



TO: Members of the Board of Directors

FROM: Bruce Steadman
Secretary & Executive Director

DATE: August 21, 2013

SUBJECT: Agenda for Board Meeting of the Authority

1. **Call to Order – James V. Gorman, Chairman**
2. **Pledge of Allegiance**
3. **Notice of Public Meeting - Roll Call – Bruce Steadman, Secretary**
4. **Approval of Previous Month’s Board Meeting Minutes**
5. **Welcome – James V. Gorman, Chairman**
6. **Secretary’s Report**
7. **Treasurer’s Report:**
 - Summary of Status of Federal Grant and Fort Monmouth Economic Revitalization Authority (FMERA) Financials
8. **Public Comment Regarding Agenda Items**
9. **Executive Director’s Report:**
 - Update on Meetings with Army Representatives
 - Update on Requests for Offers to Purchase (RFOTPs)
 - Update on FMERA Office
 - New Jersey Technology Council Conference at Gibbs Hall
 - Action Items for Next Month
10. **Committee Reports**
 - Audit Committee – Robert Ades, Chairman
 - Real Estate Committee – James V. Gorman, Chairman
 - Environmental Staff Advisory Committee – Kenneth J. Kloo, Chairman
 - Historical Preservation Staff Advisory Committee – Robert Ades,

Chairman

- Housing Staff Advisory Committee – Charles Richman, Chairman
- Veterans Staff Advisory Committee – Lillian Burry, Chairwoman

11. **Board Actions**

- Consideration of Challenge to the January 11, 2013 Request for Proposals for the Professional Management and Maintenance for the Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities

12. **Other Items**

13. **Public Comment**

14. **Adjournment**

MINUTES OF THE MEETING

I. Members of the Authority present:

- James V. Gorman, Chairman, Fort Monmouth Economic Revitalization Authority (FMERA) - **V**
- Robert Ades, Vice Chairman, Public Member – **V**
- Tim Lizura, President and Chief Operating Officer, New Jersey Economic Development Authority (NJEDA) - **V**
- Amy Herbold, Assistant Counsel, Authorities Unit, Office of the Governor – **V**
- Dr. Robert Lucky, Public Member – **V**
- Lillian Burry, Monmouth County Freeholder – **V**
- Gerald Tarantolo, Mayor of Eatontown - **V**
- Michael Skudera, Mayor of Tinton Falls - **V**
- Michael Mahon, Mayor of Oceanport – **V**
- Charles Richman, Deputy Commissioner, NJ Department of Community Affairs (DCA)
- Patricia Moran, Director of Workforce Grant and Program Management, Department of Labor & Workforce Development
- Jonathan Lowy, Regional Manager, Government and Community Relations, NJTransit (NJT)

V- Denotes Voting Member

Members Not Present

- Kenneth J. Kloo, Director, Site Remediation Program, NJ Department of Environmental Protection (DEP)

Also present:

- Bruce Steadman, Executive Director and Secretary, FMERA
- Gabriel Chacon, Deputy Attorney General (DAG)
- FMERA staff

II.

The meeting was called to order by Chairman James V. Gorman at 7:02pm, who led the meeting in the Pledge of Allegiance.

In accordance with the Open Public Meetings Act, FMERA Executive Director and Secretary, Bruce Steadman, announced that notice of this meeting has been sent to the Asbury Park Press and the Star Ledger at least 48 hours prior to the meeting, that a meeting notice has been duly posted on the Secretary of State's bulletin board at the State House, and the FMERA and the NJEDA websites.

The first item of business was the approval of the June 19th meeting minutes. A motion was made to approve the minutes by Robert Ades and seconded by Lillian Burry

Motion to Approve: ROBERT ADES Second: LILLIAN BURRY
Ayes: 9

III. WELCOME

Chairman James V. Gorman welcomed attendees to the Board Meeting. Mr. Gorman stated that copies of the Board package were available at the door and in response to public comment; the Board package was posted to the FMERA website at 5:00 p.m. to give the public the opportunity to review the information in advance of the meeting. Mr. Gorman stated that the Board continues to evaluate this effort in the future.

Mr. Gorman stated that the agenda calls for the Board to consider approval of FMERA staff to enter into Exclusive Negotiations for a Purchase Agreement pursuant to the Request for Offers to Purchase (RFOTP) for Howard Commons, in order to move forward the final negotiations in compliance with the Reuse Plan.

The Chairman went on to state that there will be two comment periods at the meeting, The first comment period is for agenda items only and the Chairman asked for the public's cooperation in keeping their comments as brief as possible. The Chairman explained that the second public comment period is towards the end of the meeting agenda and is open to the full range of FMERA business. The Chairman reiterated his request for the public's cooperation in keeping comments as brief as possible due to the full agenda. The Chairman continued by stating that in his role as Chairman he is required to conduct an orderly meeting and complete the meeting agenda in a reasonable time period. The Chairman concluded by stating that FMERA continues to welcome the public's constructive comments and ideas.

IV. SECRETARY'S REPORT

Bruce Steadman stated that the Suneagles Golf Course bid challenge is coming to a close and FMERA staff is expecting to provide a recommendation to the Board at the August meeting.

Mr. Steadman stated that the August meeting will be held at the new FMERA office, the former post library and the public access plan will take effect on August 1st and be posted on the FMERA website: www.fortmonmouthredevelopment.com

V. TREASURER'S REPORT

Bruce Steadman, on behalf of Beverlee Akerblom, stated that the Authority has submitted a Grant Application to Office of Economic Adjustment (OEA) in support of the Authority's operations. The funds being requested from the Office of Economic Adjustment are consistent with the budget approved by the Authority's Board for fiscal year 2013 and presented to the State's Office of Management and Budget in support of the Authority's appropriation request for the fiscal year ending June 30, 2014. No word yet has been received from OEA on this application. FMERA has been notified that a grant amendment request submitted on June 28, 2013 for the June 22, 2012 grant has been approved. This will allow eligible costs to be reimbursed through October 31, 2013.

Mr. Steadman stated that in accordance with the EDC agreement between the Army and FMERA, reinvestment of sale and lease proceeds has begun via the 12 authorized expense categories, for

expenses within the footprint of the former Fort. These expenditures are in accordance with the Board approved budget.

Mr. Steadman concluded the report by stating that spending continues to be strictly monitored.

VI. PUBLIC COMMENT REGARDING AGENDA ITEMS

Bob English of Eatontown asked why the American Properties proposal for Howard Commons was deemed non-compliant. Dave Nuse, Director of Real Estate Development stated that the proposal only included detached single-family homes, which are not permitted in Howard Commons under the Reuse Plan and Land Use Rules.

Mr. English asked if the score sheets will be made public. Mr. Steadman stated that the score sheets will be made public after the Board's approval of a final plan to proceed.

Tom Mahedy of Wall Township stated that Howard Commons should not be sold to a corporation and should be rehabilitated and used for public housing or for those people affected by Superstorm Sandy. Mr. Mahedy stated that the score sheets for Howard Commons should be made available immediately.

Mr. Mahedy stated that the Board package should be made available to the public at the same time the Board receives the package and not the day of the meeting.

Mr. Gorman stated that FMERA does not yet have title to Howard Commons and the score sheets cannot be made public due to ongoing negotiations. Mr. Gorman stated that FMERA does not have an obligation to publish the Board package, but under the Open Public Meetings Act does publish meeting notices 48 hours prior to the meeting.

Robert Latch, Army retired, asked why the proposed Veterans Community will take 5 years to develop. Mr. Latch stated that the current housing at the Fort should be used to house Veterans now and that new buildings should not be built. Mr. Latch stated that the Veterans should have priority over all of the housing. Mr. Latch stated that AcuteCare's plans for the former clinic do not allow a place for Veterans. Mr. Latch asked what the \$1MM grant that Soldier On received is being used for.

Mr. Steadman stated that the 5-year development timeframe for the Veterans Community is inaccurate, and that the Army still owns the property and FMERA cannot sell the property until we take title. Mr. Steadman stated that FMERA is actively and aggressively working to take title to the Main Post within the next several months to two years. Mr. Steadman stated that Base Realignment and Closure (BRAC) law requires that the Army sell the property to maximize its value, and the FMERA laws require that the Fort be sold through a public bidding process. Mr. Steadman stated that FMERA is very committed to the Veterans Community project and no project is more important than this one. Mr. Steadman stated that Soldier On may be a bidder on the project, but has two different business entities: building residential units for homeless Veterans, and using the grants received from the Veterans Association to provide services on a County by County basis. The \$1MM is not related to the FMERA's Veterans Community. Mr. Steadman further stated that AcuteCare has indicated that among the many services they will be providing, they have committed to finding a way to provide Veterans medical services if possible.

Ms. Burry stated that she has been on the Board of FMERA and its predecessor Fort Monmouth Economic Revitalization Planning Authority (FMERPA) for a total of 8 years and is extremely

committed to the Veterans and has been working for Veterans since 2005. Ms. Burry stated that as Chairperson of the Veterans Committee, the Committee has reached out to several Veterans organizations for their insight into the needs of Veterans.

Joe Irace of Oceanport and the Oceanport Borough Council President read a statement which is attached hereto.

Mr. Gorman stated that he is proud to serve on the Board with the three Mayors. The Board is unanimous in revitalizing and rebuilding the Fort, and there is openness and transparency amongst FMERA and the Mayors. Mr. Gorman stated that it is not appropriate for FMERA to comment on how the Mayors work with their councils.

Bruce Steadman stated that he emailed the three Mayors regarding the inaccuracy of the Asbury Park Press (APP) article, and asked the APP for a retraction due to the inaccuracies.

VII. EXECUTIVE DIRECTOR'S REPORT

Dave Nuse stated that FMERA and the Army continue to have regular discussions on the future transfer of the balance of the Main Post, to be accomplished under a Phase 2 Memorandum of Agreement (MOA). These discussions are helping to further a positive working relationship that will result in a revitalized former Fort Monmouth, and job creation. FMERA and the Army will be having a meeting later in the month at the Fort.

Dave Nuse stated that FMERA and Cushman & Wakefield have been working to market the Fort and Cushman & Wakefield has been involved in the RFOTP process through flyers, brochures, email blasts to the target market, presentations and tours. Cushman & Wakefield is working on additional signage for the Fort and a virtual tour video which will be posted on the FMERA website when completed. Cushman & Wakefield, in collaboration with the Small Business Development Officer, Katie Hodes held an open house for brokers and real estate developers on June 26th at the Fabrication Shops (Pinebrook Road Commerce Center at Fort Monmouth). FMERA intends to issue an RFOTP for the five fabrications shops (Buildings 2502-2504, 2506 and 2507) which consist of flex (industrial/office) space in varying configurations and range in size from 7,680 sf to 10,944 sf. There is also a building (Building 2501) on site that is 1,440 sf and well-suited for use as office space. The buildings together total over 44,000 sf.

Rick Harrison, Director of Facilities Planning gave the following summary of the status of the current RFOTPs that FMERA has issued and plans to issue:

Howard Commons

On January 28, 2013 six firms submitted proposals, with some firms submitting multiple scenarios for redevelopment. FMERA will be acting on a recommendation to enter into exclusive negotiations with the highest scoring bidder, in accordance with the Authority's Sales Rules.

