A. City of Rochester – Midtown Redevelopment Infrastructure Capital –
Upstate City-by-City (X373)
May 23, 2011

General Project Plan

Grantee: City of Rochester (the “City”)

ESD Investment: A grant of up to $11 million to be used for a portion of the cost of infrastructure expenses at the Midtown site.

Anticipated Appropriation Source: Upstate City-by-City (re-allocation of a portion of the $55 million appropriation for Midtown)

Project Location: 100 South Clinton Avenue, Rochester, Monroe County

Project Completion: December 2013

Grantee Contact: R. Carlos Carballada, Commissioner of Neighborhood and Business Development
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Project Team:
Project Management: Edward Muszynski
Legal: Stephen Gawlik
Affirmative Action: Helen Daniels
Design & Construction: Marty Piecuch
Environmental: Paul Tronolone

Project Description:

Background
Like many downtowns, Rochester’s has declined considerably during the past 50 years due to the suburbanization of retail shopping and office space, and other land-use factors. The redevelopment of the former Midtown Plaza (“Midtown”), the first downtown enclosed shopping mall in the US, built in 1962, is a transformative project not only for downtown Rochester, but also for the entire region. To date, New York State has committed nearly $56 million to ready the site for development. The City spent over $15 million for acquisition and to relocate the remaining tenants. The next major investment of $38 million in critical infrastructure will drive over $100 million in private investment over the next two years on this once-blighted site. The combined public and planned private investment will strengthen Rochester’s center city as the dynamic cultural, economic, governmental, and institutional center, and anchor of the region.
In Fiscal Year 2008-2009, the State provided a $55 million grant for the asbestos abatement and partial demolition of Midtown. ESD also provided a $900,000 Urban and Community Development Program Grant for master planning and environmental studies. Midtown consisted of 1.5 million square feet of enclosed retail space, several adjoining office buildings and a three-story, 1,800-space underground garage. By 2007, its vacancy rate was 85%. The redevelopment of this site represented a rare opportunity to redefine the heart of downtown Rochester. Subsequently, the City used its eminent domain powers to take ownership of the 8.5-acre site.

The impetus for the State’s funding was a proposal by PAETEC Holdings Corp., a publicly traded communications company headquartered in Rochester, to construct its national headquarters at Midtown if a “shovel-ready” site could be provided. In 2007, PAETEC signed a memorandum of understanding with the City and ESD, and in December 2010, the City and PAETEC executed a property transfer agreement for the headquarters parcel. PAETEC will adapt the former Seneca Office Building to become its 225,000-square-foot headquarters. Separately, Morgan Christa Development announced plans for adaptive reuse of Midtown’s 17-story former office tower into market rate housing with some retail. The multi-parcel Midtown site also required major investments initially estimated at $35.7 million for basic infrastructure.

ESD currently holds five prime contracts totaling approximately $44 million for environmental remediation, asbestos abatement, demolition, and related soft costs. Just over $31 million has been disbursed. These activities are expected to be substantially completed by the end of 2011, and the site will then be turned back over to the City.

An economic study prepared during the preparation of the environmental impact statement suggested that over an eight-to-ten-year period, a fully redeveloped Midtown site would bring approximately 2,000 new jobs (including 1,000 at PAETEC), 370 new residences and possibly a new hotel, for a total development valued at $185 million.

Since 2007, ESD has provided additional assistance to the City of Rochester in the form of six Restore NY grants totaling $17.8 million for uses ranging from the renovation of 10 downtown buildings to demolition of nearly 300 mostly residential structures to create shovel-ready sites. To date, $7,474,388 has been disbursed upon ESD’s confirmation of successful completion of projects.

