

Buffalo Urban Development Corporation

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Buffalo Urban Development Corporation Governance Committee Meeting Tuesday - October 13, 2020 – Noon

Via Conference Call & Live Stream Audio

Agenda

1. Approval of Minutes of June 22, 2020 Meeting (*Action*) (*Enclosure*)
2. Draft Procurement Procedures Applicable to the Expenditure of Federal Funds (*Recommendation*) (*Enclosure*)
3. Draft Vacation & Personal Days Carryover Policy (*Action*) (*Enclosure*)
4. New York State Paid Sick Leave Program – Memo to File (*Information*) (*Enclosure*)
5. Adjournment (*Action*)

**Minutes of the Governance Committee Meeting
of
Buffalo Urban Development Corporation**

Via Video Conference Call & Live Stream Audio

**June 22, 2020
12:00 p.m.**

Call to Order:

Committee Members Present:

Dennis W. Elsenbeck
Thomas Halligan
Thomas A. Kucharski (Committee Chair)
Amanda Mays
Dennis M. Penman

Committee Members Absent:

Hon. Byron W. Brown
Brendan R. Mehaffy

Officers Present:

Peter M. Cammarata, President
Brandy Merriweather, Vice President
Mollie M. Profic, Treasurer
Kevin J. Zanner, Secretary
Atiqa Abidi, Assistant Treasurer

Others Present: Dawn Boudreau, ECIDA Compliance Officer; Rebecca Gandour, BUDC; Arthur Hall, BUDC; and David A. Stebbins, Bisonwing Planning and Development, LLC.

Roll Call: Mr. Kucharski called the meeting to order at 12:03. A quorum of the Committee was present.

The meeting was held via video/telephone conference in accordance with the provisions of Executive Order 202.1, issued by Governor Andrew Cuomo on March 12, 2020. The meeting was also live-streamed to the general public and recorded. A transcript of the meeting will be made available at a later date.

- 1.0 Approval of Minutes of the June 12, 2019 Meeting** – The minutes of the June 12, 2019 meeting of the Governance Committee were presented. Mr. Elsenbeck made a motion to approve the minutes. The motion was seconded by Mr. Penman and unanimously carried (5-0-0).
- 2.0 PARIS Report Certification Update** – Mr. Cammarata reported that the PARIS report was certified and submitted by the March 31, 2020 deadline. Ms. Boudreau noted that the ABO had extended this deadline to June 30th due to the COVID-19 pandemic.
- 3.0 Public Authorities Law Compliance Letters Issuance** – Mr. Cammarata reported that all Public Authorities Law compliance letters were mailed in advance of the March 31, 2020 deadline.
- 4.0 Re-appointment of Board Members (2020-2023)** – Mr. Cammarata stated that there are two citizen members eligible for re-appointment this year, Dennis Elsenbeck and Darby Fishkin. Mr. Elsenbeck and Ms. Fishkin have expressed that they wish to continue serving on the Board. Mr. Halligan made a motion to recommend that the Board of Directors approve the proposed re-

appointment of Board members Elsenbeck and Fishkin. The motion was seconded by Ms. Mays and unanimously carried (5-0-0).

5.0 Appointment of Officers (2020-2021) – Mr. Cammarata presented the proposed slate of officers for 2020-2021 as follows:

Chair:	Hon. Byron W. Brown
Vice Chair:	Dennis M. Penman
President:	Peter M. Cammarata
Vice President-Downtown Development:	Brandye Merriweather
Vice President-Finance & Development:	Rebecca Gandour
Treasurer:	Mollie M. Profic
Secretary:	Kevin J. Zanner
Assistant Treasurer:	Atiqa Abidi

Mr. Halligan made a motion to recommend that the Board of Directors approve the proposed slate of officers. The motion was seconded by Mr. Elsenbeck and unanimously carried (5-0-0).

6.0 Re-appointment of Committee Members (2020-2021) – Mr. Cammarata presented the slate of proposed appointees to the Downtown, Audit & Finance, Governance, Real Estate and Loan Committees. He noted that there were no changes proposed to the current committee assignments. Mr. Penman made a motion to recommend that the Board of Directors approve the committee appointments as presented. The motion was seconded by Mr. Halligan and unanimously carried (5-0-0).

