



Meeting Agenda – STAMP Committee
 Genesee County Economic Development Center
 Wednesday, March 27, 2024 - 8:00 a.m.
 Location: 99 MedTech Drive, Innovation Zone

Page #'s	Topic	Discussion Leader	Desired Outcome
	1. Call to Order – Enter Public Session	P. Zelif	
	1a. Executive Session Motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105 for the following reasons: <ol style="list-style-type: none"> 1. Discussions regarding proposed, pending or current litigation. 2. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. 3. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof. 1b. Enter Public Session	P. Zelif	
2-5	2. Chairman’s Report & Activities 2a. Agenda Additions / Deletions / Other Business 2b. Minutes: March 6, 2024	P. Zelif	Vote
6-13	3. Discussions / Official Recommendations to the Board: 3a. Access Agreement	M. Masse	Disc / Vote
	4. Adjournment	P. Zelif	Vote



GCEDC STAMP Committee Meeting

Wednesday, March 6, 2024

Location: 99 MedTech Drive, Innovation Zone

8:00 a.m.

MINUTES

ATTENDANCE

Committee Members: M. Clattenburg, C. Kemp, C. Yunker (Video Conference*), P. Zeliff
Staff: M. Masse, L. Farrell, L. Casey, P. Kennett, J. Krencik, E. Finch, S. Hyde, C. Suozzi
Guests: Andrew Kosa (Clark Patterson Lee), RJ Ball (Empire State Development), R. Crossen (Town of Alabama Supervisor), M. Fitzgerald (Phillips Lytle/Video Conference)
Absent:

*Attending from a physical location identified in the meeting notice as open to the public.

1. Call to Order / Enter Public Session

P. Zeliff called the meeting to order at 8:03 a.m. in the Innovation Zone.

1a. Executive Session

C. Kemp made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:04 a.m., for the following reasons:

1. Discussions regarding proposed, pending, or current litigation.
2. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.
3. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such a public body, but only when publicity would substantially affect the value thereof.

The motion was seconded by C. Yunker and approved by all members present.

A. Kosa (Clark Patterson Lee) left the meeting at 8:04 a.m.

M. Clattenburg joined the meeting at 8:08 a.m.

C. Suozzi left the meeting during executive session.

1b. Re-Enter Public Session

M. Clattenburg made a motion to enter back into public session at 9:38 a.m., seconded by C. Kemp and approved by all.

A. Kosa re-joined the meeting at 9:38 a.m.

2. Chairman's Report & Activities

2a. **Agenda Additions / Deletions/ Other Business** – Nothing at this time.

2b. **Minutes: December 6, 2023**

M. Clattenburg made a motion to approve the December 6, 2023, minutes; the motion was seconded by C. Kemp. Roll call resulted as follows:

P. Zeliff - Yes
C. Yunker - Yes (Video Conference*)
M. Clattenburg – Yes
C. Kemp - Yes

The item was approved as presented.

3. Discussions / Official Recommendations to the Board:

3a. Design and Engineering Contract for Crosby Road Reconstruction and Extension of Hammerhead - The Edwards Genesee project needs the design, engineering, and construction of certain onsite utilities to support their new facility at STAMP. These improvements will include roadways, water lines, onsite water storage tank and wastewater lines.

A. Kosa (Clark Patterson Lee) reviewed the engineering contract, which was included with the meeting materials, in detail with the Committee.

Fund Commitment: \$1,810,060 from the \$56 million NYS award or GCEDC matching funds.

Committee Action request: Recommend approval of the proposal from Clark Patterson Lee to prepare the design, engineering, bid packages and construction inspection for the reconstruction of Crosby Road from STAMP Drive north to Lewiston and the extension of the hammerhead.

M. Clattenburg made a motion to recommend to the full Board the approval of the Design and Engineering Contract for Crosby Road Reconstruction and Extension of Hammerhead not to exceed \$1,810,060 as presented; the motion was seconded by C. Kemp. Roll call resulted as follows:

P. Zeliff - Yes
C. Yunker - Yes (Video Conference*)
M. Clattenburg – Yes
C. Kemp - Yes

The item was approved as presented.

