

9142. RESOLUTION 04-60 AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE DELAWARE RIVER AND BAY AUTHORITY AND THE CITY OF MILLVILLE. The Executive Director presented the following Resolution.

WHEREAS, the Delaware River and Bay Authority (the “Authority”) and the City of Millville, New Jersey (the “City”) entered into an Acquisition Agreement (“Acquisition Agreement”), dated August 1, 1999, and Ground Lease (“Ground Lease”), dated October 20, 1999 (collectively the Acquisition Agreement and the Ground Lease are referred to as the “Airport Agreements”) regarding certain property and improvements thereto located in the City, commonly known as the Millville Airport (the “Airport”); and

WHEREAS, the Airport Agreements, inter alia, provided the Authority with a thirty (30) year leasehold interest in said Airport; and

WHEREAS, the City holds fee simple title to certain real property constituting approximately seven hundred and seven (707) acres of land located along Buckshutem Road near or adjacent to the Airport identified as Block 124, Lot 16, Block 125, Lots 1, 2, 3 and 5 and Block 136, Lots 1 and 3 on the Tax Maps of the City which City and a certain third party developer, New Jersey Motor Sports Park, LLC (“NJMP”) wish to develop as an Airpark Motorsports Commercial District (the “Project”); and

WHEREAS, City and NJMP have entered into a certain Municipal Development Agreement (the “Municipal Development Agreement”) dated June 21, 2004 for purposes of setting forth their mutual undertakings regarding the development of the Project; and

WHEREAS, subject to the satisfaction of certain Project Contingencies set forth in said Municipal Development Agreement the City has agreed to convey the aforesaid parcels to NJMP; and

WHEREAS, certain of the aforesaid parcels are subject to the Airport Agreements; and

WHEREAS, the City has requested that the Authority amend the Airport Agreements to release said parcels (hereinafter referred to as the “Property”) from the terms and conditions of said Airport Agreements, said parcels being: (a) an approximate 91 acre parcel identified as Lot 2, Block 125 as shown on the Tax Maps of the City (the “Non Restricted Property”); and (b) an approximate 139 acre parcel being a portion of Lot 5, Block 125, as shown on the Tax Maps of the City (“FAA Restricted Property”); and

WHEREAS, the release of the FAA Restricted Property is subject to the approval of the Federal Aviation Administration (the “FAA”) and subject to the receipt by the Authority of fair market value consideration in accordance with FAA regulations; and

WHEREAS, said development is further conditioned on and subject to FAA review and approval that such development of the Project or the Property (i.e. the FAA Restricted Property or the Non-Restricted Property) does not in any way negatively affect the operation of the Airport; and

WHEREAS, pursuant to the terms of the Municipal Development Agreement, said approvals and consents of the Authority and the FAA are a condition precedent to the development of the Project and the consummation of the transactions contemplated by the Municipal Development Agreement (the "Project Contingencies"); and

WHEREAS, the City, in addition to any other consideration for the Authority amending the Airport Agreements, has agreed to substitute and include in the Airport Agreements, for the use and control of the Authority for Airport purposes, certain City owned land known as Lot 12, Block 125, as shown on the Tax Maps of the City, containing approximately 15 acres of vacant land and such other real property as the parties may mutually agree (the "Replacement Property"); and

WHEREAS, the Authority has recently installed perimeter and security fencing at the Airport, with the financial assistance of the FAA, a portion of which is located on the Property; and

WHEREAS, the City has agreed that in the event the Property is released by the Authority to the City, the City will be responsible for all costs and expenses associated with any necessary or appropriate relocation and addition of said fencing to insure the security of the Airport; and

WHEREAS, in the event that the proposed development of the Project may require the relocation of the Airport's static test area run-up pad then the City has agreed that it will be the responsibility of the City to pay for any and all costs and expense of the relocation of said static test area run-up pad to a site to be determined at the sole discretion of the Authority; and

WHEREAS, pursuant to Authority Resolution 04-51, the Authority has agreed, in principal, to cooperate with the City in the satisfaction of certain of the City's Project Contingencies as aforesaid and insofar as they relate to the Authority; and

WHEREAS, pursuant to Authority Resolution 04-51 the Executive Director and/or his designee were authorized to negotiate and, with assistance of counsel, develop appropriate agreement(s) between the Authority and the NJMP to reflect the terms, conditions, responsibilities and obligations of the parties as generally stated above and upon completion of the negotiations and preparation of the aforementioned Agreements, present said Agreements to the Board of Commissioners for their approval after review and advice of Authority Counsel; and

WHEREAS, the said Executive Director and his designee have negotiated and developed a proposed Memorandum of Understanding which sets forth the respective

responsibilities of the Authority and the City with respect to the satisfaction of the Project Contingencies and includes therein a proposed Amendment to Acquisition Agreement (“Amendment to Acquisition Agreement”) and proposed Amendment to Ground Lease (“Amendment to Ground Lease”; the Amendment to Acquisition Agreement and Amendment to Ground Lease are collectively referred to as the “Ancillary Agreements”).

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is authorized to finalize the Memorandum of Understanding with the City to effectuate, subject to the satisfaction of all contingencies set forth therein, the release of the Property under the general terms and conditions and for the purposes stated herein and in the Memorandum of Understanding. Upon the completion of the Memorandum of Understanding, the Executive Director, Chairman and Vice Chairman are authorized to execute said Memorandum of Understanding after review and advice of Counsel; and

BE IT FURTHER RESOLVED, that the Executive Director, upon and subject to satisfaction of each of the terms and conditions of the Memorandum of Understanding, is authorized to finalize the Ancillary Agreements. Upon completion of the Ancillary Agreements the Executive Director, Chairman and Vice Chairman are authorized to execute said Ancillary Agreements after review and advice of counsel.

Resolution 04-60 was moved by Commissioner Koebig and seconded by Commissioner Favre and approved by a roll call vote of 10-0.