7.0 Centennial Park Project – Great Lakes Commission Grant – Mr. Stebbins and Ms. Merriweather reported on a new grant opportunity that BUDC is pursuing with the Great Lakes Commission (GLC). The grant is in the amount of one million dollars and will be used to pay for design costs relating to the redevelopment of Ralph C. Wilson, Jr. Centennial Park. The source of funding is the National Oceanic & Atmospheric Administration (NOAA), a federal agency. Ms. Merriweather noted that the Downtown Committee met earlier this month and is recommending that BUDC Board of Directors pursue the GLC grant funding. Mr. Zanner commented on federal grant compliance, including federal procurement regulations which differ in some respect from BUDC’s current policy. Mr. Cammarata noted that the Governance Committee would be convened to review and consider any proposed changes to the BUDC procurement policy.

8.0 PAAA Training – Ms. Boudreau reported on upcoming Board member training opportunities in July as outlined in the materials included with the meeting agenda.

9.0 Adjournment – There being no further business to come before the Governance Committee, upon motion made by Mr. Penman, seconded by Mr. Elsenbeck and unanimously carried, the June 22, 2020 meeting of the Governance Committee was adjourned at 12:25 p.m.

Respectfully submitted,



Kevin J. Zanner, Secretary

BUFFALO URBAN DEVELOPMENT CORPORATION

Procurement Procedures Applicable to the Expenditure of Federal Funds

ARTICLE I Scope

1.1 The procurement of goods and services made by Buffalo Urban Development Corporation or any of its affiliates or subsidiaries (“BUDC”) involving the expenditure by BUDC of federal funds will be undertaken in accordance with the procurement procedures set forth herein (the “Policy”) and the applicable provisions of 2 CFR Sections 200.318 through 200.326. All other procurements (i.e., those made with non-federal funds) shall be made in accordance with the BUDC procurement policy then in effect.

ARTICLE II Procurement Standards

2.1 All procurements subject to this Policy are to be undertaken in a manner that provides for full and open competition consistent with the standards set forth in 2 CFR Section 200.319. Regardless of the procurement method utilized, BUDC may only award contracts to responsible contractors or vendors possessing the ability to perform successfully under the terms and conditions of the procurement. Consideration will be given to such matters as contractor/vendor integrity, compliance with public policy, record of past performance and financial and technical resources in awarding contracts.

2.2 Solicitations will contain a clear and accurate description of the technical requirements for the material, product, or service to be procured and will identify all requirements that the bidders must fulfill and all other factors that will be used by BUDC in evaluating bids or proposals. In addition, BUDC will ensure that all solicitations include enough qualified sources to ensure maximum open and free competition.

2.3 In order to ensure objective contractor/vendor performance and eliminate unfair competitive advantages, contractors/vendors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals will be excluded from competing for such procurements.

2.4 Solicitations will not contain features that unduly restrict competition. Some examples of situations considered under federal regulations to be restrictive of competition include, but are not limited to, the following:

- Placing unreasonable requirements on firms in order for them to qualify to do business with BUDC;
- Requiring unnecessary experience and excessive bonding;
- Non-competitive pricing practices between firms or between affiliated companies;
- Executing non-competitive contracts with consultants that are on retainer contracts
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered; and
- Any arbitrary action in the procurement process.

2.5 In undertaking procurements, BUDC shall avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach to procuring the specific good or service.

2.6 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms. In accordance with 2 CFR Section 200.321, BUDC will take affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. These affirmative steps include the following:

- Placing qualified small and minority businesses and women's business enterprises on BUDC's solicitation lists;
- Assuring that BUDC solicits small and minority businesses and women's business enterprises whenever they are potential sources;
- When economically feasible, dividing total project requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
- Using the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the above affirmative steps.

ARTICLE III **Methods of Procurement**

3.1 Methods. In accordance with 2 CFR Section 200.320, BUDC shall procure good and services utilizing one of the following methods: (i) micro-purchase procedures; (ii) small purchase procedures; (iii) procurement by competitive proposals; or (iv) procurement by competitive sealed bids. In addition, BUDC may procure goods and services without competition under the circumstances set forth in Section 3.6.

3.2 Micro-purchases (2 CFR Section 200.67). Micro-purchases involve the acquisition of goods or services that in the aggregate, cost no more than the Micro-Purchase Threshold, as such threshold is set forth in 2 CFR Section 200.67 (currently \$10,000). Micro-purchases may be made without soliciting competitive quotations, provided that the BUDC President considers the price to be reasonable, and such determination is documented in the record of procurement.

