED JULY 25, 2006

- Ensure that design and construction of the building and site improvements is of quality that will facilitate a life span of at least 50-years
- Secure all permits and pay all agency fees necessary to construct the Project
- Construct the Project in accordance with the conceptual plans, construction phasing plan (to allow for continued use and safety of the Project during construction) and schedule, and except for construction zones, ensure that the property is always open to the public for beach access, existing tenants in the "Casino" building can continue to do business, and the County's park to the immediate north is always accessible to the public
- Provide construction surety (payment and performance bond, AIA 312 Form acceptable) in an amount and type acceptable to the City, with the City as obligee.
- Pay debt on any and all loans secured for Project financing, with the City having an ability, but not obligation, to participate along with the lender in curing any default by the Developer.
- Conduct Project lease-up for the "Casino" building; collect tenant rents; manage and maintain all elements of the building and improvements around the building
- Market concessions, enter into agreements with concessionaires, managed concessionaires and collect fees
  - A description of the parameters of concessions (including how this will be managed and who will manage) will be provided at a later date, and will include:
    - Where on-site they will be allowed
    - Type and number of concessions
    - Proposed fee structure
- Engage the services of an events/festivals coordinator; manage regular events and festivals on the Project (while never precluding public access to the beach or County park to the north) including the provision of security and clean-up
  - A description of the parameters of events/festivals will be provided at a later date, and will be consistent with Ordinances and Policies of the City, and will include:
    - Where on-site they will be allowed
    - Frequency of festivals
    - Proposed fee structure

The City shall also have the right to hold events and festivals to be coordinated with the Developer, and collect revenues derived therefrom.

- Manage and maintain all parking improvements (including meters, parking spaces, etc.), collect parking fees, address parked vehicles that have not paid fees or time limit has expired by ticketing or towing
- Manage and maintain all site improvements including landscaping, park pavilions, recreational areas and improvements, boardwalk/promenade open to the public with no fees
  - Need park area management plan

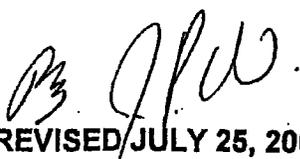
  
 REVISED JULY 25, 2006

- Maintain a reserve for replacement in the Project operating budget in accordance with industry standard.
- Pay the City an annual lease payment of \$500,000 with an annual increase based on an acceptable consumer price index (CPIU) commencing on year 2 of lease payments with an annual cap of 5% per annum.
- Provide the City sufficient guarantee that the Project will be managed and maintained to an acceptable standard. This guarantee could be in the form of a surety in an amount equal to the budget for maintenance and replacement reserve, establishment of a maintenance and replacement reserve, a default provision in the agreement, or other mechanism acceptable to the Parties, to be finalized by legal counsel.
- Turn all site and building improvements over to the City in a condition satisfactory to the City, and pay the City the unexpended replacement reserve budgeted for the last year of the lease term.
- Establish a permit parking area with sufficient and agreed upon spaces for permit holders, which areas shall not be improved upon with County bond funds.
- Manage and maintain all pool improvements including locker room, pool equipment, pool deck, life guards, security, etc., collect user fees for swimming pool. Management and maintenance shall be conducted at a standard consistent with the balance of the Project. The City shall also have the right to hold events at the pool to be coordinated with the Developer, the City to retain any associated revenues.

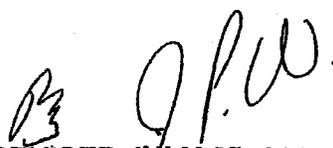
#### City's Obligations

- Enter into an interlocal agreement with Palm Beach County for the \$5M of tax exempt bond funds for the project, Developer to be reimbursed monthly by the City predicated its upon receipt of payment by the County as expenses are incurred.
- Contribute \$1.2m from the City Beach Reserve fund on a reimbursement basis by the City Commission as expended by the Developer.
- Facilitate contribution of \$200,000 from the Florida Recreation Development Assistance Program for renovation of the pool area, to be reimbursed in accordance with State regulations.
- Sign permit applications as the property owner and/or provide consent forms necessary for the Developer to obtain construction permits
- Provide lifeguard service on the beach, and at the pool if approved by separate contract and paid for by the Developer
- Sell parking permits with City to retain all associated income.
- Require that when the lessee of the pier restaurant conducts exterior improvements to the restaurant building it be of an architectural style and quality consistent with the Casino building

#### Additional Terms

  
REVISED/JULY 25, 2006

- **Agreements are contingent on third party funding obligations as set forth above, and receipt of any required zoning changes as to permitted use required to generate sufficient revenues to support the Project. Permissible uses shall be agreed upon by the City. The parties agree, however that in no event shall a hotel or residential dwellings of any type or nature be regarded as permissible uses.**
- **Developer shall protect turtle nesting at the Project in accordance with all applicable laws and regulations.**
- **Developer shall not dredge any sands from the ocean associated with the Project.**

  
**REVISED JULY 25, 2006**

Law offices

**BOOSE CASEY CIKLIN LUBITZ MARTENS MCBANE & O'CONNELL**

A partnership including professional associations

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July 25, 2006

Paul C. Boyer, City Attorney  
City of Lake Worth – City Hall  
7 N. Dixie Highway, First Floor  
Lake Worth, FL 33460

Re: City of Lake Worth Beach & Casino (the "Project")

Dear Paul:

As you know, our office has had an opportunity to participate in contract negotiations with Greater Bay Group LLC in connection with the anticipated redevelopment of the Casino Project. Based upon the positive nature of our discussions, we believe that the parties have reached principal agreement regarding the business terms relating to the development, leasing and construction of the Project. Those business terms have been reduced to writing and have been approved by Greater Bay Group LLC at the conclusion of our meeting today at City Hall.

