NEW YORK STATE OF OPPORTUNITY. USA Niagara Development Corporation
A Subsidiary of Empire State Development

USA NIAGARA DEVELOPMENT CORPORATION

Meeting of the Directors

At the offices of the
USA Niagara Development Corporation
222 First Street, 7th Floor
Niagara Falls, N.Y. 14303

Tuesday

July 29, 2025 – 11:00 a.m.

AGENDA

I. CORPORATE ACTIONS

A. Approval of Minutes of the March 18, 2025, Directors' Meeting

II. FOR CONDERATION

A. USAN Procurement Guidelines – Adoption Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

B. Property Disposition Guidelines – Adoption of Property Disposition Guidelines, Re-Appointment of Contracting Officer, and Authorization to Take Related Actions

C. Consulting Services Amendment – Niagara Falls Heritage Gateways Design – Authorization to Enter into a Contract Amendment for Consultant Services and to Take Related Actions

D. Procurement of Equipment Installation Services – Old Falls Street Play Pod – Authorization to Enter into a Contract for Equipment Installation Services and to Take all Related Actions

E. 201 Rainbow Boulevard Hotel Restoration Land Use Improvement Project – Modified General Project Plan – Adoption of the Proposed Modified General Project Plan; Authorization to Hold a Public Hearing; Authorization to Provide Financial Assistance for the Project; Authorization to Enter into Necessary Agreements; and Authorization to Take All Related Actions

Item I. A.

DRAFT – SUBJECT TO REVIEW AND REVISION

USA NIAGARA DEVELOPMENT CORPORATION
Meeting of the Directors
Held at the USA Niagara Offices
222 First Street – 7th Floor
Niagara Falls, New York 14303

With videoconferencing to:

ESD New York City Regional Office
655 Third Avenue – 4th Floor
New York, NY 10017

March 18, 2025

MINUTES

In Attendance Directors:	Francine DelMonte – Chair Scott M. Brydges – Voting Director Dr. Chandra Foote – Voting Director
Present for USA Niagara:	Yvonne Cooper – Acting Corporate Secretary (via videoconference) Douglas Janese – Senior Counsel, Legal Samuel Morreale – Senior Project Manager John Risio – Project Manager Lou Rizek – Officer Manager Anthony Vilardo – President
Present for ESD:	Joshua Bloodworth – General Counsel Tiffany Bowie – Director, Subsidiary Finance Anthony Dalessio – Deputy Chief Financial Officer and Controller Eugene Kwiatkowski – Senior Director of Budgeting Raymond Orlando – Chief Financial Officer
Present for ESD:	Laura Magee – Deputy Director, Public Affairs Paul Tronolone – Vice President, Policy and Planning WNY
NFCC	Jason Murgia – General Manager (NFCC) &(OFS)
DNUSA (Destination USA)	John Percy – President & CEO Andrea Czopp - Chief Operating Officer

Following the roll call and confirmation that a quorum was present, the meeting of the Directors of the USA Niagara Development Corporation ("USAN" or the "Corporation") was called to order at 11:33 a.m. by Chair DelMonte.

Chair DelMonte called the meeting to order and noted that the meeting will be webcast.

Chair DelMonte also noted that the public had been given an opportunity to comment on the Agenda items by submitting their written comments by noon. on Monday and noted that no comments were received from the public.

Chair DelMonte then noted that the Directors had received the relevant written materials in advance of today's meeting and are free to ask questions.

The Chair then asked the Directors if anyone had any potential conflict of interest with regard to any of the items on the Agenda and no conflicts were noted at this time.

The Chair then called for the approval of the Minutes of the November 6, 2024 and Directors' meeting. There being no corrections noted, upon motion duly made and seconded, the following Resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE NOVEMBER 6, 2024 MEETING OF THE DIRECTORS OF THE USA NIAGARA DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on November 6, 2024 and as presented to this meeting, 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 Corporation.

* * *

Chair DelMonte then called on Anthony Vilardo to present the next item on the Agenda related to the Fiscal Year 2025-2026 Operating and Capital budgets for the Directors' consideration.

Mr. Vilardo explained that State Finance Law requires that prior to the commencement of each fiscal year on April 1st, the Directors of the USA Niagara Development Corporation adopts an Operating and Capital budget. The operating budget for the 2025-2026 fiscal year in the amount of $757,001 includes personal services that includes salaries and benefits for five employees and a budget for non-personal services in the amount of $196,475, that includes office space costs, insurance and other administered expenses for a total budget of $953,476.

Mr. Vilardo noted that consistent with previous years operating budgets, the fiscal year 2025-2026 Operating Budget will be advanced by Empire State Development the parent of USA Niagara Development Corporation with the expectation of reimbursement at a later date.

Mr. Vilardo explained that the Fiscal Year 2025-2026 Corporate Budget in the amount of $85,849,397 includes but is not limited to design and other soft costs, legal costs, property management/maintenance costs, insurance costs, demolition and site clearance costs,

construction costs and other miscellaneous costs.

Mr. Vilardo noted that it is anticipated that the proposed Capital budget will also fund design and constructions costs for the Rainbow Mall Civic Improvement Project and the Gorge Gateway Park and Hydraulic Power Plaza capital grants that are related to the Hotel Niagara and First Street Mixed-use Building projects along with the maintenance and site preparation expenses associated with properties that have been secured through USA Niagara's Strategic Land Acquisition Program.

Mr. Vilardo noted that funding for the Capital budget will be consistent with existing board actions and will consist of both existing and anticipated funds from New York State Budget Appropriations and no USA Niagara Corporate funds are included in the Capital budget.

Following the full presentation, Chair DelMonte called for questions or comments from the Directors. Chair DelMonte asked if there was an increase in the budget.

Mr. Vilardo stated that there is a slight increase from last year due to additional staff being hired and an increase in the insurance cost.

Director Foote asked about property management maintenance costs and if constructions costs have gone down.

Mr. Vilardo stated that maintenance costs will be less and less.

Director Foote asked if the Directors were being asked to vote on both the Operating and Capital budgets.

Mr. Vilardo clarified that it was all one budget and noted that the budget down slightly.

The Chair then called for any further questions or comments. Hearing none and noting that no comments were received from the public, upon motion duly made and seconded, the following Resolution was unanimously adopted:

USA NIAGARA DEVELOPMENT CORPORATION – FY 2025-26 Operating and Capital Budgets – Approval of the Corporation's FY 2025-26 Operating and Capital Budgets (April 1, 2025 – March 31, 2026)

RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the "Materials"), the Corporation's proposed FY 2025-26 Operating and Capital Budgets are 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 Corporation is hereby authorized to undertake tasks and incur expenditures consistent with advancing the scope of work contemplated in the proposed budgets, subject to the availability of funds; and be it further

RESOLVED, that the Directors shall make individual approvals and authorizations for items under the Capital Budget; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to execute and deliver on behalf of the Corporation all documents, instruments and agreements that the President shall deem necessary and appropriate to carry out these resolutions; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to take

any action necessary and appropriate to carry out the foregoing.

* * *

The Chair then called on Mr. Vilardo to present the next item on the Agenda related to the Niagara Falls Convention and Conference Facility and Old Falls Street 2025 Operating and Capital budgets.

Mr. Vilardo explained that the USA Niagara Development Corporation is the owner and developer of the Niagara Falls Convention Center and on October 12, 2021 authorized entering into a five-year agreement with the Niagara Tourism and Convention Corporation d/b/a Destination Niagara to provide management services for the Niagara Falls Convention Center and the City of Niagara Falls Old Falls Street for a term starting on January 1, 2022 with the option to extend the term for two one-year extensions.

Mr. Vilardo noted that the proposed calendar year 2025 Operating budget for the Convention Center is in the amount of $400,495 and for Old Falls Street the budget is in the amount of $816,041 for a total budget of $1,215,536. The proposed calendar year 2025 Capital budget in the amount of $283,400 and Destination Niagara will make the proposed Capital budget purchases on behalf of USA Niagara through State contracts through costs effective and competitive bids and comparable pricing where State contracts are not available.

Mr. Vilardo noted that the Capital budget for the Convention Center includes various upgrades and renovations and there are currently no Capital items in the budget for Old Falls

Street.

Mr. Vilardo noted that the combined Operating an Capital budget is $1,499,936 consisting of the Niagara Falls Convention Center Operating Capital budget in the amount of $683,895 and the Old Falls Street Operating Capital budget in the amount of $816,041.

Mr. Vilardo noted the gap in the fiscal years for each budget, noting that the Convention Centers budget runs from April 1st to March 31st in a fiscal year and Old Falls Street budget runs from January 1st to December 31st of a calendar year. On March 26, 2024, the Directors approved and advance of $250,000 to fund the first quarter operations in 2025.

Mr. Vilardo explained that the Directors were being asked to approve funding for the Niagara Falls Convention Center and Old Falls Street for the first quarter of 2026 in the amount of $250,000. The budgets for 2026 will remain subject to approval by the Directors before the start of the Corporation's fiscal year.

The Chair then called for any further questions or comments. Hearing none and noting that no comments were received from the public, upon motion duly made and seconded, the following Resolution was unanimously adopted:

USA NIAGARA DEVELOPMENT CORPORATION – Approval of the CY 2025 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets; Approval of First Quarter 2026 Funding; and Authorization to Disburse Funds

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RESOLVED, that based on the materials presented at this meeting and ordered filed with the

Corporation (the "Materials"), the Corporation's proposed CY 2024 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets in a cumulative amount not to exceed $1,499,936 are 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, the Corporation's proposal for first quarter 2026 (calendar quarter) funding for the Niagara Falls Convention and Conference Facility and Old Falls Street in an amount not to exceed $250,000 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 actions of the President or his designees relating to the CY 2025 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets be approved and ratified, and the same hereby are, authorized to disburse funds substantially in accordance with the CY 2025 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets with such changes as the President or his designee deems necessary or appropriate; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to execute and deliver on behalf of the Corporation all documents, instruments and agreements that the President shall deem necessary and appropriate to carry out these resolutions; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to take any action necessary and appropriate to carry out the foregoing.

* * *

Chair DelMonte then called on Andrea Czopp, Chief Operating Officer and Jason Murgia, General Manager of the Niagara Falls Convention Center to present the Annual Report and budget for informational purposes only on Destination Niagara.

There being no further business, the meeting was adjourned at 12:10 p.m.

Respectfully submitted,

Yvonne Cooper
Acting Corporate Secretary

Item II. A.

