

Erie Canal Harbor Development Corp.

ERIE CANAL HARBOR DEVELOPMENT CORPORATION
at the offices of
Empire State Development – Buffalo Regional Office
95 Perry Street, Suite 500
Buffalo, NY 14203

Meeting of the Directors

Monday
February 9, 2015 – 10:30 AM

PROPOSED AGENDA

CORPORATE ACTION

1. Proposed Operation and Maintenance Agreement for a Portion of the Outer Harbor Property - Authorization to Enter into a Lease, Operating and Maintenance Agreement for a Marina Operator and Authorization to Take Related Actions

FOR INFORMATION

2. President's Report – Oral Report

Item 1

Erie Canal Harbor Development Corp.

FOR CONSIDERATION

February 9, 2015

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: Proposed Operation and Maintenance Agreement for a Portion of the Outer Harbor Property

REQUEST FOR: Authorization to Enter into a Lease, Operating and Maintenance Agreement for a Marina Operator and Authorization to Take Related Actions

I. Background

In September of 2013, Governor Andrew M. Cuomo announced a new vision for the dramatic transformation of the City of Buffalo's Outer Harbor waterfront. As part of that vision, in January of 2014, the Board of Directors of the Erie Canal Harbor Development Corporation ("ECHDC") authorized the corporation to acquire property located on Furhmann Boulevard on Lake Erie in the Buffalo Outer Harbor consisting of approximately 354 +/- acres (the "Property") from the Niagara Frontier Transportation Authority. The Property includes a 1,000-slip boat harbor (hereinafter the "Marina"), Gallagher Beach (a non-swimming beach hereinafter "Gallagher Beach") and approximately 150 acres of vacant land (hereinafter "Outer Harbor Land").

Since that time, ECHDC has acquired the full Property and has assumed responsibility for all capital needs. ECHDC has also assumed responsibility for the operations and maintenance of the northern Outer Harbor Land and has entered a long-term operations and maintenance agreement with the New York State Office of Parks, Recreation and Historic Preservation ("State Parks"), which is required to operate and maintain the remaining Marina and Gallagher Beach on the southern portion of the Outer Harbor. In May, Governor Cuomo announced that the property controlled by State Parks would be dedicated as the Buffalo Harbor State Park, a new state park and the first state park in the City of Buffalo.

As part of the land transaction with the NFTA, the NFTA agreed to operate and maintain the Property, including the Marina, for State Parks through November of 2014 and the conclusion of the 2014 boating season. In assessing the significant capital needs and operating requirements of the marina, State Parks staff concluded that, in future boating seasons, an experienced private operator would be better equipped to operate and maintain the Marina and dedicate the appropriate capital resources to improve the facilities. Accordingly, in

September of 2014, as the landowner, ECHDC issued a Request for Proposals for the long-term lease, improvement and operation of the Marina on behalf of and in partnership State Parks so that State Parks could full its operations and maintenance responsibilities under a public-private partnership with a more experienced private operator. It was also hoped that a long-term lease with a private operator would address the Marina's significant capital improvement, for which ECHDC has otherwise assumed responsibility.

In anticipation of the upcoming 2015 boating season, this action seeks approval for ECHDC to enter a long term lease for the improvement, operation and maintenance of the Marina on behalf of ECHDC and State Parks.

II. Contractor Selection Process

On September 16, 2014, ECHDC and State Parks issued a Request for Proposals which was advertised in the New York State Contract Reporter seeking a long term operator for the Marina. A total of four (4) submissions were received by the deadline of November 12, 2014. One of these submissions was legally disqualified for only proposing a one-year operations agreement, leaving three responsive submissions for consideration. Staff from ESD, ECHDC and State Parks evaluated the submissions based on the following criteria: 1) proposed capital improvement plan; 2) proposed operations plan; 3) financial offer; 4) financial feasibility; 5) team qualification; and 6) proposed diversity plan.

Based on a review of the proposals and the interviews conducted by the review team, Safe Harbor Development, LLC (the "Operator") was determined to be the most qualified firm to maintain and operate the Marina. The proposal submitted by Safe Harbor demonstrated a wide range of experience in operating marinas and provided the best blend of experience and financial ability to create destination for boaters and visitors.