**The Project**

Once the Midtown site is cleared, the City will undertake a two-year, approximately $38 million infrastructure investment, including the installation of a new street grid, restoration and modification of the underground garage, development parcel preparation/temporary treatment, a new pedestrian tunnel to the garage for PAETEC,
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restoration of the truck service tunnel, utilities, landscaping, open space, and pedestrian corridors. The City has requested that the unused balance (up to $11 million) of the $55 million Upstate City-by-City appropriation for Midtown be awarded to the City to assist with these infrastructure costs.

The City will construct the project in four phases:

- Phase 1 - construct the truck service tunnel, the PAETEC pedestrian tunnel and other site preparations on the PAETEC parcel (to commence in fall 2011);
- Phase 2 - rehabilitate the underground garage (to commence in winter 2011);
- Phase 3 - install a new street grid, utilities and landscaping (to commence in fall 2012); and
- Phase 4 - complete the site with open space and pedestrian corridors (to commence in summer 2013).

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<th>Financing Sources</th>
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Financial Terms and Conditions:

1. An administrative fee of up to 1% of the overall $55 million Midtown Upstate City-by-City appropriation ($550,000) will be paid to ESD from Midtown project #W496 (asbestos abatement, demolition and related work), consistent with ESD’s May 22, 2008 spending plan, to defray the costs of ESD’s administrative and out-of-pocket expenses incurred in connection with the overall Midtown project.

2. The City will be obligated to advise ESD of a material adverse change in its financial condition prior to disbursement.

3. Up to $11 million will be disbursed to the Grantee in three installments as follows:
   a) an Initial Disbursement of an amount equal to 13.6% of the grant ($1.5 million) upon documentation of at least $1.5 million in eligible expenditures and related construction for improvements specified in the PAETEC site preparation agreement and compliance with ESD’s Design & Construction requirements, assuming that all project approvals have been completed and funds are available. No more than 10% soft costs are allowed.
b) a Second Disbursement of an amount equal to 26.0% of the grant ($2,858,200) will be disbursed upon documentation of at least $7 million additional in eligible expenditures and related construction for the truck and pedestrian tunnels and compliance with ESD’s Design & Construction requirements, assuming that all project approvals have been completed and funds are. No more than 10% soft costs are allowed;

c) a Third Disbursement of an amount equal to 60.4% of the grant ($6,641,800), but not to exceed the actual balance or surplus remaining from the overall $55 million Midtown Upstate City-by-City appropriation, will be disbursed upon documentation of an additional $10 million in eligible expenditures and related construction cost for the Midtown garage rehabilitation and compliance with ESD’s Design & Construction requirements, assuming that all project approvals have been completed and funds are available. No more than 10% soft costs are allowed.

Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenses must be incurred on or after April 1, 2008, the start of the New York State fiscal year in which the Midtown Upstate City-by-City Appropriation was authorized, to be considered eligible project costs.

4. The City will agree to defend and indemnify ESD from all claims related to the Midtown Project.

5. ESD may reallocate the project funds to another form of assistance, at an amount no greater than $11 million for this project if ESD determines that the reallocation of the assistance would better serve the needs of the City of Rochester and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.

**Design and Construction:**
The project calls for the phased design and redevelopment of the Midtown site.

Phase 1 includes $1.5 million to design and construct structural foundations and slabs for PAETEC’s headquarters site as well as other site improvements, including up to 10% for soft costs. ESD’s funding represents 100% of this component’s total costs. This component is scheduled to be bid in the summer of 2011 with construction slated to begin in the fall of 2011.

Phase 1 also includes reconstruction of pedestrian and truck tunnels. ESD’s funding for this work is $2,858,200 for hard construction costs. Total hard costs are $5,989,700, excluding a 12% contingency of $718,800. This work will soon be in the final design stage and is scheduled to be let in the fall of 2011. Work is expected to begin in mid fall 2011.
Phase 2 includes rehabilitating the existing three-level, 1,800-car underground parking garage. ESD’s share for construction costs is estimated to be $6,641,800. Total hard costs are estimated at $8,467,900, excluding a 12% contingency of $1,016,100. This work will be in the final design stage soon with the contract expected to be let in the fall of 2011. Work would begin in mid-fall 2011.