NEW YORK STATE OF OPPORTUNITY. | USA Niagara Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
July 29, 2025

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: USAN Procurement Guidelines

REQUEST FOR: Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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I. Background

Each year the USA Niagara Development Corporation ("USAN" or "the Corporation") Directors adopt updated and revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the "Guidelines"). There have been no substantive changes to Executive Orders and discretion to authorities in the past year that would require modification of the proposed 2025 Guidelines (the "2025 Guidelines"). New York State Urban Development Corporation d/b/a Empire State Development ("ESD") staff reviewed the Guidelines and incorporated the following changes:

- Reviewing and updating all internal and external internet links to ensure they are all functional and provide the most current information;

- Further clarifying the division of duties between the originating team and the Procurement Unit when conducting a competitive solicitation;

- Removing duplicative, out of date and extraneous information that is no longer relevant or useful to staff; and

- Updating section numbering, formatting and the table of contents for increased ease of use by staff.

Accordingly, the proposed 2025 Guidelines have been revised to incorporate these revisions, as well as the changes for consistency. As with previous Guidelines, the proposed 2025 Guidelines are modeled directly upon ESD's procurement guidelines.

On March 27, 2025, the ESD Board adopted the revised 2025 Guidelines, which are designed to govern procurements by ESD and its subsidiaries, such as USAN. A copy of the 2025 Guidelines is attached. Approval is sought for the adoption by the USAN Directors of the 2025 Guidelines.

II. Procurement Guidelines Summary

The proposed 2025 Guidelines set forth the policies and procedures to be followed by USAN when seeking to contract for goods or services. It should be noted that these Guidelines do not have the force of law, and are intended as a statement of best practices and procedures. No contract is invalid merely because these guidelines have not been followed.

The proposed 2025 Guidelines define the universe of procurement transactions which are subject to the policies and procedures. Generally, all procurements by USAN must be competitively awarded, except where State law provides for non-competitive sourcing (e.g., goods purchased from approved not-for-profit agencies for the blind, and procurements from the Office of General Services centralized contracts list). Based on the expected cost of procured goods and/or services, procurement contracts must be obtained after advertisement in the NYS Contract Reporter, except in limited instances where an exemption is obtained, generally for sole or single source procurements when only one vendor offers the desired goods or services or when a single vendor has unique qualities or experience that obviate a competitive process. The proposed 2025 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of ESD's Bid Opening Guidelines and the compilation of a procurement record for every covered procurement contract.

The proposed 2025 Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all State agencies and public authorities make responsible spending decisions, and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness and transparency.

The proposed 2025 Guidelines are intended to be user-friendly and are set forth in a logical and coherent fashion that will assist staff in understanding the procedures to be followed and the substantive rules that govern procurements.

Sources of help to users and information are included as clickable links, and virtually all required forms and ESD policy and procedure documents also can be accessed from within the document by hyperlinks. These links appear in blue font in the hard copy of the proposed 2025 Guidelines presented to the Directors for approval.

III. Environmental Review

ESD staff on behalf of USAN has determined that approval of the proposed 2025 Guidelines constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the requested approval.

IV. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and Article 3 of New York State Veterans' Services Law, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of New York State certified minority-and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity has reviewed the amendment to the 2025 Guidelines and has determined that MWBE and SDVOB participation goals will not apply.

V. Requested Action

The Directors are requested to adopt the proposed 2025 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, effective as of April 1, 2025.

VI. Recommendation

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

Attachments

Resolution
Proposed 2025 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

July 29, 2025

USA NIAGARA DEVELOPMENT CORPORATION – 2025 USAN Procurement Guidelines – Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the proposed 2025 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, a copy of which is attached to the materials, be and hereby is approved and adopted as of April 1, 2025; and the President or his designee is authorized to promulgate the said Guidelines in electronic form and other media for the use of the staff of the Corporation, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION

D/B/A EMPIRE STATE DEVELOPMENT

Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts

Effective April 1, 2025

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT ("ESD")
Guidelines Regarding the Use, Awarding, Monitoring and
Reporting of Procurement Contracts

Effective April 1, 2025

1. Overview And Requirements

The following guidelines (the "Guidelines") are applicable to the use, awarding, monitoring and reporting of procurement contracts of the New York State Urban Development Corporation, d/b/a Empire State Development and its subsidiaries (collectively, "ESD"), ESD is required to adopt procurement guidelines by Article 9, Title 4 of the Public Authorities Law ("PAL"). The same law requires annual review and updating of the guidelines by the ESD Board of Directors ("Board"), and all subsidiaries Board.

These Guidelines are modeled on the New York State Procurement Guidelines published by the State Procurement Council (the "SPC Guidelines"). The SPC Guidelines apply to all State agencies and thus provide useful guidance for procurement by ESD (which is not a State agency as that term is defined in the SPC Guidelines). The SPC Guidelines cover some issues and procedures rarely encountered by ESD but should be consulted by staff if a situation arises that does not appear to be covered in these Guidelines, since useful guidance may thereby be obtained. One can view the SPC guidelines here:
https://ogs.ny.gov/system/files/documents/2025/02/february-2025-nys-procurement-guidelines_0.pdf

In these ESD Guidelines, a person, firm or corporation who wishes to provide goods and/or services to ESD may be called a **"vendor"** or **"offeror"** or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming an ESD vendor, a **"respondent."**

It is imperative that the proper steps are followed when procuring a vendor. Failure to follow the proper steps such as buying goods or services without proper approvals may leave both the purchaser and Corporation in a vulnerable position. Under no circumstance should anyone acquire goods or services without the necessary approvals or required documents. Please be advised that this apply to both new procurement and amendments or modifications of procurements. Corrective steps including but not limited to restarting an entire procurement process may be taken if ESD Procurement Guidelines are not strictly followed.

1.1. Contracts Covered, And Not Covered, By The Guidelines

Pursuant to PAL § 2879 (2), **"Procurement Contracts"** are any written agreements for the acquisition of goods or services of any kind in the actual or estimated amount equal to five thousand dollars ($5,000) or more. Contracts which are intended to earn money or other assets or benefits to ESD (often referred to as **"revenue contracts")** are also considered Procurement Contracts for the purposes of these Guidelines.

For purposes of compliance with anti-lobbying laws contained in State Finance Law § 139-j and 139-k (see section 8.1), Procurement Contracts also include the purchase or lease of any interest in real property which involves an estimated annualized expenditure by ESD in excess of fifteen thousand dollars ($15,000).

Disposition of property (real or personal) by ESD is not a procurement covered by these Guidelines but is instead subject to ESD's Property Disposition Guidelines. However, where a property disposition requires a competitive process, that process should be conducted in accordance with these Guidelines to the extent practicable.

Loans and grants made by ESD in furtherance of its economic development mission are not Procurement Contracts, but may be subject to certain provisions of these Guidelines, including Office of the State Comptroller ("OSC") review and approval for grants over $1 million (see Section 10.4).

Memberships, sponsorships and certain types of subscriptions are also not considered Procurement Contracts, but may be subject to certain provisions of these Guidelines. Advice about the requirements for these types of contracts, and about what types of subscriptions are not considered Procurement Contracts may be obtained from the Procurement department.

A Contract or Memorandum of Understanding ("MOU") with a sister State agency or authority is not considered a Procurement Contract covered by these Guidelines. Note, however, that appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement, as well as OSC approval for binding agreements) may apply to MOUs.

In connection with certain of its projects, ESD may need to obtain a license from a governmental agency, authority, or company or a public utility in order to enter the licensor's premises and perform work. As a precondition to receiving the license, ESD can be required to enter into agreements with the licensor that prescribe conditions for work to be performed on the site, including work and/or oversight of work which must be performed by the licensor's personnel or contractors, as well as payment of licensor costs by ESD. Examples include licenses for work on rail and utility facilities. Agreements of this kind, often referred to as **"forced contracts,"** are not covered by the competitive solicitation requirements of these Guidelines, because ESD has no discretion or authority with respect to the work to be performed by the licensor's personnel and contractors. However, appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement) would apply.

Procurement Contracts **under $50,000** may be handled by **Purchase Order** approved by Department Head, Controller's Office and Contracts Administration. A formal competitive solicitation is not required, but these purchases should be made after obtaining three quotes whenever practicable. For further information, consult the Procurement Department.

Minority and Women-Owned Business Enterprise (MWBE) goal setting applies to any contract in an amount of $25,000 and greater. The Office of Contractor & Supplier Diversity (OCSD) must assign a MWBE goal or request an exclusion for approval. Exclusions are contracts that do not have subcontracting opportunities or where there is no availability of certified MWBEs to perform or provide specific goods or services. ESD is required to document this by searching the New York State MWBE Directory, and consulting with ESD's assigned Agency Services Analyst or the MWBE Business Development Unit. Exclusions will only be granted if MWBEs are solicited to participate as prime contractors or no MWBEs are available to participate as prime contractors. If seeking an exclusion and MWBE firms are in the Directory, ESD will need to solicit quotes to these firms to verify if they meet ESD's needs. If this firms don't meet the required needs, ESD must provide adequate documentation and submit the exclusion request to the DMWBE for approval. If not approved, ESD will assign a goal. The prime contractor is required to meet the goal or document good faith efforts to meet the goal.

1.2. Types Of Procurement Contracts

The types of goods and services requiring Procurement Contracts include goods and services needed to proceed with an ESD project, or to support the administrative needs of ESD. Procurements of goods cover the entire spectrum of goods, ranging from pens to motor vehicles.

Procurements of services include but are not limited to legal, accounting, auditing, management consulting, investment banking, underwriting, financial advice, specialized temporary employees, planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of ESD.

Reasons for procuring services include:

a. Requirements of special expertise or unusual qualifications;
b. Nature, magnitude or complexity of services required;
c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
d. Short-term or infrequent need for the services; and
e. Distance of the location(s) where the services must be performed from ESD offices or facilities.

Term Contracts (sometimes referred to as "open retainer" contracts) are also included in and covered by these Guidelines. These contracts may be used when ESD anticipates using a vendor or vendors multiple times over a given period of time. In such cases, a maximum contract period must be specified when the contract is entered into. In all other respects, these Guidelines apply.

1.3. General Procurement Principles

ESD's procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet agency needs;
- Provide checks and balances to regulate agency procurement activities; and
- Protect the interests of ESD, the State and taxpayers.

