



**ECONOMIC DEVELOPMENT CORPORATION  
BOARD OF DIRECTORS SPECIAL MEETING  
TUESDAY, SEPTEMBER 21, 2021 – 9:00 A.M.**

**BOARD MEMBERS PRESENT:** Clifford Brown  
Damon Hodge  
Marsha Bruhn  
Linda Forte  
Kwaku Osei  
Jonathan Quarles

**BOARD MEMBERS ABSENT:** Antoine Bryant (Ex-Officio)  
Kimberly Clayson  
Chris Jackson  
John Naglick (Ex-Officio)  
Thomas Stallworth

**SPECIAL DIRECTORS  
PRESENT:** None

**SPECIAL DIRECTORS  
ABSENT:** None

**OTHERS PRESENT:** Cora Capler (DEGC/EDC)  
Andre Crook  
Gay Hilger (DEGC/EDC)  
Malinda Jensen (DEGC/EDC)  
Paul Kako (DEGC/EDC)  
Jennifer Kanalos (DEGC/EDC)  
Glen Long (DEGC/EDC)  
Rebecca Navin (DEGC/EDC)  
Orza Robertson (DEGC/EDC)  
Lexi Shaw (DEGC/EDC)  
Katy Trudeau (City Planning & Development Dept.)



**MINUTES OF THE ECONOMIC DEVELOPMENT CORPORATION  
BOARD OF DIRECTORS SPECIAL MEETING  
SEPTEMBER 21, 2021 – 9:00 A.M.  
ZOOM VIRTUAL MEETING**

**GENERAL**

**Call to Order**

Chairperson Forte called the Regular meeting of the Economic Development Corporation Board of Directors to order at 9:02 a.m. a.m. Roll call was conducted, and a quorum was established.

**Approval of Minutes**

Ms. Forte asked if there were any additions, deletions, or corrections to the minutes of the August 24, 2021 Regular Board meeting. Hearing none, Ms. Forte called for a motion approving the minutes.

Mr. Hodge made a motion approving the minutes of the August 24, 2021 Regular Board meeting. Mr. Quarles seconded the motion. All were in favor with none opposed.

EDC Resolution Code 21-09-02-351 was unanimously approved.

**PROJECTS**

**I-94 Industrial Park Project: Construction Contract with VIL Construction Inc. – Approval of Change Orders and Contract Close-Out for Georgia Street Reconstruction Project**

Mr. Robertson reported that in May 2018 the Economic Development Corporation (“EDC”) Board authorized EDC staff to enter into contract with VIL Construction for a contract value of \$2,703,189, together with a 10% owner’s contingency, to complete the Georgia Street road reconstruction project. The EDC, in partnership with the City of Detroit, has reconstructed the existing Georgia Street between Mt. Elliott Street and St. Cyril Street as part of the I-94 Industrial Subdivision Redevelopment Project. The approximate length of the road redevelopment (the “Project”) section is 2,750 feet. The road was once part of a residential development and was designed to provide vehicular access for residents and associated services. The road has been improved to an ALL Season specification as described by the City of Detroit to support heavy truck movement, as it wasn’t originally designed for such use. In support of the Project, the EDC secured a grant from the Economic Development Administration (EDA), with matching funding from the City of Detroit.



EDC previously executed Change Orders #1-3 which increased the contract value by approximately \$256,000.

Change Order #4 represented Contract Modifications #4 thru #16. Those modifications consisted of design errors on the drawings, electrical work changes, watermain additions, additional concrete for sidewalks and approaches, cold weather protection, additional dirt removal/ hauling and other infrastructure improvements. This represented an increase to the contract in the amount of \$142,725.50.

Change Order #5 primarily consists of a negotiated amount for about 13,500 CY of non-hazardous contaminated material removal that was completed in 2019. After the completion of this work, in order to continue to advance the Project forward, the parties agreed to reserve rights on amounts owed. Following a review of contract documents, drawings and correspondence by EDC's contact manager and outside counsel, and in an effort to close out the contract in a timely manner prior to the expiration of the EDA grant, EDC staff and VIL agreed to an amount equal to \$399,829.50, which represents a 15% discount on amounts invoiced by VIL. In addition, EDC agreed to contribute \$10,000 towards the cost of COVID compliance measures that were instituted mid-project. The total contract increase under Change Order #5 is \$409,829.50.

EDC staff requested that the EDC Board of Directors authorize the approval of Change Orders #4 and #5 in the amounts indicated above, and the execution of a related settlement agreement settling all claimed amounts.

A resolution was included for the Board's consideration.

Ms. Forte thanked Mr. Robertson and asked if there was a motion for approval. Mr. Quarles made a motion and Mr. Hodge supported the motion.