3.3 Small Purchases (2 CFR Section 200.68). Small purchases involve the acquisition of goods or services that cost no more than the Simplified Acquisition Threshold, as such threshold is set forth in 2 CFR Section 200.68 (currently \$250,000). For small purchases, BUDC will obtain written price or rate quotations from an adequate number of qualified sources, which generally will involve soliciting written price or rate quotations from a minimum of two (2) vendors.

3.4 Procurement through Competitive Proposals. As provided in 2 CFR Section 200.320(d), the competitive proposals method of procurement is normally conducted with more than one source submitting an offer and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. When the competitive proposal method is used, the following requirements apply:

- Requests for proposals (RFP) must be publicized and identify all evaluation factors and their relative importance;
- Proposals must be solicited from an adequate number of qualified sources—three proposals will generally be deemed adequate;
- BUDC will utilize a documented method for conducting technical evaluations of the proposals received and for selecting recipients;
- Contracts will be awarded to the responsible firm whose proposal is most advantageous to BUDC, with price and other factors considered.

BUDC may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform such services.

3.5 Procurement by Sealed Bids. BUDC may procure goods and services through the use of a competitive sealed bid process. Where sealed bid procurement is used, bids must be publicly solicited with a firm fixed-price contract (lump sum or unit price) to be awarded to the responsible bidder whose bid is the lowest in price while conforming to all material terms and conditions of the solicitation.

3.5.1 Construction Services. As provided in 2 CFR Section 200.320, the competitive sealed bid method of procurement is the preferred method of procuring construction services, if the following conditions apply: (A) a complete, adequate, and realistic specification or purchase description is available; (B) two or more responsible bidders are willing and able to

compete effectively for the business; and (C) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

Where sealed bids are used, the following requirements apply:

- Bids must be solicited from a sufficient number of known suppliers who are given adequate response time prior to the date set for opening the bids;
- The invitations for bids must define the items or services in order for the bidder to properly respond;
- All bids should be opened at the time and place identified in the invitation for bids;
- A firm fixed price contract will be made in writing to the lowest responsive and responsible bidder; and
- Any or all bids may be rejected if there is a sound documented reason for doing so.
- Bid bonds, performance bonds and payment bonds are required as provided in 2 CFR Section 200.325.

3.6 Procurements without Competition. BUDC may procure goods or services without competition when one or more of the following circumstances apply:

- The good or service being procured is available only from a sole source;
- The public exigency or emergency nature of the procurement will not permit a delay resulting from a competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from BUDC; or
- After solicitation of a number of sources, competition is determined by BUDC to be inadequate.

ARTICLE IV

Contracts; Incorporation of Federal Contract Provisions

4.1 All contracts entered into by BUDC shall contain the applicable provisions set forth in Appendix II to 2 CFR Part 200, or any successor regulation or appendix. BUDC shall undertake such cost or price analysis as may be required in accordance with 2 CFR Section 200.323. Time and materials contracts are discouraged and shall be utilized only in compliance with the provisions of 2 CFR 200.318(j)(i).

ARTICLE V

Records of Procurement Transactions

5.1 BUDC will maintain records of all procurements made pursuant to this Policy. Such records shall include, at a minimum, a written report with relevant source documents setting forth the rationale for the method of procurement selected, the type of contract, the basis

for contractor selection or rejection, and the basis for the contract price. Source documents for purposes of this Article shall include receipts, purchase orders, invoices, RFP/RFQ data and bid documents. These documents will be maintained for such period of time as the federal award or sub-grant requires, or if no such period is specified, in accordance with BUDC records retention policies.

ARTICLE VI **Conflicts of Interest**

6.1 No employee, director, officer or agent of BUDC may participate in the selection, award or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, director, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. In the event that a conflict of interest, real or apparent, exists, the employee, director officer, or agent of BUDC shall notify the appropriate official(s) of BUDC, and such conflict of interest shall be processed in accordance with the provisions of the BUDC Code of Ethics.

6.2 No employee, director, officer or agent of BUDC shall solicit or accept gratuities, favors, or anything of monetary value from current or prospective consultants, contractors, vendors in connection with any federal procurements made under this Policy. For purposes of this Section, "gratuities, favors, or anything of monetary value" shall include money, services, loans, travel, entertainment, hospitality or any financial transaction on terms not available to the general public, but shall not include normal hospitality or promotional materials if such hospitality or materials do not exceed \$100.00 in value and are not received in circumstances in which it might reasonably be inferred that they were given with intention to influence or reward an employee, director, officer or agent of BUDC in relation to the performance of their duties.