S. Hyde left the meeting at 9:49 a.m.

3b. First Amendment to Lease Agreement with Plug Power- As part of their construction of their hydrogen facility, Plug Power would like to utilize the approximately 6.5-acre parcel directly to the south of

their site as a construction parking area. Plug Power will be responsible for all DEC permits (except Part 182) and compliance. On April 10, 2023, Plug and the GCEDC signed this agreement. Plug is seeking an amendment to this agreement as the DEC has not issued the necessary permits through no fault of Plug's. The amendment would make the two-year lease agreement time frame start on the issuance of the DEC permits as well as making the payment due at that time.

Fund Commitment: None.

Committee Action Request: Recommend approval of First Amendment to Access Agreement.

M. Clattenburg made a motion to recommend to the full Board the approval of the First Amendment to the Lease Agreement with Plug Power as presented; the motion was seconded by C. Kemp. Roll call resulted as follows:

P. Zeff - Yes
C. Yunker - Yes (Video Conference*)
M. Clattenburg - Yes
C. Kemp - Yes

The item was approved as presented.

3c. Additional Work Related to Survey for STAMP Business Park Association - The GCEDC previously went out to bid and was awarded survey work related to the formation of the business park association at STAMP. Once the survey work was completed, it was noted that there was some additional work that the legal firm is requiring for the formation that was not in the original bid.

Fund Commitment: \$3,000 from the \$33 million NYS award.

Committee Action request: Recommend approval of the proposal from Frandina for the additional survey work related to the business park association formation.

C. Kemp made a motion to recommend to the full Board the approval of the additional survey work with Frandina Engineering for the STAMP Business Park Association not to exceed \$3,000 as presented; the motion was seconded by M. Clattenburg. Roll call resulted as follows:

P. Zeff - Yes
C. Yunker - Yes (Video Conference*)
M. Clattenburg - Yes
C. Kemp - Yes

The item was approved as presented.

3d. CC Environment & Planning Proposal for STAMP Hedgerow Removal Mulching – The GCEDC is required to add straw mulching to the area where the hedgerow was removed and will be seeded in accordance with the issuance of the Part 182 permit. CC Environment and Planning will complete this task under the review and approval of the DEC.

Fund Commitment: \$2,260 from the mitigation escrow funds.

Committee Action request: Recommend approval of the proposal from CC Environment and Planning for the mulching of the area where the hedgerow was removed.

C. Yunker made a motion to recommend to the full Board the approval of the CC Environment & Planning proposal for the mulching of the area where the hedgerow was removed not to exceed \$2,260 as presented; the motion was seconded by M. Clattenburg. Roll call resulted as follows:

P. Zelif - Yes
C. Yunker - Yes (Video Conference*)
M. Clattenburg – Yes
C. Kemp - Yes

The item was approved as presented.

4. Adjournment

As there was no further business, M. Clattenburg made a motion to adjourn at 10:00 a.m., seconded by C. Kemp and passed unanimously.

2a

Mark Masse

STAMP Committee

March 27, 2024

Review of Access License Agreement for Project Emporium and/or affiliates for due diligence work

Discussion: Phillips Lytle has reviewed for the GCEDC an Access License Agreement to allow Project Emporium and their agents to enable their due diligence on GCEDC owned property for their proposed facility until that work is complete or a Purchase and Sale Agreement is executed. Any contractors would be required to sign indemnity agreements, provide proof of insurance and list the GCEDC as an additional insured on their policy with the applicable coverage limits as set forth by the GCEDC.

Fund Commitment: None.

Committee Action Request: Recommend approval of Access License Agreement.

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (this "Agreement") is made and entered into as of the Effective Date (as hereinafter defined) by [REDACTED], a [REDACTED] ("Developer"), and [REDACTED], a [REDACTED] ("Owner"). As used herein, the "Effective Date" shall be the last date set forth on the signature page of this Agreement for Developer's and Owner's execution.