Ms. Forte opened the floor for questions/discussion.

Ms. Forte asked if Change Orders #1 through #3 were approved by the Board. Mr. Robertson replied that the contract contingency covered the first three change orders. Change Orders #4 and #5 are over the contract amount.

Mr. Hodge asked two questions. First, he requested details on Change Orders #1 through #3, and secondly, stated that it appears there are some design errors in Change Order #4 and asked why the party that made those errors is not taking responsibility.

Mr. Robertson explained that the EDC entered into this contract before the drawings had been approved by DWSD. This error made by staff delayed the project start. . Once the project could begin, which was a year later, several things had taken place which resulted in Change Orders #1-#3. The drawings that were approved by DWSD were



totally different than those that were bid, therefore, the actual contract value of the work to be performed was increased. Due to the project delay and initial removal of the existing road prior to DWSD approval, considerable time was dedicated to maintaining the condition of the road for traffic entering and exiting to Crown Logistics facilities and the offices of US Ecology.

Relative to Change Order #4, the contract modification form is the field document that documents the typical changes that occur during a construction project, i.e., going from an 8-inch sewer pipe to a 6-inch pipe, additional concrete needed, and those types of things. The changes that were made in the DWSD drawings from the unapproved drawings to the approved drawings contributed to Change Order #4 and #5. Half of the cubic yards of digging in Change Order #5 was wrapped up in the additional digging we had to do because of the changes made in the approved drawings. The sewers were much deeper than what was originally bid for project. Moving non-hazardous material is a major cost of any project.

Mr. Brown stated that he had several questions and asked what is being done to ensure that we don't run into these problems again. He also asked if these items were not covered in the contingency carried in the project. And thirdly, were they truly design errors or were these modifications to the drawings. If they truly were design errors, they should be captured in the engineer's and architect's Errors and Omissions part of the contract.

Mr. Robertson responded that they had learned from their mistakes, and unfortunately, mistakes were made in this project. As for Mr. Brown's second question, the project contingency was used for the first three Change Orders. As for the third question, the most significant design error was the changes in the design when DWSD drawings were approved.

Mr. Brown suggested that moving forward we have a documented process that identifies lessons learned and stated that these things happen in all construction projects. Also, if this was more design changes vs design errors, that should be documented.

Ms. Bruhn stated that Board members Hodge and Brown captured some of her questions and concerns, but she is disturbed that the final amount of the contract is now 30 percent above the original contract amount. This is being brought to the Board for approval after the fact, and there isn't anything the Board can do other than vote yes or no. She believes that when these kinds of blips occur, the Board needs to be apprised before proceeding with the project so that the Board has the background when it comes to a formal decision.

Ms. Navin expressed that she wanted to give further explanation with respect to Change Order #5. At the time that this work was completed, there was confusion on our part as to whether the bulk of the costs should be additional work on our part under the contract. To avoid a stoppage, they agreed to continue with the work and then provide us with a



final accounting at completion. The reason why this is coming to the Board so late is that a large amount of due diligence has been done with outside counsel and Mannik & Smith, the project manager, combing through the manifests and through the contract. The first impression and determination, although late, was that EDC did have liability under the contract because of the way the contract and scope of services were written. Ms. Navin apologized that it was so late on Change Order #5. There was disagreement on the additional work and the agreed-upon amount needed to be double checked with construction counsel. Based on all of the diligence we've done since spring, this is the negotiated amount that we've come to in order to achieve contract close-out prior to grant close-out.

Ms. Forte commented that she would be interested in Counsel's thoughts as we go through process at what point the Board should be alerted and commented that these are very significant costs over the original contract. There should be a point that the Board is alerted so it can ask questions, even though the due diligence phase is still in process. Ms. Navin stated that is understood and explained that she is not able to give a specific point in time where that should normally be done in contracts. This was an exceptional matter because the uncertainty was significant and because of the project timeline. She wished that a conclusion could have been reached sooner and knows now that waiting to conclude the due diligence was not the right approach and they should have come to the Board sooner. Some of Change Order #4 utilizes the contingency that was approved by the Board. Change Order #5 could have and should have been brought to the Board and assumes that the thinking was to close out the project and bring it all to the Board at once, which Project Management staff and Counsel now agree is not the right approach going forward.

Ms. Bruhn, following up on Madam Chair's comment, said that at some point staff was aware of significant additional work associated with this contract and asked how the Board can keep control in future contracts of change orders, particularly since this is public money. Maybe a way to deal with it in future contracts is to have language in the contract relating to change orders and cost overruns.