Officer Housing

Proposals for the Officer Housing were due on April 1, 2013 and two proposals were received. Staff has begun to evaluate the proposals in accordance with the Authority's Sales Rules. As per the RFOTP alternative proposals were permitted including the potential to expand Parcel B eastward.

Parcels B, C and C1

Proposals for each of the three parcels were due on June 10, 2013. Four proposals were received for Parcel B, three proposals were received for Parcel C, and three proposals were received for Parcel C1. The proposals are in the process of being scored by individual evaluators.

Parcel B is a 55-acre tract located along the Fort's Route 35 frontage in the Main Post's Eatontown Reuse Area. The Reuse and Redevelopment Plan calls for Parcel B to be developed as a lifestyle center, with approximately 150,000 square feet of retail, restaurant, entertainment and other uses in a Main Street format, along with 302 mixed-income apartments.

Parcel C is in the Tinton Falls Reuse Area and is planned as a mixed-use town center. The 39-acre lot can accommodate up to 239 newly constructed residential units, along with up to 107,000 square feet of retail and other commercial development.

Parcel C1 is a 12-acre tract also located in Tinton Falls. In accordance with the Reuse Plan, the property can accommodate up to 49 newly constructed residential units.

Building 2705

Proposals were due on June 6, 2013 and one proposal was received. Staff has begun to evaluate the proposal in accordance with the Authority's Sales Rules.

Parcel V-1

At the May meeting of the Authority, the Board approved making Parcel V-1 available for through the offer purchase process. Parcel V-1 is a 10-acre tract in the Eatontown section of Fort Monmouth and will be put out for offers to purchase for the purpose of establishing a Veterans Community. Staff anticipates issuing an RFOTP for Parcel V-1 in the coming weeks.

Russel Hall

At the June meeting of the Authority, the Board approved making Russel Hall (Building 286) available through the offer to purchase process. The property is located outside of the Fort's Phase One project area, so FMERA's ability to sell the property will be contingent on execution of a Phase Two Economic Development Conveyance Agreement with the Army. That agreement is currently under negotiation. Staff anticipates issuing an RFOTP for Russel Hall in the coming weeks.

Environmental Advisory Services

An RFP was issued on July 28th with proposals due on August 2nd. A mandatory pre-proposal conference was held on July 11th. The current contract with Matrix Design Group will expire in August.

Rick Harrison stated that the FMERA Office in the former Fort library is complete and staff would move into the new facility by the end the week. Public board meetings will be held in the new office space beginning in August. A public access plan has been established in coordination with the Army and the New Jersey State Police, and will be posted on the FMERA website, www.fortmonmouthredevelopment.com, to take effect on August 1st.

Mr. Steadman acknowledged Katie Hodes for her lead and coordination on the Fabrication Shops Open House and the subsequent tours that followed. Mr. Steadman acknowledged Tony Poklasny, Senior Engineer for his lead in the conversion of the library to the FMERA offices. Mr. Steadman

acknowledged John Windish, Asset Officer for the coordination and FMERA's move to the library. Mr. Steadman acknowledged Regina McGrade, Program Assistant for her anticipation of any gaps in the coordination of these many projects, and for taking the lead in filling the gaps.

Mr. Steadman stated that according to the Army, there are currently 300 people living in the FEMA housing on the Fort. Mr. Steadman further stated that FMERA has engaged their planner, Phillips Preiss Grygiel (PPG) to conduct an inventory of the open space and develop a plan at the Fort to manage the open space.

Action Items for Next Month.

- Continued work with Matrix Design Group and the N.J. Department of Environmental Protection to identify and resolve environmental issues of concern
- Continued meetings and tours with interested prospective employers and investors
- Continued outreach to our stakeholders
- Continued collaboration with our Trenton office on marketing and business development opportunities
- FMERA has collaborated with several Federal, State and Local agencies regarding storm response initiatives.

Ms. Burry stated that the FMERA staff did a remarkable job on the conversion of the library to the FMERA offices.

VII. COMMITTEE REPORTS

a) AUDIT COMMITTEE (ROBERT ADES, CHAIRMAN):

Robert Ades stated that the Committee met on June 24th at the FMERA offices and discussed the following:

- Discussion on the expected timeline for the Phase II EDC.
- Discussion on Cushman & Wakefield's efforts to promote the RFOTPs.
- Discussion on the Homeless Obligation Fund being established and that the funds have been deposited into a segregated, interest bearing account.
- Discussion on the Auditor RFP Evaluation Committee along with the status of the draft RFP, evaluation criteria and timeline. The Audit Committee is to determine the evaluation criteria and scoring weights.

b) REAL ESTATE COMMITTEE (JAMES V. GORMAN, CHAIRMAN):

Chairman Gorman stated that the Committee met on July 10th at the FMERA offices and discussed the following:

- Update on the status of discussions for a Phase 2 Economic Development Conveyance (EDC) agreement with the Army. The discussions are ongoing.
- Update on the Golf Course Operator Request for Proposals (RFP) challenge. FMERA staff confirmed that the golf course is being well maintained during the challenge period.
- Update on the Howard Commons RFOTP. The FMERA staff asked that the Real Estate Committee recommend that the Board of Directors authorize entering into exclusive

negotiations with Hovnanian for a purchase agreement pursuant to the RFOTP, and in accordance with the Authority's Rules for the Sale of Real and Personal Property. The Committee reached a consensus and agreed to recommend entering into exclusive negotiations with Hovnanian to the Board of Directors for approval.

- Update on AcuteCare
- Update on Officers Housing
- Update on Parcels, B, C & C1
- Update on the FMERA office
- Update on Fort Access and Security
- Update on the Veterans Community Project
- Update on the Open Space Inventory
- Update on Pinebrook Road Commerce Center at Fort Monmouth June 26th Open House event
- Update on the Applied Sciences University Project
- Update on the FEMA housing
- Update and review of the Marina sublease from FMERA to the Borough of Oceanport
- Update on Cushman & Wakefield's broker marketing effort
- Discussion on the Teen Center opening on August 10th

c) ENVIRONMENTAL STAFF ADVISORY COMMITTEE (KENNETH J. KLOO, CHAIRMAN):

Bruce Steadman, on behalf of Kenneth J. Kloo stated that the Committee did not meet this month.

- HISTORICAL PRESERVATION STAFF ADVISORY COMMITTEE (ROBERT ADES, CHAIRMAN):

Robert Ades stated that the Committee did not meet this month.

d) HOUSING STAFF ADVISORY COMMITTEE (CHARLES RICHMAN, CHAIRMAN):

Charles Richman stated that the Committee did not meet this month.

- e) VETERANS STAFF ADVISORY COMMITTEE (FREEHOLDER LILLIAN BURRY, CHAIRWOMAN):

Freeholder Burry stated that the Committee did not meet this month Ms. Burry stated that she does not want to be put in a position where she must defend herself regarding Veterans projects. Ms. Burry stated that the Soldier On has a total program for Veterans to allow them to transition back into society after they serve and this is what some of the VA grant money is used for.

VIII. Board Actions

- a) The next item before the Board was the consideration of approval for FMERA staff to enter into Exclusive negotiations for a Purchase Agreement pursuant to the Request for Offers to Purchase

(RFOTP) for Howard Commons.

Bruce Steadman read the resolution which is attached hereto and marked Exhibit 1.

Bruce Steadman stated that the board memo mirrored the resolution and provided additional backup information.

A motion was made to approve by Mayor Tarantolo and was seconded by Tim Lizura.

Bruce Steadman conducted a roll call vote.

Name	Yes	No	Abstain
James V. Gorman	X		
Robert Ades	X		
Tim Lizura	X		
Amy Herbold	X		
Dr. Robert Lucky	X		
Lillian Burry	X		
Gerald Tarantolo	X		
Michael Skudera			X
Michael Mahon	X		

Mayor Skudera abstained from voting stating that he is an employee of K. Hovanian.

Motion to Approve: MAYOR TARANTOLO Second: TIM LIZURA
AYes 8

IX. Other Items

Mayor Mahon read a statement which is attached hereto.

Mayor Tarantolo concurred with Mayor Mahon. Mayor Tarantolo stated that there are three reasons for his council to have Executive Sessions, and he must abide by this rule: (1) litigation (2) negotiating and (3) personnel.

X. Public Comment

Robert Latch stated that he does not appreciate being told his facts were fabricated. Mr. Latch stated that the FEMA housing should be used for the homeless Veterans when the families move out.

Anthony Talerico of Eatontown stated that the Open Public Meetings Act has more than three exemptions and that the Borough of Eatontown should be involved and engaged with the Fort redevelopment. Mr. Talerico stated that the Borough of Eatontown should be engaged in the Howard Commons redevelopment.

Linda Zucaro of Tinton Falls stated that there have been RFOTPs issued with regards to housing and as a member of the Housing Staff Advisory Committee, asked that the Committee have a meeting

within the next month to discuss the RFOTPs and housing. Mr. Steadman noted that there will be an HSAC meeting in August.

Bob English of Eatontown asked if the Board has any problem or issues with the Mayors conveying to their councils, in closed session, any information related to the Fort redevelopment.

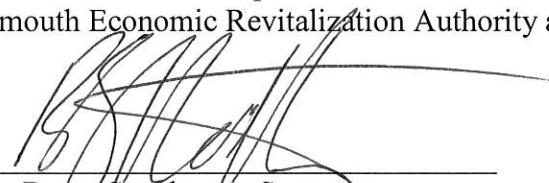
DAG Gabriel Chacon stated the Board cannot advise the Mayors on this subject.

Tom Mahedy of Wall Township stated that he is not in favor of Matrix Design Group as the Environmental Advisory Consultant. Mr. Mahedy stated that Matrix was asked to produce an Environmental Impact Statement and declined to do so. Mr. Mahedy stated that the Teen Center pool is toxic and the public should not be responsible for cleaning it up. Mr. Mahedy asked what was included in the \$200K deduction given to CommVault. Mr. Mahedy stated that a property listed as a carve out, means that it is a toxic site. Mr. Mahedy stated there is too much secrecy and during his participation on the ESAC, he was advised he had to sign a form that he would not discuss any contamination at the Fort.

Mr. Steadman clarified Mr. Mahedy's comments stating that Matrix is not leaving any mess behind and that the Army said no to an Environmental Impact Statement, not Matrix. Mr. Steadman stated that there is no toxic dumpsite at the Teen Center pool. Mr. Steadman stated that the information related to the \$200K deduction for CommVault would be made available. Mr. Steadman stated that a carve out does not indicate that the site is toxic. Mr. Steadman stated that there never has been nor is there planned a Finding of Suitability for Early Transfer (FOSET). Mr. Steadman stated that there was no form given to the ESAC members. The Committee was asked for confidentiality in the discussion of specific parcels related to the business aspects of parcels, not the environmental information.

There being no further business, on a motion by Robert Ades seconded by Tim Lizura and unanimously approved by all voting members present, the meeting was adjourned at 8:45 pm.

Certification: The foregoing and attachments represent a true and complete summary of the actions taken by the Fort Monmouth Economic Revitalization Authority at its Board Meeting.