Procurement Contracts are to be awarded on a **competitive basis** to the maximum extent practicable. Such awards are generally made after notice of the procurement opportunity is published in the **New York State Contract Reporter** where the amount of the contract is **$50,000 or more** and after the evaluation of proposals obtained, whenever practicable, from at least three qualified vendors or respondents, including where practicable at least one State-certified minority-or woman-owned business enterprise ("MWBE") and one service-disabled veteran-owned business ("SDVOB"). (See Section 7: Types of Solicitations). Monetary thresholds may not be avoided by artificially splitting or breaking up contracts into lesser agreements, or entering into a series of agreements, for sums below the dollar thresholds. Also, if a mini bid is completed and the bidders have all submitted costs that are equal to or greater than the threshold of $50,000, an RFP must be posted on the contract reporter.

All mini bids in the amount of $25,000 or greater must be forwarded to OCSD to review whether MWBE and/or SDVOB goals will apply to the contract.

Competition in the procurement process serves both ESD and potential vendors by ensuring that the procurement process produces an optimal solution at a reasonable price; and allowing qualified vendors an opportunity to obtain ESD business, while the process guards against inflated pricing, favoritism, fraud and collusion; and allows all qualified vendors an opportunity to obtain ESD business.

2. Procurement: Overview And Requirements

2.1. The Procurement Process Guide

I. Purchases greater than $5,000 and less than $50,000

- Preferred Source: If ESD's procurement needs can be met by a preferred source vendor, you **must** use this option. See section 2.2.

- OGS Centralized Contract: If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Please follow OGS guidelines of each specific contract as indicated in section 2.3.

- Informal Solicitation: If ESD's needs cannot be met by the above options, you may elect to conduct an informal solicitation, in the following order:

- Discretionary Purchase: a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business (see section 2.4).

- Mini-Bid: a mini-bid from vendors on a current pre-qualified list (see section 2.6) or a mini-bid to a minimum of three vendors equipped to provide services. One of the vendors in each solicitation should be an MWBE/SDVOB whenever practicable (see section 6). Contact the Procurement Unit for further assistance if needed.

- Emergency/Single Source/Sole Source: If this is an emergency situation, one vendor is best suited to perform the work, or there is only one vendor that can meet the needs required for service, the initiating department head must justify the need procure the vendor as an Emergency, Single Source or Sole Source in the justification memo and forward it to the Procurement Unit to review.

II. Purchases of $50,000 or greater

- Preferred Source: If ESD's procurement needs can be met by a preferred source vendor, you **must** use this option. See section 2.2.

- OGS Centralized Contract: If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Please follow OGS guidelines of each specific contract as indicated in section 2.3.

- Informal Solicitation: If ESD's needs cannot be met by the above options, you may elect to conduct an informal solicitation, in the following order:

  - Discretionary Purchase: a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business (see section 2.4).

  - Mini-Bid from a Pre-Qualified List: a mini-bid from vendors on a current pre-qualified list (see section 2.6). One of the vendors in each solicitation should be an MWBE/SDVOB whenever practicable (see section 6). Contact the Procurement Unit for further assistance if needed.

- If ESD's needs cannot be met by the above options, use a Request for Proposals ("RFP"), Request for Qualifications ("RFQ") or Request for Expressions of Interest (RFEI"), and **advertise in the Contract Reporter** (see section 4) unless this procurement warrants a Contractor Reporter Exemption as set forth herein.

- Emergency/Single Source/Sole Source: If this is an emergency situation, one vendor is best suited to perform the work, or there is only one vendor that can meet the needs required for service, a Contract Reporter Exemption request may be appropriate (see Section 3).

2.2. NYS Preferred Sources

Goods and services needed by ESD may be available, without the need for competitive procurement, from New York State Preferred Sources. If a Preferred Source has goods or services available in the form, function and utility required by ESD, at a price not more than 15% above the prevailing market rate, the goods or services should be obtained through the Preferred Source in the following prioritized order: NYS Department of Correctional Services Correctional Industries Program (CORCRAFT); NYS approved charitable non-profit agencies for the blind; and approved charitable non-profit agencies for the severely disabled, qualified programs for the mentally ill, and qualified veterans workshops. For information on these Preferred Sources, see State Finance Law §162 and the Office of General Services ("OGS") Preferred Sources Guide. The Guide is exhaustive, but the main points are easy to follow.

2.3. OGS Centralized Contracts

Goods and services needed by ESD may be available, without the need for a competitive procurement, through Centralized Contracts held by OGS. Please follow the OGS guidelines for each specific contract.

2.3.1 Commodities Contracts

The OGS Procurement Services Group (PSG) establishes centralized contracts for commodity contracts in the form, function and utility required by State agencies, for a wide range of items commonly acquired by agencies. If the commodity is available from a centralized contract in form, function and utility consistent with ESD's need, such item may be purchased from the centralized contract. However, ESD may competitively procure items otherwise available on a centralized contract when the resultant price is less.

2.3.2 Service Contracts

ESD has discretion to use the OGS centralized service contracts list. A wide and diverse range of services from routine maintenance to complex technology-based acquisitions are available through these OGS contracts. Again, ESD may competitively procure items otherwise available on the OGS centralized contract list when the resultant price is less.

2.4 Discretionary Purchases

Pursuant to PAL § 2879(3)(b)(i) and State Finance Law §163(6), ESD may purchase services or commodities from small business concerns, from those certified pursuant to Article 15-A of the Executive Law (MWBEs), from those certified pursuant to Article 3 of the Veterans' Services Law (SDVOBs), or commodities or technology products that are recycled or remanufactured, in an amount up to $500,000, without a "formal competitive process." In such a case, three quotes should be obtained wherever practicable, and Contract Reporter advertising is advisable when time permits.

Staff should assess whether a formal competitive process, or one that is less formal but still competitive, may best meet ESD's needs. The award of a discretionary purchase contract should be published in the Contract Reporter.

As with any other procurement, for discretionary purchases the initiator must:

- review the Preferred Source list and OGS Centralized Contracts (see links above) to determine whether the desired goods or services are available to meet ESD's needs;
- ensure that the commodities, services or technology acquired meet ESD's form, function and utility needs;
- document and justify the selection of the vendor;
- document and justify the reasonableness of the price; and
- ensure that ESD buys from responsible vendors.
- Obtain board approval if the contract amount is over $250,000

2.5 "Piggyback" Contracts

ESD may find it efficient to establish a contract based on another governmental entity's contract. This is known as "piggybacking" and may be used in accordance with the criteria established by OGS in the Contract Piggybacking Guidelines under State Finance Law § 163(10)(e), available at https://www.ogs.state.ny.us/procurecounc/pdfdoc/pgbguidelines.pdf. Note that a piggyback procurement requires approval by the OGS Procurement Services Group — this can be difficult and time-consuming to accomplish, as the OGS staff are not very familiar with public authority procurement policies and practices. For example, if the agency you wish to piggyback on is a State agency, it will have different contractual terms than those used by ESD. This may lead to delay, if OGS decides to seek approval of the proposed ESD contract terms from the Attorney General. Piggybacking is better accomplished when you wish to use a contract established by another public authority (rather than a State Agency).

2.6 Pre-Qualified Lists

Goods and services needed by ESD may be available without the need for full competitive procurement, from a pre-qualified list of vendors that have been vetted for qualifications and pricing. When selecting from a pre-qualified list, solicitations should go out to as many providers on the list as practicable including an MWBE or SDVOB entity if pre-qualified.

When a member of a prequalified firm leaves the firm to one that is not on the prequalified list, the prequalification follows the member. A new contract would be required.

Also, ESD staff will have the option of adding additional vendors to Prequalified Lists for a variety of reasons including but not limited to increasing the number of prequalified vendors to better serve ESD's needs. It is anticipated that links to all current ESD Pre-Qualified Lists will be made available to ESD Staff via ESD's Intranet.

If a vendor was procured from a prequalified list that has expired and is not on the current prequalified list, any contract amendment must be accompanied by a contract reporter exemption.

Adoption of the Pre-Qualified Lists by ESD subsidiaries are now covered under ESD's board approval. The subsidiaries no longer have to hold a special session to approve board materials.

2.7. GSA Contracts

ESD is permitted to order from federal General Supply Schedules (GSA) through the GSA Multiple Award Schedule (MAS) program. GSA has already determined the prices of supplies and fixed-price services and rates for services offered at hourly rates under GSA contracts to be fair and reasonable. However, the originator shall evaluate all responses received using the evaluation criteria provided to the GSA contractors to determine whether the total price is reasonable and represents the best overall value to ESD. The advantages of using this program include competitive pre-negotiated terms, conditions, and competitive prices with the flexibility to seek more discounts.

Please see below link to GSA Multiple Award Schedule program.

https://www.gsa.gov/buy-through-us/purchasing-programs/multiple-award-schedule

3. Contract Reporter Exemptions

3.1. Reasons For Exemptions

Advertising a procurement in the Contract Reporter is generally required unless specific grounds exist that constitute a reason for exemption. A Contract Reporter exemption may be granted by the Officer(s) specified in Attachment A to these Guidelines, only if any of the following circumstances can be demonstrated:

(a) **Sole Source.** Only one source for the goods or services is available. Three examples of sole source procurements: (i) proprietary software compatible with ESD operating systems that no-one else offers; (ii) a printer's warranty requiring that only a toner cartridge supplied by the manufacturer could be used without voiding the warranty; (iii) a vendor has developed a proprietary system for remediating contaminated land, unavailable from anyone else.

(b) **Single Source.** The required goods or services are available from two or more vendors, but a compelling reason exists to make the award to a particular vendor. A request for a single source exemption must include information about the alternatives considered and justification that price is reasonable. One common example of a single source procurement is where a vendor needs to complete work on a project for which it was originally competitively procured.

In general, the Corporation's policy is to minimize the use of single source contracts and to maximize the use of competitive procurement methods. Please discuss a contract reporter exemption request early on in the process with Contracts Administration and Procurement Counsel.

(c) Emergency Circumstances. Emergency circumstances exist when an urgent and unexpected situation arises which places public health or safety or the use or conservation of resources at risk and requires immediate action. Poor or late planning does not constitute an emergency. Contracts entered into as a result of an emergency situation should only cover the goods or services reasonably necessary to stabilize, ameliorate or remedy the situation. An example is a hazardous condition at a building owned by ESD: a contractor can be hired immediately to deal with the situation.

