

**Condensed Title:**

A Resolution Approving on Second Reading, a Development Agreement with Berkowitz Development Group, Inc., for the construction of Right-Of-Way Infrastructure Improvements on Lenox Ave. and 6th St.

**Key Intended Outcome Supported:**

Well-Improved Infrastructure

**Supporting Data (Surveys, Environmental Scan, etc.):** Included in the top five changes that would make Miami Beach a better place to live, work, play or visit, are Traffic and Development/Construction, which can be positively impacted by coordination between the public and private improvements being constructed around the project site.

**Issue:**

Shall the Mayor and City Commission open and continue the second public hearing, pending the receipt of bids?

**Item Summary/Recommendation:**

The Administration recommends that the Mayor and City Commission open and continue the item pending the receipt of bids for the proposed right-of-way infrastructure improvements. If the bids received are in excess of the price received from the Job Order Contract, the recommendation is to reject the bids and to go with the JOC price. However, the intent is to get a competitive price that is lower than those already received.

On May 16, 2005, the Mayor and City Commission approved a Development Agreement with AR&J Sobe, LLC., for the construction of a vertical retail center with an 1,100 space parking garage to be located on the site bounded by Fifth Street on the south, Sixth Street on the north, Alton Road on the west and Lenox Avenue on the east. The project, known as "Fifth and Alton", is currently under construction by Berkowitz Development Group, Inc. (Developer), one of the principals of AR&J Sobe, LLC.

The City has approved and is planning to perform drainage improvements, utility upgrades, road, sidewalk, landscaping and streetscape work in the neighborhood around the project, including work on Sixth Street and on Lenox Avenue adjacent to the project site. The work for these streets is contained in the Basis of Design Report for the Flamingo Neighborhood. Since this project is scheduled to commence after the 5<sup>th</sup> and Alton Project is complete, the Developer expressed an interest to the City to construct these improvements during the 5<sup>th</sup> and Alton construction. The Developer is interested in performing the work so that its development is not adversely impacted by the Flamingo Neighborhood project when it is built. Thus, the City and Developer have mutually determined that it is desirable that the aforesaid infrastructure work within the Project Site be coordinated with construction of the Fifth and Alton project. As such, the Administration and the Developer have met several times to discuss a negotiated development.

At the September 10, 2008 City Commission meeting, the Mayor and City Commission approved Resolution No. 2008-26884, approving the Development Agreement on first reading and also directing the Administration to bid the project, including language in the bid that the project must be completed by a certain date. The deadline for the receipt of bids for this project is October 13, 2008; therefore, the Administration recommends that the Mayor and City Commission open and continue the second reading of the Development Agreement until such time that the bids have been received and evaluated.

**Advisory Board Recommendation:**

N/A

**Financial Information:**

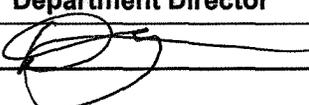
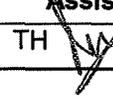
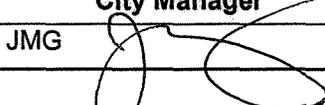
Source of Funds:		Amount	Account
	1		
	3		
OBPI	Total		

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Kevin Crowder, Economic Development

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
KC 	TH 	JMG 





# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

**SECOND READING**

DATE: October 7, 2008

SUBJECT: **A RESOLUTION APPROVING ON SECOND READING, IN ACCORDANCE WITH CHAPTER 163, FLORIDA STATUTES (THE FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT), A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND BERKOWITZ DEVELOPMENT GROUP, INC., FOR THE CONSTRUCTION OF PUBLIC RIGHT-OF-WAY INFRASTRUCTURE IMPROVEMENTS, INCLUDING CURB, GUTTER, SIDEWALKS AND DRAINAGE, ON LENOX AVENUE AND ON SIXTH STREET.**

### ADMINISTRATION RECOMMENDATION

Open and continue the item until competitive bids are received.

### ANALYSIS

On May 16, 2005, the Mayor and City Commission approved a Development Agreement with AR&J Sobe, LLC., for the construction of a vertical retail center with an 1,100 space parking garage to be located on the site bounded by Fifth Street on the south, Sixth Street on the north, Alton Road on the west and Lenox Avenue on the east. Over the last several years and most recently on April 25, 2007, the Development Agreement has been amended. The project, known as "Fifth and Alton", is currently under construction by Berkowitz Development Group, Inc. (Developer), one of the principals of AR&J Sobe, LLC. The City's total contribution to this project is \$14,397,725, of which 59% or \$8,564,210 has been paid to the Developer as of August 20, 2008. Included in the negotiations, was an effort to coordinate the construction of the off-site improvements in connection with this Project.