Bruce Steadman - Secretary

ADOPTED
July 17, 2013

Resolution Regarding the
**Consideration of Authorization for FMERA Staff to Enter into Exclusive Negotiations
for a Purchase Agreement Pursuant to the Request for Offers to Purchase (RFOTP)
for Howard Commons**

WHEREAS, FMERA issued a Request for Offers to Purchase (RFOTP) in connection with the planned redevelopment of the Howard Commons site in Eatontown on December 14, 2012; and

WHEREAS, Howard Commons is a 63.67-acre tract on Pinebrook Road in the Fort's Charles Wood Area; and

WHEREAS, the RFOTP was publically advertised and the response date for offers to purchase Howard Commons was January 28, 2013, 45 days after the issuance of the RFOTP; and

WHEREAS, FMERA received proposals from six development entities: American Properties at Monmouth, LLC; BNE Real Estate Group/Sterling Properties Joint Venture; Fieldstone Associates, LP; HovWest Land Acquisition LLC (Hovnanian); Somerset Development, LLC; and US Home Corporation, a wholly owned subsidiary of Lennar Corporation (Lennar); and

WHEREAS, five of the six respondents provided compliant proposals; American Properties was deemed to be non-responsive because it proposed detached single-family homes, which are not permitted in Howard Commons under the Reuse Plan or the Land Use Rules; and

WHEREAS, all proposals were scored independently by an evaluation committee; and

WHEREAS, HovWest Land Acquisition LLC received the highest score; and

WHEREAS, as provided in the Rules for the Sale of Real and Personal Property, FMERA staff has determined during the evaluation process that there is a high likelihood that negotiating with Hovnanian will lead to an acceptable sales contract between the parties, and, if exclusive negotiations are approved, Hovnanian will make an additional deposit of 10% of the proposed purchase price that will be credited to Hovnanian at closing; and

WHEREAS, the FMERA Real Estate Committee recommends that the Board of Directors authorize the FMERA Staff to enter into exclusive negotiations with Hovnanian for a purchase agreement pursuant to the RFOTP for Howard Commons.

THEREFORE, BE IT RESOLVED THAT:

1. For the reasons expressed in the attached memorandum, the Authority authorizes the FMERA Staff, pursuant to the Rules for the Sale of Real and Personal Property, to enter into exclusive negotiations with Hovnanian for a purchase agreement pursuant to the RFOTP for Howard Commons.

2. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless during such 10-day period the Governor of the State of New Jersey shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

ATTACHMENT

Dated: July 17, 2013

EXHIBIT 1

Remarks Regarding Confidentiality and Keeping the Oceanport Local Governing Body Informed

Mr. Chairman, members of the FMERA board, Staff and members of the public;

The legislation creating this Authority includes specific recognition of the Host Municipalities, and Host County, which Fort Monmouth called home for over 90 years. These include the Boroughs of Eatontown, Tinton Falls, Oceanport and the County of Monmouth. Accordingly, the statute grants guarantees representation on the FMERA board to these three communities and the County Board of Freeholders with ex-officio, and therefore automatic, representation by the Freeholder Designee, and the 3 Mayor's or the Mayor's Designee. This Designee can come from a number of municipal officials including members of the Borough Council. The involvement of these communities and the impacts, both of the closing and the redevelopment, are special concerns repeated again and again in the statute. These mentions include specific rights of review and outline a process for plan amendments, municipal review, and planning board review. The Statute calls out specific time frames for review by the Host Communities and the County.

This FMERA board has considered several key documents and referred them for review by the Host Communities. Among these are two plan change amendments and the Land Use Regulations. The former required public review by the Planning and Zoning Board and an Oceanport Council resolution returning comments to the FMERA Board, from both the Planning Board and Borough professionals. While these activities are very public and information is shared directly with Host Communities and County, some details are, and remain confidential. In these cases, the Oceanport meeting agenda includes an executive or closed session and a formal resolution is read and approved before the discussion takes place in private. The meeting minutes of the Oceanport governing body very clearly reflect the resolution, the matter for discussion and are available on the borough website. The minutes of the Executive session remain sealed until those matters are concluded and these are not posted for any pending matters.

In addition, and specific to the Borough of Oceanport, the FMERA Board publicly consented to a sub-lease of the Fort Marina in Oceanport, and approved a sales purchase agreement with purchasers of the former Patterson Army Health Clinic which included a provision for "terms" related to the local tax levy to be negotiated. In both cases, these actions must be authorized by the governing

Remarks Regarding Confidentiality and Keeping the Oceanport Local Governing Body Informed

body before the Mayor can sign. Clearly, this Council consent requires the Council to be informed; to provide feedback and to contribute to a final agreement.

It is my practice to participate in negotiations or discussions with FMERA staff, or contract purchasers, developers, etc; with Borough legal counsel, field related professionals, and no more than two members of Council with relevant committee responsibilities. These council members are on the negotiating team and participate first hand in discussions. The Borough has been called upon to negotiate tax abatements with potential purchasers. This very process requires specific public actions under the Local Redevelopment and Housing Authority Act calling for a study, a referral to the Planning Board and a resolution affirming that an "AREA in NEED of Rehabilitation or Redevelopment" exists, the drafting of an ordinance and public hearings prior to adoption by Council. Most of this process is public and has been experienced by Tinton Falls for the CommVault project and in Oceanport for the Acute Care project.

Each of these was accomplished by keeping our Governing Bodies informed through the seal of Executive Session, and when permitted or required, during public session.

With regard to any negative impact this process may have on "sensitive negotiations" and the success or failure of redevelopment deals; the Oceanport Governing Body will continue to seek out those opportunities that are "Best for Oceanport", best for our residents and neighbors while achieving the goals of this Authority. Doing it right the first time requires building consensus, engaging our stakeholders and understanding local issues. When all is said and done with the redevelopment of the Fort I expect that we the Authority all hope to be proud of our accomplishments. Proud of how we have shaped a recovery through the creation of jobs with economic stability and growth. Proud of how we have respected and preserved the character and history of Fort Monmouth. Proud of how we have respected and preserved the character and history of each of the Host Communities and the County of Monmouth.

Thank you, Mr. Chairman

Comments from Joe Irace

Today's Asbury Park Press article regarding FMERA and the three Fort Monmouth host towns was disturbing to say the least. Apparently, the Mayors of Oceanport and Tinton Falls are in trouble with FMERA's Executive Director for reporting back to their respective municipal councils. It appears that the mayors of Oceanport and Tinton Falls are doing something that the Mayor of Eatontown is not and Eatontown Council doesn't like it. I'm guessing this is what makes it news. I believe that the mayors of Oceanport and Tinton Falls share information necessary to keep their respective councils informed regarding the redevelopment of Fort Monmouth. I believe that neither of the mayors were taking any confidential operating information and making it PUBLIC. They are not putting any Fort Monmouth plans in jeopardy! They were and are, in fact, bringing information back to the municipal bodies that they are part of by virtue of their election into office. They were and are bringing that information back as part of an executive session that excludes the general public from the municipal council meetings. The confidential nature of the executive sessions the municipal councils partake in are the SAME as the ones that FMERA partakes in. Nothing is being made public that shouldn't be made public. Frankly, the Mayors of Oceanport and Tinton Falls are doing the job they were elected to do! Oceanport's residents have been through a lot over the past few years. I am proud to be a member of our community and our Borough Council. I think FMERA has forgotten that FMERA is funded by taxpayer dollars. For a salaried, appointed bureaucrat to question the integrity of our local elected officials is just wrong. There is a distinct difference between "leaking" information and "conveying" information. I believe that it is each mayor's obligation and duty to convey as much information as possible to their respective municipal councils in executive session. Mike Mahon takes his duties as Mayor seriously and he is committed to maintaining an active, informed and participatory governing body. To quote the press, "But Bruce Steadman, FMERA's executive director, said the mayors, as board members, are "entrusted with confidential FMERA operating information that must remain confidential until it is appropriate to be made public." However, Mr. Steadman seems to think that FMERA operates in a vacuum, independent of the communities it will impact upon and the form of government under which they operate. The investment that the Army, FMERA's board and FMERA's bureaucracy have in the Fort's redevelopment pales in comparison to that of Eatontown, Oceanport and Tinton Falls. The Army has already abandoned us and, in time, FMERA will be gone, too. And we'll be left to deal with your decisions for generations to come. This necessitates that the elected officials in Eatontown, Tinton Falls and Oceanport be kept in the information loop. To suggest that disciplinary action may be in order when, in fact, the Mayors in question are only doing their job, is preposterous! In my opinion, an apology is in order to both Mayor Mahon and Mayor Skudera and, more importantly, maybe FMERA should follow the lead of Oceanport and Tinton Falls and become more open and transparent.



MEMORANDUM

TO: Members of the Board of Directors

FROM: Bruce Steadman
Executive Director

DATE: August 21, 2013

SUBJECT: Monthly Status Report

Summary

The following are brief descriptions of the Fort Monmouth Economic Revitalization Authority (FMERA) staff's monthly activities which include an Update on the Status of the Federal Grant and FMERA Financials; Update on Meetings with Army Representatives; Update on Requests for Offers to Purchase (RFOTPs); Update on FMERA Office; New Jersey Technology Council Conference at Gibbs Hall; and Action Items for Next Month.

Treasurer's Report.

1. New Grant Application.

The Authority Grant Application to Office of Economic Adjustment (OEA) in support of the Authority's operations has been approved. The funds requested from the OEA are consistent with the budget approved by the Authority's Board for fiscal year 2013 and presented to the State's Office of Management and Budget (OMB) in support of the Authority's appropriation request for the fiscal year ending June 30, 2014.

2. 2012 Comprehensive Annual Report of the Authority.

The 2012 Comprehensive Annual Report of the Authority, approved by the FMERA Board at the June 19, 2013 Board meeting, has been issued, distributed and posted on the Authority's website in accordance with Executive Order 37. The Authority's 2012 financial data has been timely submitted to the Federal Audit Clearinghouse in compliance with OMB Circular A-133 requirements.

3. Independent Auditing Services Request for Proposals (RFP).

The RFP for Independent Auditing Service is ready to be issued this week. Responsive proposals will be reviewed by the members of the Evaluation Committee who will then meet to discuss their findings and prepare their report for submittal to the Audit Committee. We anticipate that the Audit Committee, based on their review of the

Evaluation Committee's report, will make their recommendation for appointment as the Authority's Independent Auditor to the Board at the Authority's October 16, 2013 meeting.

4. Budget.

Spending continues to be strictly monitored.

Executive Director's Report.

1. Update on Meetings with Army Representatives.

FMERA and the Army continue to have regular discussions on the future transfer of the balance of the Main Post, to be accomplished under a Phase 2 Memorandum of Agreement (MOA). The Army, FMERA and representatives from Cushman and Wakefield met at the former Fort Monmouth on July 31, 2013. The meeting was productive and will help to further a positive working relationship that will result in a revitalized former Fort Monmouth, and job creation.