WITNESSETH:

WHEREAS, Owner is the record title holder of that certain real estate located in Genesee County, New York known as tax parcel(s) [REDACTED], which are [depicted and outlined in red/crosshatched] on Exhibit A, attached hereto and by this reference incorporated herein (the "Property");

WHEREAS, Developer wishes to conduct various property inspections, including but not limited to physical inspections, testing, studies, surveys, investigations, and environmental and engineering and geotechnical inspections at the Property (collectively, the "Inspections") in order to assist in determining if Developer desires to acquire the Property from Owner; and

WHEREAS, Owner has agreed to allow Developer to conduct the Inspections, subject to Developer entering into this Agreement and complying with the conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the covenants, promises and undertakings set forth herein, and for good and valuable consideration, receipt of which is hereby acknowledged, Owner and Developer hereby agree as follows:

Owner agrees to allow Developer, including Developer's employees, agents, consultants, contractors, and representatives (the foregoing, collectively, "Developer Representatives"), to access the Property for the limited purpose of conducting the Inspections, subject to the following terms and conditions:

1. Owner represents and warrants to Developer that Owner owns the Property and has good right and authority to enter into this Agreement and to grant the rights to Developer granted herein.

2. Developer and the Developer Representatives are hereby granted the right to enter upon the Property at any time, and from time to time, to perform the Inspections, which shall be at Developer's sole cost and expense. The right to perform Inspections includes, without limitation, the right to assess environmental conditions, including taking of soil, groundwater, and surface water samples. Developer shall conduct its Inspections in accordance with all applicable laws and regulations and will make reasonable efforts to minimize any interference with, or disruption of, existing operations on the Property as a result of the Inspections. All work product or materials derived from the Inspections shall be the sole property of Developer.

Developer shall, at its expense, repair any material physical damage to the Property caused by any Inspection on the Property, and shall restore the Property substantially to the condition in which it existed prior to such Inspection; provided, however, that Developer shall have no obligation to repair damage caused by the acts or omissions of Owner or its employees, agents, consultants, contractors, and representatives or to restore, remediate, remove, contain, abate, or control any condition of the Property that existed prior to Developer's entry thereon.

3. Unless disclosure is required by law, Owner shall not disclose to any third party the existence of, or the terms and conditions of, this Agreement or any possible transaction that is the subject of this Agreement, without the prior written consent of Developer, which may be withheld in Developer's sole and absolute discretion. The provisions of this paragraph shall survive the termination of this Agreement.

4. To the extent permitted by law, Developer agrees to indemnify and hold Owner free and harmless from and against any and all losses, damages, claims, liens, costs, expenses (including reasonable outside attorneys' fees), liabilities, and judgments (generally, "Damages") arising from (a) actual physical damage to the Property or injury to persons resulting from the entry onto the Property by Developer Representatives in connection with this Agreement, or (b) Developer's breach of any of the terms of this Agreement., including being responsible for the cost of damage to planted crops on the Property, not to exceed \$1,000 per acre of damage, as calculated by Developer's surveyor. Without limiting the generality of the foregoing indemnity, Developer shall keep the Property free and clear of any mechanic's or other lien which may be recorded or threatened against the Property by any party providing labor, materials, or services in connection with the Inspections. Notwithstanding the foregoing, nothing contained in this indemnity shall be interpreted as imposing any liability or obligation on the part of Developer with respect to (i) any Damages incurred or caused by the acts of Owner or its employees, agents, consultants, contractors, and representatives; (ii) any pre-existing conditions of the Property, including without limitation any existing environmental condition; (iii) the diminution of fair market value of the Property resulting from the information disclosed by any of the Inspections; and/or (iv) any Damages other than actual damages (such non-indemnified damages to include, without limitation, consequential damages, lost profits, special damages, or punitive damages). Further, nothing contained in this Agreement shall be interpreted as imposing any liability or obligation on the part of Developer with respect to loss of or damage to crops or loss of rental income from the Property. The obligations set forth in this paragraph shall survive the termination of this Agreement for a period of six (6) months.