Ms. Forte advised that there are two things that the Directors have been loud and clear about:

1. There needs to be a total examination of the process around construction projects to get hands around the total cost of the project in the interest of conserving and being as accurate as possible with taxpayer dollars.
2. When staff is aware that a project is going off track, particularly in terms of expenses, Board members need to be apprised.

Ms. Forte called for additional comments/questions.



Mr. Brown stated, as a developer, and in defense of the team, this is not unheard of for a project to go sideways. That is why in the future it is important for the Board to have compensating controls. Mr. Brown added that, in his experience, DWSD can be difficult to work with at times and can be extremely slow. That is not meant to slander DWSD, but rather, to be in defense of Mr. Robertson and his team. He would argue that this is not an isolated experience with this department.

Mr. Hodge questioned if this project is 100 percent complete. Mr. Robertson advised that the project is complete and there are only a couple of very nominal outstanding bills left to be paid.

For clarity, Mr. Forte asked staff to bring back to the Board for follow up what has been examined by staff, what has been changed or will be changed with respect to process, as well as what has been determined about timing of when the Board should be informed.

Subsequent to the discussion, the Board took the following action:

Mr. Quarles made a motion approving the Change Orders and Contract Close-Out for Georgia Street Reconstruction Project. Mr. Hodge seconded the motion. A roll call vote was conducted, and all were in favor, with Ms. Bruhn abstaining. Resolution Code EDC 21-09-12-59 was approved.

## **ADMINISTRATION**

Mr. Jensen thanked the Board members for convening in person at the last meeting and informed the emergency order by the Health Department was extended the next day through the end of the year.

## **OTHER MATTERS**

None.

## **PUBLIC COMMENT**

None.

## **ADJOURNMENT**

On a motion by Mr. Hodge, seconded by Mr. Quarles, Ms. Forte adjourned the meeting at 9:37 a.m.



**CODE EDC 21-09-02-351**

**APPROVAL OF MINUTES OF AUGUST 24, 2021 REGULAR MEETING**

**RESOLVED**, that the minutes of the Regular meeting of August 24, 2021 are hereby approved, and all actions taken by the Directors present at such meeting, as set forth in such minutes, are hereby in all respects ratified and approved as actions of the Economic Development Corporation.

September 21, 2021



**CODE EDC 21-09-12-59**

**I-94 INDUSTRIAL PARK PROJECT: SUBDIVISION REDEVELOPMENT PROJECT--  
REQUEST TO APPROVE CONSTRUCTION CONTRACT WITH V.I.L.  
CONSTRUCTION FOR THE GEORGIA STREET ROAD RECONSTRUCTION  
PROJECT**

**WHEREAS**, in May 2018 the Economic Development Corporation (“EDC”) Board authorized EDC staff to enter into a construction contract with VIL Construction for a contract value of \$2,703,189, together with a 10% owner’s contingency, (the “Contract”) to complete the Georgia street road reconstruction project (the “Project”); and

**WHEREAS**, EDC previously executed Change Orders #1-3 to the Contract which increased the contract value by approximately \$256,000; and

**WHEREAS**, EDC staff is seeking Board approval of Change Orders #4 and 5 to the Contract as described below (collectively, the “Change Orders”):

- Change Order #4 in the amount of \$142,725.50 for Contract Modifications #4 thru #16 consisting of design errors on the drawings, electrical work changes, watermain additions, additional concrete for sidewalks and approaches, cold weather protection, additional dirt removal/ hauling and other infrastructure improvements.
- Change Order #5 primarily in the amount of \$409,829.50, consisting primarily of a negotiated amount for about 13,500 CY of non-hazardous contaminated material removal that was completed in 2019 but for which the parties reserved rights on amounts owed, as well as a \$10,000 contribution towards the cost of COVID compliance measures that were instituted mid-project.

; and

**WHEREAS**, the EDC Board determined that the staff’s request to approve the Change Orders is reasonable and in the best interest of the Project and the close out of the Contract; and

**NOW, THEREFORE BE IT RESOLVED** that the EDC Board of Directors hereby authorizes the negotiation and execution of the Change Orders, together with a settlement agreement settling all claimed amounts under the Contract.

**BE IT FURTHER RESOLVED** that the EDC Board of Directors hereby authorizes any two Officers, or any one of the Officers and any of the Authorized Agents or any two



Authorized Agents of the EDC to negotiate and execute the Change Orders, the settlement agreement, any and all documents necessary to implement the provisions and intent of this resolution.

**BE IT FINALLY RESOLVED** that all of the acts and transactions of any Officer or Authorized Agent of the EDC, in the name and on behalf of the EDC, relating to matters contemplated by the foregoing resolutions, which acts would have been approved by the foregoing resolutions except that such acts were taken prior to execution of these resolutions, are hereby in all respects confirmed, approved and ratified.

September 21, 2021