2. Update on RFOTPs.

The following is a summary of the status of the RFOTPs that FMERA has issued and plans to issue:

Howard Commons

FMERA staff issued an RFOTP for the Howard Commons Area of the former Fort on December 14, 2012. The approximately 64-acre parcel is intended to be developed into housing, as shown in the Fort Monmouth Reuse and Redevelopment Plan. On January 28, 2013 six firms submitted proposals, with some firms submitting multiple scenarios for redevelopment. At the July meeting of the Authority the Board of Directors authorized FMERA staff to enter into exclusive negotiations with HovWest Land Acquisition LLC for the property.

Officer Housing

FMERA staff issued an RFOTP for the Officer Housing in the Historic District of the former Fort on January 16, 2013. The Officer Housing is intended for residential reuse consistent with the Fort Monmouth Reuse and Redevelopment Plan. Proposals for the Officer Housing were due on April 1, 2013 and two proposals were received. Staff has begun to evaluate the proposals in accordance with the Authority's Sales Rules.

Parcels B, C and C1

On March 26, 2013 FMERA publically issued RFOTPs for Parcels B, C and C1. Proposals for each of the three parcels were due on June 10, 2013. Four proposals were received for Parcel B, three proposals were received for Parcel C, and three proposals were received for Parcel C1, with some firms submitting multiple scenarios for redevelopment. FMERA staff has begun to evaluate the proposals in accordance with the Authority's Sales Rules.

Parcel B is a 55-acre tract located along the Fort's Route 35 frontage in the Main Post's Eatontown Reuse Area. The Reuse and Redevelopment Plan calls for Parcel B to be developed as a lifestyle center, with approximately 150,000 square feet of retail, restaurant, entertainment and other uses in a Main Street format, along with 302 mixed-income apartments.

Parcel C is in the Tinton Falls Reuse Area and is planned as a mixed-use town center. The 39-acre lot can accommodate up to 239 newly constructed residential units, along with up to 107,000 square feet of retail and other commercial development.

Parcel C1 is a 12-acre tract also located in Tinton Falls. In accordance with the Reuse Plan, the property can accommodate up to 49 newly constructed residential units.

Building 2705

On May 6, 2013 FMERA publically issued a Request for Offers to Purchase (RFOTP) for Building 2705 in the Tinton Falls section of the former Fort. FMERA staff has determined that Building 2705 and its two outbuildings would require a parcel measuring approximately 5.5 acres. The parcel size would increase to about 7.25 acres if the geothermal well field located south of the building were included. Proposals were due on June 6, 2013 and one proposal was received. Staff has begun to evaluate the proposal in accordance with the Authority's Sales Rules.

Parcel V-1

At the May meeting of the Authority, the Board approved making Parcel V-1 available for purchase through the offer to purchase process. Parcel V-1 is a 10-acre tract in the Eatontown section of Fort Monmouth and will be put out for offers to purchase for the purpose of establishing a Veterans Community. Staff anticipates issuing an RFOTP for Parcel V-1 this month. We look forward to a great project that will acknowledge the outstanding service to our country by military veterans. We salute our veterans.

Russel Hall

At the June meeting of the Authority, the Board approved making Russel Hall (Building 286) available through the offer to purchase process. Russel Hall is a 42,300 sf, four-story administration building located on Sanger Avenue in the Oceanport Reuse Area of the Fort. Taking into account the parking and setback requirements of the Land Use Rules, FMERA staff has determined that Russel Hall will require a parcel measuring approximately 6.5 acres. The property is located outside of the Fort's Phase One project area, so FMERA's ability to sell the property will be contingent on execution of a Phase 2 Economic Development Conveyance Agreement with the Army. That agreement is currently under negotiation. Staff anticipates issuing an RFOTP for Russel Hall this month.

Fabrication Shops (Pinebrook Road Commerce Center at Fort Monmouth)

At the June meeting of the Authority, the Board approved making the Fabrication Shops (Buildings 2501 – 2504, 2506 and 2507) available through the offer to purchase process. The five fabrications shops (Buildings 2502-2504, 2506 and 2507) consist of flex

(industrial/office) space in varying configurations and range in size from 7,680 sf to 10,944 sf. There is also a building (Building 2501) on site that is 1,440 sf and well-suited for use as office space. The buildings together total over 44,000 sf. The Parcel is located off of Pinebrook Road in the Tinton Falls Reuse Area of Fort Monmouth. Staff anticipates issuing an RFOTP for the Fabrication Shops in the coming weeks.

Please refer to our website, www.fortmonmouthredevelopment.com, for more information.

3. Update on FMERA Office Move.


The FMERA staff moved into our new office space in the former Post library at the end of July. Tonight, August 21st, is the first public board meeting in the new space. An access plan for the public is posted on the FMERA website, www.fortmonmouthredevelopment.com. Thanks to our staff, and all of our partners, including Patock Construction and Army, who have made the move possible.

4. New Jersey Technology Council Conference at Gibbs Hall.

The New Jersey Technology Council will hold its Data Summit & Expo: Aligning Infrastructure Efficiencies and Big Data Business Objectives with an IT Strategy on December 12, 2013 at Gibbs Hall on the former Fort Monmouth. The conference is expected to attract 150+ attendees from the technology sector. For more information, please visit www.njtc.org.

5. Action Items for Next Month.

- Continued work with the N.J. Department of Environmental Protection to identify and resolve environmental issues of concern
- Continued meetings and tours with interested prospective employers and investors
- Continued outreach to our stakeholders
- Continued collaboration with our Trenton office on marketing and business development opportunities
- FMERA has collaborated with several Federal, State and Local agencies regarding storm response initiatives.



Approved By: Bruce Steadman

Prepared by: Katie Hodes

ADOPTED
August 21, 2013

Resolution Regarding the
Consideration of Challenge to the January 11, 2013 Request for Proposals for the Professional Management and Maintenance for the Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities

WHEREAS, on January 11, 2013, the Fort Monmouth Economic Revitalization Authority (FMERA) issued a Request for Proposals (RFP) for the Professional Management and Maintenance for Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities; and

WHEREAS, the successful consultant would be required to manage, operate and maintain the Suneagles Golf Course and the associated banquet/restaurant facilities for a term of eighteen (18) months; and

WHEREAS, the January 11, 2013 RFP was issued to replace an existing contract with Atlantic Golf Management (AGM); and

WHEREAS, proposals were received from AGM and Meticulous Golf Management (MGM) on February 11, 2013, and the names and addresses of the responding firms were read aloud to representatives from both AGM and MGM at the public proposal opening on February 12, 2013; and

WHEREAS, both proposals were independently reviewed and evaluated by an Evaluation Committee comprised of four (4) FMERA staff members, and the Fee Schedules of each Proposal were analyzed by two (2) FMERA staff members who did not participate on the Evaluation Committee; and

WHEREAS, the Evaluation Committee recommended the selection of the highest ranked firm, AGM, to provide the services based upon its overall score, price and other factors included; and

WHEREAS, on February 20, 2013, the FMERA Board selected AGM as the Professional Manager of the Suneagles Golf Course and Associated Banquet/Restaurant Facilities subject to the Army's approval of a lease extension for the golf course for an additional eighteen (18) months; and

WHEREAS, a Bid Challenge was timely received by letter dated March 15, 2013 from the attorney for MGM; and

WHEREAS, the Hearing Officer designated to hear the bid challenge issued a report on June 24, 2013; and

WHEREAS, it is the Hearing Officer's finding "...that the Bid Challenge has merit based solely on the lack of financial data available to prospective bidders in the Request For Proposals related to the food and beverage operations and, therefore, it is recommended that the award to Atlantic Golf Management be rescinded, the selection process be terminated, and that, if the procurement of these services are re-bid through issuance of a subsequent Request For Proposals, access to the food and beverage financial information be provided to all prospective bidders..."; and

WHEREAS, AGM and MGM submitted timely exceptions to the Hearing Officer report; and

WHEREAS, FMERA staff recommends accepting the Hearing Officer's report and further recommends that the Board direct staff to issue a new RFP; and

WHEREAS, the Real Estate committee reviewed the bid challenge, the Hearing Officer's report, the exceptions, and the staff memorandum and recommends that the Board accept the Hearing Officer's report and direct staff to issue a new RFP.

THEREFORE, BE IT RESOLVED THAT:

1. Upon review of the March 15, 2013 bid challenge from MGM, the June 24, 2013 Hearing Officer's report, the July 1, 2013 exceptions from AGM, the July 8, 2013 exceptions from MGM, and the staff memorandum, the Authority adopts the attached Hearing Officer's report, including the findings of fact, conclusions, and recommendations, as the final agency determination regarding the bid challenge.
2. The award of the January 11, 2013 RFP to Atlantic Golf Management is rescinded.
3. Staff is directed to issue a new RFP for the Professional Management and Maintenance for Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities, which will include pertinent food and beverage financial information.
4. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor of the State of New Jersey for his approval, unless

during such 10-day period the Governor of the State of New Jersey shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

ATTACHMENT

Dated: August 21, 2013

EXHIBIT 1



To: Members of the Board of Directors

From: Bruce Steadman, Executive Director

Date: August 21, 2013

Re: Bid Challenge

Professional Management and Maintenance for Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities

Request for Proposals (RFP) Issued: January 11, 2013

Responses Due: February 11, 2013

Request

I am requesting that the Board of Directors consider accepting the attached Hearing Officer's report regarding the referenced Bid Challenge, thereby rescinding the award of the January 11, 2013 RFP to Atlantic Golf Management, and directing the FMERA staff to issue a new RFP for *Professional Management and Maintenance for Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities*.

Background

On January 11, 2013, Fort Monmouth Economic Revitalization Authority (FMERA) issued a Request for Proposals (RFP) for the Professional Management and Maintenance for Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities. The successful contractor would be required to manage, operate and maintain the Suneagles Golf Course and the associated banquet/restaurant facilities for a term of eighteen (18) months. The January 11, 2013 RFP was issued to replace an existing, expired contract with Atlantic Golf Management (AGM).

A Mandatory Pre-Proposal Conference was held on January 18, 2013 wherein the prospective bidders were provided with a Profit & Loss Report for the golf course operations for the period October 2011 through September 2012, utility costs, a tour of the facilities and a question and answer session. The Profit & Loss Report did not include profit and loss data for the food and beverage operations. FMERA accepted questions on the RFP until January 25, 2013. In addition, one Addendum was issued and posted on FMERA's website on January 28, 2013 which included questions and answers, a revised Fee Schedule, and the list of attendees from the January 18th Pre-Proposal Conference. No written questions were received regarding the financial reports for the food and beverage operations. Proposals were due on February 11, 2013 and were publicly opened on February 12, 2013.

Proposals were received from AGM and Meticulous Golf Management (MGM; or Challenger) on February 11, 2013 and the names and addresses of the firms were read

aloud at the public proposal opening on February 12, 2013. Representatives from both AGM and MGM attended the Proposal opening. Proposers were not afforded the opportunity at that time to review the Proposals or the Fee Schedules.

Both proposals were independently reviewed and evaluated by an Evaluation Committee comprised of four (4) FMERA staff members. The Fee Schedules of each Proposal were analyzed by two (2) other FMERA staff members who did not participate on the Evaluation Committee. The Evaluation Committee recommended the selection of the highest ranked firm, AGM, to provide the services based upon its overall score, including the scores for the Fee Proposals. As outlined in its Fee Schedule, AGM would be required to pay FMERA \$250,000 during the eighteen month term of the contract in monthly installments.