### Off-Site Improvements

The City has approved and is planning to perform drainage improvements, utility upgrades, road improvements, sidewalk, landscaping and streetscape work in the neighborhood around the project, including work on Sixth Street and on Lenox Avenue adjacent to the project site. The work for these streets is contained in the Basis of Design Report for the Flamingo Neighborhood Right of Way (ROW) Improvements. Since this project is scheduled to commence after the 5<sup>th</sup> and Alton Project is complete, the Developer expressed an interest to the City to construct these improvements during the 5<sup>th</sup> and Alton construction. The Developer is interested in performing the work so that its development is not adversely impacted by the Flamingo Neighborhood project when it is built.

Thus, the City and Developer have mutually determined that the aforesaid infrastructure work within the Project Site should be coordinated with construction of the Fifth and Alton project. As such, the Administration and the Developer have met several times to finalize

design concepts, construction schedules, cost estimates and terms and conditions for a negotiated Development Agreement between the City and Developer.

Pursuant to Sections 163.3220-163.3243, Florida Statutes, before entering into, amending or revoking a development agreement, a local government shall conduct at least two public hearings. This process is followed by up to a 60 day recording period with the State. The Developer has indicated that in order to meet the current construction schedule for completion of the 5<sup>th</sup> & Alton retail project, currently projected for June 2009, these “off-site improvements” would need to commence by January 2009. The Developer has represented that in order to meet this schedule that we would need to conclude the required development agreement hearing process by October 2008.

**Key Terms and Provisions:**

- The Director of the Capital Improvement Projects (CIP) Office of the City, or his designee, shall be designated as the Contract Administrator for matters concerning this Agreement.
- The Developer shall be solely responsible for overseeing and directing the Consultant in the design of the project, and such design shall be substantially in accordance with the Plans and Specifications.
- The Primary Consultant for this project shall be the firm of Schwebke-Shiskin & Associates, and the Consultant is defined in the Agreement as “the registered architect, professional engineer, professional land surveyor, civil engineer and/or registered landscape architect who has contracted with the Developer to provide professional services for the design and construction of the Project.
- Developer shall not commence construction until Developer has obtained and delivered to the City copies of all permits and approvals required, and delivered to the City original certificates of the policies of insurance required.
- Prior to commencement of construction, Developer shall cause its Contractor to furnish to the City a payment and performance bond in a form reasonably acceptable to the City.
- Since this is a proposed Development Agreement, and not a construction contract, it includes outside dates for performance that are very general in nature as the work is considered to be for the benefit of the City but at a time that is controlled by the Developer. Therefore, the outside dates for performance allow up to 270 days to obtain permits and up to 24 months for completion of the project.

**Scope of Work**

The Scope of Work for the project is the work described in the Contract Documents and generally consists of drainage improvements, utility upgrades, road improvements, sidewalk, landscaping and streetscape work as more particularly provided for in this Agreement within the Project Site.

**The Developer will provide, at a minimum, the following services:**

- Developer shall be responsible for the construction of the Project in accordance with the Plans and Specifications.
- Developer shall be responsible to cause Contractor to have and maintain appropriate certificate(s) of competency for all Work to be performed and for all persons working on the project that require certificates of competency.
- Until Final Completion, Developer shall be fully responsible for the performance of its agents and employees, Contractor and Consultant.

