

12/16/2022

**ERIENET LOCAL DEVELOPMENT CORPORATION
RESOLUTION NO. 22-05**

A regular meeting of the ErieNet Local Development Corporation was convened on December 16, 2022 at 2:00 p.m.

The following resolution was duly offered and seconded, to wit:

RESOLUTION OF THE ERIENET LOCAL DEVELOPMENT CORPORATION (“ENLDC”) TO (i) NEGOTIATE AND EXECUTE A CERTAIN MEMORANDUM OF UNDERSTANDING WITH THE COUNTY OF ERIE GOVERNING THE RECEIPT AND UTILIZATION OF FEDERAL AMERICAN RESCUE PLAN FUNDING (“ARP FUNDS”) AND (ii) APPROVE OF THE PURCHASE OF CERTAIN PROJECT EQUIPMENT

WHEREAS, the ENLDC is an affiliate of the County of Erie (the “County”) and is authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as amended, to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in Erie County and to lessen the burdens of government and act in the public interest; and

WHEREAS, throughout the County, large and small business, governments and government agencies, indigenous nations, and low income persons are found to be in need of affordable high speed internet to interact, participate in education, and to compete in the business world; and

WHEREAS, the County has received federal American Recovery Plan (“ARP”) funding in the amount of \$34,000,000 (the “ARP Funds”) to study, design, and engineer an Open Access Network and to ultimately install internet services within and throughout the County to ensure growth, equity and prosperity for the County (the “Project”), said Project having been shown to be critical for work, education, healthcare, and civic participation during a public health emergency as so evidenced during the COVID-19 global pandemic; and

WHEREAS, the County engaged ECC Technologies to design and engineer the Project (the “Project Plan”); and

WHEREAS, ENLDC was specifically created and empowered by the County to undertake the Project on behalf of and for the benefit of the County; and

WHEREAS, the County desires to allocate the ARP Funds to ENLDC to facilitate the undertaking of the Project, said allocation to be governed by applicable federal ARP rules and guidelines (the “ARP Rules and Guidelines”); and

WHEREAS, pursuant to the ARP Rules and Regulations, the County must allocate the ARP Funds to ENLDC by December 31, 2022, and thereafter, ENLDC must spend the ARP Funds for the Project by December 31, 2026; and

WHEREAS, ENLDC desires to fulfill its public purpose and undertake the Project consistent with the Project Plan for the benefit of the County and its residents, and related thereto, desires to receive and deploy the ARP Funds in a manner consistent with the federal ARP Rules and Guidelines as so required to undertake the Project; and

WHEREAS, in furtherance of the County’s desire to undertake the Project through its affiliate ENLDC, the County and ENLDC desire to enter into a memorandum of understanding (the “MOU”) to govern the allocation of ARP Funds to ENLDC in a manner consistent with the ARP Rules and Guidelines and to otherwise ensure the obligations and duties of each to the other are clearly set forth and articulated; and

WHEREAS, the Project Plan has yet to be completed, such that the ultimate design, engineering, site layout and location is speculative, and Project related implementation determinations are unable to be made at this point in time; and

WHEREAS, upon completion of the Project Plan, and prior to taking any action related to implementing the Project Plan, ENLDC will undertake the appropriate environmental assessment related thereto pursuant to Article 8 of the Environmental Conservation Law and the regulations promulgated thereto at 6 NYCRR Part 617 (collectively referred to as “SEQRA”); and

WHEREAS, due to various macroeconomic issues associated with industry-wide supply chain challenges, purchase order delays approaching up to 18-months are expected as so related to ENLDC’s contemplated Project related equipment purchases, and there is concern that that purchasing delays could adversely impact Project implementation timeframes and ARP Funding expenditure timeline requirements; and

WHEREAS, upon execution of the MOU and receipt of the ARP Funds, ENLDC desires to issue purchase orders for the purchase of Project related equipment (the “Project Equipment”) and to expend such ARP Funds to ensure the Project Equipment can be timely acquired, and the Project timely completed, consistent with the ARP Rules and Guidelines; and

WHEREAS, in addition, upon taking delivery of any Project Equipment so acquired, ENLDC will necessarily engage warehouse storage services to store any such acquired Project Equipment.

NOW, THEREFORE, BE IT RESOLVED BY THE ERIENET LOCAL DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. The ENLDC hereby authorizes the Chair to negotiate and execute the MOU, in consultation with ENLDC general counsel.

Section 2. The ENLDC hereby accepts receipt of the ARP Funds.

Section 3. In accordance with SEQRA, the purchase and storage of the Project Equipment is a Type II action exempt from review pursuant to Section 617.5(c)(31) of the SEQRA regulations.

Section 4. The ENLDC hereby authorizes the Chair to (i) procure the Project Equipment, (ii) negotiate and execute purchase orders related to the Project Equipment, (iii) procure warehouse storage services for the Project Equipment, and (iv) negotiate and execute purchase orders related to such warehouse storage services, all actions to be undertaken consistent with the ENLDC Procurement Policy.

Section 5. The officers, employees and agents of the ENLDC are hereby authorized and directed for and in the name and on behalf of the ENLDC to do all acts and things required and to negotiate, execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the ENLDC with all of the terms, covenants and provisions of the documents executed for and on behalf of the ENLDC as related thereto and hereto.

Section 6. This resolution shall take effect immediately.

Dated: _____, 2022