On February 20, 2013, the FMERA Board selected AGM as the Professional Manager of the Suneagles Golf Course and Associated Banquet/Restaurant Facilities subject to the Army's approval of a lease extension for the golf course for an additional eighteen (18) months.

A Bid Challenge was timely received by letter dated March 15, 2013 from Wayne E. Mauro, Esq., attorney for Meticulous Golf Management, LLC. A copy of said letter is attached as Exhibit A.

The Hearing Officer's Report states "...that the Bid Challenge has merit based solely on the lack of financial data available to prospective bidders in the Request For Proposals related to the food and beverage operations and, therefore, it is recommended that the award to Atlantic Golf Management be rescinded, the selection process be terminated, and that, if the procurement of these services are re-bid through issuance of a subsequent Request For Proposals, access to the food and beverage financial information be provided to all prospective bidders..."

Recommendation

I am requesting that the Board of Directors consider accepting the Hearing Officer's report regarding the referenced Bid Challenge, thereby rescinding the award of the January 11, 2013 RFP to Atlantic Golf Management, and directing the FMERA staff to issue a new RFP for Professional Management and Maintenance for Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities, which will include pertinent food and beverage financial information.

A handwritten signature in cursive script that reads "Bruce Steadman" followed by a circled "CH" monogram. The signature is written over a horizontal line.

Bruce Steadman

Attachments: Hearing Officer Report, Challenges, and pertinent correspondence



MEMORANDUM

TO: Fort Monmouth Economic Revitalization Authority Board

FROM: Donna T. Sullivan, Director
NJEDA Real Estate Development Division
Hearing Officer

RE: Bid Challenge
Professional Management and Maintenance for Fort
Monmouth Suneagles Golf Course and Associated
Banquet/Restaurant Facilities

DATE: June 24, 2013

This memorandum is a recommendation to the Members of the Fort Monmouth Economic Revitalization Authority Board regarding a Bid Challenge received to the award of a contract to Atlantic Golf Management, Inc. (AGM) for the Professional Management and Maintenance for Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities. The Bid Challenge received from Meticulous Golf Management, LLC (Meticulous) through its attorney, Wayne E. Mauro, Esq., requests rescission of the contract award to Atlantic Golf Management.

After a thorough review of this matter, in response to the formal challenge initiated by Meticulous Golf Management, LLC, it is my finding that the Bid Challenge has merit based solely on the lack of financial data available to prospective bidders in the Request for Proposals related to the food and beverage operations and, therefore, it is recommended that the award to Atlantic Golf Management be rescinded, the selection process be terminated, and that, if the procurement of these services are re-bid through issuance of a subsequent Request for Proposals, access to the food and beverage financial information be provided to all prospective bidders.

BACKGROUND - REQUEST FOR PROPOSALS:

On January 11, 2013, Fort Monmouth Economic Revitalization Authority (FMERA) issued a Request for Proposals (RFP) for the Professional Management and

Maintenance for Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities. The successful consultant would be required to manage, operate and maintain the Suneagles Golf Course and the associated banquet/restaurant facilities for a term of eighteen (18) months.

A Mandatory Pre-Proposal Conference was held on January 18, 2013 wherein the prospective bidders were provided with a Profit & Loss Report for the golf course operations for the period October 2011 through September 2012, utility costs, a tour of the facilities and a question and answer session. The Profit & Loss Report did not include financial data for the food and beverage operations. FMERA accepted questions on the RFP until January 25, 2013. In addition, one Addendum was issued and posted on FMERA's website on January 28, 2013 which included questions and answers, a revised Fee Schedule, and the list of attendees from the January 18th Pre-Proposal Conference. No questions were received regarding the financial reports for the food and beverage operations. Proposals were due on February 11, 2013 and were publicly opened on February 12, 2013.

Proposals were received from Atlantic Golf Management and Meticulous Golf Management on February 11, 2013 and the names and addresses of the firms were read aloud at the public Proposal opening on February 12, 2013. Representatives from both Atlantic Golf Management and Meticulous Golf Management attended the Proposal opening, although the representative from Meticulous Golf Management arrived late (further discussed below). Proposers were not afforded the opportunity to review the Proposals or the Fee Schedules.

Both Proposals were independently reviewed and evaluated by an Evaluation Committee comprised of four (4) FMERA staff members. The Fee Schedules of each Proposal were analyzed by two (2) FMERA staff members who did not participate on the Evaluation Committee.

The Evaluation Committee recommended the selection of the highest ranked firm, Atlantic Golf Management, Inc. to provide the services based upon its overall score, price and other factors included. As outlined in its Fee Schedule, Atlantic Golf Management would be required to pay FMERA \$250,000 during the eighteen month term of the contract in monthly installments.

On February 20, 2013, the FMERA Board selected Atlantic Golf Management as the Professional Manager of the Suneagles Golf Course and Associated Banquet/Restaurant Facilities subject to the Army's approval of a lease extension for the golf course for an additional eighteen (18) months.

A Bid Challenge was received by letter dated March 15, 2013 from Wayne E. Mauro, Esq., attorney for Meticulous Golf Management, LLC. A copy of said letter is attached as Exhibit A.

CHALLENGE BY METICULOUS GOLF MANAGEMENT:

Meticulous' formal Bid Challenge contains six (6) points of challenge. The six (6) points of challenge are summarized as follows:

Point I: "AGM Failed to Make the Full 15% Payment Due Under the Original 2011-2012 Contract for the Amount of Revenues Received in Excess of \$1 Million." Thus, Meticulous alleges that AGM is not a responsible bidder, that the information provided with the RFP was substantially deficient because the food and beverage revenues were not included, and that had the food and beverage revenues been included MGM and other prospective bidders might have bid significantly higher.

Point II: "AGM Failed to Account For, and Report Revenues Generated From F&B Operation, and Failed to Pay the Authority 15% of Those Revenues." Meticulous essentially repeats the allegations in Point I.

Point III: "AGM's Reported Golf Outing Revenues are Grossly Inconsistent with the Number of Golf Outings and Golf Outing Attendees Reported." Thus, Meticulous alleges that AGM is not a responsible bidder.

Point IV: "AGM has Failed to Perform Required Maintenance Tasks Under Previous Contract." Thus, Meticulous alleges that AGM is not a responsible bidder.

Point V: "The Award of Contract should be Rescinded because the Authority did not Adhere to its own Promulgated Mandatory Procedures."

Point VI: "The Award of Contract should be Rescinded because the Cumulative Effect of the Authority's Actions have Prejudiced MGM, and Undermined the Public Confidence."

On April 16, 2013, I was appointed as the Hearing Officer for this matter. I advised Meticulous and their attorney of my appointment. In its letter dated March 15, 2013, Meticulous requested an opportunity to make an oral argument to support its challenge. I have determined that an oral argument by the Bid Challenger is not necessary to reach an informed decision regarding the merits of this challenge.

RESEARCH AND CONCLUSIONS:

As Hearing Officer, I reviewed the following documents:

- FMERA Request for Proposals for Professional Management and Maintenance for Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities
- FMERA Agenda and Handouts provided at the Pre-Proposal Conference

- FMERA Addendum to RFP including attachments
- Atlantic Golf Management Proposal
- Meticulous Golf Management Proposal
- FMERA Evaluation Committee documentation
- FMERA Board Memorandum and Resolution
- FMERA Conditional Notice of Award Letter to Atlantic Golf Management
- FMERA letter to Meticulous Golf Management advising of Notice of Award to Atlantic Golf Management
- Meticulous Golf Management Bid Challenge Letter
- Documentation related to the existing contract for Professional Management and Maintenance for Fort Monmouth Suneagles Golf Course and Associated Banquet/Restaurant Facilities:
 - Agreement between Atlantic Golf Management and FMERA
 - Food and Beverage Services Management Agreement between Atlantic Golf Management and TME, Inc.
 - Request for Proposals issued by FMERA
 - Proposal Submitted by Atlantic Golf Management
 - Correspondence, including emails, between FMERA and Atlantic Golf Management

In addition to reviewing the documents listed above, I also conducted further inquiry as needed to make my review complete and thorough. My findings are summarized as follows and address each of Meticulous' challenge points.

BID CHALLENGE

Point I:

AGM Failed to Make the Full 15% Payment Due Under the Original 2011-2012 Contract for the Amount of Revenues Received in Excess of \$1 Million.

Meticulous alleges that based upon records provided by FMERA that AGM was not a responsible bidder because it did not fulfill its obligations under the existing contract to pay the full 15% of all revenues above \$1 million and that FMERA is due approximately \$11,800.00 under the contract. Meticulous also asserts that the information provided with the RFP was substantially deficient because the food and beverage revenues were not included. Thus, Meticulous states that they could not know whether AGM would have bid significantly lower if, during its tenure, it had lived up to its responsibility and paid the required fifteen percent (15%) of food and beverage revenues to FMERA. They also stated that MGM or any other prospective bidder might have bid significantly higher had the food and beverage revenues been included with the RFP. Thus, MGM alleges that a fair opportunity to compete as equals on a level playing field has been denied.

Conclusion/ Recommendations:

Since the current contract is ongoing and FMERA has not made a final determination as to the amount AGM is obligated to pay, I do not find that the allegation of under-reported revenue merits a rescission of the contract award to AGM.

As required under the existing contract between FMERA and AGM, auditable financials were required to be submitted by AGM to FMERA to ensure that payments due from AGM required under the contract were paid to FMERA. As stated in the 2011 Request for Proposals, Scope of Services, Section II (1c), AGM was required to oversee, manage, and account for all elements of revenue and expenses; maintain auditable financial records of all transactions; and create an annual budget using quarterly data. The financial reports were to be prepared utilizing generally accepted accounting principles. The Scope of Services did not exclude the food and beverage operations from the financial reporting obligations. There is no amendment to the contract that revises any of the above-referenced requirements.

AGM has been submitting financial reports to FMERA staff during the term of the current contract. Based upon my review of the documentation and confirmation from FMERA staff, there was no communication to AGM from FMERA that there were any discrepancies in the financial reports submitted by AGM resulting in an under-payment. The current contract, however, has not been closed out since AGM is operating under a month to month extension pending the results of this Bid Challenge.

Therefore, I do not find merit to MGM's allegation that AGM was not a responsible bidder. As part of the contract close-out process for the current contract, it is recommended that the financial records for all operations should be reviewed by FMERA staff, under the supervision of the Director of Finance and Administration, to ensure accuracy and any discrepancies that resulted in an under-payment to FMERA for the golf operations or the food and beverage operations should be paid to FMERA by AGM.

As to the second argument raised under this point, I find that it has merit. MGM argues that without information about the food and beverage operations, it was impossible for a bidder to make an accurate bid. Financial statements were provided, but there was no reference to the fact that they did not include the food and beverage operations. AGM, as the incumbent, had superior knowledge about the food and beverage operations, thus allowing it to make a more informed bid.