Phases 3 and 4, as described in the Project section, will not involve use of ESD funds, though ESD will remain involved in monitoring the project.

LaBella Associates will perform design and construction inspection services for the majority of Phase 1 and all of Phases 2 - 4. The firm is known to Design and Construction (“D&C”) and is qualified to perform the work. Bergmann Associates will design and inspect the PAETEC components of the work. It is also known to D&C and qualified to perform the work. Both firms are headquartered in Rochester.

D&C will review the project in conjunction with its requirements and forms. D&C will attend construction meetings, monitor construction progress, review and approve all change orders/contractor requisitions, and verify that all requirements have been satisfied prior to the approval and release of ESD funds. D&C will also review the completion of construction documents, project bidding and visit the site before funds are disbursed.

Environmental Review:
As an Involved Agency, the Directors issued an Findings Statement pursuant to the State Environmental Quality Review Act (“SEQRA”) and its implementing regulations of the New York State Department of Environmental Conservation for the Midtown Redevelopment Project at their meeting of May 21, 2009. This Findings Statement was based upon the Draft and Final Generic Environmental Impact Statement (“DGEIS” AND “FGEIS”) and Findings Statement issued by the SEQRA Lead Agency, the City of Rochester Director of Zoning. These findings addressed all aspects of the proposed Midtown Redevelopment Project. Therefore, no further environmental review is required in connection with this action.

In addition, because the Midtown Block was determined to be eligible for inclusion on the State and National Registers of Historic Places (“S/NRHP”), ESD and the City consulted with the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”) in accordance with Section 14.09 of the New York State Historic Preservation Act. This consultation resulted in ESD, the City, and OPRHP entering into a Letter of Resolution (“LOR”) on March 2, 2009 outlining stipulations to mitigate impacts to S/NRHP-eligible resources. The City and ESD have complied or are in the process of complying with all stipulations of the LOR.
Affirmative Action:
ESD’s Non-discrimination and Affirmative Action policy will apply. The City is encouraged to use its best efforts to achieve a Minority Business Enterprise participation goal of 7% and a Women Business Enterprise participation goal of 3% of the total dollar value of work performed pursuant to contracts or purchase orders entered into in connection with the construction work related to the project and to include minorities and women in any job opportunities created by the project.

Statutory Basis – Upstate City-by-City Project:
Section 10 Findings – Land Use Improvement Project

1. The area in which the project is to be located is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest sound growth and development of the municipality.
   Due to its decline over several decades and high vacancy rate, the project site meets these conditions.

2. The project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto.
   The project involves the clearing of the site, and plans for a corporate headquarters, housing/mixed uses and other uses still to be determined.

3. The plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole.
   As previously mentioned, PAETEC and Morgan Christa Development, both private entities, are taking the initial lead in developing the site. All capital projects will be subject to applicable building codes or other regulations.

4. That the proposed facilities or project is consistent with any existing local or regional comprehensive plan.
   A master planning document has been developed expressly for the Midtown project. Furthermore, all previous local comprehensive plans have identified the Midtown site as a priority for revitalization.

5. The requirements of Section 10(g) of the Act are satisfied.
   As part of the Midtown project, in 2008-2009, the City of Rochester relocated all remaining commercial and retail tenants to appropriate buildings nearby (except for several tenants who closed their businesses and did not want to be relocated). Therefore, there are no families or individuals currently on the site that would be displaced from the project areas.
Disclosure and Accountability Certifications:
The Grantee has provided ESD with the required Disclosure and Accountability Certifications. Grantee’s certifications indicate that Grantee has no conflict of interest or good standing violations and, therefore, staff recommends that the Corporation authorize the grant to the Grantee as described in these materials.

Attachment: May 22, 2008 Midtown Plaza Redevelopment Spending Plan