



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

Wednesday
July 25, 2012 - 10:30 AM

REVISED AGENDA

FOR CONSIDERATION

1. Canalside Land Use Improvement Project – Real Property Acquisition – Authorization to Acquire Real Property from the City of Buffalo; and Authorization to Take Related Actions
2. Parcel OH, Buffalo Outer Harbor – Authorization to Enter into a Contract for Construction of Improvements to Parcel OH (Former Site of Cargill and NYPA Ice Boom Parcel) and Associated Infrastructure; Determination of No Significant Effect on the Environment; Authorization to Take Related Actions
3. Sand Sustainability Study at Gallagher Beach and the Former NYPA Parcel – Authorization to Enter Into a Contract for Construction of the Sand Sustainability Study; and Authorization to Take Related Actions
[PLEASE NOTE: This item was withdrawn from consideration at the meeting.]

EXECUTIVE SESSION

4. Procurement of Legal Services – Authorization to Enter into a Contract for Environmental, Land Use and Construction Counsel and Related Litigation Services; and to Take Related Actions

FOR INFORMATION

5. President's Report – Oral Report

FOR CONSIDERATION

July 25, 2012

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: Canalside Land Use Improvement Project - Real Property Acquisition

REQUEST FOR: Authorization to Acquire Real Property from the City of Buffalo; and
Authorization to Take Related Actions

I. The Project

The Canalside Project (the “Project”) being development by the Erie Canal Harbor Development Corporation (ECHDC) consists of over 1 million square feet of commercial (retail, lodging, and office), cultural, and residential space along the Buffalo waterfront that would be designed to emphasize downtown Buffalo’s connection to the Lake Erie waterfront through the construction of a network of interpretive water elements evoking the character and vibrancy of the historic canals that once crossed the area, including segments of the Erie Canal, the Commercial Slip, and the Prime Slip. The Project would provide various year-round offerings and experiences, including restaurants, entertainment venues, retail outlets, cultural attractions, vast public spaces, and increased access to the Buffalo River, appealing to a wide demographic of visitors and residents.

The Project Area is adjacent to the Commercial Slip area and the Naval and Military Park, each recently redeveloped by the Urban Development Corporation d/b/a Empire State Development (ESD), and ECHDC as part of the decades-long effort led by the City, ESD and many other stakeholders to create a vibrant Erie Canal Harbor area. Since its creation, ECHDC has facilitated the next phase of waterfront development by guiding design and development of the Project.

II. Acquisition of Real Property for the Project

The Project is located on approximately 20 acres of vacant or unused land in downtown Buffalo, and is generally bounded by the following streets:

- On the north by Upper Terrace and Exchange Streets and Perry Boulevard;

- On the east by Washington Street and Seymour H. Knox III Plaza;
- On the south by Perry Street and Buffalo River; and
- On the west by Erie Street, Marine Drive, and Pearl and Commercial Streets.

In order to complete the Project as intended, ECHDC needs to acquire various parcels from the City of Buffalo (“City”) within the Project site. The parcels include:

1. Aud Block: bordered by Marine Drive, Main Street, Lower Terrace and Pearl Street. The property acquired in this area includes four small parcels totaling approximately .15 acres bordering the Aud site which is currently owned by ECHDC. Acquisition of these minor parcels will permit ECHDC to fully build-out the historic canals currently be constructed on the Aud site.
2. Donovan Block: bordered by Scott Street, Washington Street, Main Street and Donovan Building. This parcel is approximately .12 acres on the south portion of the Donovan site and borders Scott Street. By acquiring this parcel and combining with the property already controlled by ECHDC, a development ready parcel will be created that will be located north of Scott Street and South of the renovated Donovan Building and the east canal/public space currently being designed by ECHDC. Pursuant to the development agreement entered into with Harbor District Associates, Benderson Development’s affiliate (hereinafter “Benderson”), for development of the former Donovan Office Building, Benderson will be the preferred developer for the new combined parcel.

III. Agreement with the City of Buffalo

The current request to the Board seeks approval to enter into any necessary agreements with the City for acquisition of the five parcels for an amount not to exceed \$120,000 and to acquire the parcels from the City. The amount is the appraised value of the property pursuant to appraisal conducted by Howard P. Schultz & Associates, LLC in November of 2011. The source of funding for the acquisition will be proceeds from the New York State Power Authority Industrial Incentive Award.