6.3 Any BUDC employee, director, officer, or agent who knowingly and deliberately violates the provisions of this Article may be subject to disciplinary action up to and including termination or employment or removal from the board or office. Any contractor or potential contractor who knowingly and deliberately violates these provisions will be barred from future transactions with BUDC.

ARTICLE VII **Contract Approval Thresholds**

7.1 The approval thresholds set forth in Section (I) of the BUDC Procurement Policy shall be applicable to the procurement of all goods and services made under this Policy, other than emergency procurements made pursuant to Section 3.6.

ARTICLE VIII
Amendments

8.1 This Policy may be amended from time to time by the BUDC Board of Directors.

Adopted. _____, 2020

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To: BUDC Staff
From: Peter Cammarata, President
Date: September 29, 2020
Re: Vacation & Personal Days Carryover Policy

BACKGROUND:

The COVID-19 pandemic and New York State travel bans have affected the amount of paid time off used by BUDC employees. All ECIDA employees were working from home for nearly three months, which allowed for greater flexibility in work hours compared to working primarily in the office. Some employees had an increase in working hours due to new programs or tasks as a result of the pandemic. Many employees typically travel out of state for vacations, and mandatory quarantining upon return has made this type of travel undesirable. As a result of these and other factors, many employees would likely forfeit a significant amount of vacation and/or personal time at the end of 2020 under the current carryover policy.

CURRENT CARRYOVER POLICY:

The current BUDC policy regarding the carryover of unused vacation/personal time is that one year of vacation and personal day entitlements (combined) may be carried over to the following calendar year. (Source: BUDC Employee Handbook Section 3.)

This is broken out as follows:

- Employees with less than 10 years of service – a total of 18 days may be carried over. Annual entitlement = 15 vacation days + 3 personal days.
- Employees with 10 or more years of service – a total of 23 days may be carried over. Annual entitlement = 20 vacation days + 3 personal days.

CHANGE TO CARRYOVER POLICY FOR 2020:

An expansion of the carryover of unused vacation/personal time into 2021 at a 50% increase. This is broken out as follows:

- Employees with less than 10 years of service – a total of 27 days may be carried over into 2021.
- Employees with 10 or more years of service – a total of 34.5 days may be carried over into 2021.

The following parameters apply:

- Calendar year allotments of vacation and personal time would remain unchanged. (e.g. Time earned for 2021 would remain at 18 or 23 days total.)
- Employees must use the additional time off carried over during calendar year 2021.
- If an employee leaves BUDC for other employment during 2021, he or she would not be paid for unused vacation/personal time in excess of 18 or 23 days (based on tenure).

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To: File

Item 4

From: Mollie Profic, HR Officer

Date: September 25, 2020

Re: New York State Paid Sick Leave

The purpose of this memo is to document the Buffalo Urban Development Corporation's (BUDC) sick leave policy as it relates to New York State's (NYS) new paid sick leave program. The NYS program begins January 1, 2021, and employers must start to accrue time for employees beginning September 30, 2020.

General

According to N.Y. Labor Code § 196-b, every employer must provide its employees with sick leave as follows:

- Employers with four or fewer employees in any calendar year must provide at least 40 hours of unpaid sick leave to each employee per calendar year. However, if these employers have a net income of greater than one million dollars (in the previous tax year) then the 40 hours of leave must be paid;
- Employers with between five to 99 employees in any calendar year must provide at least 40 hours of paid sick leave to each employee per calendar year; and
- Employers with 100 or more employees in any calendar year must provide at least 56 hours of paid sick leave to each employee per calendar year.

For employee count, a calendar year is the 12-month period from January 1st through December 31st. For all other purposes, a calendar year is either the twelve-month period from January 1st through December 31st, or a regular and consecutive twelve-month period, as determined by an employer.

Note: The state sick leave law does not prevent localities, with a population of at least one million, from enacting their own sick leave provisions that meet all state minimums. Moreover, local sick leave laws in place on September 30, 2020 are not diminished or limited by the state law.

BUDC Policy: BUDC's current policy provides for 9 days of sick leave annually for all full-time employees. At 7.5 hours per day, this amounts to 67.5 hours per year. This meets the NYS minimum requirement.

Accrual

Employees accrue sick leave at a rate of one hour per every 30 hours worked. Accrual begins at the later of the employee's start date or September 30, 2020 and is subject to use and accrual limitations. However, employees may not use accrued sick leave until January 1, 2021.