NOTE: Notwithstanding any Contract Reporter exemption that may be granted for any of the reasons set forth above, a reasonable attempt should be made wherever practicable to solicit at least three competitive bids, with written confirmation of the bids furnished within a reasonable time and maintained in the contract file. Also, any sole or single source contract or contract amendment with a value or aggregate value of $50,000 or more must be published in the Contract Reporter (Economic Development Law, §143(4). if the original contract was under $50,000 and the aggregate amount is less than $50,000.

3.2. Authorization For Exemptions

The initiator of the proposed contract must complete a Contract Reporter Exemption form, signed by the Officer(s) specified in Attachment A to these Guidelines.

The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that the cost of the proposed contract is reasonable under the circumstances. The Contract Reporter Exemption form can be found at: https://intranet.apps.esd.ny.gov/Finance/2024/Contract_Reporter_Exemption_Request_Form_April_2024.docx. If the proposed contract amount is over $250,000 or is a services contract that will last more than one year, the exemption authorization **must be obtained before** ESD Board or President/designee approval. If the proposed amount is $250,000 or less, and the term of the contract is less than one year, the exemption authorization should be obtained from the Officer(s) specified in Attachment A to these Guidelines, prior to contract execution and the commencement of any services or delivery of any goods.

Note that even if a Contract Reporter exemption is granted, compliance with SFL § 139-j and 139k (Lobbying Laws) and State Tax Law § 5-a must still be satisfied (see Section 8.1). Where appropriate, a statement from the staff initiator that the price obtained for the goods or service is compatible with market pricing must be presented with the exemption request.

At the time ESD enters into a contract with a single or sole source provider for an amount in $50,000 or more, ESD should submit an announcement of the contract for publication in the NYS Contract Reporter and must identify the recipient of the contract.

4. How To Conduct A Competitive Solicitation

- **Get Approval to Advertise:** Fill out the ESD Procurement Opportunity Advertisement Approval form for Corporate or Subsidiary and forward it for review along with procurement solicitation material to the Procurement Department for review. See section 5.

- **Approval of Advertisement and Contract Reporter:** When review is completed, material is sent to the Officer(s) specified in Attachment A to these Guidelines for approval. Upon approval, the Procurement Unit will submit the solicitation through the Contract Reporter, with a minimum of 15 business days for responses. Solicitation should also be posted on the ESD and Subsidiary (if applicable) website. See section 8.9.

- **Bid Opening and Selection:** All bids must be timely submitted via a designated Dropbox which link should be provided in each solicitation. Staff can then conduct a review and selection process. See section 8.11.

- **Board Approval:** Once a vendor is selected, staff must obtain Board approval, where required. See section 9.1

- **Preparation of Commitment Package:** Once Board approval is granted; staff must prepare a commitment package and enter it into Peoplesoft for Contract processing. See section 10.1.

5. Approval To Advertise

Prior written approval of the Officer(s) specified in Attachment A to these Guidelines is required when you need to advertise a procurement opportunity, including Requests for Proposals ("RFPs"), Requests for Statements of Qualifications ("RFQs"), Invitation to Bidders (“ITB”), and Requests For Expression of Interest ("RFEIs") (See Section 7: Types of Solicitation).

Note also that other approvals may be required to comply with State Division of Budget procedures (see Section 11.4). Submit the ESD Procurement Opportunity Advertisement Approval form (either Corporate or Subsidiary) to the appropriate officer at least 10 business days in advance of the relevant New York State Contract Reporter publication submission date (the Contract Reporter is published daily).

6. Contents Of Procurement Solicitations

For all Procurement Contracts (see section 1.1), whether the procurement is formal (such as an RFP, RFQ, RFEI, or, ITB) or informal (such as procurement for less than $50,000, or a Discretionary Purchase from an MWBE or SDVOB for up to $500,000), or procurement from a pre-qualified list) the same basic information should be included in the solicitation:

(i) What goods are being sought or what scope of services is desired;
(ii) What the projected length ("term") of the resultant contract will be;
(iii) What criteria will be used in evaluating bids, and how those criteria are weighted. For example, price, bidders' expertise, the qualifications of the proposed staff; past history of government contracts, references/testimonials, understanding of ESD's mission, and either diversity practices (commitment to sound diversity practices within the firm) or a firm's status as a certified MWBE and/or SDV0B[1];
(iv) A schedule of relevant dates (when bid is due, when questions may be asked or briefing meetings/interviews held, etc.);
(v) Contact information for a designated Procurement contact at ESD, who is the only person at ESD to whom communications about the solicitation may be directed. Failure to abide by this requirement may result in disqualification of the bidder.
(vi) ESD's insurance requirements (obtained from Contract Administration for all solicitations).
(vii) ESD's contractor and supplier diversity requirements: MWBE and SDVOB goals, if applicable (The Office of Contractor and Supplier Diversity must be contacted during the drafting of a solicitation to identify the appropriate goals).
(viii) Disclosure to bidders that they must be able to demonstrate that they are responsible bidders, in good standing under the laws of New York and capable of fulfilling the requirements of the contract, and untainted by past non-performance or criminality;
(xi) A copy of the ESD standard terms and conditions to which the successful bidder will be expected to agree. This will generally be ESD's Schedule A - Standard Terms and Conditions (For Materials and Services or for Law Firms). IMPORTANT: ESD's standard terms and conditions must be sent to potential vendors as early in the process as possible, to avoid later disputes about terms.
(x) VENDREP Form where needed (See Section 8.13);
(xi) Proof that the vendor is authorized to do business in New York State, if services are to be performed in New York State. Generally, this will require NYS Department of State Registration, which can be checked here.
(xii) Encouragement of use of New York State businesses as sub-contractors or suppliers (See Section 8.6).

A template for informal solicitation language can be viewed in the link below:
https://intranet.apps.esd.ny.gov/Finance/2017/SolicitationRequestForm.xlsx

[1] Program regulations provide that ESD can either score a firm's diversity practices or the firm's status as a certified MWBE, but not score both in the same procurement. So, if certified firms are likely to respond, then the solicitation should request proof of certified status. But if it is more likely that no MWBE will respond to a solicitation, the solicitation should request diversity practice information instead. In either event, this factor must not exceed 10% of the overall technical score.

7. Types Of Solicitations

7.1. General Information

There are a number of procurement techniques available, including Request for Proposals (RFP), Request for Statements of Qualifications (RFQ), Invitations to Bid (ITB) and, rarely, Requests for Expressions of Interest (RFEI). When selecting among these various approaches, the determining factors are:

- The importance of price or cost as a component in the review of incoming bids or proposals; and
- The ability to define specifications for goods or services being acquired, or to obtain those specifications from potential vendors (where the RFEI may be useful).

Generally, contracts for goods are to be awarded on the basis of "lowest price" and contracts for services are to be awarded on the basis of "best value" among responsive and responsible vendors. "Best value" is the basis for awarding service and technology contracts to the vendor that optimizes quality, cost and efficiency, among responsive and responsible vendors. The basis for a "best value" contract award must be, wherever possible, quantifiable. However, all procurement solicitations issued by ESD are to be guided by the same basic principles:

Clarity: Procurement documents should clearly convey to vendors what ESD wants to buy;
Fairness: No vendor should be advantaged over another. All information concerning the solicitation shall be conveyed in writing to all vendors participating in the process, including but not limited to process rules and evaluation criteria (note that vendors must submit a statement of non-collusion (see s. 7.2 below)

Openness: All relevant vendors should have an equal opportunity to respond to the offering.
Disclosure of Selection Criteria: The criteria for awards should be developed in preparation for the release of the solicitation and included in the solicitation before it is publicly advertised. Vendors should know the basis upon which their offers are being evaluated. Note that if cost is weighted below 20%, a written justification for such weighting should be prepared and included in the Procurement Record.
Efficiency: The process should be efficient, fair and able to withstand public scrutiny.

7.2. Requests For Proposals ("RFP")

RFP solicitations may range from relatively uncomplicated procurements to highly complex, long term efforts involving the significant commitment of both ESD and vendor resources. RFPs follow a common format, focusing on a description of tasks including, but not limited to:

- Description of program objectives and background;
- Scope of services to be provided;
- Detailed requirements or specifications (required qualifications of vendors, "what" is needed and "how" services should be provided). Note that the terms of the RFP may not be knowingly tailored to favor a particular vendor;

- Statement of Non-Collusion required by Section 2878 of the Public Authorities Law (responders must certify that they have not colluded with any other responder(s) in their proposal).

Please see below link to view ESD's standard RFP template.
https://intranet.apps.esd.ny.gov/Finance/2022/RFP_Template-April2022.docx

7.3. Requests For Statements Of Qualification ("RFQ")

RFQs are appropriate for retention of qualified pools of contractors to provide defined types or scopes of services (and, rarely, goods) required by ESD on a regular or semi-regular basis as the need arises. Competitive establishment of a pool or list of pre-qualified vendors is appropriate, for example, in the case of contractors or property appraisers. If ESD has established a list of pre-qualified contractors, unless services will be rendered by all qualified vendors at rates not to exceed a pre-set maximum, three quotes should be obtained from vendors on the list, and/or from vendors known to ESD outside the list. Amendments to contracts with vendors selected from a pre-qualified list should also follow this mini-bid process (and comply with all requirements in Section 9.2).
Where a vendor's eligibility to be on a pre-qualified list is contingent upon the vendor's agreement that professional services will be rendered at pre-established rates, or will not exceed certain limits, this solicitation should be accomplished through an RFP.

After ESD has established a list of pre-qualified vendors, staff may enter into open retainer contracts (sometimes called "Term Contracts") with one or more vendors on the list, for no set dollar amount but, in the case of services, not to exceed a term of three years. This process facilitates the use of purchase orders against the contract, and Board or President/CEO approval, if required, can be obtained at such time as a scope of services and dollar amount are identified, or if the term will be extended beyond one year. All transactions executed as part of a Term Contract will follow standard approval procedures as per sections 9 and 10 of these guidelines. Please consult with Procurement and Legal if you wish to enter into such an arrangement.

Please see below link to view ESD's standard RFQ template.
http://intranet.empire.internal/Finance/2023/RFQ-Template-Feb-23.docx

7.4. Requests For Expressions Of Interest ("RFEI")

RFEIs are generally appropriate when ESD does not know the precise scope of services or goods required and wishes to obtain this information from prospective vendors. An example would be a proposal for adaptive re-use of ESD or other State surplus property, where the re-use is likely to be dependent on the prospective respondents' needs or ideas.

