FOR CONSIDERATION
August 16, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Buffalo (Erie County) – Canal Side Land Use Improvement Project

REQUEST FOR: Authorization to Enter into Amended Relicensing Settlement Agreement; Authorization to Take Related Actions

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Background

In June 2006, the Corporation entered into the Erie County/City of Buffalo Relicensing Settlement Agreement (the "Settlement Agreement") with the Power Authority of the State of New York ("NYPA"), Erie County, the City of Buffalo, the Buffalo Olmstead Parks Conservancy and the Erie Canal Harbor Development Corporation ("ECHDC") (collectively the "Parties"). In consideration of the Parties support for NYPA's application to the Federal Energy Regulatory Commission for a new license for the Niagara Power Project, NYPA agreed to provide certain financial assistance to the Parties, including, among other assistance, (i) $1,000,000 per year, for the 50 year term of the license, to ESDC for the specific purpose to support economic development and revitalization activities within the vicinity of the Buffalo waterfront; and (ii) a minimum of $2.5 million per year to the Buffalo Waterfront Development Fund established by ECHDC. (The annual payment could exceed $2.5 million in the event that the value of Niagara Project power exceeds wholesale market rates based on a stipulated formula.) The aggregate value of the forgoing payments, over the 50 year term, in actual dollars would equal not less than $175 million, of which an aggregate of $7 million was received in 2007 and 2008.

The New Funding Agreements

Subsequent to entering into the Settlement Agreement, ESDC and ECHDC, with the assistance of Congressman Higgins, re-opened discussions with NYPA in an effort to accelerate the payments that were promised over the 50 year term and thereby increase the present value of the NYPA investment in the Buffalo waterfront. Those negotiations resulted in an agreement that NYPA would pay the balance of the $175 million over a 20 year term. Accordingly, in lieu of the payments referenced above, ECHDC will now receive from NYPA, for waterfront development, the sum of $8.4 million per year for twenty years.

The new funding arrangement, as described above, will be codified in two agreements. It is intended that ESDC and the other Parties enter into an amended Settlement Agreement with NYPA. The amended Settlement Agreement shall require NYPA to pay ECHDC $4.7 million per year for nineteen years commencing in 2010. (The adjusted 2009 payment has been or will be made.) This payment will be in lieu of the obligation to make payments of not less than $3.5 million per year to ESDC and ECHDC for the balance of the 50 year term.

In addition, ECHDC has, or will, enter into an Industrial Incentive Award Agreement with NYPA wherein NYPA will agree to provide ECHDC with an industrial incentive award of $3.7 million per year for 20 years between 2010 through 2019 for the purposes of financing the Canal Side Project.

The new funding agreements are being crafted to ensure that ECHDC will be able to monetize the NYPA revenue streams. At the direction of ESDC, our affiliate, the New York Job Development Authority, authorized the creation of a Local Development Corporation, to be called the Canal Side Local Development Corporation, to issue bonds to raise funds for the Canal Side Project. Those bonds will be secured by the NYPA contractual commitment set forth in the above referenced funding agreements. Current estimates are that the NYPA revenues will generate approximately $105 million (present value) to be used for the Canal Side Project.

ESDC has retained, on behalf of the Canal Side Local Development Corporation, bond counsel (Harris Beach) and bond underwriter (Seibert Brandford Shank and Co.) to arrange for the bond financing. The bonds will be secured solely by the NYPA revenues. Neither ESDC nor ECHDC will have any liability under the proposed bond sale.

Environmental Review

ESD staff has determined that the action, which involves authorization to enter into the amended Settlement and Licensing Agreement, constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project. With regard to the intended use of the funds, the Canal Side Project was the subject of a SEQRA EIS process. The Directors issued a Findings Statement for the Canal Side project at a prior meeting. This prior review addressed all aspects of the Canal Side Project. No further environmental review is required in connection with this action.

Recommendation

Based upon the foregoing, it is recommended that the Directors authorize the Corporation to enter into the amended Settlement Agreement with NYPA and other parties, substantially on the terms set forth above, with such changes as the President of the Corporation deems appropriate and to take such actions as are necessary and appropriate in furtherance thereof.

Attachments
Resolution

August 16, 2010

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RESOLVED, that the Corporation is hereby authorized to enter into an Amendment to the Erie County/City of Buffalo Relicensing Settlement Agreement with the New Pork Power Authority and other parties on the terms and conditions set forth in the materials presented to this meeting and ordered filed with the records of the Corporation with such changes as the President of the Corporation deems necessary or appropriate; and be it further

RESOLVED, that the President of the Corporation or his designee may enter into such agreements and take any and all related actions necessary or appropriate to implement the foregoing resolution.

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