MGM's second argument is essentially a challenge to the specifications of the Request for Proposals package. In general, an unsuccessful bidder has no standing to attack an award on the basis of illegal or improper specifications. Camden Plaza Parking v. Camden, 16 N.J. 150, 158 (1954); Waszen v. Atlantic City, 1 N.J. 272, 276 (1949); Saturn Constr. Co. v. Bd. of Chosen Freeholders, 181 N.J. Super. 403, 407-08 (App. Div. 1981). For example, the Department of Treasury, Division of Purchase

and Property requires a challenge to a specification in a Request for Proposals to be submitted "in sufficient time to permit a review of the merits of the protest and to take appropriate action as may be necessary, prior to the scheduled deadline for proposal submission." N.J.A.C. 17:12-3.2(b). Similarly, in the context of the Local Public Contracts Law, challenges to a bid specification filed less than three business days prior to the bid opening "shall be considered void and having no impact on the contracting unit or the award of a contract." N.J.S.A. 40A:11-13(e).

Nonetheless, courts have decided to address the merits of such a challenge to bid specifications after the bid opening when "a decision on the public bidding issue will serve the public interest." Autotote, Ltd. v. New Jersey Sports & Exposition Auth., 85 N.J. 363, 369 (1981). Additionally, FMERA is not subject to the Local Public Contracts Law and does not have rules similar to the Division of Purchase and Property. For example, FMERA's rules for Sale of Real and Personal Property and Real and Personal Property Leasing permit the submission of any challenge asserting "that the proposed award should be overturned" within 10 business days from the date of the notice of intent to award. N.J.A.C. 19:31C-1.15(b) and -2.18(b). Likewise, the Request for Proposals did not specify a deadline for challenges to the specifications or information provided.

Here, the lack of financial information related to the food and beverage operations was a material defect in the procurement process because it directly impacted the fee and because the full, accurate information was only held by the incumbent AGM. Upon dissemination of the Profit & Loss Report at the Pre-Proposal Conference, FMERA staff did not disclose or clarify that the information was strictly related to the golf course operations. Based on the 2011 Request for Proposals requiring auditable financial records for all operations of Suneagles Golf Course from AGM, it is reasonable for prospective bidders to assume that the Profit & Loss Report supplied by FMERA as part of the current Request for Proposals included income and expenses for the food and beverage operations.

Access to financial information confirming the income and expenses for the food and beverage operations is a required element for prospective bidders to determine the monthly amount to pay to FMERA and is a material element of the Request for Proposals. The current Request for Proposals indicated that the Proposers shall take into account all the revenue, costs, and all circumstances associated with managing, operating and maintaining the Suneagles Golf Course in determining the monthly fee.

This contract award was based on price and other factors. The technical scores were weighted at 80% and the fee proposals were weighted at 20%. The rating of the fee proposals submitted by Meticulous and AGM had an impact on the final ranking.

Regardless of the weight allocated to the fee proposals, I find that the lack of financial information with regard to the food and beverage operations was a

material defect in the procurement process because it could have resulted in prospective bidders failing to submit Proposals.

Therefore, I find that the challenge to the substantial adequacy of the information due to the lack of financial information related to the food and beverage operations has merit and warrants a rescission of the contract award. Accurate and updated financials for the food and beverage operations should be included if a subsequent Request for Proposals is issued for these services to ensure a level playing field for all prospective bidders.

Point II:

AGM Failed to Account For, and Report Revenues Generated From F&B Operation, and Failed to Pay the Authority 15% of Those Revenues.

Meticulous alleges that AGM was not a responsible bidder because the Profit and Loss Report supplied for the golf course operations do not include revenues associated with the food and beverage operations, that the revenues were unreported, and that payments to FMERA required under the contract were not made. Meticulous also asserts that the Profit and Loss Report was substantially deficient without the revenues and expenses for the food and beverage operations. They stated that they could not know whether AGM would have bid significantly lower on the Bid Proposal if it paid the required 15% of food and beverage revenues to FMERA as required under the contract. They also stated that if there was full disclosure as to the Food and Beverage revenues, they or other prospective bidders might have bid significantly higher.

Conclusion/Recommendations:

The analysis and conclusion of Point I apply to the allegations of Point II since the basis for the challenges raised in Point II are the same as Point I. Therefore, my conclusion/recommendations for Point II are the same as Point I.

Point III:

AGM's Reported Golf Outing Revenues are Grossly Inconsistent with the Number of Golf Outings and Golf Outing Attendees Reported.

Meticulous alleges that AGM is not a responsible bidder because there may be under-reported revenues from the existing contract which deprived FMERA of revenue payments required under the contract.

Conclusion/Recommendations:

AGM has been submitting financial reports to FMERA staff during the term of the current contract. Based upon my review of the documentation and confirmation from FMERA staff, there was no communication to AGM from FMERA that there were any discrepancies in the financial reports submitted by AGM resulting in an under-payment. However, the contract is still ongoing. As part of the contract close-out process, it is recommended that the financial records for all operations should be obtained and reviewed by FMERA staff, under the supervision of the Director of Finance and Administration, to ensure accuracy and any discrepancies that resulted in an under-payment to FMERA should be paid by AGM.

Since the current contract is ongoing and FMERA has not made a final determination as to the amount AGM is obligated to pay, I do not find that the allegation of under-reported revenue merits a rescission of the contract award to AGM.

Point IV:

AGM has Failed to Perform Required Maintenance Tasks Under Previous Contract.

Meticulous alleges that AGM is not a responsible bidder because AGM had failed to perform the clean-up services required under the existing contract and states that AGM should not be awarded an opportunity to continue to operate the golf course. They also allege that AGM failed to maintain at least seventeen golf carts.

Conclusion/Recommendations:

The damage and debris caused by Superstorm Sandy was not, and could not, have been contemplated under the existing contract between AGM and FMERA. The clean-up services required under the 2011 Scope of Services were based on the current conditions of Suneagles at the time of the initial bid, July 2011. The Fee Schedule submitted by AGM did not, and could not, include the extraordinary costs of clean-up after the storm. AGM did clean-up a substantial amount of storm debris so that the golf course would be operational at the earliest opportunity after the storm for no additional cost. FMERA staff included the clean-up of the storm damage as part of the current RFP with full disclosure to all prospective bidders. This enabled all bidders to price their Fee Schedules accordingly.

Upon commencement of the existing contract between FMERA and AGM, numerous golf carts were non-operational. Many of the carts had mechanical issues and were fixed. AGM procured a maintenance contract which covers standard maintenance and repairs but did not cover major repair work. The 2011 Scope of Services required AGM to maintain the golf carts, it did not require replacement of non-serviceable golf carts. The contract documents did not require AGM to do major

repair work on the carts since they were in a state of disrepair and non-serviceable at the start of the contract term. AGM was required to perform standard maintenance and repairs only. Based upon my review of the documentation and confirmation from FMERA staff, there were no communications sent to AGM from FMERA indicating dissatisfaction with the maintenance and repairs obligations required under the contract. The current RFP included replacement and or repair of all equipment as needed, including the golf carts, thus giving full disclosure to all prospective bidders. This enabled all bidders to price their Fee Schedules accordingly.

Therefore, I find that AGM may be considered a responsible bidder, as it has complied with the maintenance requirements of the existing contract specifications and there is no merit to either of these allegations. AGM did not evade its contractual responsibilities related to the clean-up services or the repair of the non-serviceable golf carts.

Point V:

The Award of Contract should be Rescinded because the Authority did not Adhere to its own Promulgated Mandatory Procedures.

Meticulous requests the rejection of the AGM contract award based on FMERA's violation of its bid opening procedure as outlined in the RFP by changing the location of the bid opening without advising all prospective bidders, communicating with AGM during the bidding process and holding the bid opening on the premises of the incumbent vendor.

Conclusion/Recommendations:

The Request for Proposals indicated that Proposals must be received by FMERA no later than February 11, 2013 at 3:00 p.m. The Request for Proposal further indicated that the Proposals would be publicly opened on February 12, 2013 at 10:00 a.m. at the FMERA Public Office located at 15 Christopher Way, Eatontown, NJ 07724. On January 28, 2013, subsequent to the issuance of the Request for Proposal, FMERA issued an Addendum to the Request for Proposals which included a list of attendees at the Mandatory Pre-Proposal Conference, a Revised Fee Schedule and the questions and answers presented at the Pre-Proposal Conference.

Access to Fort Monmouth is limited and there is no U.S. Mail service provided to the Fort at this time or at the time of the Proposal due date. To ensure all prospective bidders had an opportunity to submit timely Proposals, FMERA staff required all Proposals due on February 11, 2013 and scheduled the Proposal opening date on February 12, 2013. Sometime in January 2013, to ensure the public had access to all Proposal openings, an internal decision was made to hold all future Proposal

openings at Gibbs Hall on the Suneagles Golf Course, which has public access. It was the intention of FMERA staff to include the change of location in the Addendum issued on January 28, 2013, although through an administrative error, the location of the Proposal opening was not included in the Addendum. FMERA staff contacted the current operators of Suneagles to ensure that there was a room available for the Proposal opening, similar conversations were held between FMERA staff and the current operators of Suneagles for the Pre-Proposal Conference.

Meticulous was not informed of the location change.

A representative from Meticulous arrived at the Proposal opening at Gibbs Hall at 10:17 a.m. after contacting FMERA staff and receiving information of the location change. Representatives of AGM and FMERA were already present. The names and addresses of both Proposers were announced, Meticulous and AGM. Meticulous requested copies of AGM's Proposal and Fee Schedule. These requests were denied in accordance with FMERA's standard practice.

I do not find that it was improper to hold the Proposal opening at Gibbs Hall at Suneagles. The Pre-Proposal Conference was held at Gibbs Hall, which Meticulous did not challenge, and FMERA staff required a space that was open to the public to hold Proposal openings due to the public access limitations at Fort Monmouth. All Proposals were sealed and under the care of FMERA staff and all conversations prior to the Proposal opening between AGM and FMERA staff were limited to the logistics for public access.

Although I find that the error made in changing the location of the Proposal opening without informing Meticulous was an administrative oversight, I do not find that Meticulous was harmed or held at a disadvantage as their Proposal was accepted, MGM's representative was provided the same bid information as AGM's representatives, and FMERA reviewed and evaluated MGM's proposal under the same evaluative criteria as AGM's Proposal. I do not find that the bidding process was compromised or that Meticulous was adversely affected. I did not find any evidence of favoritism or improper competitive advantage.

I do not find that the allegation of non-adherence to promulgated mandatory procedures merits a rescission of the contract award to AGM.

Point VI:

The Award of Contract should be Rescinded because the Cumulative Effect of the Authority's Actions have Prejudiced MGM, and Undermined the Public Confidence

Meticulous alleges that the public's guarantee to fairness and transparency has been compromised through deficient financial data supplied to FMERA by AGM. They state that FMERA has a responsibility to ensure that the information

presented to bidders represents actual operations. They further allege that AGM has not been required to perform to the letter of the RFP for payments called for under the RFP for the entire amount of gross revenues generated from the Golf Course as well as the Associated Restaurant/Banquet Facilities, amounting to an impermissible advantage over MGM and all other prospective bidders.

Conclusion/Recommendations:

As stated above, the current contract has not been closed out since AGM is operating under a month to month extension pending the results of this Bid Challenge. As required under the contract between FMERA and AGM, auditable financials were required to be submitted by AGM to FMERA to ensure that payments due from AGM required under the contract were paid to FMERA. Auditable financial reports were required for all elements of the contract, including the food and beverage operations.