7.5 Invitation To Bidders ("ITB")

Invitation to Bidders (“ITB”) are used strictly for construction related projects. Usually, in such case, the scope of work is predetermined and well defined. The only determining factor in choosing the preferred vendor is cost. Utilization of this process means that there is no

opportunity to negotiate prices, fee structures, or level of services with a preferred vendor or vendors.

Please see below link to view ESD's standard ITB template and a sample bid form.
http://intranet.empire.internal/Finance/2022/ITB-Template-10-2022.docx
http://intranet.empire.internal/Finance/2022/ITB-Bid-Form-sample.docx

7.6 Requests For Applications ("RFA")

RFA are often used for grant and loan disbursements. It is not considered as a Procurement. Although, some of the procurement forms are included in an RFA.

Please see below link to view ESD's standard RFA template.
http://intranet.empire.internal/Finance/2022/RFA-Template-10-2022.docx

8. Compliance With State Laws And Executive Orders

8.1. Compliance With State Finance Law § 139-j And § 139-k (Lobbying)

State Finance Law ("SFL") §§ 139-j and 139-k apply to all Procurement Contracts over $15,000, regardless of whether the contract was competitively bid.

Among other things, SFL §§ 139-j and 139-k: (i) govern permissible communications between potential vendors, and staff of ESD, its subsidiaries, or other involved governmental entities during the procurement process; (ii) require the disclosure of such communications, as well as prior determinations of vendor non-responsibility; and (iii) establish sanctions for knowing and willful violations of such provisions, including disqualification from eligibility for an award of any contract. Specifically, SFL §§ 139-j and 139-k require that only permitted ESD and subsidiary contact person(s) identified in solicitation materials may communicate with potential bidders regarding the solicitation, from the issuance of the earliest written notice of a Request for Proposal through the final award and approval of any resulting contract. This period is defined by law as the "Restricted Period."

SFL § 139-j (6)(b) also requires potential vendors to complete the Offeror's Affirmation of Understanding and Agreement to comply with ESD's procedures relating to permissible contacts. This written affirmation is deemed to apply to any amendments to a procurement submitted by ESD after an initial affirmation is received with an initial bid.

SFL § 139-k governs the disclosure of prior non-responsibility determinations by potential vendors. SFL § 139-k (5) requires potential vendors to certify that the information they provide to ESD for consideration in its determination of vendor responsibility is true and accurate. Therefore, all prospective vendors must complete and submit two forms mandated by SFL § 139-j and § 139-k as part of their proposals: 1) the Offeror's Affirmation of Understanding and Agreement., and 2) the Offeror's Disclosure of Prior Non-Responsibility Determinations. See the link below for copies of these required forms:
https://intranet.apps.esd.ny.gov/Finance/SF_Law139_JK.pdf

When contacted during the Restricted Period, ESD staff must obtain the following information: the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact. Further, ESD staff must inquire whether the person or organization making the contact was the offeror or retained, employed or designated by the offeror. All such recorded contacts must be included in the procurement record for the procurement contract.

In addition, ESD staff must record any contacts that reasonably appear to be an attempt to influence the procurement process as well as contacts with staff members other than the designated contact person(s) during the Restricted Period of procurement. However, SFL §§ 139-j and 139-k do not prohibit an offeror from communicating with a member of the State legislature or legislative staff about a government procurement, provided such member of the State legislature or legislative staff is acting in his or her official capacity. If a vendor is found to have knowingly and willfully violated the State Finance Law provisions, that prospective vendor and its subsidiaries, related or successor entities will be determined to be a non-responsible vendor, and will not be awarded any contract issued pursuant to the solicitation. Two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State government procurement contract.

For further guidance, ESD staff engaged in the procurement process should review ESD's policy regarding permissible lobbying contacts, and the required language for solicitations by ESD and its subsidiaries to ensure compliance with SFL §§ 139-j and 139-k. See also the OGS website on procurement lobbying, found at https://ogs.ny.gov/acpl.

Note that, once a recommended vendor has been selected after compliance with the competitive bidding process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the designated contact person, although it is good practice to have the contact person present. However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such. For example: an ESD employee who is in the process of negotiating the terms of a land development deal which the Board has not approved, receives a call from an outside person saying that the vendor should get more development land because the vendor has a wonderful track record. Such a call constitutes lobbying and must be reported as such. The caller should be informed that the call will be reported and asked to communicate directly with the designated contact person in the future.

8.2. Compliance With State Tax Law § 5-a / ST-220 (Sales Tax Registration)

State Tax Law § 5-a prohibits ESD and its subsidiaries from approving any contract valued at more than $100,000 with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over $300,000 during the four quarters preceding the proposed contract date, and is not registered with the Department of Taxation and Finance ("DTF") for sales and compensating use tax purposes.

Accordingly, all respondents to a solicitation where the amount of the contract is expected to exceed $100,000 must include in their responses a properly completed Form ST-220-CA. However, if a vendor is not registered with DTF because of a lack of sales of over $300,000 within the relevant period, the vendor must submit an affidavit so certifying. Note also that § 5a does not apply to contracts for architectural, engineering or surveying services. If in doubt, contact the ESD legal department after having reviewed DTF Publication 223.

Failure to include a properly completed form ST-220-CA or affidavit may be a basis for considering any such response incomplete. Only the primary respondent vendor completes Form ST-220-CA, but Schedule A to Form ST 220-CA requires detailed information from the vendor's sub-contractors, such as tax ID number, etc. If applicable, certificates of authority evidencing registration with DTF for sales tax purposes must be attached by the prime vendor and all the sub-contractors.

Further in accordance with the requirements of § 5-a, any contract resulting from a solicitation will require periodic updating of the certifications contained in Form ST-220-CA.

8.3. Compliance With Executive Order 177 (Prohibiting Contracts With Entities That Fail To Address Discrimination)

EO 177, issued on February 3, 2018, directs all State agencies, including public authorities, to amend their procurement procedures to prevent contracting with entities that have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity,
Military status, sex, marital status, disability, or other protected basis. All ESD contracts must contain a representation that the vendor's policies or practices do not fail to address harassment and discrimination.

8.4. Compliance With Executive Law Article 15-A And Veteran's Service Law Article 3: Contractor And Supplier Diversity

Background
All Procurement Contracts must comply with the requirements of New York Executive Law Article 15-A, which governs the New York State MWBE Program. The purpose of the MWBE Program is to eliminate historic barriers to participation by minority and women-owned business enterprises in State contracting. The MWBE Program contributes significantly to ESD's mission of promoting a growing State economy; encouraging business investment and job creation; and supporting diverse, prosperous local economies across the State. Staff should be familiar with the MWBE Operations Primer published by the Division of Minority and Women's Business Development to ensure compliance with MWBE-related laws and requirements.

All Procurement Contracts must also comply with the requirements of New York Veteran's Service Law Article 3, which acknowledges that SDVOBs strongly contribute to the economies of the State and the nation. Staff should familiarize themselves with the SDVOB Operations Guidance Document published by the Office of General Services ("OGS"), Division of Service-Disabled

Veterans' Business Development to ensure compliance with SDVOB-related laws and requirements.

ESD staff are expected to encourage the use of MWBEs and SDVOBs in all procurements, including any amendments to existing contracts. Staff must reach out to the Office of Contractor and Supplier Diversity ("OCSD") as early as possible in the procurement process in order to facilitate goal setting for each contract. Additionally, upon advertising a solicitation for a new opportunity, staff should consider publicly posting a list of State-certified MWBEs or SDVOBs who have expressed interest in subcontracting opportunities in connection with the solicitation

Executive Order 162

Pursuant to Executive Order Number 162 ("EO 162"), all New York State contracts, agreements and procurements issued and executed on or after June 1, 2017 require contractors to submit detailed workforce utilization reports that include the job title and gross wages of each employee of a contractor and subcontractor performing work on a State contract either or each employee in the contractor's and subcontractor's entire workforce, if the individuals working directly on a State contract cannot be identified. A State contract includes all agreements in excess of $25,000 for services and commodities, and all agreements in excess of $100,000 for construction. Contractors and subcontractors performing work on construction contracts with a total value in excess of $100,000 are required to submit workforce utilization reports to on a monthly basis, within ten (10) days of the end of that month. Contractors and subcontractors performing work on commodities and service contracts with a total value in excess of $25,000 are required to submit workforce utilization reports to on a quarterly basis within ten (10) days of the end of that quarter.

Goal Setting

All State contracts, including revenue contracts, as defined in State Finance Law Section 139-j, exceeding $25,000 for commodities and/or services, and $100,000 for construction **must** be assessed for MWBE & SDVOB goals. For ESD's purposes, a State contract includes commodities procurements, professional services contracts, loans, grants, and leases of real property involving construction, demolition, replacement, and major repairs or renovation.

OCSD is responsible for ensuring ESD's compliance with the MWBE and SDVOB Programs. OCSD works with ESD program staff (project managers, program directors, originators and procurement officers) to determine if a contract is eligible for MWBE and SDVOB goal setting, exempted from goal setting, or excluded from goal setting.

"Exemptions" are defined contracts which are excluded from MWBE and SDVOB goal setting. Some examples of exemptions are wages, benefits, and other employee-expenditures; debt service; travel reimbursement; utilities; OGS centralized services; sole source contracts (subject to there being no MWBE or SDVOB available to participate as sub-contractor when subcontracting is appropriate); postage; telephones; operating transfers; certain rentals and repairs; and special departmental charges (i.e. unemployment insurance and tuition reimbursement).

"Exclusions" are contracts that either do not have subcontracting opportunities or no availability of certified MWBEs or SDVOBs to perform or provide specific goods or services. In cases where

a contract is awarded by a means other than an RFP, including, but not limited to discretionary purchases and single source contracts, **DMWBD/OGS will only grant an exclusion if MWBEs or SDVOBs are solicited to participate as prime contractors or no MWBEs or SDVOBs are available to participate as prime contractors.**

It is important to know multi programs projects cannot be assessed on a single goal rather individual contracts must be assessed for goals.

OCSD may determine that an MWBE goal below the agency-specific goal of 30% is appropriate because there are limited or no subcontracting opportunities and/or limited or no availability of certified MWBEs to perform or provide specific good or services. All goals of less than 30% MWBE participation, must be forwarded to the Executive Chamber for review and must include documentation to reflect the reason for goal reduction.