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BUDC Policy: BUDC's accrual rate of 9 days per year and standard workweek of 37.5 hours equates to 67.5 hours earned per 1950 hours annually. This equates to 1.04 hours accrued per 30 hours, calculated as follows: (67.5 sick hours / 1950 hours = .0346 sick time earned per hour. .0346 x 30 hours = 1.04.) This accrual rate exceeds the NYS requirement of 1 hour accrued per 30 hours worked.

Frontloading

Employers may frontload the entire amount of required sick leave at the beginning of the calendar year. However, employers may not reduce or revoke any frontloaded sick leave based on the numbers of hours actually worked by an employee during the calendar year.

BUDC Policy: BUDC employees accrue sick time on a monthly basis.

Carryover and Use Caps

Unused sick leave carries over to the following calendar year, with the following use caps:

- Employers with fewer than 100 employees may limit the use of sick leave to 40 hours per calendar year; and
- Employers with 100 or more employees may limit the use of sick leave to 56 hours per calendar year.

BUDC Policy: BUDC does not limit the amount of sick time used by employees, subject to the employee's individual accruals.

Permitted Purposes

On January 1, 2021, upon the verbal or written request of an employee, an employer must provide accrued sick leave for the following permitted purposes:

- Employee's or family member's mental or physical illness, injury, or health condition, regardless of whether there has been a diagnosis or medical care is required when the employee request leave;
- Employee's or family member's diagnosis, care, or treatment of a mental or physical illness, injury or health condition, in addition to the need for medical diagnosis or preventive care; or
- When the employee or a family member is a victim of domestic violence (including a family offense, sexual offense, stalking, or human trafficking) and the employee needs leave to:
 - Obtain services from a domestic violence shelter, rape crisis center, or other services program;
 - Participate in safety planning, relocate, or other actions to increase their, or family members, safety;
 - Meet with an attorney, or other social services provider, to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding;
 - File a complaint or domestic incident report with law enforcement;
 - Meet with a district attorney's office;
 - Enroll children in a new school; or
 - Any other actions necessary to ensure their, or a family member's, health or safety or to protect those who associate or work with the employee.

Note: If the employee committed the domestic violence crime, then they are not entitled to leave.

BUDC Policy: BUDC will permit sick leave for the listed purposes.

Confidentiality

Employers may not require the disclosure of confidential information relating to a mental or physical illness, injury, or health condition of such employee or such employee's family member, or information relating to absence from work due to domestic violence, a sexual offense, stalking, or human trafficking, as a condition of providing sick leave.

BUDC Policy: BUDC will not require disclosure of confidential information as listed above.

Incremental Use and Rate of Compensation

Employers may set a reasonable minimum increment for the use of sick leave which may not exceed four hours. Employees must receive compensation at their regular rate of pay, or the applicable minimum wage, whichever is greater, for their paid sick leave.

BUDC Policy: BUDC permits sick leave usage in increments as low as one hour. Employees are compensated at their regular rate of pay.

Leave Statement

Upon an employee's verbal or written request, employers must provide a summary of the sick leave amounts they accrued and used in the current calendar year and/or any previous calendar year. Employers must provide this information to the employee within three business days of their request.

BUDC Policy: Employees may request a summary of sick leave accruals and usage from the Human Resources Officer. Employees are also able to view and track their sick leave accruals in BUDC's timekeeping system.

Preexisting Leave

Employers are not required to provide any additional sick leave if they have a preexisting a sick leave policy or time off policy that provides employees with an amount of leave which meets or exceeds legal requirements and also satisfies accrual, carryover, and use requirements.

BUDC Policy: BUDC's current policy provides employees with an amount of leave that exceeds legal requirements and satisfies accrual, carryover, and use requirements.

Right to Reinstatement

Employees must be restored to the position they held prior to taking sick leave (with the same pay, terms, and conditions of employment) upon return from sick leave.

BUDC Policy: Employees returning from sick leave return to their same position.

Upon Termination

Employers are not required to pay an employee for unused sick leave upon their termination, resignation, retirement, or other separation from employment.

BUDC Policy: BUDC does not currently compensate employees for unused sick leave upon separation of employment.

Recordkeeping

Employers must maintain records showing the amount of sick leave provided to each employee, for each week worked, along with the other standard payroll records.

BUDC Policy: BUDC maintains these records in its timekeeping system.