5. Owner represents and warrants that Owner has all right, title and interest in the Property free from any rights of others for the sale or transfer of any interest in the Property of any nature, whether by purchase, option, right of first refusal, lease, or otherwise.

6. Owner acknowledges that Developer will incur certain expenses related to the Inspections; therefore, Owner agrees, while this Agreement remains in effect, not to engage in any negotiations or enter into any agreement with any other party relating to the sale or transfer of any interest in any portion of the Property of any nature, whether by purchase, option, right of first refusal, lease, or otherwise.

7. In connection with the negotiation and performance of this Agreement, Owner, on behalf of itself and its affiliates, employees, agents, consultants, contractors, and representatives,

represents, warrants and covenants that they have complied and shall continue to comply with all applicable anti-corruption laws, rules, and regulations. Owner represents that the performance of any obligations under this Agreement does not require Developer to submit any bid or otherwise participate in any procurement process of the County or to undertake any other obligations required by procurement laws and regulations of the County.

8. All notices and other communications given pursuant to this Agreement shall be in writing and shall be (a) mailed by first class, United States mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address listed below, (b) hand delivered to the intended addressee, (c) sent by nationally recognized overnight courier, or (d) or by electronic mail with a confirming copy being forwarded by a reputable overnight courier service within 24 hours thereafter to the recipient at the mailing address set forth below. If notice is given by U.S. Certified Mail, then the notice shall be deemed to have been given on the second Business Day (defined below) after the date the envelope containing the notice is deposited in the U.S. Mail, properly addressed to the party to whom it is directed, postage prepaid. Notice made by personal delivery, overnight delivery or electronic mail shall be deemed given when received. The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.

OWNER:

[Redacted signature area for Owner]

DEVELOPER:

[Redacted signature area for Developer]

9. This Agreement may be executed in two (2) or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original but all such counterparts together shall constitute but one and the same instrument, binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart. Electronic signatures (including via DocuSign, Echosign, or a similar program) shall be binding.

10. Except for those provisions expressly stated to survive the termination of this Agreement, this Agreement shall terminate on the earlier to occur of (a) the full execution of a purchase and sale agreement for the Property between Developer and Owner; or (b) 180 days after the Effective Date.

11. Nothing in this Agreement shall be construed by the parties hereto or by any third party to create the relationship of principal and agent, or of partnership, or of joint venture, or of any other association of a similar nature, nor shall anything in this Agreement be construed as

imposing any obligation on the part of Developer to purchase the Property.

12. This Agreement shall be freely assignable by Developer to an affiliate, an entity under common control, a subsidiary, or a parent entity without Owner's consent. Assignment to any other party shall require Owner's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law) applicable to contracts negotiated, executed and performed entirely within the State of New York (the "State"). Owner consents to the jurisdiction of the federal and State courts located in Genessee County, New York, and irrevocably waive any objection to the exercise of jurisdiction by such courts on the grounds of the inconvenience of the forum.

14. As used herein, the term "**Business Day**" shall mean a day that is not a Saturday, Sunday or legal holiday in the State. In the event that the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday under the laws of the State, the date for performance thereof shall be extended to the next Business Day.

15. This Agreement may not be modified, except by written agreement signed and duly authorized by Owner and Developer. Nothing in this Agreement shall be construed to require Owner to sell, lease, or otherwise convey the Property to Developer, or to grant any approvals, permits, or other entitlements regarding the acquisition of the Property or any future use of the Property.

16. This Agreement represents the entire agreement of the Owner and Developer with respect to the matters contained herein, and no prior oral or written representation shall serve to modify or amend this Agreement.

17. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

[Signatures appear on following page]

IN WITNESS HEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

DEVELOPER:

_____, a

By: _____

Name: _____

Title: _____

Date: _____

[Signatures continue on next page]

OWNER:

 , a

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
PROPERTY DEPICTION

3a