Waiver Requests

A firm responding to a solicitation or already engaged on an ESD contract, after making good faith efforts to achieve the maximum feasible portion of an MWBE and/or SDVOB participation goal, may submit a Waiver Request Form to OCSD with appropriate information documenting its "good faith efforts" to meet its goals. The waiver process includes reviews by: OCSD Compliance Manager and the OCSD Director. The Executive Chamber must approve MWBE waiver requests before a waiver can be issued.

MWBE waivers must be sought even if the overall MWBE goal is met but either the Minority-owned Business Enterprise or the Women-owned Business Enterprise component of the MWBE goal is not met in part or in full. SDVOB waivers must be sought if the assessed goal is not achieved.

"Good Faith Efforts" are the actions that all contractors must demonstrate to certify they have performed their due diligence to solicit MWBE and SDVOB participation in support of their State contract goals. Good Faith Efforts requirements are outlined in 5 NYCRR §142.8 (MWBEs) and 9 NYCRR § 252.2(n) (SDVOBs). A waiver of MWBE or SDVOB goals will not be granted unless the contractor has provided documentation of good faith efforts. In addition to completing a waiver request form, the contractor shall also provide OCSD with supporting information including, but not limited to:

- A statement setting forth the basis for the waiver request;
- The names of general circulation, and trade association publications in which certified MWBE/SDVOBs were solicited for the purposes of complying participation goals related to this contract;
- A list identifying the date(s) that all solicitations for certified MWBE/SDVOB participation were published in any of the above publications;
- A list of all certified MWBEs appearing in the NYS Directory of Certified Firm: and all certified SDVOBs appearing in the OGS Directory that were solicited for purposes of complying with the participation goals;
- Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations to all certified MWBEs/SDVOBs;

- Copies of responses to solicitations received from certified MWBEs/SDVOBs;
- Copies of bid prices from all respondents to a solicitation; and
- A description of any contract documents, plans, or specifications made available to certified MWBEs/SDVOBs for purposes of soliciting bids and the date and manner in which these documents were made available.

In the event that a waiver is not granted or approved by one or all of the above parties, OCSD may assess liquidated damages or seek settlement in accordance with the MWBE and/or SDVOB Regulations and the provisions of the contract language.

Where practical, feasible and appropriate, ESD shall promote and encourage participation by MWBEs and SDVOBs in the selection and award of all contracts. Such MWBE and SDVOB participation shall be documented in a regular supplement, prepared by OCSD, for inclusion in the quarterly and annual reports made by Contracts Administration to the Board. To assist in the gathering of this information, the originator must provide OCSD with a completed Utilization Plan of MWBE and, separately, SDVOB Participation, from the potential contract awardee, for OCSD's review and approval, prior to contract award. The required forms are accessible at: https://esd.ny.gov/office-contractor-and-supplier-diversity (scroll down to "Non-Discrimination and Contractor & Supplier Diversity Forms").

8.5. Compliance With Iran Divestment Act Of 2012

Every bid or proposal made to ESD pursuant to a competitive solicitation as provided in these Guidelines must contain the following statement, signed by the bidder or respondent and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is no on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State finance law The list in question is maintained by OGS and is available here: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf. No bid that fails to certify compliance with this requirement may be accepted as responsive, unless the bidder includes a statement in compliance with the Iran Divestiture Act (contact the Legal Department for guidance in such a case).

8.6. Encouragement Of Use Of New York Businesses As Sub-Contractors And Suppliers.

The Secretary to the Governor has issued a directive that provides that all vendors who anticipate using sub-contractors or suppliers to fulfill procurement contracts must be encouraged (but not required) to use New York State businesses. All procurement solicitations of any kind must include specific language aimed at such encouragement. The model language can be found at: : https://esd.ny.gov/sites/default/files/media/document/USEOFNYSBUSINESSES-2025.pdf

8.7. Project Sunlight

Project Sunlight is an important component of the Public Integrity Reform Act of 2011. Under this law, State governmental entities specified in the law are required to cooperate with the Office of General Services (OGS) and identify in a database developed by OGS all individuals, firms or other entities (other than State or local governmental agencies) that appear before such entity on behalf of themselves or in a representative capacity on behalf of a client or customer for any of various specified purposes. This includes appearances related to (a) procurement, (b) ratemaking, (c) regulatory matters, (d) judicial or quasi-judicial proceedings, (e) adoption or repeal of a rule or regulation.

Project Sunlight's reporting requirement for procurement appearances applies to those appearances that are for the purpose of procuring a State contract, irrespective of whether there is a governmental procurement planned. Thus, reporting is required for appearances relating to State contracts for which a Restricted Period under the Procurement Lobbying Law has not been established and without regard to whether a governmental procurement is anticipated. Appearances during the Restricted Period—whether they are bid clarification meetings or bid interviews or any other permissible contact under the State Finance Law do not need to be reported. As well as, appearances following the award of a State contract do not need to be reported.

8.8. Publication On ESD Website

Competitive solicitations must be made available on the ESD (and subsidiary, if applicable) website after advertisement in the NYS Contract Reporter. This website is also the appropriate place to post Addenda and Questions and Answers regarding the procurement.

8.9. Contract Reporter Advertising Process

As stated above, ESD must advertise in the New York State Contract Reporter all contracts for the acquisition of goods and services of $50,000 or more, unless an exemption is granted. In order to commence the process to place an advertisement, the initiator should contact the Procurement Unit, who will work with the originator and IT department to complete the process.

The minimum time for vendors to respond to a Contract Reporter solicitation is 15 business days (i.e., Saturdays, Sundays and legal holidays are excluded). The Contract Reporter website provides authorized users with a publication calculator tool in order to calculate the earliest due date for a solicitation.

Where practicable, staff members responsible for a proposed Procurement Contract should make reasonable efforts to identify potential vendors in addition to those identified through the Contract Reporter. This may be done by obtaining referrals from other governmental entities that may have similar requirements, reviewing reference directories, mailing solicitation materials to industry associations and/or known vendors and mailing to lists of appropriate certified MWBE vendors listed in the NYS M/WBE Directory and appropriate certified SDVOBs listed in the Service-Disabled Veteran-Owned Business Directory.

8.10. Selection Criteria

Written selection criteria shall generally be established for each proposed Procurement Contract and shall be included in any written solicitation materials. The relative weighting of the selection criteria should be set out in the RFP wherever practicable and, in the absence of written weighting, each criterion shall be deemed to have the same weight.

The selection criteria shall generally include price as an important factor to be considered in the selection process; however, many ESD procurements are based on "Best Value," which allows for factors other than price to the considered. Such factors commonly include the quality of goods and services, the experience of the vendor and specific expertise with respect to the goods or services to be supplied. See also Section 7.1 above if price is weighted at less than 20%.

Starting in January 2020, for MWBE prime contractors, a ten percent bidding credit was established for low-bid construction projects (ITBs) provided the cost of such project does not exceed the maximum project cost permitted by Public Buildings Law §8.

8.11. Bid Opening Procedures

In an effort to be more environmentally conscious, ESD has recently moved toward electric submissions of bids/proposals/applications via a filing sharing service. A unique sharing link is created for each solicitation. Proposals/Bid Forms/Applications must be submitted on time and compliant with RFP/RFQ/RFA/or ITB requests. There is no in-person bid opening for electronic submission. The entire process is controlled by the Procurement Unit. Documents submitted via any other method other than the drop box will not be accepted.

Although Mini-bids are handled by the originating department, the originating department must inform the Procurement Unit before the solicitation process starts to ensure compliance with all applicable procurement guidelines. Once the solicitation is completed, the originating team must inform the Procurement Unit of: 1) all responses received and 2) the selected respondent. Procurement will conduct periodic audits of ESD mini-bids.

A Public Bid Opening is required for Public Works contract solicitations, pursuant to UDC Act § 11 (which incorporates by reference State Finance Law § 135). This section generally covers bids for construction work on public projects, and may include preparatory work such as demolition, asbestos abatement and the like. ESD or a subsidiary must be a party to the contract, which must involve the use of laborers, mechanics or workers (not, for example, architects and engineers). Construction contracts must be awarded to the lowest qualified and responsible bidder. See UDC Act § 11. The definition of a "Public Work" is more a matter of art than law: if in doubt as to whether the contract is for Public Work, contact the Legal Department for guidance. ESD and its subsidiaries typically use the Invitation to Bidders (ITB) for this type of work. Because the bids are submitted electronically, the Public Bid Opening mentioned in the afore paragraph has been replaced by a Public Bid Announcement. This type of announcement is usually conducted via a conference call.

8.12. Bid Evaluation And Vendor Selection

The initiating Department Head or his/her designee should establish, as early as practicable prior to bid opening, a team of at least three and no more than seven (with five being preferred when possible) individuals to evaluate proposals. with relevant knowledge and experience of the goods and/or services being procured, and staff members that will be utilizing the goods or services generally merit inclusion as well. The selected individuals should not all work in one department, division or subsidiary, and one member of the evaluation committee should come from the Legal Department, Contracts Administration or Finance. The Procurement Unit controls and monitors the integrity of the entire procurement process. The Procurement Director must be present at the first meeting held for planning a solicitation and every meeting or discussion through the approval of the selected bidder by ESD's Board of Directors. In order to maintain transparency, the Procurement Director will serve as the only liaison between the Procurement Unit and Potential bidders. As such, the primary and secondary contact names on the solicitation should be those of the Procurement Directors. At times, the Procurement Director can serve on the Review Committee, but must always be present to monitor the integrity of the procurement process. The Procurement Director will assign staff if there is a conflict of interest and the Procurement Director is unable to attend. It is possible to have one or more non-ESD team members join the review team, where those persons have specific knowledge of the procurement subject, or a specific role to play in the administration of the contract with the successful bidder. This involvement of non-ESD persons is appropriate because § 2824 (1) of the Public Authorities Law permits authorities such as ESD to "take into consideration the views and policies of any elected official or body, or other person" in the exercise of its powers and duties, provided that ESD must "apply independent judgment in the best interest of the authority, its mission and the public." If non-ESD staff is included in the review team, the team must be expanded in number such that a majority will always be ESD staff members.

Analysis of the proposals and/or bids submitted, and the award of the contract shall be documented in reasonable detail. With respect to an ITB, award to anyone other than the low bidder must include documentation as to the reason the low bidder was not selected. For all other solicitation types, ESD will award to the vendor whose proposal represents the best value to the Corporation based on the evaluation criteria..