AGM has been submitting financial reports to FMERA staff during the term of the current contract. Based upon my review of the documentation and confirmation from FMERA staff, there was no communication to AGM from FMERA that there were any discrepancies in the financial reports submitted by AGM resulting in an under-payment.

It is recommended that the financial records for all operations should be reviewed by FMERA staff, under the supervision of the Director of Finance and Administration, to ensure accuracy and any discrepancies that resulted in an under-payment to FMERA for the golf operations or the food and beverage operations should be paid by AGM as part of the contract close-out process.

I do not find any favoritism or intentional acts to circumvent the public bidding process by FMERA staff. As explained in Point I above, I do find that, based solely on the lack of financial information related to the food and beverage operations in the Request for Proposals, the challenge to the adequacy of information provided with the Request for Proposals has merit and warrants a rescission of the contract award.

Request for Oral Argument:

In Mr. Mauro's Bid Challenge letter dated March 15, 2013, an oral argument was requested. As the designated hearing officer, I have sole discretion to determine if an oral argument by the Bid Challenger is necessary to reach an informed decision on the matters of the challenge. I have determined that an oral argument by the Bid Challenger is not necessary for me to reach an informed decision on the merits of Meticulous' challenge. Therefore, Meticulous' request for an oral argument will not be granted.

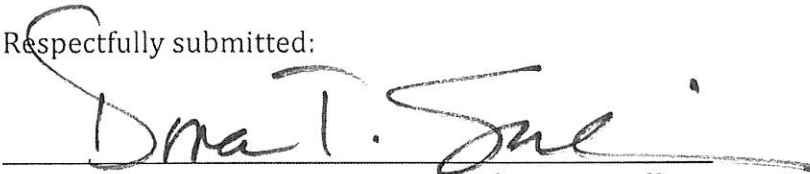
Remedy:

In Mr. Mauro's Bid Challenge letter dated March 15, 2013, the specific remedy requested was a rescission of the award to Atlantic Golf Management, Inc. of the Contract for Professional Management and Maintenance for Suneagles Golf Course and Associated Banquet/Restaurant Facilities, not an award to Meticulous Golf Management, LLC.

RECOMMENDATION:

Based on the above information and analysis, it is my finding that the Bid Challenge submitted by Meticulous Golf Management, LLC has merit based solely on the lack of financial data available to prospective bidders in the Request for Proposals related to the food and beverage operations and I recommend that the award to Atlantic Golf Management, Inc. be rescinded and the selection process be terminated.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Donna T. Sullivan", written over a horizontal line.

Donna Sullivan, Director – Designated Hearing Officer
NJEDA Real Estate Development Division

EXHIBIT A

Wayne E. Mauro, Esq.

552 Wells Mills Road
Waretown, New Jersey 08758
609 618 7800
wemo 101 (d)aol.com

March 15, 2013

Mr. Bruce Steadman, Executive Director
Fort Monmouth Economic Revitalization Authority
P.O. Box 267
Oceanport, New Jersey 07757

Re: Challenge of Bid Award for Professional Management and Maintenance for SunEagles Golf Course and Associated Restaurant/Banquet Facilities by the Fort Monmouth Economic Revitalization Authority

Dear Director Steadman,

Please accept this letter as our Challenge to the February 28, 2013 award of contract for Professional Management and Maintenance for SunEagles Golf Course and Associated Facilities by the Fort Monmouth Economic Revitalization Authority (FMERA, or, the Authority). It is our strong belief, supported by the following facts and arguments, that the law, public policy, and the best interests of the State of New Jersey, and its citizens, require the rescission of this award. Oral argument is requested.

1. Background:

FMERA has authority, under N.J.S.A.. 52:27I *et seq.*, to manage, operate, and redevelop the Fort Monmouth army base property in Monmouth County. FMERA currently contracts with Atlantic Golf Management Corporation (AGM) for the operation and maintenance of the SunEagles Golf Course at Fort Monmouth, under a month to month extension of a contract awarded beginning in September, 2011. That contract originally extended through September, 2012. Subsequent to the contract award, AGM entered into an agreement with a third party, TME, Inc. to operate restaurant/banquet facilities in connection with the golf course at the Fort.

A request for proposals (RFP) was issued by FMERA on January 11, 2013, inviting proposals from qualified bidders to provide "Professional Management and Maintenance for Fort Monmouth SunEagles Golf Course and Associated Banquet/Restaurant Facilities". The RFP called for submittal of responses no later than 3p.m. on February 11, 2013, and required all bidders to attend a mandatory Pre Proposal Conference at Gibbs Hall at the SunEagles Golf Course on Fort Monmouth at 10:00 a.m. on January 18, 2013.

The RFP specifically required that any hand delivered bid proposals be received by FMERA staff at their office on the second floor of Russell Hall on Fort Monmouth. It also specified that all proposals received would be opened publicly on February 12 at 10:00 a.m. at the FMERA Public Office at 15 Christopher Way, Eatontown, New Jersey.

The Authority allowed for a period of time, until January 25, 2013, where each prospective bidder could submit questions to FMERA staff regarding any aspect of the RFP, via email only. Answers were to be posted on the Authority website, available to all bidders and the public. It is significant to note that, subsequent to January 25, the specifications of the RFP prohibited any communication between FMERA staff and any bidder pertaining to any aspect of the RFP, mandating immediate rejection of the offending firm's bid submittal.¹

FMERA published an addendum on the Authority website on January 28, 2013, containing revised Fee Schedule Form, answers to 14 questions of prospective bidders, and the Pre Proposal Conference Attendees list. The addendum did not make any other changes to the RFP.

Timely bids were submitted by Atlantic Golf Management Corporation, and Meticulous Golf Management, LLC (MGM). AGM's bid offered to pay the Authority \$250,000 for the 18 month period covered by the prospective contract. MGM offered to pay the Authority \$286,000 for the same period.^{2 3}

2. New Jersey Law and Public Policy Requires that the Discretion of the Authority is Limited to the Exercise of Sound Business Judgment.

It is well settled, in New Jersey law, that the "purpose of competitive bidding for [...] public contracts is not protection of individual interests of bidders, but rather advancement of public interest in securing [the] most economical result by inviting competition in which all bidders are placed on equal basis. The statutes authorizing competitive bidding accomplish that purpose by promoting competition on an equal footing and guarding against "favoritism, improvidence, extravagance and corruption." Indeed, the major objective of all public bidding statutes is to promote the honesty and integrity of those bidding, and of the system itself⁴

Moreover, the determination of who is the best responsible bidder does not rest in the exercise of arbitrary and unlimited discretion, but on a bona fide judgment, based upon all available facts which support that determination.⁶

MGM believes that the Authority has not fully considered relevant facts that would compel the rejection of AGM and their bid in this matter, and ensure the advancement of the public interest by realizing for the citizens of the State the significantly larger financial gain offered by MGM's competently responsive proposal. As such, we believe that rescission of the award of contract to AGM is consistent with the laws of the State of New Jersey, its public policy to guarantee fairness and honesty in public bidding, and ultimately, serves the best interests of the Authority and the Citizens of our great State.

January 11, 2013 RFP, "Professional Management and Maintenance for Fort Monmouth SunEagles Golf Course and Associated Banquet/Restaurant Facilities"; pg. 5, para. 5.

²As of the date of this submittal, there are significant documents relevant and necessary to this Challenge that have been requested of FMERA through the Records Custodian, New Jersey Economic Development Authority, but not yet turned over to MGM. These documents have also been requested directly from the Authority. MGM reserves the right to supplement this Challenge after the Authority has complied with its obligations under OPRA, and other applicable law.

¹ All FMERA RFP and bid related documents referred to in this Challenge are record documents of the Authority. a Meadowbrook Carting Co. v. Island Heights Borough, 138 N.J. 307 (1994)
s Matter of On-Line Games Contract, 279 N.J. Super. 566, 595 (1995)

⁶Id.

3. The Award of Contract should be Rescinded because AGM Failed to Perform its Obligations under the Previous Contract.

- a. AGM Failed to Make the Full 15% Payment Due Under the Original 2011-2012 Contract for the Amount of Revenues Received in Excess of \$ 1 Million.

After receiving competitive bids under an RFP in August, 2011, AGM was awarded the contract to operate the SunEagles Golf Course and associated food and beverage operation ("F&B"), in or about September, 2011 for a twelve month period. Sometime thereafter, AGM entered into an agreement with a third party, TME, Inc. to staff and operate the F&B facilities at the Course. TME obtained a State license authorizing alcoholic beverage sales for onsite consumption.

In its bid proposal, AGM had agreed to pay the Authority, for the 12 month contract period, \$100,000.00 *plus* 15% of all gross receipts above \$ 1 million. Records provided by the Authority show, however, that AGM did not fulfill its obligations under the contract. According to the Profit and Loss Report for AGM operations under the contract for the period October 2011 through September 2012, (provided by the Authority in connection with the current RFP), total income from SunEagles operations was \$1,292,145.48. The monies paid to the Authority for the Operating Agreement Fee that same period were only \$132,221.75. Had AGM complied with the terms of their agreement and paid the full 15% of all revenues above \$1 million, the Authority would have realized \$143,821.82. The records reflect that AGM has defaulted on their obligation by more than \$ 11,800.00, and has deprived the Authority and the citizens of the State of that revenue due under the contract.

The Authority is required to assure that each bidder on a contract is a responsible bidder, judged by and subject to the same *objective* evaluation criteria. If AGM, as the incumbent vendor, is allowed to ignore mandatory, specific responsibilities required of the RFP (and current contract) with impunity it will have been afforded a "favorite son" advantage over MGM, depriving the public of the assurance "of equality among bidders, of the financial and ethical ability of the bidders to perform, and of performance of the contract in accordance with the RFP." ⁷ Under the present circumstances, we cannot know whether AGM would have bid significantly lower if, during its tenure, it had lived up to its responsibility and paid the required 15% of F&B revenues to the Authority. Nor can we know, if full disclosure as to F&B revenues was included with the RFP, if MGM or any other prospective bidder might have bid significantly higher. Thus, a fair opportunity to compete as equals on a level playing field has been denied.

- b. AGM Failed to Account For, and Report Revenues Generated From F&B Operation, and Failed to Pay the Authority 15% of Those Revenues.

Sometime after September, AGM entered into an agreement with a third party Food and Beverage Operator, TME, Inc., operating under the trade name "McClune's". According to AGM's bid proposal of February 11, 2013, AGM asserts that they "subcontracted all food and beverage services to Tim McClune", and called the results of the relationship "an overwhelming

Securitas Security Services, U.S.A., Inc. v. New Jersey Dept. of Treas., A-2608-10T4 (N.J. Tax 1-10-2012) (citing, In Re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract, 279 N.J. Super. 566, 592-93 (App. Div. 1995)).

success"⁵. AGM further stated that they "directly oversaw all areas of F&B related to outings and the beverage cart. The McClune's group was responsible for all other activity but was accountable to [AGM]." The F&B operations include a "19th hole" style restaurant and full service bar, large banquet facilities suitable for more than 500 patrons, as well as on-course beverage cart service.