- Upon Final Completion, City shall unconditionally and irrevocably release, satisfy and forever discharge Developer and Owner from any and all actions, causes of actions, claims, demands, losses costs and expenses, relating to the design and construction of the Project and provided that full payment has been received by Developer, Developer shall release the City one in the same.
- Developer agrees to bind specifically Contractor and Consultant, and require that all respective subcontractors and sub-consultants are bound to the applicable terms and conditions of this Agreement and the Contract Documents for the benefit of the City.
- Developer shall at all times enforce strict discipline and good order among its Contractor, employees and Consultants and shall not employ any unfit or unskilled person to Work on the Project.
- Developer shall keep itself fully informed of, and shall take into account and comply with, all applicable state and national laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the Project.
- Developer and City are required to initiate a Change Order for the purposes of bringing the Project into compliance with any/all amended or newly enacted laws, ordinances, codes and regulations.
- Developer is responsible to pay, as a Cost of the Work, all applicable sales, consumer, use and other taxes required by law and in effect at execution of the Agreement. A City issued debit card will be provided to Contractor for the purchase of materials for the Project on behalf of the City without the payment of sales tax.
- Developer shall contract the services of a licensed general contractor (Contractor) to execute the Work.
- Developer shall submit certified monthly applications for payment prepared by Contractor for review/approval by the Consultant and Contract Administrator.
- Developer shall provide a location for, attend and participate in weekly construction progress meetings with the Contract Administrator, Consultant and Contractor.
- Developer will provide overall technical and management services to assist City in maintaining schedules, establishing budgets, controlling costs, achieving quality and minimizing operational disruptions.
- Prior to the final completion of construction services, an established record set of plans and specifications, approved by Developer and Contract Administrator shall be maintained. In addition, prior to the commencement of construction, Developer shall submit a CPM Schedule to the Contract Administrator for the planning and execution of the Construction Phase of the Project.
- Should Developer observe or become aware of any fault, defect or nonconformance with the Project or Contract Documents, Developer shall notify the Consultant and Contract Administrator and will direct that all reasonable steps be taken to cure or conform.
- During course of the Work, Developer shall also be responsible for causing Contractor to provide quality assurance of the construction Work in accordance with Contract Documents.
- Developer shall coordinate all phases of the Work to facilitate completion of the Project in accordance with the established time period and estimate of construction costs.

Consultant will provide, at a minimum, the following services:

- Consultant shall perform all of the architectural and engineering services necessary to describe, detail and design the Project in accordance with the Contract Documents.
- Consultant shall design the Project so as to comply with applicable codes and regulations.
- Consultant shall prepare the Plans and Specifications, as well as review and approve (or take other appropriate action upon) submittals such as Shop Drawings, product data and samples.
- Consultant shall prepare construction change directives, if necessary, and authorize minor changes in the construction Work as provided in the Contract Documents.
- Consultant shall receive and review for compliance with the Contract Documents all written warranties and related documents required hereby to be assembled upon Substantial Completion and issue certificates for payment for Work performed in compliance with the requirements of the Contract Documents.
- Consultant shall review Shop Drawing submittals prepared by the Contractor and its subcontractors and return to Contract Administrator for routing.
- Consultant shall review and/or respond to Contractor and/or City inquiries regarding the intent of the Contract Documents with respect to written requests for information, requests for Change Orders, and other communications between the Developer and the City requiring Consultant review.
- Consultant shall prepare Contract Document clarifications to address clarifications regarding the intent of the Contract Documents.
- Consultant shall perform specialty site visits by various design disciplines upon request in the prosecution of the Work.
- Consultant shall assist Contract Administrator with the development of a punch list or list of items requiring corrective action.
- Consultant shall attend weekly progress meetings with the Developer, Contract Administrator, and Contractor to review Work progress and resolve issues relating to the prosecution of the Work.
- Consultant shall have the authority to order or approve deviations from the Contract Documents, pursuant to approved Change Orders, so long as such deviations do not cause the Cost of the Work to exceed the Guaranteed Maximum Price. In the event any such deviations are sought, prior written approval from the Contract Administrator must be obtained.

**Cost Proposals**

**Proposals and estimates without Value Engineering**

A cost proposal of \$2,028,095 was initially provided by the Developer's Contractor, Suffolk Construction. This proposal was reviewed by both, the City's Capital Improvement Projects Office, as well as a third-party cost estimator. Additionally, this proposal did not include any value engineering suggestions.

Since receipt of the initial cost proposal, the Administration has been negotiating costs with the Berkowitz Development Group (Berkowitz) for the construction of the proposed right-of-way improvements, which include streetscaping and drainage, on 6<sup>th</sup> Street between Alton Road and Lenox Avenue and on Lenox Avenue between 5<sup>th</sup> and 6<sup>th</sup> Street, and that complies with the Flamingo neighborhood master plan.

The negotiations with Suffolk focused primarily on the value of the General Conditions after

some items were clarified and verified. The City provided the Developer's plans to an independent construction cost estimator. The estimate prepared by The Bosch Group (Bosch), a professional estimating firm, was for \$1,649,250 without value engineering suggestions. The Suffolk proposal was 23% higher than the Bosch estimate.

