



ATLANTIC YARDS COMMUNITY DEVELOPMENT CORPORATION

Meeting of the Directors

Tuesday
March 22, 2022 at 3:00 pm

PROPOSED AGENDA

CORPORATE ACTIONS

1. AYCDC FY 2022-23 Operating Budget Proposal – Approval of the Corporation’s Operating Budget for the Fiscal Year 2022-23 (April 1, 2022 – March 31, 2023)

FOR CONSIDERATION

2. Advisement on Procurement of Environmental Consulting Services - Recommendation that ESD Directors Amend the Contract With Henningson, Durham & Richardson, Architecture and Engineering P.C. to Continue to Provide Mitigation Monitoring Consulting Services in Connection with the Atlantic Yards Land Use Improvement and Civic Project; and Authorization to Take Related Actions

FOR INFORMATION

3. Corporate Update (Oral Report)
 - a. Community Relations Update
 - b. Construction Update
4. Public Comments – Submitted in writing to AYCDCBdMtg@esd.ny.gov by 10:00 am on Tuesday, March 22, 2022

Item 1



**Atlantic Yards
Community
Development
Corporation**

A Subsidiary of Empire State Development

FOR CONSIDERATION

March 22, 2022

TO: The Directors

FROM: Tobi Jaiyesimi

SUBJECT: Atlantic Yards Community Development Corporation
FY 2022-23 Operating Budget Proposal

REQUEST FOR: Approval of the Corporation's Operating Budget for the Fiscal Year ("FY")
2022-23 (April 1, 2022 – March 31, 2023)

I. Background

New York State Finance Law requires that prior to the commencement on April 1 of each new fiscal year, the Directors of Atlantic Yards Community Development Corporation ("AYCDC" or the "Corporation") adopt an annual operating budget. Attached for your review and approval is the proposed AYCDC operating budget (the "Operating Budget") for FY 2022-23 (April 1, 2022 – March 31, 2023).

II. AYCDC FY 2022-23 Operating Budget Summary

The Operating Budget proposes a total of \$211,953 in personal services (salaries and fringe benefits for two employees) and a total of \$38,047 in non-personal services (primarily insurance and occupancy expenses). The total of all budgeted personal and non-personal expenses for FY 2022-23 is \$250,000.

The Corporation's FY 2022-23 operating budget will be funded in its entirety from an imprest account funded by project developers and maintained at and by Empire State Development.

III. Environmental Review

Approval of the Corporation's Operating Budget for FY 2022-23 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 this request.

IV. Recommendation

Based upon the foregoing, the Directors are requested to ratify and approve the Corporation's proposed FY 2022-23 Operating Budget in the amount of \$250,000.

V. Attachments

Resolution
AYCDC – FY 2022-23 Operating Budget

March 22, 2022

ATLANTIC YARDS COMMUNITY DEVELOPMENT CORPORATION – AYCDC FY 2022-23 Operating Budget – Approval of the Corporation’s Operating Budget for FY 2022-23 (April 1, 2022 – March 31, 2023)

BE IT RESOLVED, based on the materials presented at this meeting and ordered filed with the Corporation (the “Materials”), the Corporation’s proposed FY 2022-23 Operating Budget is hereby approved, and adopted in all respects, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, that the Officers of the Corporation and/or appropriate designees, and each of them hereby are, authorized and directed to take all actions and execute all documents in connection with the establishment and implementation of the Corporation’s Budget; and be it further

RESOLVED, that the Officers of the Corporation and/or appropriate 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 resolution.

* * *

Empire State Development
Atlantic Yards Comm Dev. Corp.
Operating Budget Plan FY 2022-23

	Board Approved Budget FY 2021-22	Proposed Budget Plan FY 2022-23
<u>PERSONAL SERVICES (PS)</u>		
Salaries	\$ 153,589	\$ 153,589
Fringe Benefits	58,364	58,364
TOTAL PERSONAL SERVICES	<u>\$ 211,953</u>	<u>\$ 211,953</u>
HEADCOUNT	2	2
<u>NON-PERSONAL SERVICES (PS)</u>		
Professional Fees		
Legal / Accounting Fees	\$ 0	\$ 0
Consultant Fees	0	0
Total Professional Fees	<u>\$ 0</u>	<u>\$ 0</u>
Other Non-Personal Services		
Employee Travel & Meals	\$ 0	\$ 0
Online Services/Training/ Conferences/Subscriptions	0	0
Office Occupancy Expenses	12,250	12,250
Insurance	20,000	20,000
Outside Services and Expenses	5,797	5,797
Telephone/Fax/Internet	0	0
Office Supplies and Expenses	0	0
Computers/Software/Equipment	0	0
Total Other Non Personal Services	<u>\$ 38,047</u>	<u>\$ 38,047</u>
TOTAL NON-PERSONAL SERVICES (NPS)	<u>\$ 38,047</u>	<u>\$ 38,047</u>
TOTAL PS & NPS	<u><u>\$ 250,000</u></u>	<u><u>\$ 250,000</u></u>