The Q&A matrix and the scoring matrix will be provided and maintained by the Procurement Director, All members of the Review Committee must complete and sign scoring sheets that rate each bidder according to the selection criteria and weighting set out in the RFP. Scoring sheets must include relevant comments/opinions/notes, etc. explaining the rationale for the score provided). Original scoring sheets must be signed and submitted to only the Procurement Director as part of the Procurement Record.

8.13. Determination Of Responsibility — "DoR" And The VendRep Form

Pursuant to State Finance Law § 139-j (7), ESD or the Subsidiary Board must determine that a vendor or respondent is a responsible contractor, prior to approving the award of a contract. In any event, whether or not a formal Determination of Responsibility ("DoR") is sought from the relevant Board, the initiator should ensure that all selected vendors are "responsible." **For all procurements, the**

initiator must submit a memo to the Procurements Director attesting that the initiator conducted both a DoR and a thorough review of the VendRep. View Determination of Responsibility form. In addition to consulting the resources listed on the Determination of Responsibility form, staff may find it useful to consult OSC's list of suggested resources, or review OGS's bulletin of best practicest or review OGS's bulletin of best practices for determining vendor responsibility. for determining vendor responsibility.

Category and Factors to be considered include but not limited to:

a) Financial and Organizational and Capacity: Assets, liabilities, recent bankruptcies, equipment, facilities personnel resources and expertise, and proper auditing and accounting controls.

b) Legal Authority: Authority to do business in New York State, licenses, and registrations.

c) Integrity: Criminal indictments or convictions, civil fines and injunctions imposed by other agencies, anti-trust investigations, ethical violations, tax delinquencies, or debarment by federal, State or local governments.

d) Previous Contract Performance: Report of less satisfactory performances, early contract termination for cause, contract abandonment, court determination of breach of contract.

It is imperative that the DOR is conducted very early in the process in order to avoid wasting time on proposals for bidders that might be ineligible.

- The OSC VendRep Questionnaire, which should be used wherever possible and is required for all purchases of $100,000 or more. This form seeks information about the vendor, its affiliates and subsidiaries, officers and owners, past responsibility determinations by agencies and investigations/prosecutions. It must be notarized, and false statements may be actionable and, in some cases, may be criminal. The VendRep forms for different types of vendors can be accessed here: www.osc.state.ny.us/vendrep/webresources.htm.

If a vendor is considered to be non-responsible, steps must be taken to afford the vendor due process rights, including an opportunity to explain its position in writing and, in some cases, at a meeting. Consult the ESD Legal Department in such cases, after having reviewed the resources available from OSC and OGS set forth above.

Pursuant to Governor Cuomo's Executive Order No. 192, issued on January 15, 2019, all vendors, suppliers, service firms and most other contractors to State agencies and Public Authorities (such as ESD), must remain "responsible" throughout the term of the contract. There are serious consequences if contractors fail to maintain responsibility. This requirement is expressly included in ESD solicitations and in Schedule A to contracts.

8.14. Cancellation Of A Solicitation

On occasion, the competitive solicitation process does not yield any satisfactory responses and ESD wishes to pursue other methods of procurement. To notify the public that ESD has cancelled a solicitation, the Procurement Unit should (1) inform all respondents via phone call (which should be documented for the procurement record), letter or email of the cancellation and (2) publish or post notice of the cancellation in each place that the solicitation was published (usually the Contract Reporter and the ESD website) for no less than 2 weeks. If the decision is made to re-advertise the opportunity, the project team should scrutinize the initial solicitation document to determine whether any restrictions can be lifted, or the document can otherwise be revised to produce better results.

8.15. Procurement Record

The Procurement Unit shall be responsible for creating and maintaining a record of the procurement process. Such record shall contain documentation related to the procurement process, any competitive solicitation exemption, proposals and/or bids received, scoring sheets, vendor responsibility documentation and other documents prepared or used by the bid reviewers in their vendor selection process. Note that final scoring sheets must be sent to the Procurements Director before a vendor is conditionally designated, selected, Board/CEO approval is sought or a contract is executed.

8.16. Post Proposal Submission Activities - Debriefing Of Respondents

With respect to unsuccessful respondents, a debriefing is available upon request. The solicitation must include information advising bidders that a debriefing may be requested by any unsuccessful offeror, within 15 calendar days of notification by ESD that the proposal or bid submitted by the unsuccessful offeror was not selected for an award. Debriefing is typically conducted by video conference, over the phone, or through written correspondence. The purpose of the debriefing is to be open and transparent, and to promote future competition. The debriefing should address strengths, weakness; and provide other relevant information that ESD used to determine best value, including the qualitative and quantitative analysis used in assessing the relative merits of the proposal The Procurement Director is responsible for debriefing unsuccessful respondents and all correspondence must come from Procurement. ESD is precluded from disclosing the content of any other proposal during the debriefing that would jeopardize the integrity of the procurement or impede contract negotiations.

8.17. Conflicts Of Interest

Respondents must have read, understood and comply with the provisions of the conflict of interest attestation found here: https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf

ESD shall have the right to disqualify any Respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

a. Gifts and Offers of Employment: Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

b. Disclosure of Potential Conflicts: Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

c. Disclosure of Ethics Investigations: Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

9. Contract Approval

Procurement Contracts for goods with a total value of **up to $250,000** must be approved by the Officer(s) specified in Attachment A to these Guidelines. Board approval is not required for these contracts, but if the contract value is **between $50,000 and $250,000** (or whatever amount the applicable subsidiary board approval threshold is), it must also be approved by the President of ESD (or the applicable subsidiary) or his or her designee.

Procurement Contracts for services with a total value **up to $250,000** that will be completed within one year must be approved by the Officer(s) specified in Attachment A to these Guidelines. Board approval is not required for these contracts, but if the contract value is **between $50,000 and $250,000** (or whatever amount the applicable subsidiary board approval threshold is), it must be approved by the President of ESD (or the applicable subsidiary) or his or her designee.

Procurement Contracts with at total value **in excess of $250,000,** as well as service contracts for **any amount with a term greater than one year,** must be approved by the ESD (or applicable subsidiary) Board.

For the purposes of this section, several types of service contracts are considered "non-personal service" contracts, and therefore do not require approval by the ESD (or applicable subsidiary) Board unless the total value of the contract exceeds $250,000 in the aggregate through its term, inclusive of any contract amendments or extensions. Non-personal service contracts up to $250,000 must still be approved by the Officer(s) specified in Attachment A to these Guidelines, and if the contract value is between $50,000 and $250,000 (or whatever amount the applicable subsidiary board approval threshold is), it must be approved by the President of ESD (or the applicable subsidiary) or his or her designee. These non-personal service contracts include but are not limited to: insurance policies; warranties; product maintenance or service contracts; product support contracts, software as a subscription ("SaaS") contracts and true leases. If you are uncertain whether a particular contract is non-personal service contract, please contact the Procurement Unit for the appropriate guidance.

In additional to the requirements above, all contracts with a technology component must be approved by ESD's Information Security Officer or designee prior to execution or Board approval.

9.1. Board Materials

The initiator writes a memorandum from the respective Department Head to the Officer(s) specified in Attachment A to these Guidelines, explaining the need for the contract. View Model Directors' Materials for Procurement Contracts (these materials can also be used for obtaining approval of the President or his or her designee by adding a CEO/Designee Approval Memo). The Board materials must set out:

a. the need for goods and services;
b. a brief description of the goods or services needed;
c. the expected maximum cost and the term of the contract for the proposed goods or services;
d. the selection process used to determine an award based on best value, or where not quantifiable, the justification which demonstrates the best value will be achieved; and
e. the funding sources.

9.2. ESD Contracts And Approval - Contracts Over One Year.

a. If staff anticipates that a contract may need to be extended beyond one year, ensure that Board approval is requested and that the materials and resolution specifically permit an extension of the contract. Once Board approval is obtained, the contract with the vendor must contain a clause that specifically permits extension. If the contract does not contain such a clause, and the contract needs to be extended, Contract Reporter advertising is required unless an exemption is granted. If a

contract has already been presented to the board and it needs to be extended because the work took longer than expected, a No Cost Time Extension can be provided without further board approval as long as sufficient funds and the scope of work remains unchanged.

b. **Contracts for services** to be rendered over a period of more than one year, regardless of the amount of the contract, which must have been approved by the Board, must in addition be reviewed annually by the ESD (or subsidiary) Directors, pursuant to Public Authorities Law § 2879.3(b)(ii). The initiating Department Head must provide an annual report setting forth the status of all continuing services contracts, together with justification for the continuance of such contracts for the next year. This annual status report can be made to Contracts Administration by filling out a contract summary/contract status report. The annual status reports will thus serve to clarify the need to continue existing multi-year service provider contracts. Note also that warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases) are not considered personal service contracts.

c. Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head it is essential that work on the contract be commenced before the formal contract documents have been approved, and before Board or President approval if required, the officer named in Attachment A to these Guidelines may issue a letter authorizing a contractor to commence work pending completion and execution of formal contract documents **("Notice to Proceed"),** provided that:

   i. the contract is not subject to OSC approval (See Section 10.4); and

   ii. the authorization contained in the Notice to Proceed is (a) $250,000 or less and (b) does not exceed 20% of the total contract value; and

   iii. the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Contract Administration and Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of the Officer(s) specified in Attachment A to these Guidelines.

   iv. Notice to Proceed can be used prior or after board approval and has a lifespan of just one year. No more than one Notice to Proceed can be used per contract.