IV. Environment Review

The Canalside Project was the subject of a SEQRA EIS process. The ESD Board of Directors issued a Findings Statement for the Project at their meeting of March 25, 2010 and the ECHDC Board of Directors issued Involved Agency Findings on March 12, 2010. These prior reviews and findings addressed all aspects of the Canalside Project, including the acquisition of real property to facilitate the Project’s implementation. Therefore, no further environmental review is required in connection with this action.

V. Recommendation

Based upon the foregoing, the Directors are requested to: 1) authorize the Corporation to acquire the real property described in these materials in an amount not to exceed \$120,000; and 2) take all related actions.

VI. Attachments

Resolution

July 25, 2012

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Canalside Land Use Improvement Project
- Real Property Acquisition – Authorization to Acquire Real Property from the City of Buffalo;
and Authorization to Take Related Actions

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Erie Canal Harbor Development Corporation (the “Corporation”), the Corporation is hereby authorized to acquire real property described in these materials from the City of Buffalo for an amount not to exceed One Hundred Twenty Thousand Dollars (\$120,000) on the terms and conditions set forth in the materials; and be it further

RESOLVED, that the President of ECHDC or his designee(s), be and the same hereby is, authorized in the name of and on behalf of the ECHDC to enter in any such agreements and take any and all actions necessary or appropriate to implement the foregoing.

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Erie Canal Harbor Development Corp.

FOR CONSIDERATION

July 25, 2012

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: Parcel OH, Buffalo Outer Harbor

REQUEST FOR: Authorization to Enter into a Contract for Construction of Improvements to Parcel OH (Former Site of Cargill and NYPA Ice Boom Parcel) and Associated Infrastructure; Determination of No Significant Effect on the Environment; Authorization to Take Related Actions

I. Contract Summary

Contractor: Keleman – Bauer Construction, Inc. d/b/a Edbauer Construction
2790 Clinton Street
West Seneca, New York 14224

Contract Term: 180 Calendar Days from Notice to Proceed

Contract Amount: Not to exceed \$2,799,200 plus an additional \$559,840.00 contingency (20%) to cover unknowns due to known petroleum contamination and other underground anomalies that may be encountered.

Funding Source(s): NYPA Relicensing Agreement

II. Background

The Erie Canal Harbor Development Corporation (“ECHDC”) seeks authorization to enter into a Contract with Keleman – Bauer Construction, Inc. d/b/a Edbauer Construction. ECHDC solicited Construction Bids for the construction services to provide the public amenities that will be installed on Parcel OH. Parcel OH is made up of the Cargill Parcel that ECHDC purchased back in 2008. The balance of the site is from the Former NYPA parcel that housed the Ice Boom until it was relocated to a new site. The NYPA parcel was recently acquired from the New York Power Authority as part of the re-licensing agreement. The Outer Harbor advisory group has recommended that the 20+/- acres of land become shovel ready and have public access. Work

is to include shoreline enhancements, removal and disposal of misc. concrete slabs and foundations, installation of a soil cap over the entire site, closure of a 5000 gallon underground tank, excavation of petroleum contaminated soil, construction of landscape features including walking paths, installation of site utilities and site lighting, and the rehabilitation of an existing building into a comfort station and storage. The plans and specifications dated June 2012 along with the issuance of (3) addendums were developed by LiRo Engineers with offices at 690 Delaware Ave, Buffalo, New York.

III. Contractor Selection Process

On June 5 2012, ECHDC advertised a Request for Proposal for the construction of improvements at Parcel OH in the New York State Contract Reporter. A total of seven (7) submissions were received on June 26, 2012. ECHDC received a letter from Scott Lawn Yard Inc. on June 27th stating that they had found a bid error in the submitted proposal to ECHDC and asked if it could withdraw the submitted bid. This letter was shared with ESD Legal and is has been determined that ECHDC should allow Scott Lawn Yard to withdraw its bid. ECHDC and LiRo interviewed the next lowest three bidders on June 29th and it recommended that ECHDC award the contract to Keleman – Bauer Construction, Inc. d/b/a Edbauer Construction, who was found to be the lowest responsible bidder. All bid alternatives are included in the contract amount except No. 2 which was deleted in a bid addenda. The following are the results:

Contractor	Base Bid	alt.#1 dock	Alt. #3: 1 yr maintenance	Alt. 4-9 shoreline enhancements	total
Scott Yard Lawn	\$1,979,434.00	\$214,000.00	\$15,000.00	\$162,600.00	\$2,371,034.00
EDBauer Constr.	\$2,256,200.00	\$230,000.00	\$48,000.00	\$265,000.00	\$2,799,200.00
Yarussi Constr.	\$2,533,490.00	\$235,600.00	\$53,600.00	\$134,100.00	\$2,956,790.00
Mark Cerrone Constr.	\$2,561,498.00	\$236,515.00	\$30,274.00	\$160,200.00	\$2,988,487.00
Pike Constr.	\$3,098,093.41	\$286,000.00	\$53,000.00	\$113,000.00	\$3,550,093.41
Anastasi	\$3,229,128.00	\$255,726.27	\$25,986.13	\$125,439.36	\$3,636,279.76
Accadia Constr.	\$3,269,793.00	\$281,000.00	\$19,500.00	\$160,000.00	\$3,730,293.00
Engineers Est.	\$ 2,977,910.00	\$350,130.00	\$120,000.00	\$221,000.00	

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation’s policy related thereto, staff has; a) considered proposed contractor’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 contractor to be responsible.

IV. Scope of Work

Erie Canal Harbor Development Corporation solicited bids for the construction of a shovel ready site complete with public access and the public amenities for Parcel OH. This project will include:

1. **Shoreline Debris Removal:** The existing shoreline is protected by a variety of materials, primarily consisting of demolition debris in the form of marble, reinforced concrete and brick. However, over time some stone has been placed on the shoreline to enhance the protection provided by the construction debris. Additional protection is provided by what remains of constructed shoreline protection from past activities at the site, including portions of stone and concrete walls. Finally, the shoreline is covered with garbage, tarps, bottles, driftwood, etc. and materials formerly used on site, such as steel cables for tying off ships docking at the former site facilities, exposed railroad tracks and ties, and exposed utility piping. The Contractor shall remove and dispose of all items described herein and elsewhere in the Contract Documents in accordance with all Federal, state and local laws and regulations.

In addition to the removal activities described above, the Contractor shall breakup/demolish in-place portions of walls constructed of concrete and stone remaining in place from previous site uses, as well as areas where the shoreline has washout leaving overhangs of the site surface material (primarily slag).

Shoreline Protection and Enhancement: The Contractor shall supply and install revetment stone as described herein and elsewhere in the Contract Documents. Revetment stone placement will be selective in nature below the Lake Erie ordinary high water elevation to fill in where a substantial amount of debris was removed or to enhance the remaining shoreline protection. Above the Lake Erie ordinary high water elevation revetment stone will be placed to bring the shoreline grade up to the cover elevation at the top of bank and as shoreline protection enhancement. In certain areas, namely the remaining concrete wall and concrete boat moorings, additional revetment stone will be placed to provide protection against washout around these features.

2. **Site Grading and Cover Placement:** The site shall be re-graded in accordance with the Contract Documents. Twelve (12) inches of clean material will be placed as a cover over the site with a layer of geo-textile placed beneath the cover layer. The soil cover will consist of on clean off-site borrow soil and top soil. All material cut in the process of grading the site, unless otherwise noted in the Contract Documents, shall be reused as subsurface fill to meet site grading requirements.

Additional imported fill may be required to meet proposed grades. Imported borrow fill for Cover or additional fill shall be tested and shown to be environmentally clean (i.e., in compliance with NYSDEC Part 375 restricted Residential Soil Cleanup Objectives) and to meet the source and geotechnical requirements of these specifications. The Contractor may encounter concrete building foundations during the course of grading the site. These shall be removed to the extents noted in the Contract Documents and as necessary to meet the required grades.

