Township of Berkeley Heights
Union County, New Jersey
February 9, 2022

Adequate notice of this meeting has been provided by forwarding a copy to the Courier News, Star Ledger and posting on the Township website, at least forty-eight hours prior to the meeting, all in accordance with the Open Public Meetings Act. This meeting will not substantially go past 10:00 p.m.

COUNCIL MEMBERS:
Gentiana Brahimaj
Manuel Couto – Vice President
Paul Donnelly
John Foster
Jeanne Kingsley - President
Jeff Varnerin
Angie Devanney - Mayor

AGENDA FOR SPECIAL PUBLIC MEETING

I. CALL TO ORDER – 6:30 p.m.

II. ROLL CALL

III. FLAG SALUTE

IV. REGULAR AGENDA

V. HEARING ON AGENDA ITEMS ONLY:

Comments are welcome during this portion of the meeting via Zoom: http://zoom.us/s/3575747364; if you need to enter a meeting ID it is: 357-574-7364. Before making a comment, all speakers must identify their name and address. Each speaker is limited to 3 minutes. Written comments may also be submitted in lieu of verbal comments via the zoom chat function prior to the end of the hearing. Your cooperation in adherence to these rules of order will ensure an orderly and respectful meeting.

Alternatively, you may submit written comments in advance of the meeting either via electronic mail (to: aminkoff@bhtwp.com) or by written letter (to: Township Clerk, 29 Park Avenue, Berkeley Heights, NJ 07922), including commenter’s full name and address, which must be received by the Township Clerk by 4:00 P.M. on the date of the Zoom meeting.
VI. NEW BUSINESS – RESOLUTIONS OFFICIAL ACTION WILL BE TAKEN ON THE FOLLOWING:

1. Resolution authorizing certain actions in connection with the Municipal Complex Redevelopment Agreement.

2. Resolution authorizing a contract with Neglia Engineering for Construction Management Services for the Municipal Complex, in an amount not to exceed $50,000.00.

VII. CITIZENS HEARING:
Comments are welcome during this portion of the meeting via Zoom: http://zoom.us/s/3575747364; if you need to enter a meeting ID it is: 357-574-7364. Before making a comment, all speakers must identify their name and address. Each speaker is limited to 3 minutes. Written comments may also be submitted in lieu of verbal comments via the zoom chat function prior to the end of the hearing. Your cooperation in adherence to these rules of order will ensure an orderly and respectful meeting.

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VII. EXECUTIVE SESSION –

IX. ADJOURNMENT

Ana Minkoff, Township Clerk
RESOLUTION

RESOLUTION OF THE TOWNSHIP OF BERKELEY HEIGHTS, IN THE COUNTY OF UNION, NEW JERSEY, AUTHORIZING CERTAIN ACTIONS IN CONNECTION WITH THE MUNICIPAL COMPLEX REDEVELOPMENT AGREEMENT

WHEREAS, on April 22, 2014, the Township Council of the Township of Berkeley Heights (the "Township Council") designated Block 608, Lots 1 and 4, and Block 504, Lots 5 and 6, as shown on the Tax Maps of the Township, including that portion of the Columbus Avenue right-of-way extending from the western limit of Block 504, Lot 6 to the New Jersey Transit property line to the north, and that portion of the Berkeley Avenue right-of-way extending from the New Jersey Transit boundary line to the north to the Park Avenue right-of-way to the south, all within the Township of Berkeley Heights (the "Redevelopment Area"), as a non-condemnation area in need of redevelopment in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"); and

WHEREAS, on June 14, 2016 via the adoption of Ordinance 10-2016, the Township Council duly adopted a redevelopment plan for the Redevelopment Area entitled, "Municipal Complex Redevelopment Plan for the Township of Berkeley Heights", dated as of May 19, 2016 (as the same may be amended and supplemented from time to time, the "Redevelopment Plan"); and

WHEREAS, on December 29, 2017, the Township issued a Request for Proposals for Berkeley Heights Municipal Complex Redevelopment Project (as supplemented from time to time, the "RFP"), seeking an experienced and qualified redeveloper to design, if applicable, and construct the project as described therein; and

WHEREAS, pursuant to the Redevelopment Law, the Redevelopment Plan and the RFP, the project was to include the construction of a redevelopment project on the Redevelopment Area consisting of (1) the demolition/abatement of the existing salt dome and miscellaneous structures, and the construction of a new seventy-two foot diameter salt dome and related site improvements (the "Salt Dome"); (2) the construction of a new 60,975 +/- square foot, three level municipal complex, which includes but is not limited to a new police station, library, community center, administrative offices and associated off-street parking facilities (the "Municipal Complex"), and (3) the abatement and demolition of the existing municipal building and structures and construction of a new commuter parking lot and streetscape improvements (the "Lot Project") (collectively, and as more fully described in the hereinafter defined Redevelopment Agreement, the "Project"), all within the Redevelopment Area which is owned by the Township; and

