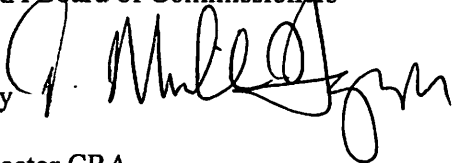




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## MEMORANDUM

**TO:** Honorable Chair and Members, CRA Board of Commissioners  
City of Riviera Beach, Florida

**FROM:** J. Michael Haygood, CRA Attorney 

**COPY:** Scott Evans, Interim Executive Director CRA  
Jonathan Evans, City Manager  
Dawn Wynn, City Attorney

**DATE:** August 20, 2020

**SUBJECT:** Legal Opinion regarding Public Disclosure of Confidential Submitted Material

This memorandum is written in response to your request for a legal opinion as to the propriety of public disclosure of certain information submitted by the proposed developers of Phase II of the Marina Village II Project.

### FACTUAL BACKGROUND

On or about February 2, 2018, the City of Riviera Beach and the Riviera Beach Community Redevelopment Agency issued a Request for Proposal (“RFP”) for the development of Phase II of the Marina Village Phase II (“Project”). On or about July 9, 2018, Tezral Partners, LLC (“Tezral”) and APD Solutions Real Estate Group, LLC (“APD”) submitted separate responses to the RFP. No documents submitted pursuant to the RFP were marked as trade secrets. At the request of the Board of Commissioners of the Agency, on July 22, 2019, Tezral and APD submitted a joint proposal to collaborate as developers for the Project (APD and Tezral will be collectively referred as the “Development Team”). No documents submitted in response to the request for a joint proposal were marked as trade secrets. The City Commission in March, 2020, retained PFM Financial Advisors, LLC (“PFM”) to perform specialized financial and analytical services in relation to the joint proposal from Tezral and APD. In furtherance of the contract, Dr. Hank Fishkind of PFM, requested additional information from the Development Team. In response, the

Development Team in May, 2020, submitted various requested information under the Florida Trade Secret Statute to be exempt from public disclosure. Dr. Fishkind prepared an initial report which was provided to the Development Team. The Development Team through Tezral's attorney objected to the public disclosure of the entire report on the grounds, in part, that the report contained information which it had submitted as trade secrets.

#### APPLICABLE STATUTES AND CASE LAW

Section 812.081, Florida Statutes (2019) defines trade secrets in relevant part as "the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use or is used, in the operation of a business and which provides the business an advantage, an opportunity to obtain an advantage, over those who do not know or use it" and includes "any scientific, technical, or commercial information or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof". The entity who owns the trade secrets must designate the information as such. Section 812.081 (2) provides in relevant part "Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, ... or without authority makes or causes to be made a copy of an article representing a trade secret commit a felony of the third degree". Section 815.045, Florida Statutes makes trade secrets as defined in Section 812.081 exempt from the public records law.

#### ANALYSIS

All information submitted to the Agency and the City submitted to the City and CRA are subject to disclosure to the City Council and Board of Commissioners in their roles as members of the governing body of each public entity regardless if the information is designated as trade secrets. Of course, disclosure of any information designated as trade secrets to the public or anyone not authorized by the Development Team is subject to the criminal penalties of Section 812.081 (2).

Only information submitted to the City/CRA marked as trade secrets are exempt for public disclosure. Accordingly, only the information submitted in May, 2020 would be exempt from public disclosure. The Development Team raised the issue that the report prepared by the Dr. Fishkind contained information that was included in the documents submitted in May, 2020 and the entire report should not be made public. Dr. Fishkind reviewed his initial report and redacted any information gleaned solely from the May, 2020 and issued a redacted report.

#### CONCLUSION

All information submitted by the Development Team is subject to disclosure and review by the Commissioners of the Agency and City Councilmembers. All information submitted to the Agency not marked trade secrets are subject to public disclosure. The information submitted by the Development Team and marked trade secrets is not subject to public disclosure and disclosure is subject to criminal penalties. The redacted report prepared by Dr. Fishkind is subject to public disclosure in that all reference to information contained in the May, 2020 supplemental Development Team information.