Item 2



FOR CONSIDERATION

March 22, 2022

TO: The Directors

FROM: Tobi Jaiyesimi

SUBJECT: Advisement on Procurement of Environmental Consulting Services

REQUEST FOR: Recommendation that ESD Directors Amend the Contract With Henningson, Durham & Richardson, Architecture and Engineering P.C. to Continue to Provide Mitigation Monitoring Consulting Services in Connection with the Atlantic Yards Land Use Improvement and Civic Project ("Project"); and Authorization to Take Related Actions

I. Contract Summary

Consultant: Henningson, Durham & Richardson, Architecture and Engineering, P.C ("HDR" or "Consultant")

Scope of Services: HDR would continue to provide Owner's Representative services for mitigation monitoring in connection with the required environmental commitments for the Atlantic Yards Project.

Current Contract Term/Amount: The current contract of \$6,645,000 expires May 2022.

Amendment Term/Amount: Two (2) year term with one (1) year option at a cost not to exceed \$500,000 per year.

Total New Contract Term/Amount: Amended contract would expire May 2024 with a total cost of \$8,145,000.

Funding Source: Imprest Account (Funded by Project developer)

II. Background

The General Project Plan was affirmed in 2006, and modified in 2009, 2014 and 2019. The Atlantic Yards Land Use Improvement and Civic Project (the "Project") is a 22-acre site that consists of the Barclays Center Arena; the development of a reconfigured and improved LIRR train yard and subway facility upgrades; the development of 16 buildings for residential and commercial uses, including up to 6,430 apartments, of which 2,250 will be affordable to low, moderate and middle income households; and the creation of eight acres of publicly accessible open space. The Project will also deliver the following community benefits: healthcare facility, public school, and an intergenerational community center.

ESD, as the lead agency for SEQRA, prepared Draft and Final Environmental Impact Statements to address the potential environmental impacts that could result from the Project. During the public comment period on the Draft Environmental Impact Statement ("DEIS"), ESD received public comments requesting that it put into place a mechanism to require the Project developer to implement the numerous project-related environmental commitments and mitigation measures described in the DEIS. To address these comments, the Final Environmental Impact Statement ("FEIS") stated that ESD would require the Project developer to enter into contractual obligations to implement required environmental impact avoidance and mitigation measures. The FEIS further provided that, during construction of the Project, ESD would retain the services of appropriate professionals to monitor and ensure compliance with the same.

A document titled "Memorandum of Environmental Commitments for the Atlantic Yards Project" dated December 8, 2006 (the "Memorandum") describes the specific avoidance and mitigation measures that Project developer is required to undertake in connection with the Project and the role of the environmental monitor to be retained by ESD. The Memorandum commitments are enforceable against Project developer through the contractual documents that have been entered into between ESD and developer. The Memorandum has been amended twice since 2006; the most recent amendment (the "Second Amended Memorandum of Environmental Commitments") was prepared in connection with the Supplemental EIS ("SEIS") that ESD approved in 2014.

III. Consultant Selection Process

ESD advertised a Request for Proposals ("RFP") in the Contract Reporter for the Environmental Monitor on February 5, 2007 but did not receive any qualified proposals. The RFP was subsequently modified to more specifically describe the desired services and the name of the RFP was changed to "Owners Representative – Mitigation Monitor" with the intention of clarifying the services to be contracted. A short list of eight potentially qualified engineering and/or construction management firms was identified and the RFP was sent directly to the short list of firms. Of the eight firms that were sent the RFP, three proposals were received by the submission deadline. These three proposals were reviewed by ESD staff and outside environmental counsel. Based on the quality of HDR's proposal, the demonstrated experience of the team assembled to perform the work, and results from checking project references, ESD

staff recommended that the ESD Directors authorize retention of HDR to perform the mitigation monitor responsibilities. The ESD Directors authorized an initial contract of up to ten years, the then-expected life of the Project.

HDR has extensive experience as both an owner's representative and as environmental consultant for some of the City's most significant initiatives. HDR is currently the mitigation monitor for the Columbia University Manhattanville construction project. HDR has approximately 11,000 employees worldwide with more than 150 offices in the U.S.. HDR's New York Department has almost 700 employees from which they draw from to accommodate the numerous technical areas covered by the mitigation commitments.

ESD has had a positive experience with HDR throughout the contract. Staff has determined that the Project is best served by continuing to retain HDR to provide owner's representative services to conduct mitigation monitoring of construction activities to ensure that environmental mitigation measures, as required of the Developer by the Memorandum, are provided throughout construction.