3. Asphalt Work: The site is being used to provide waterside access to the public and to connect to an existing trail system in the vicinity of the site. Waterside access will be provided through the construction of shared use asphalt trails throughout the site. In addition, limited access will be provided for vehicles through an asphalt driveway and small parking area. The Contractor shall supply and install all asphalt pavement as required by the Contract Documents.
4. UST Removal: There exists on site a 5,000 gallon underground fuel storage tank (UST). The Contractor shall remove and dispose of the UST and all appurtenances and piping in accordance with all Federal, state and local laws and regulations.
5. Petroleum-contaminated Soil Removal: Historical records indicate that there were other UST's located on site. The approximate locations of these USTs and associated piping are provided in the Contract Documents. Preconstruction investigations found no tanks existing in these areas. The Contractor shall determine if petroleum contaminated soil exists in these locations and in areas adjacent to the 5,000 gallon UST noted in item 6 above. If petroleum contaminated soil is discovered, the Contractor shall remove and dispose of the petroleum contaminated soil in accordance with all Federal, state and local laws and regulations. Petroleum contaminated soil shall not be reused on site.
6. Landscape Elements and Plantings: In coordination with the grading operations the Contractor shall construct landscape features that include an "overlook mound", "radial berms" and several bio-swales.

The bio-swales will be used as a decorative planted site element and as part of the on-site drainage system. It is anticipated that drainage will run from the east to west through the bio-swales and drainage piping, and outfall in the shoreline planting feature. The Contractor shall provide and install plantings in these and other areas throughout the site in accordance with the Contract Documents, as well as the site drainage elements connecting these features that include all drainage piping and associated items. In the vicinity of the Shoreline Planting

Feature (see item 9 below) will be the drainage outfall that will be constructed separately from the Shoreline Planting Feature.

7. Supply/Install Site Features: As part of the site there will be several natural and prefabricated recreational items that will allow for additional recreational use of the site. The prefabricated items include a gazebo, pedestrian bridges, wind sculptures, children's slide, climbing rocks, and benches. The Contractor shall supply and install the prefabricated elements in accordance with the Contract Documents. Several of these prefabricated items will require foundations as part of their installation. The Contractor will be responsible for the design, supply and construction of these foundations in accordance with the Contract Documents.

Natural features include flagstone stepping stones, driftwood, stacked boulders, stone benches and collected marble display. The ECHDC has placed on site large stones to be used for this project. Included in this Work shall be moving and placing these stones throughout the site. Unless otherwise noted, the Contractor shall provide and install all natural features in the Contract Documents.

8. Supply/Install Lighting and Utilities: New water service to the existing building will be installed from the main on Fuhrmann Boulevard and will require tapping into the existing main and in pavement waterline installation on Fuhrmann Boulevard. Coordination with the City of Buffalo will be required. A new connection to the existing on-site sanitary sewer will be made in accordance with the Contract Documents.

Existing electric and phone service will be moved underground with a connection to the building. Coordination with the appropriate utilities will be required. New parking and driveway lighting will be installed in accordance with the Contract Documents.

9. Rehabilitate Building/Comfort Station: An existing metal building currently used for storage will be rehabilitated and converted to a building used for storage and public restroom and is denoted as the comfort station in the Contract Documents. An existing internal office area having concrete masonry unit (CMU) walls will be demolished. All mechanicals and finishes will be removed and disposed of to prepare the building for rehabilitation. New CMU walls and associated foundations will be constructed, as well as all finishes, equipment and mechanicals for the new comfort station. The ceiling for the new comfort station will be constructed so as to allow storage above the comfort station. A replacement sectional door and man door will be installed.

A mechanical/service room will be constructed to hold all the mechanical equipment and provide a storage area for cleaning supplies for the comfort station. Water service, electric service, plumbing and HVAC will be included in the Work to construct the comfort station.

The exterior metal cladding and metal roof will be removed and disposed of. The metal roof will be replaced in-kind with new metal panels meeting current code requirements and meet recommendations of the building manufacturer, Star Building Systems. The exterior will be clad in brick and a new entrance canopy will be installed to provide cover for the entrances into the comfort station.

10. Landscape Maintenance Contract: It is important that the landscaping be maintained to make certain that, to the extent possible, the plantings can continue to grow in the environment along the shoreline. The Contractor, as part of this Work, will provide maintenance of the site landscaping for a period of one full growing season (full year) following final landscape installation and acceptance. This will include monitoring the new landscape on a regular basis and taking all steps necessary to assure the successful growth and survival of all plantings in the project area similar to a typical out-sourced commercial maintenance contract. The Contractor shall provide the necessary manpower and resources throughout the following growing season to assure successful establishment of all plantings on the project. General maintenance responsibility is to include watering, weeding (removal of invasive plantings), pruning of trees and shrubs, protection from insects and diseases, organic fertilizing and similar operations as needed to ensure normal growth and good health for live plant material. During watering operations under this work, the Contractor may access the Owner's water source for the Contractor's watering equipment.