WHEREAS, in order to implement the development, financing, design, construction, operation and management of the Project, the Township and Epic Management, Inc., or an affiliated entity (sometimes the "Redeveloper" or "Epic") entered into a Redevelopment Agreement dated as of July 11, 2018, as amended by Amendment 1 to the Redevelopment Agreement dated as of December 5, 2018 (together, and along with the Redevelopment Agreement Amendment discussed and defined below, collectively the "Redevelopment Agreement"), which Redevelopment Agreement specifies the rights and responsibilities of the
Township, designates the Redeveloper as redeveloper of the Redevelopment Area as to the Project, and specifies the rights and responsibilities of the Redeveloper with respect to the Project; and

WHEREAS, pursuant to the original Construction Schedule (as defined in the Redevelopment Agreement), the demolition/abatement of the existing salt dome and miscellaneous structures and construction of the Municipal Complex ("Phase 1") was to be completed by February 5, 2020 (the "Phase 1 Completion Date"), and the demolition/abatement of the existing municipal building and construction of the Lot Project ("Phase 2") was to be completed by May 1, 2020 (the "Phase 2 Completion Date" and, together with the Phase 1 Completion Date, the "Original Completion Dates"); and

WHEREAS, the Project described above was not completed by the respective Original Completion Dates; and

WHEREAS, in order to address the failure to complete the Project by the respective Original Completion Dates, the Township and Epic entered into an Amendment No. 2 to Redevelopment Agreement dated and effective July 22, 2020 (the "Redevelopment Agreement Amendment" or "Second Amendment"), which, among other things, bifurcated the time periods before and after the Effective Date thereof, and separately addressed the respective rights and obligations of the Parties in connection with the same. Notably, it also revised the Construction Schedule, providing among things for an October 23, 2020 completion date for the new Municipal Complex, and a December 30, 2020 completion date for the Lot Project; and

WHEREAS, the first time period included the period of July 11, 2018 to, but not including, the Effective Date of the Redevelopment Agreement Amendment ("Time Period One"), with a commensurate reservation by the Parties of all rights with respect to the Original Completion Dates resulting from acts, omissions or events occurring within Time Period One, including any Claims (as defined in the Redevelopment Agreement) by Redeveloper for a change in the Contract Time and the payment of money in connection therewith, and any Township imposition of liquidated damages pursuant to Section 4.05(b) of the Redevelopment Agreement in connection with the failure to complete the Project by the Original Completion Dates; and

WHEREAS, the second time period included the period beginning on the Effective Date of the Redevelopment Agreement Amendment, and running until the Project is Substantially Complete (as defined in the Redevelopment Agreement) ("Time Period Two"), with the revised Construction Schedule and the respective rights and obligations of the Parties in connection with a failure to Substantially Complete that portion of the Project that is not Substantially Complete as of the Effective Date of the Second Amendment (the "Time Period Two Project"), to be governed by the provisions of the Second Amendment; and

WHEREAS, despite entry into the Second Amendment and the expectation that Epic as Redeveloper would achieve Completion of the Project within the timeframes set forth in the revised Construction Schedule contained within the Second Amendment, the Project remains incomplete, and plagued by numerous punch list issues and problems ranging from minor concerns to those which are critical to the functional operation of the Project and/or present imminent safety hazards. Neither Phase 1 nor Phase 2 were completed by the completion dates
set forth in the Construction Schedule, either as initial promulgated or as revised in the Second Amendment. In addition, there has not been meaningful progress on any of the three (3) punch lists prepared in connection with this Project, including on mission critical items required for the public health, safety and welfare; and

WHEREAS, the three (3) respective punch lists for this Project were prepared by the Township’s professionals, as follows: one prepared by Arcari + Iovino dated December 15, 2020, another prepared by KSI Consulting Engineers, LLC dated June 4, 2021, and the third prepared by Harbor Consultants Inc. dated October 27, 2021. These respective punch lists detail the work to be completed. These punch lists include dozens of unaddressed items - several critical ones, including by example (but not limited to):

- Multiple roof leaks throughout the building, occurring regularly and beginning at least prior to December 15, 2020, which are causing additional damage to the building, its furniture, fixtures and equipment and is rendering portions of the buildings non-functional;
- Automatic door operator at the main building entrance which is necessary to comply with Americans with Disability Act requirements and which have risked injury to Township residents and visitors;
- Installation of ladder cage and safety post on roof ladder as required by the contract documents, the absence of which previously led to an on-site worker sustaining serious injury;
- Install security cameras in the parking lot;
- Fix damaged light fixtures;
- Install the wayfinding and the LED signage to be installed near the intersection of Park and Plainfield Avenues;
- Fix the ADA compliant sidewalk sloping and landing areas; and
- Fix uneven flooring in several areas; and

WHEREAS, despite consistent communication from the Township to Epic with respect to the items on these punch lists - and now more than thirteen (13) months since the Arcari + Iovino punch list was first issued - Epic has not performed the remaining punch list work. In many instances, Township staff has had to inject themselves into the construction management process in order to get work completed, including but not limited to:

- Working with the New Jersey Department of Environmental Protection ("NJDEP") to determine the proper safety process for taking down the old asbestos-laden municipal building;
- Hiring a qualified asbestos remediation company to do the work Epic’s subcontractor would not complete without charging the Township significantly more money, and taking more time than necessary (the Township’s hired professional took less than two (2) weeks to do that work, to NJDEP’s satisfaction);
- Ensuring the swale drainage improvements were made; and
- Hiring an outside elevator waterproofer to ensure the elevator was watertight after months of water seeping into the pit, in order to get the elevator approved by the State; and
WHEREAS, the Township has been beyond patient in trying to rectify these outstanding issues with Epic without having to declare a default under the Redevelopment Agreement. However, the history with Epic, and the passage of more than thirteen (13) months from the issuance of the first punch list, and approximately eighteen (18) months since the entry into the Second Amendment, make clear that the exercise of default remedies under the Redevelopment Agreement, as discussed herein, is wholly appropriate in the interests of the taxpayers of the Township.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Berkeley Heights, in the County of Union, New Jersey, as follows:

Section 1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

Section 2. Epic Management, Inc., as Redeveloper, be and hereby is declared in default of the Redevelopment Agreement. Specifically, Epic is in default of Section 3.01(a), Section 3.01(b), Section 4.01(a), Section 4.05, and Schedule C of the Redevelopment Agreement, as most recently amended by the Second Amendment (which included among other things, the revised Construction Schedule). Epic had (and has) an obligation to perform under the Redevelopment Agreement, and to Complete (as such term is defined in the Redevelopment Agreement) the Project consistent with the revised Construction Schedule. To date, Epic has failed to complete such activities, and is therefore declared in default of the Redevelopment Agreement, all as aforesaid. The Township hereby reserves all legal and equitable remedies at its disposal to enforce its rights under the Redevelopment Agreement, as and should that become necessary.

Section 3. Township redevelopment counsel, McManimon, Scotland & Baumann, LLC, be and hereby is authorized and directed to prepare a default letter and notice of default directed to Epic as Redeveloper, which letter and notice shall be consistent with, but not limited to, the facts and recitals set forth in this Resolution, and which may be expanded upon at the discretion of said counsel in consultation with as necessary the Township’s general counsel and Township Administration. Said default letter and notice shall be on written notice not only to Epic, but also, to Travelers Casualty and Surety Company of America, Epic’s performance and payment bond surety in connection with this Project, with whom appropriate Township representatives are hereby authorized to engage in order to address the issues raised in this Resolution, and with the Project.

Section 4. This Resolution shall take effect immediately.

APPROVED this 9th day of February, 2022.

ATTEST:

Ana Minkoff
Township Clerk
A RESOLUTION AWARDING A PROFESSIONAL SERVICES CONTRACT TO NEGLIA ENGINEERING ASSOCIATES FOR CONSTRUCTION MANAGEMENT SERVICES – MUNICIPAL COMPLEX – OWNERS REPRESENTATIVE TOWNSHIP OF BERKELEY HEIGHTS

WHEREAS, the Township of Berkeley Heights is in need of contracting for professional Construction Management Services for the Municipal Complex; and

WHEREAS, the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., requires a resolution authorizing the award of the contract for professional services without competitive bid and that the contract itself must be available for inspection; and

WHEREAS, on February 4, 2022, Neglia Engineering Associates was deemed qualified to provide professional Construction Management Services for the Municipal Complex to the Township of Berkeley Heights as part of a Fair and Open process in accordance with the New Jersey Local Unit Pay-to-Play Law, N.J.S.A. 19:44A-20.5; and

WHEREAS, Neglia Engineering Associates has provided proposal dated February 4, 2022, to provide Construction Management Services for the Municipal Complex; and

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Township of Berkeley Heights that the Mayor of the Township of Berkeley Heights is hereby authorized to execute and attest to an agreement with Neglia Engineering Associates for Construction Management Services for the Municipal Complex- Owner’s Representative, at a fee not to exceed $50,000.00, pursuant to their proposal dated February 4, 2022. This contract is awarded without competitive bids as a "professional services contract" in accordance with N.J.S.A. 40A:11-5(1)(a)(l) of the Local Public Contracts Law and pursuant to a Fair and Open process in accordance with the New Jersey Local Unit Pay-to-Play Law, N.J.S.A. 19:44A-20.5, et seq.; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer has issued a Certificate Available Funds which is incorporated herein by reference, for an amount not to exceed $50,000.00.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately.

APPROVED this 9th day of February, 2022.
CERTIFICATE OF AVAILABILITY OF FUNDS

I certify that there are sufficient legally appropriated funds for the amount of this contract, $50,000.00, in Account # C-04-20-110-201, and that these funds have not been certified as available for any other pending contract.

Eugenia Poulos, Chief Financial Officer