IV. Scope of Work

Consultant will continue to monitor certain impact avoidance and mitigation measures described in the FEIS and set forth in the Memorandum. These include:

- handling of hazardous materials at the site, including (i) development and implementation of procedures for pre-demolition removal of PCB-containing equipment in accordance with applicable regulations; (ii) implementation of dust suppression techniques during the demolition of buildings and any excavation, grading or earth-moving activities at the project site; (iii) additional subsurface investigations as needed to refine and supplement soil and groundwater sampling data previously collected; (iv) remediation of contaminated material where necessary (unless such activities are overseen by NYSDEC or NYCDEP); and (v) prior to remediation and excavation at the site, development and subsequent implementation of the Construction Health and Safety Plan and Community Air Monitoring Plan;
- certain issues pertaining to construction, including (i) incorporation of necessary environmental commitments into construction contracts; (ii) routing of truck deliveries to minimize traffic impacts; (iii) designation of on-site staging areas to reduce truck queueing and materials storage in the streets; (iv) provision of an appropriate number of on-site construction worker parking spaces; (v) certain issues pertaining to noise mitigation, including use of equipment with the noise levels described in the FEIS, scheduling work to reduce night time and weekend noise, use of electrical powered equipment where feasible, location of noisy equipment away from the site perimeter, maintenance of noise barriers, use of quiet construction procedures, maintenance of noise mufflers and use of noise curtains; (vi) provision of

double-glazed windows and alternative ventilation for certain residential locations; (viii) the construction-related air quality impact avoidance measures; and (viii) rodent control;

- protection of cultural resources near the Project site from being impacted by construction on the Project site, as required by the Letter of Resolution;
- review of the effectiveness of any modified design for stormwater management facilities;
- review of fuels or boiler technologies other than those described in the FEIS;
- review any proposed changes in the location of HVAC intakes in the event that the design of the relevant Project buildings changes from the design subject to air dispersion modeling in the FEIS and/or SEIS; and
- review of adjustments to optimize the effectiveness of demand management measures to limit automobile traffic in connection with arena operation.

V. Contract – Need for Amendment; Price and Funding

The current term expires in May of this year. The original contract, initiated in June 2007, assumed that construction of the Project would be completed in ten years, hence the contract term established at that time. To date, in addition to the arena and a new subway entrance, six residential buildings have been completed with some parcels of Open Space and local retail establishments.

Currently, sites B12 and B13 are progressing through superstructure phase with completion expected in early 2023. The two towers will deliver 30% affordable units, publicly accessible open space, parking, local retail, and an indoor recreational facility.

Staff recommend a two-year extension with a one-year option. The contract is billed on a time and materials basis, with an allowance for an annual escalation of the Consumer Price Index (CPI) + 2%, provided that the escalation does not exceed the actual labor rate for any employee performing work under the contract. The contract originally was approved for \$360,000 in 2007, its first year. It has been renewed for \$500,000 per year since 2012, to a total current contract value of to \$6,645,000.

ESD will continue to be reimbursed by the Project developer for all costs incurred under the contract with HDR. ESD has never advanced any funds during the term of the current contract and is not anticipated to advance any funds for the proposed contract extension.

VI. RESPONSIBLE PARTY

Pursuant to State Finance Law Sections 139-j and 139-k and the Corporation's policy related thereto, staff has: (a) considered Consultant'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 Consultant to be responsible.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the requested authorization to extend the term of HDR's contract constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations promulgated by the NYS Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies apply to the Contract. HDR is required to include minorities and women in any job opportunities created, to solicit and utilize Minority- and Women-Owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with the Project and is required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% related to the total value of ESD's funding.

IX. REQUESTED ACTION

The AYCDC Directors are requested to recommend that the ESD Directors authorize an extension of ESD's contract with HDR for owner's representative services for mitigation monitoring on the terms and conditions set forth in these materials for an additional two years, with a one year option, at a cost not to exceed \$500,000 per year.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

March 22, 2022

ATLANTIC YARDS COMMUNITY DEVELOPMENT CORPORATION – Brooklyn (Kings County) – Atlantic Yards Land Use Improvement Project and Civic Project - Recommendation that ESD Directors Authorize the Amendment of the Contract with Henningson, Durham & Richardson, Architecture and Engineering, P.C. to Continue to Provide Owner’s Representative Services for Mitigation Monitoring in Connection with the Atlantic Yards Land Use Improvement and Civic Project; 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 Corporation (the “Materials”), the Corporation hereby recommends that the ESD Directors authorize, on the terms and conditions set forth in the Materials, an amendment of ESD’s contract with Henningson, Durham & Richardson, Architecture and Engineering, P.C. to continue to provide owner’s representative services for mitigation monitoring in connection with the Atlantic Yards Land Use Improvement and Civic Project; and be it further

RESOLVED, that the Officers of the Corporation and/or appropriate designees are authorized and directed, in the name and on behalf of the Corporation, to take any and all such actions as may be necessary or appropriate to effectuate the foregoing resolutions, including making report to and submitting materials to the ESD Directors.

* * *