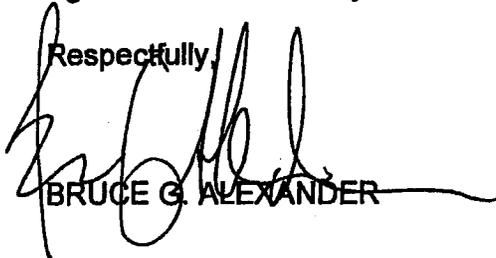
At this time, we understand that you and your staff will be presenting these negotiated terms to the City Commission for review and approval this Thursday, July 27, 2006 at 4:00pm. Procedurally, once the City Commission has approved the business terms, conditions and contingencies discussed and negotiated between the parties yesterday and today, and based further upon conversations between our office and Ron Mittleman, counsel for Greater Bay Group LLC, we are confident that we would then have the information necessary to move forward expeditiously to draft the Development Agreement, Lease Agreement and underlying Construction Contract documents so as to reflect the business terms agreed upon by the parties and endeavor to the best of our ability to incorporate such terms with these three legal documents to best reflect the desires of the Commission and for appropriate associated legal protections.

Paul C. Boyer, City Attorney  
July 25, 2006  
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At this time, therefore, we would procedurally await approval of the negotiated business terms by the City Commission, at which point we will then proceed to finalize the legal instruments to reflect such agreements.

Our firm appreciates the opportunity to be of service to the City of Lake Worth and we are pleased that the Project is proceeding positively and with the significant progress that was made, in our opinion, as a result of this weeks negotiations. We await your further advice.

Respectfully,



BRUCE G. ALEXANDER

BGA/rsb  
enc.

cc: Robert L. Crane, Esq.

SCOLARO, PROFFER, COHEN, FETTER & DORSTEIN, P.C.

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\* ALSO ADMITTED TO PA. BAR  
\*\* ALSO ADMITTED TO N.Y. BAR  
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BERNARD J. LAWLER  
(1940-1998)

July 25, 2006

VIA FAX & U.S. MAIL

Mr. Paul C. Boyer  
City Manager  
City of Lake Worth  
City Hall  
Seven North Dixie Highway  
First Floor  
Lake Worth, Florida 33460

Re: **City of Lake Worth Beach & Casino Project (the "Project")**

Dear Mr. Boyer:

This office represents Greater Bay Group, LLC ("Greater Bay") in connection with the redevelopment of the Project. We have participated over the last two days, together with your office, the City of Lake Worth's outside counsel, Corey O'Gorman, and our client in the open forum negotiations to reach an agreement regarding the essential business terms for the redevelopment of the Project.

We were successful in reaching an understanding that has been documented by a writing titled *City of Lake Worth Beach & Casino, Greater Bay Construction Agreed Upon Business Terms* (the "Document"). I am advised that the Document will be submitted to the City Commission for its consideration and approval on Thursday, July 27, 2006 at 4:00 p.m. If the City Commission approves the Document, our office together with our local counsel, Raymond Royce, Esq. of Holland & Knight, LLP and your counsel will promptly commence redrafting the Development Agreement and the Ground Lease Agreement and will prepare the construction contracts for Greater Bay's and the City's approval (the "Agreements"). It is our intent to finalize the Agreements as promptly as possible as they will be the basis for the ongoing

**SCOLARO, SHULMAN, COHEN, FETTER & BURSTEIN, P.C.**

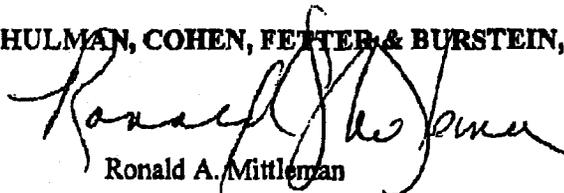
Mr. Paul C. Boyer  
July 25, 2006  
Page 2

relationship between the City and Greater Bay and Greater Bay's ability to obtain the appropriate financing package to complete the redevelopment of the Project.

If you need anything further, please feel free to have you counsel contact me. It has been a pleasure to work with you in arriving at the Document. I look forward to the successful completion of the Project.

Very truly yours,

**SCOLARO, SHULMAN, COHEN, FETTER & BURSTEIN, P.C.**



Ronald A. Mittleman

RAM:ml:319001.1

cc: J. Peter Willard  
J. Timothy Steele  
Joseph Toner  
Raymond Royce, Esq.  
Robert L. Crane, Esq.  
Bruce G. Alexander, Esq.