The Contractor shall perform the work with equipment that will not damage the landscaping or asphalt trails on the site. Any damage to the Work shall be repaired by the Contractor at no additional cost to the Owner.

11. Dock Structure: The project will include construction of a steel, aluminum and wooden dock structure. The work for this item will include an in water steel structure secured piles, an aluminum gangway, a floating wood dock structure, a concrete gangway support that is founded on piles and a concrete walk connecting the parking lot to the gangway support. Furthermore, this work will include installation of light and light pole located north of the dock support, as well as associated conduit and wiring.

This project is intended to undertake an initial phase of development at the site to accommodate year round use.

V. Contract Term, Price and Funding

This contract is a lump sum contract inclusive of all work as called out in the projects plans and specifications dated June 2012 along with (3) addendums that were provided during the bidding period. The project is slated to begin September 1, 2012 and be completed 180 calendar days from the Notice to Proceed date.

The total contract price is in an amount not to exceed \$3,359,040, which includes a 20% contingency. Funding will be the NYPA Relicensing Agreement.

VI. Non-Discrimination and Contractor & Supplier Diversity

ECHDC's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. The Contractor shall be required to: (i) solicit and utilize Minority and Women Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with the Project and (ii) use Good Faith Efforts to achieve an overall MWBE Participation Goal of 33%. The overall goal shall include a Minority Business Enterprise ("MBE") Participation Goal of 22% and a Women Business Enterprise ("WBE") Participation Goal of 11%, related to the total value of the contract.

The Contractor has submitted the following list of sub-contractors in order to demonstrate how they intend to meet the M/WBE participation goals for this project. The following were included with the Contractor's bid submission:

Ideal Concrete	\$46,300.00	WBE
Pavilion Drainage Supply	\$61,710.00	MBE
Dig It	\$235,300.00	WBE
Fisher Assoc.	\$20,900.00	WBE
Buffalo Concrete Products	\$41,392.00	WBE
Iroquois Bar Corp.	\$5,000.00	MBE
Call Associates	\$43,000.00	MBE
Willcore Contracting	\$509,770.00	MBE

For a total of \$343,892.00 WBE 12.3%
\$619,470.00 MBE 22.1%

VII. Environmental Review

The Erie Canal Harbor Development Corporation, as lead agency, has completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act and the implementing regulations of the New York State

Department of Environmental Conservation. This review, which was coordinated with the involved agencies due to the project's Type I classification, found that the proposed project would not result in significant adverse impacts on the environment. Therefore, staff recommends that the Directors make a Determination of No Significant Effect on the Environment.

VIII. Requested Action

The Directors are requested to: (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize the Corporation to enter into a contract with Keleman – Bauer Construction, Inc. d/b/a Edbauer Construction in an amount not to exceed \$3,359,040 which includes a twenty percent contingency; and (3) authorize the Corporation to take all related actions.

IX. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

X. Attachments

Resolution

July 25, 2012

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Parcel OH, Buffalo Outer Harbor
Authorization to Enter into a Contract with for Construction of Improvements to Parcel OH
(Former Site of Cargill and NYPA Ice Boom Parcel) and Associated Infrastructure; Determination
of No Significant Effect on the Environment; Authorization to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the
“Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the
Corporation hereby finds Keleman – Bauer Construction, Inc. d/b/a Edbauer Construction to be
responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Keleman –
Bauer Construction, Inc. d/b/a Edbauer Construction in an amount not to exceed Two Million
Seven Hundred and Ninety Nine Thousand and Two Hundred Dollars (\$2,799,200) plus a
contingency of Five Hundred Fifty Nine Thousand and Eight Hundred Forty Dollars (\$559,840)
for a total contract amount not to exceed Three Million Three Hundred Fifty Nine Thousand
and Forty Dollars (\$3,359,040) for the purposes and services, and substantially on the terms
and conditions, set forth in the Materials; and be it further

RESOLVED, that based on the materials submitted to the Directors with respect to the Parcel
OH project, the Corporation hereby determines that the proposed action will not have a
significant effect on the environment; and be it further

RESOLVED, that the President of the Corporation or his designee 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 resolution.

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