Approximately \$202,000 of the approximately \$379,000 cost difference between the original Suffolk proposal and the Bosch original estimate were reconciled and reduced the original Suffolk proposal to \$1,826,676. Although there are other minor discrepancies throughout the unit prices, the majority of the remaining \$177,000 cost difference remains in General Conditions. Suffolk proposed \$417,551 in General Conditions in their original proposal. They later reduced it to \$394,813. Bosch estimates that General Conditions should only cost approximately \$279,693.

In addition, the City provided the Developer's plans to a contractor on the Job Order Contract (JOC) list. The JOC proposal, developed by H.A. Contracting (HA), was for \$1,639,239 without value engineering suggestions. This proposal and estimate differed by less than 1% from the Bosch estimate but still differed from the Suffolk original proposal by twenty three percent and from the negotiated proposal by Suffolk by eleven percent. HA includes \$186,193 for General Conditions in their proposal which is closer to the Bosch estimate and below the Suffolk proposal.

On May 28, 2008, a meeting was held with Berkowitz, Suffolk, Schwebke Shiskin, Bosch, and the City to discuss the cost difference. The proposal was reviewed line item by line item. Bosch and Suffolk were able to reconcile quantities and unit costs in almost all circumstances so that it was verified that the work scopes were the same and that no items were omitted by Bosch.

The Bosch estimate was not modified after the discussions with the team and after verification that quantities and unit costs were consistent with the scope. In a separate meeting with the City, H.A. confirmed that it included all the line items and work scope that Suffolk included in its proposal. Specifically, concerns raised by Suffolk relating to Payment and Performance bonding, allowances for repairs, materials testing, extended hours for the asphalt plant, tree fertilization systems, and irrigation are included in the H.A. proposal. These items are either included in the Job Order Contract as specific line items, and thus included in the multiplier, or are listed in multiple line items of the JOC proposal. The JOC proposal presented here is the negotiated amount after discussions with HA on scope and prices and after comparison with both the Bosch estimate and the Suffolk negotiated proposal.

Suffolk Negotiated Proposal	Bosch Original Estimate *	JOC Negotiated Proposal
\$1,826,676	\$1,649,250	\$1,639,239

\* Bosch estimate was deemed accurate and complete

Separate from this effort, the City requested a former member of the Capital Improvement Projects Oversight Committee, Mr. William Goldsmith, to review these documents. Mr. Goldsmith has indicated that he believes the value of this project can be contracted for significantly less than either of the proposals or estimates received by the City.

**Finance and Citywide Projects Committee**

A concern for the Project is to ensure that these improvements are implemented in time to coincide with the opening of the completed Project, and additionally, so as to mitigate any adverse conditions as much as possible, the work (performed by whichever contractor is selected) is coordinated with the Construction Phase of the Project. Therefore, the Administration presented this project to the Finance and Citywide Projects Committee on August 21, 2008. The Developer also advised that its contractor, Suffolk, has lowered its price to \$1,680,000 for the full project scope. Written confirmation of this verbal representation was subsequently confirmed in writing.

**September 10, 2008 City Commission Meeting**

At the September 10, 2008 City Commission meeting, the Mayor and City Commission approved Resolution No. 2008-26884, approving the Development Agreement on first reading and also directing the Administration to bid the project, including language in the bid that the project must be completed by a certain date. The City Commission expressed a desire to have the right-of-way work finished concurrent with the work for the development project.

During the previous discussions with the Developer, the City agreed to have a geotechnical investigation performed at ten locations to determine the need for completely rebuilding the street or whether milling and resurfacing would be sufficient. The geotechnical report has been completed, and it is under review by the engineer. Once this review is completed, a determination will be made regarding the need for rebuilding the street. The bid was structured in a manner that respondents provide prices for rebuilding the road and for milling and resurfacing. Should the road need to be rebuilt, the base bid will be used. Should the road not need to be rebuilt, the deductive alternates will be used in the bidding.

The deadline for the receipt of bids for this project is October 13, 2008; therefore, the Administration recommends that the Mayor and City Commission open and continue the second reading of the Development Agreement until such time that the bids have been received and evaluated. The Developer has indicated that the Development Agreement, should the City be interested, must be approved at second reading by October 15, 2008 in order for the Developer to construct the project.

**CONCLUSION**

The Administration recommends that the Mayor and City Commission open and continue the item until the competitive bids are received.

