



**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  
September 12, 2012 - 12:00 PM

PROPOSED AGENDA

FOR CONSIDERATION

1. Designation of Chairman - Authorization to Designate Chairman
2. Canalside Land Use Improvement Project - Utility Easement - Authorization to Grant a Utility Easement to the Niagara Mohawk Power Corporation; and 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

FOR INFORMATION

4. President's Report – Oral Report

# Erie Canal Harbor Development Corp.

## FOR CONSIDERATION

September 12, 2012

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: Designation of Chairman

REQUEST FOR: Authorization to Designate Chairman

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## BACKGROUND

In accordance with the Erie Canal Harbor Development Corporation's (the "Corporation" or "ECHDC") by-laws, all Directors of ECHDC are appointed by the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), as sole shareholder, based on the recommendation of the Governor. On August 29, 2012 the Governor recommended Robert Gioia as a member of the ECHDC Board. Accordingly, on August 29, 2012, ESD formally appointed Mr. Gioia to the Corporation's Board.

Pursuant to the by-laws of the Corporation, the chairman of the Corporation is designated by the Directors. It is proposed that Robert Gioia be designated as Chairman of the Corporation replacing Sam Hoyt, who previously served in that position as Interim Chairman, until such time as a permanent Chairman could be named.

## REQUESTED ACTION

The Directors are requested to designate Robert Gioia as Chairman of ECHDC, effective immediately.

## ATTACHMENT

Resolution

September 12, 2012

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – Designation of Chairman - Authorization  
to Designate Chairman

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RESOLVED, that in accordance with the by-laws of the Corporation, Robert Gioia is hereby  
designated as Chairman of the Corporation.

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# Erie Canal Harbor Development Corp.

## FOR CONSIDERATION

September 12, 2012

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: Canalside Land Use Improvement Project - Utility Easement

REQUEST FOR: Authorization to Grant a Utility Easement to the Niagara Mohawk Power Corporation; and Authorization to Take Related Actions

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### 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. Easement

Currently under construction on the site of the former Memorial Auditorium is the public canal system. This construction includes Lake Erie-level water features to be installed on the Aud Block interpreting the alignment of the historical Erie Canal and Commercial Slip, respectively which once crossed the Aud Block. In order to provide electrical service to the project site, a utility easement is needed by the Niagara Mohawk Power Corporation (“NMPC”) to permit installation of high voltage cabling lines running along Marine Drive to the electric vault located on the Aud site.

The easement consists of two 20 foot by 50 foot wide sections as shown on Exhibit "A". The proposed easement would prohibit building construction on the section and grants NMPC the right to access the property to inspect, maintain and repair the electric cabling as necessary.

### III. Compliance with the Public Authorities Accountability Act

Pursuant to the provisions of the Public Authorities Accountability Act ("PAAA"), ECHDC is required to dispose of property through a competitive process unless a specific statutory exception applies. In the present case, the relevant exception permits negotiated transactions when the value of the property interest disposed of is less than \$15,000. In the present case, the appraised value of the easement granted to NMPC is \$5,000, as determined by an independent appraiser.

Furthermore, as the transfer will be to NMPC for nominal consideration and therefore for below fair market value, the PAAA requires that the transfer is within the purpose, mission or governing statute of the public authority. As the granting of the easement is necessary to provide electric service to the Canalside Project, the transfer will support the mission of ECHDC, namely development of the City of Buffalo's inner harbor.

The following information is provided for the below market transfer pursuant to the PAAA:

- (i) A full description of the asset: two 20 foot by 50 foot sections as shown in Exhibit "A".
- (ii) An appraisal of the fair market value of the asset: Pursuant to an independent appraisal, the value of the property right granted to NMPC is \$5,000.
- (iii) A description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved a required by the transfer, the benefits, if any to the communities in which the asset is situated as are required by the transfer: As more fully described in these materials, the public benefit expected includes permitting electric service that is necessary for the Canalside Project.
- (iv) A statement of the value to be received compared to the fair market value: The transfer will not provide any monetary compensation to ECHDC but will provide electrical service to the site and allow ECHDC to operate and maintain the site.
- (v) The names of the private parties participating in the transfer: Niagara Mohawk Power Corporation. No other private parties are participating in the transaction.
- (vi) The names of the private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used: No other offer has been received.

The goal of the transfer is provide necessary electric service which is required in order for ECHDC to operate and maintain the project site. As there is easement is needed by NMPC to install and maintain the electric service, there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.

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/disposition of real property interests 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 grant an easement to the Niagara Mohawk Power Corporation as described in these materials; and 2) take all related actions.