Safe Harbor Development, LLC ("Safe Harbor") is wholly-owned by Knoxville, TN-based Darby Campbell, the owner and executive at several entities that have developed and operated marinas, restaurants, and other entertainment and real estate projects. Safe Harbor, which was set up to run Mr. Campbell's marinas, operates six marinas with a total capacity of 2,300 slips including dry and wet storage.

Two public marinas operated by Mr. Campbell and Safe Harbor include the Clarksville Marina which is owned by the City of Clarksville, Tennessee and the Concord Marina owned by Knox County Tennessee. Both marinas are municipally owned, include a restaurant and are considered extremely successful. Because they are operated as municipal facilities, they compare favorably to the Marina and demonstrate the ability of Safe Harbor to operate the project efficiently and reliably.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has: a) considered proposed Operator's ability to perform the services provided for in the proposed contract; and b) consulted the list of offerers determined to be non-

responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed Operator to be responsible.

III. Proposed Transaction

ECHDC will enter into a lease and operating agreement with Operator or an affiliated entity controlled by the Operator for a term of 25 years with two 10 year rights to renew at Operator's option provided the Operator is compliance with terms of the lease. During the base term, base Lease payments will be made to State Parks totaling \$75,000 in year one and escalating to \$90,750 in year 25 of the lease. In addition, Operator shall annually pay State Parks 5% of rent generated from the property, 2% of fuel sales and 1% on any boat sales/services, which are expected to more than double the total rent paid to State Parks.

The lease and operating agreement will also include requirements for the fulfillment of the Operator's proposed capital plan, which includes, among other features dock replacement, slip layout redesign and the expected construction or complete reconstruction of the existing restaurant for a new full-service restaurant on site. In total, Operator's capital plan includes an approximate \$10 million commitment in the first five years of operation. In addition, Operator will be required to pay for any needed dredging of the Marina unless the material is not suitable for disposal in the US Army Corp of Engineers Confined Disposal Facility due to potential contamination of the soils. In such event, the ECHDC and Safe Harbor will agree to share the disposal costs. In any event, testing conducted to date by State Parks has demonstrated that the soil is suitable for disposal in the Army Corps facility. To recoup its capital investment, Safe Harbor will be permitted to increase Marina slip fees at a rate not to exceed an average of 7% per year between years one through five and at a rate of no more than 5% per year thereafter without prior written approval of State Parks.

Finally, the Operator will be required to maintain and operate the Marina in a first class manner consistent with its designation as a State Park. As State Parks has operational control and oversight of the Marina, the Operator will primarily work with State Parks on all matters associated with the Marina. ECHDC's role is expected to be limited to that of lessor.

IV. Non-Discrimination and Contractor & Supplier Diversity

ECHDC's Non-Discrimination and Contactor & Supplier Diversity policies will apply this this project. The Operator shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprises ("MWBE") for any contractual opportunities generated in connection with the project.

V. Environmental Review

Staff has determined that the requested authorization to enter into a lease and operating agreement for a marina operator constitutes a Type II action as defined by Section 617.5(c)26 of the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. The lease and

related agreements are not anticipated to result in any material change in permit conditions or the scope of permitted activities for the marina. As such, no further environmental review is required in connection with the requested authorization.

VI. Requested Action

The Directors are requested to (1) authorize the Corporation to enter into the necessary agreements to effectuate the lease of the Marina as stated in these materials; and (2) authorize the Corporation to take all related actions.

VII. Recommendation

Based on the foregoing, I recommend approval of the attached resolution.

Attachments

Resolution

February 9, 2015

Proposed Operation and Maintenance Agreement for a Portion of the Outer Harbor Property -
Authorization to Enter into Operating and Maintenance Agreement for Marina
Operator and Authorization to Take Related Actions

RESOLVED, that based on the materials presented to this meeting and ordered filed with the records of the Erie Canal Harbor Development Corporation (the "Corporation") relating to Operation and Maintenance of the marina located at the Buffalo Harbor State Park in the City of Buffalo, the Corporation hereby finds Safe Harbor Development LLC to be responsible; and be it further

RESOLVED, the Corporation be and hereby is authorized to enter the necessary agreements with Safe Harbor LLC or its related entities as stated in these Board materials; and to take all related actions, and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designees be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolutions.

* * *