A careful review of the Profit and Loss Report⁹ for the AGM operation at SunEagles, however, reveals that there are no reported revenues associated with the F&B operation. Indeed, the only reference to F&B operations at all on the Profit and Loss Report is a footnoted remark about allocation of utilities expenses of \$50,000 to the F& B operator. While we do not, at present, have specific detailed information defining the revenues generated by AGM through the F&B operations, it is clear that they are substantial and unreported. As such the Authority and the citizens of the State have been deprived of the benefit of those revenues, as AGM has failed to report them and to pay the required 15% of revenues as part of the contracted Operating Agreement Fee. It would not be unreasonable to speculate that an F&B operation that consumed \$50,000 in utilities per year, could reasonably generate more than \$1 million a year in unreported gross revenues, resulting in a shortfall of more than \$150,000.00 in unpaid Operating Agreement Fees, due and payable to the Authority and the citizens of this State.

The Authority is not free to subjectively exclude these revenues from AGM's obligations under the RFP and resulting contract. Again, the Authority is required to assure that each bidder on a contract is a responsible bidder, judged by and subject to the same *objective* evaluation criteria. If AGM, as the incumbent vendor, is allowed to ignore mandatory, specific responsibilities required of the RFP (and current contract) with impunity it will have been afforded a "favorite son" advantage over MGM, depriving the public of the assurance "of equality among bidders, of the financial and ethical ability of the bidders to perform, and of performance of the contract in accordance with the RFP." ¹⁰ Under the present circumstances, we cannot know whether AGM would have bid significantly lower on the 2013 Bid Proposal if, during its tenure, it had lived up to its responsibility and paid the required 15% of F&B revenues to the Authority on the 2011 Contract. Nor can we know whether, with full disclosure as to 2011-2012 F&B revenues included with the RFP, if MGM or any other prospective bidder might have bid significantly higher.

c. AGM's Reported Golf Outing Revenues are Grossly Inconsistent with the Number of Golf Outings and Golf Outing Attendees Reported.

During the Pre Proposal Conference, Authority staff reported¹¹ that, during the 12 months period of September, 2011 through October 2012, thirty-three (33) golf outings averaging 50 participants had been held at SunEagles. AGM, however, reported only \$9,865.00 of revenue

⁵ "Proposal Related to: The Professional Management and Maintenance for Fort Monmouth SunEagles Golf Course and Associated Banquet/Restaurant Facilities", page 13; submitted by AGM, February 11, 2013.

⁹ Supplemental Handout provided by Authority to attendees of Pre Proposal Conference, January 18, 2013.

¹⁰ *Securitas Security Services, U.S.A., Inc. v. New Jersey Dept. of Treas.*, A-2608-I0T4 (N.J. Tax 1-10-2012) (*citing, In Re Protest of the Award of the On-Line Games Prod. and Operation Servs. Contract*, 279 N.J. Super. 566, 592-93 (App. Div. 1995)).

¹¹ The Authority also ratified the oral statements at the Conference in a written answer to a bidders question in the Addendum issued subsequent to the Conference.

attributed to "Golf Outings and Tournaments". It does not require golf experience to clearly and immediately recognize that \$9,865.00 falls far short of the amount of revenue that would be appropriate for 1650 rounds of tournament play with cart rental. At a conservatively estimated average of \$40.00 per participant for greens fee and cart, that level of play should have generated nearly \$ 66,000.00 in revenues. We cannot yet know whether AGM has negligently under-reported revenues, and deprived the Authority and the citizens of the State of the contracted operating fee, or, that AGM held 33 outings and only charged an average of \$ 6.50 per round for greens fees and cart. In either case, sound business practices demand a careful review of the revenues reported, and whether AGM has diligently and completely discharged its contractual obligations to pay 15% of all revenues above \$1 million.

d. AGM has Failed to Perform Required Maintenance Tasks Under Previous Contract.

Under the terms of the contract¹² awarded to AGM for 2011-2012, AGM was required to "perform all maintenance functions consistent with normal golf course operations". Among the specifically enumerated required tasks, AGM was required to "remove brush and obstructions", and, "maintain golf carts". AGM has failed to perform both of these required tasks.

At the Pre Proposal Conference, Authority staff noted that there were numerous trees, stumps, and debris, remaining from Hurricane Sandy, that the new operator would be required to remove and clean up. A walk down of the course property following the Pre Proposal Conference revealed that a significant amount of clean-up work remained, almost three months after the storm. It is clear that, that AGM had failed to perform the clean-up required under the "Scope of Services" terms of their agreement, and should not be rewarded by extending another opportunity to operate SunEagles.

Moreover, it was reported by Authority staff at the Pre Proposal Conference that of the 80 golf carts that AGM was responsible for maintain, at least *seventeen* (17) were inoperative and in need of maintenance. AGM is accountable, in accordance with the terms of their contract agreement to ensure that the golf carts provided to serve the SunEagles patrons are properly maintained and available for service. Indeed the contract specifications include the replacement of unserviceable carts if needed. AGM should not be allowed to evade its contract responsibility, nor should the Authority be free to ignore these breaches in evaluating AGM's fitness to continue as the operator of SunEagles.

4. The Award of Contract should be Rescinded because the Authority did not Adhere to its own Promulgated Mandatory Procedures.

The RFP that the Authority presented to the public, soliciting bids for SunEagles management and maintenance, specifically required that that all proposals received by the Authority would be opened publicly on February 12 at 10:00 a.m. at the FMERA public office at 15 Christopher Way, Eatontown, New Jersey. The Authority's procedure also specified that,

¹² July 8, 2011 RFP, "Professional Management and Maintenance for Fort Monmouth SunEagles Golf Course and Associated Banquet/Restaurant Facilities"; Attachment I "Scope of Services", Section 11 "Specific Tasks", Subsection 2 "Maintenance Tasks", Paragraph d.

¹³ January 11, 2013 RFP, "Professional Management and Maintenance for Fort Monmouth SunEagles Golf Course and Associated Banquet/Restaurant Facilities"; pg. 5, para. 5.

following the Pre Proposal Conference, the *only* means to communicate "concerning the RFP" between the Authority and bidders was "via e-mail only" before 5 p.m. on January 25, 2013. It further admonished that "[c]ommunication regardin this RFP in any manner[...] **will result in the immediate rejection of your firm's Proposal.**" (*emphasis in the original text*). The RFP went on to specify that "[a]ll answers to questions posed regarding any aspect of this RFP will be posted on the Authority website [...] and/or through an addendum [...] to this RFP made available to all potential bidders at the Authority website."¹¹ An addendum was promulgated by the Authority through their website on or about January 28, 2013. There was no reference within the addendum of any change in location for the public bid opening.

On February 12, 2013, shortly before 10 a.m., Dean White (Superintendent for MGM) arrived at the 15 Christopher Way office of FMERA. Upon inquiry¹⁶, he was informed that the bid opening had been moved to Gibbs Hall at Sun Eagles Golf Course. FMERA staffer Regina McGrade told Mr. White that the change in bid opening location from the FMERA offices at 15 Christopher Way to Gibbs Hall at SunEagles had been published in the addendum of January 28, 2013 on the Authority website. Mr. White checked the website addendum on line right then, and informed Ms. McGrade that she was wrong; in fact the addendum contained no such change.

Mr. White immediately proceeded to Gibbs Hall, arriving at 10:17 a.m. at the clubhouse area, which is part of the SunEagles premises under contract to AGM. Present were Mr. Rick Harrison, FREMA staffer; Chris Wegner, AGM Golf Pro for SunEagles; Mark Kriews, AGM Director of Operations; and an AGM maintenance employee. Mr. Harrison informed Mr. White upon his arrival that the bids submitted by AGM and MGM had already been opened.

Mr. White questioned Mr. Harrison about the change of location for the Bid opening. Mr. Harrison stated that a mistake had been made by the Authority in not publishing the change of location, and that he was "sorry" for any problem that it had caused. Mr. White requested disclosure of the monetary bids, as well as a copy of the AGM-submitted Proposal. Mr. Harrison denied both requests.

These circumstances, standing alone, warrant the rejection of the AGM bid. It is clear that the Authority violated its own *mandatorily required* procedure. It is clear that there was communication with a bidder, AGM, contrary to the unequivocal and specific requirements of the RFP. In order for AGM to have known to be at the Gibbs Hall location at 10 a.m. on February 12, 2013 for the bid opening, there must have been communication between the Authority and AGM, in violation of the RFP. It is clear that AGM was improperly the beneficiary of information not made available to MGM.

Moreover, the propriety of holding the bid opening on the premises of the incumbent vendor should offend the sense of fair play that is the bedrock of Public Bidding Policy. At the very least, when the Authority was made aware of the violation of the bid opening procedure required by the RFP, *prior to the actual bid opening*, the bid opening should have been delayed until MGM's representative was present. As it stands, there can be no assurance that the goals so important to the guarantee that the Public Policy, underpinning the statutory, legal, and regulatory bid mechanisms protecting New Jersey citizens, has been preserved.

5. The Award of Contract should be Rescinded because the Cumulative Effect of the Authority's Actions have Prejudiced MGM, and Undermined the Public Confidence

¹¹ Id., para. 4-6.

¹⁷ Id., para. 6.

¹⁶ Mr. White called Regina McGrade. FMERA staff contact, at approximately 9:55 a.m. February 12, 2013.

Public confidence in the fairness and transparency of this State's bidding processes is of the utmost concern, and must transcend any individual bid, vendor, or Agency. Agencies of the State have an obligation to avoid any appearance of unfairness or collusive advantage in the bidding process. Here, sadly, the public's guarantee to that fairness and transparency has been compromised. The circumstances detailed in the above paragraphs give rise to a reasonable question as to whether AGM's bid has been deferentially received, prejudicing MGM.

Indeed, the very fact that the financial data supplied by the Authority to prospective bidders, from uncertified, unaudited, and unreviewed Profit and Loss statements supplied by the incumbent, may have under reported income, or overstated expenses could have discouraged some of the Pre Proposal Conference attendees from participating and submitting a bid. The Authority has a responsibility to ensure that the information presented for the consideration of bidders represents actual operations that are not skewed by an incumbent bidder or otherwise misrepresentative.

Moreover, the fact that AGM has not been required to perform to the letter of the RFP specifications it obligated itself to, or to be held otherwise accountable in delivering to the Authority the amount of payments called for under the RFP for the entire amount of gross revenues generated from the Golf Course as well as the Associated Restaurant/Banquet Facilities, amounts to an impermissible advantage over MGM and all other prospective bidders, depriving the public of the assurance "of equality among bidders, of the financial and ethical ability of the bidders to perform, and of performance of the contract in accordance with the RFP."¹⁷

6. Conclusion

For the reasons articulated above, we would ask the Authority to protect the interests of the citizens of this State, ensure the adherence to the spirit of the Public Policy guaranteeing fair, open, and transparent Public Bidding, and Rescind the Award of Contract for Professional Management and Maintenance for SunEagles Golf Course and Associated Restaurant/Banquet Facilities by the Fort Monmouth Economic Revitalization Authority.

Yours Very Truly,



Wayne E. Mauro, Esq.,

for Robert Kraft,
Meticulous Golf Management, LLC.

Cc: Gabriel Chacon, DAG