Attachments

Resolution  
Exhibit "A" – Description of Easement

September 12, 2012

ERIE CANAL HARBOR DEVELOPMENT CORPORATION - Canalside Land Use Improvement Project  
– Authorization to Grant a Utility Easement to the Niagara Mohawk Power Corporation; and  
Authorization to Take Related Actions

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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 grant an easement to the Niagara Mohawk Power Corporation as described in these materials 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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FOR CONSIDERATION

September 12, 2012

TO: The Directors

FROM: Thomas P. Dee

SUBJECT: Sand Sustainability Study at Gallagher Beach and the Former NYPA Parcel

REQUEST FOR: Authorization to Enter Into a Contract for Construction of the Sand Sustainability Study; and Authorization to Take Related Actions

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I. Contract Summary

Contractor: Nature's Way Environmental  
3553 Crittenden Road  
Alden, New York 14004

Contract Term: 90 Calendar Days from Notice to Proceed

Contract Amount: Not to exceed \$299,600.00 (plus \$59,920.00 20% contingency to cover unknowns)

Funding Source(s): NYPA Relicensing Agreement

II. Background

The Erie Canal Harbor Development Corporation ("ECHDC") seeks authorization to enter into a Contract with Nature's Way Environmental to provide Construction Services for the construction of the Sand Sustainability Study at Gallagher Beach which is currently owned by the NFTA and the site of the former NYPA Ice Boom which is currently owned by ECHDC, both parcels located on the Buffalo Outer Harbor. ECHDC has been asked to provide a sand sustainability test at these locations to see if construction of a sand beach is possible at these two locations. Staff met with the ACOE and the ACOE suggested doing a study to see if the area was able to support a sand beach at these two locations. ECHDC contracted with URS at 77 Goodell Street Buffalo New York to provide the design necessary for this construction. URS also prepared necessary permit application which would be issued through the ACOE, New York State Department of Conservation and New York State Coastal Review.

III. Contractor Selection Process

On June 7, 2012 ECHDC advertised for Request for Proposal for the Construction of Public Canal Environments in the June 7, 2012 issue of the New York State Contract Reporter. A total of two (2) submissions were received on June 28, 2011 and read publically. ECHDC, and URS interviewed the low bidders on July 2, 2012 and it was the recommendation of URS to award the Contract to Nature’s Way Environmental who was found to be the lowest responsible bidder. The following are the results:

<b>Contractor</b>	<b>Base Bid</b>
Nature’s Way	\$299,600.00
Pinto Constr.	\$319,450.00

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 Construction Bids to accomplish the Gallagher Beach Sand Sustainability Study (GBSSS) located on the Outer Harbor in Buffalo New York. Construction Documents were developed by URS with office in Buffalo New York. The Gallagher Beach Sand Sustainability Study will include placement of a total of approximately 1,400 cubic yards of sand in two locations at Gallagher Beach (owned by NFTA) and one location at the former NYPA parcel on Fuhrmann Blvd. At each location, the sand will be placed in a continuous layer approximately 1 foot thick in each test plot up to 100 feet in width by up to 150 feet in length. The sand will be placed from the upland end of the beach into the water to a depth of approximately 2-3 feet. Of that volume, approximately 950 cubic yards (divided between the three test plots) will be placed below the ordinary high water mark (el. 573.4 IGLD). The sand will be surveyed immediately after placement in the Fall of 2012 and then again in the Spring of 2013. It will be inspected at least monthly throughout the winter as weather conditions permit. The results of the field test will be used to help determine the next step in the beach development process. Such steps might include full scale beach development, or additional tests to determine if modifications to the sand placement design might increase its sustainability.

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 (1) addendums that were provided during the

bidding period. The project is slated to begin September 1, 2012 and be completed 90 calendar days from the Notice to Proceed date.

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 Enterprise ("MWBE") for any contractual opportunities generated in connection with the Project and (ii) use Good Faith Efforts to achieve an overall MWBE Participation Goal of 30%. The overall goal shall include a Minority Business Enterprise ("MBE") Participation Goal of 20% and a Women Business Enterprise ("WBE") Participation Goal of 10% related to the total value of the contract.

Nature's Way Environmental is a certified Women-Owned Business Enterprise in the State of New York. They have indicated they will be using Iroquois Bar as their MBE vendor to meet the required Minority Business Enterprise goal on this project.

VII. Environmental Review

The Directors made a Determination of No Significant Effect on the Environment for the proposed project at their meeting of June 13, 2012. This determination addressed all aspects of the proposed Gallagher Beach Sand Sustainability Study. Therefore, no further environmental review is required in connection with this action.

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 Nature's Way Environmental for a total contract price not to exceed \$359,520 which includes a twenty percent contingency; and (3) to take all related actions.

IX. Recommendation

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

XI. Attachment

Resolution

September 12, 2012

ERIE CANAL HARBOR DEVELOPMENT CORPORATION – 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

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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 Nature’s Way Environmental to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract Natures Way Environmental in a base contract amount of \$299,600.00 plus a contingency of \$59,920.00, for a total contract price not to exceed \$359,520 for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; 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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