JMG/TH/JC/kc

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RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FOLLOWING A DULY NOTICED PUBLIC HEARING, APPROVING ON SECOND READING, IN ACCORDANCE WITH CHAPTER 163, FLORIDA STATUTES (THE FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT), A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND BERKOWITZ DEVELOPMENT GROUP, INC., FOR THE CONSTRUCTION OF PUBLIC RIGHT-OF-WAY INFRASTRUCTURE IMPROVEMENTS, INCLUDING CURB, GUTTER, SIDEWALKS AND DRAINAGE, ON LENOX AVENUE AND ON SIXTH STREET.**

**WHEREAS**, the City is the owner of certain streets known as 5<sup>th</sup> Street, 6<sup>th</sup> Street, Alton Road and Lenox Avenue, in Miami Beach, Florida (the "Project Site"); and

**WHEREAS**, AR&J Sobe, LLC ("Owner"), is the owner of certain land adjacent to the Project Site, bounded by 5<sup>th</sup> Street, 6<sup>th</sup> Street, Alton Road and Lenox Avenue, Miami Beach, Florida (the "5<sup>th</sup> and Alton Property"); and

**WHEREAS**, on May 16, 2005, the Mayor and City Commission adopted Resolution No. 2005-25899, approving on second reading a Development Agreement between the City and Owner for the purpose of constructing a 179,000 square foot vertical retail center with 1,100 parking spaces; and

**WHEREAS**, Berkowitz Development Group, Inc. ("Developer"), is an affiliate of AR&J Sobe, LLC (the "5<sup>th</sup> and Alton Project"); and

**WHEREAS**, in conjunction with the 5<sup>th</sup> and Alton Project, the City had planned to perform certain public improvements adjacent to the Project Site including, without limitation, drainage improvements, utility upgrades, road, sidewalk, landscaping and street-scape work; and

**WHEREAS**, the City and Owner have mutually determined that the aforestated work within the Project Site should be coordinated with construction of the 5<sup>th</sup> and Alton Project; and

**WHEREAS**, accordingly, the City and Developer negotiated a Development Agreement between the City and Berkowitz Development Group, Inc. ("Developer"), for design and construction of the aforestated public improvements by Developer, in conjunction with the 5<sup>th</sup> and Alton Project; and

**WHEREAS**, as required by the Florida Local Government Development Agreement Act, a duly noticed public hearing to consider the attached Development Agreement, on first reading, took place on September 10, 2008; and

**WHEREAS**, the Mayor and City Commission adopted Resolution No. 2008-26884, approving the Development Agreement on first reading and also set a public hearing for second reading on October 7, 2008; and

**WHEREAS**, the second reading public hearing was held on October 7, 2008, and following said public hearing, the Administration would recommend that the Mayor and City Commission approve the Development Agreement on second (and final) reading.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission, following a duly noticed public hearing to consider same, hereby approve, on second reading, in accordance with Chapter 163, Florida Statutes (The Florida Local Government Development Agreement Act), a Development Agreement between the City and Berkowitz Development Group, Inc., for the construction of public right-of-way infrastructure improvements, including curb, gutter, sidewalks and drainage, on Lenox Avenue and Sixth Street.

**PASSED and ADOPTED** this 7th day of October, 2008

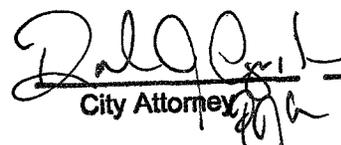
**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

\_\_\_\_\_  
**MAYOR**

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**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney      Date

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# CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY** given that a public hearing will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Tuesday, October 7, 2008 at 10:20 A.M.**, to consider approval, on second and final reading, in accordance with Sections 163-3220 – 163-3243, Florida Statutes, (the "Florida Local Government Development Agreement Act"), of a Development Agreement between the City of Miami Beach and Berkowitz Development Group, Inc., For The Construction Of Public Right-Of-Way Infrastructure Improvements On Lenox Avenue And On Sixth Street, said improvements to include utility upgrades, drainage improvements, road, sidewalk, landscaping and street-scape work.

Inquiries may be directed to the Miami Beach Economic Development Department at (305) 673-7193.

A copy of the Development Agreement can be obtained in the City Clerk's Office.

**INTERESTED PARTIES** are invited to appear at this meeting or be represented by an agent or to express their views in writing addressed to the City Commission c/o the City Clerk, 1700 Convention Center Drive, 1<sup>st</sup> Floor, City Hall, Miami Beach, Florida 33139. This meeting may be opened and continued and under such circumstances additional legal notice would not be provided.

Pursuant to Section 286.0105, FL Statutes, the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact (305) 604-2489 (voice), (305) 673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).  
**(Ad #508)**