All Notices to Proceed shall include:

a) A statement or scope of the tasks the vendor will commence and/or complete pursuant to the Notice to Proceed;

b) The fees and other costs for completing the tasks, (including hourly fees and anticipated numbers of hours or fees for each completed task), as appropriate; and

c) Any deliverables and/or milestones that the vendor is expected to provide/meet while working pursuant to the Notice to Proceed.

d. **Contract Amendments**

i. **Amendments** to **existing contracts** generally follow the same process as new contracts, i.e., any amendment over $50,000 needs to be advertised in the Contract Reporter, exempted, or awarded to a firm on a pre-qualified list after soliciting bids from three other firms including at least one MWBE firm and one SDVOB firm. An Amendment Package must be sent to Contracts Administration for approval and processing (see Commitment Request Package on the next page for guidance). The same documents, such as justification memo/contract status report, commitment request form and/or standard amendment form must be generated. If the proposed amendment will involve a new Contract Reporter advertisement or other solicitation, the requirements of SFL §139-j and 139-k and State Tax Law § 5-a will apply, and in any case, new certifications may be required. Note that an amendment to an existing contract that causes the aggregate amount of the contract to exceed $1 million may be subject to OSC approval, regardless of the amount of the amendment and source of funds. If the proposed amendment will be for a different scope of work, the process for a new contract should be followed

ii. Amendments that increase the **contract amount** to more than $250,000 must be approved by the ESD (or subsidiary) Directors. Amendments for less than $50,000, or amendments for less than 10% of the original contract amount (or the contract amount as subsequently approved by the Board) may be executed by the ESD officer named in Attachment A to these Guidelines without further Board approval, unless the amendment increases the contract to an amount above $250,000 and Directors' approval has not been previously obtained. Amendments that exceed the aforementioned thresholds require Board approval. Additionally, only one (1) such Amendment for less than $50,000 or less than 10% of the original contract amount without Board approval may be sought from the ESD officer named in Attachment A per contract.

iii. If a proposed amendment to a contract for services will increase the **term** of the contract to more than one year, Board approval is

necessary, and Contract Reporter advertising is necessary unless (i) as discussed in paragraph (a) above, the original contract contained a clause specifically permitting extension; or (ii) the amendment is awarded to a vendor on a pre-qualified list following wherever practicable the receipt of three quotes from other vendors on the list including at least one from a certified MWBE or SDVOB fir; or (iii) the amendment increases the term of the contract by not more than three months, and approval for the extension is given by the person named in Attachment A to these Guidelines If the amendment will increase the amount of time or other terms of the contract but **will not increase the contract amount,** the initiator need not submit a. new Commitment Request Package. Additionally, if the amendment will only increase the length of the contract with no other changes, Board approval is not required as this is deemed a "no cost time extension" amendment.

iv. In the case of contracts for more than $1 million, where the initiator anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount, Board approval should be sought from the outset for amendment of the contract up to 10% of the amount approved, to be executed without further Board approval by the Chief Executive Officer and/or the Chief Financial Officer of the corporation. Note that such an amendment may require OSC review and approval (see section 10.4). If in doubt, consult the Legal Department.

Example A: Original contract for $100,000 was awarded competitively. The initiator wishes to amend the contract for an additional $5,000. Because the amendment is for less than $50,000 it does not require advertisement or an exemption, and because it will not increase the total contract amount to more than $250,000* and is less than 10% of the original contract amount, it does not require Board approval. This example also assumes that the amendment will not extend services beyond one year, and so will not require Board approval.

*Some subsidiaries have lower monetary thresholds for board approval.

Example B: Original contract for $40,000 was awarded via purchase order. Due to unforeseen circumstances, the initiator wishes to amend the contract for an additional $20,000. Because the amendment will bring the total revised amount over the threshold of $50,000, it can no longer be treated as a requisition. Staff will take the necessary steps to complete a sequence package.

Example C: Original contract for $5 million was awarded competitively and approved by the Board and by OSC. The Board also approved the power to amend the contract to reflect an increase in the scope of services/goods, in an amount not to exceed 10% of the original approved amount, with the amendment to be approved by the CEO/CFO. The initiator wishes to amend the contract for an additional $300,000. Because the amendment is less than 10%, and the contract has previously been

approved by the Board, no further Board approval is necessary, but Contract Reporter advertising is still necessary, unless an exemption is granted (see section 3.2 above).

Example D: Original contract for $100,000 was awarded to a firm on a Board-approved pre-qualified list. The initiator wishes to amend the contract for an additional $50,000 and extend the term beyond one year. Because the amendment will extend the contract term beyond one year, Board approval is necessary. However, because the firm was pre-qualified through a competitive process no further contract reporter advertising is necessary (but the initiator should solicit bids from three other firms on the list where practicable, including at least one MWBE and one SDVOB.

10. Steps After Contract Approval Is Obtained

10.1. Commitment Request Process (For Contracts And Contract Amendments Where The Total Contract Value Is $50,000 Or More)

The contract initiator should assemble and submit via Peoplesoft a Commitment Request Package containing the following documents:

1. A Commitment Request Form (composed in Peoplesoft).
2. A Contract Summary/Justification Memorandum explaining the need for the procurement and the method of procurement used.
3. A Standard Form Contract - Short Form for Goods/Services or Standard Form Amendment or Modification of Contract with: (i) Schedule A (conditions applicable to procurements of goods/services or legal services); (ii) Schedule B (Participation By Minority and Women-Owned Business Enterprises: Requirements and Procedures) provided by OCSD; (iv) Schedule B-1 (Participation by Service-Disabled Veteran-Owned Businesses with Respect to State Contracts) provided by OCSD; (v) Appendix A (ST-220 Contractor Certification Form pursuant to Tax Law § 5-a); (vi) Appendix B (Compliance with SFL § 139-j and 139-k, the Offeror's Affirmation of Understanding and Agreement pursuant to SFL §139-j; and (vii) Appendix C (Offeror). Disclosure of Prior Non-Responsibility Determinations under SFL § 139-k). Remember that the provisions and the requirements of the proposed contract must be specific and stated in clear and unambiguous terms so they are fully understood by the contracting parties. It is important that the contract clearly specify what is expected of both the contractor and ESD, and the method of payment to the contractor. The clearer and more specific the contract, the easier it will be to monitor. The terms of the contract should include, but not be limited to:

    - the scope and purpose of the contract;
    - the description of the services to be performed;
    - the location where the work is to be performed;
    - the standards to be used to measure performance (e.g. units of services, number and nature of clients served, target dates, etc.);
    - the level of expertise that is required to perform the tasks, the cost and the method payment of the contract;
    - the projected starting date and the contract period;

- the finished product or the services to be delivered;
- record-keeping and reporting requirements, including a statement that ESD and any relevant State agency has the right to audit the contractor's records;

This task can usually be accomplished by incorporating a solicitation's scope of work, the vendor's proposal, and fee schedule. For more complicated contracts, the Legal Department should be consulted to ensure all necessary terms and conditions are incorporated.

4. Completed and approved Determination of Responsibility form. For contracts valued at $100,000 or more, staff must also submit a VendRep Form completed by the vendor (not applicable to vendors outside NY).
5. ESD/Subsidiary Board of Directors or CEO/designee approval, if applicable. View sample Board materials and CEO/Designee Approval Memo.
6. Depending on the procurement method used: (i) the Contract Reporter advertisement and posting of bid results and internal approval to advertise and the scoring sheet/bid opening log; or (ii) an approved exemption letter; or (iii) the OGS Centralized Contract; or (iv) a copy of the relevant Board-approved prequalified list.
    a. All appropriate insurance certificates, as approved by the ESD Insurance Administrator, a copy of the appropriate officer's approval and a copy of the RFP, if applicable. Note that all contractors must have evidence of Workers' Compensation and Disability Insurance coverage.
    b. Contract Administration routes and tracks the commitment package and obtains necessary approvals from various ESD departments via PeopleSoft .
    c. Upon full approval and execution, the original copy of the fully executed contract or amendment is sent by Contract Administration to the vendor.

10.2. Contract Reporter Award Notification

A contract is considered conditionally awarded when it has approved by the appropriate Board of Directors or CEO/designee. A contract is considered fully awarded when it has been conditionally awarded, reduced to writing and has been executed (signed) by all parties. If a contract is awarded after a Contract Reporter Solicitation, the award, along with the Schedule of MWBE and SDVOB Participation (and/or Disadvantaged Business Enterprise Participation, where applicable), must be posted on the Contract Reporter system. This posting will be completed by Contracts Administration at the appropriate time with information provided in the approval from the Board of Directors or CEO/designee.

10.3. Division Of Budget ("DoB") Approval For State Agency Spending

Under DOB Bulletin B-1184 (Revised), approval for certain procurements by state agencies over $500 is required. In general, if a State or legislative appropriation is the source of funds, approval is needed. A web-based application known as the "Agency Spending Controls Application"

process is used to obtain prior approval. DOB approval is not required when the funding source for the procurement comes from a non-State source (e.g., a developer of an ESD project), where at least 75% of the procurement cost will be reimbursed by federal funds, or when the procurement is needed to address an immediate threat to public health and/or safety. DOB mandated forms are used in cases where approval is required. ESD has implemented the cost control measures described in Bulletin B-1184 (Revised). Please see the aforementioned bulletin for additional guidance. Additional assistance is available by contacting the ESD Controller's Department as well.

10.4. OSC Jurisdiction Over Contracts In Excess Of $1 Million

Under Public Authorities Law § 2879-a (effective March 1, 2010), ESD must make certain communications to OSC about certain types of contracts valued at more than one million dollars. OSC has issued final regulations implementing this law, and OSC approval shall be deemed part of these Guidelines. A memorandum explaining the application and procedures involved in OSC approval has been circulated to all relevant staff and may be viewed here.

"Eligible Contracts" are contracts in excess of one million dollars that are either: (i) to be paid for in whole or in part by State appropriations; or (ii) noncompetitively awarded (regardless of the funding source).

"Eligible Contract Amendment" is any modification to (A) an Eligible Contract; or (B) a contract executed after March 1, 2010 where is the value as amended is in excess of $1 million where (i) the contract as amended will be funded in whole or in part by State appropriations; or (ii) the contract was originally awarded noncompetitively; or (iii) the contract was originally awarded competitively but the modification was "neither contemplated nor provided for" in the original solicitation (i.e, new scope).

- ESD must annually report to OSC all Eligible Contracts/Amendments that it anticipates in the next fiscal year and revise such report within 30 days of learning of any significant changes to the annual report.
- ESD must give OSC 10 days' notice before (i) publishing a solicitation that ESD expects will result in an Eligible Contract/Amendment that was not previously reported to OSC or (ii) executing a noncompetitive Eligible Contract/Amendment that was not previously reported to OSC.
- ESD must file all Eligible Contracts/Amendments that are not subject to OSC approval (see following paragraph) with OSC within 60 days of execution.
  Certain Eligible Contracts/Amendments that are the subject of a written notice must also be approved by OSC within 90 days after the contract is signed. A list of active written notices can be viewed here. If approval by OSC has not been obtained, the signed contract "shall not be a valid enforceable contract."
  All submissions to and communications with OSC are to be handled by Contracts Administration only. Submit nothing to OSC directly.

OSC has confirmed that contracts for the sale of real property for an amount over $1 million are covered by the Property Disposition Guidelines and are not subject to OSC review and approval under PAL § 2879-a.

11. Monitoring Of Procurement Contracts

Performance of Procurement Contracts must be monitored by the initiating Department to ensure that the scope of work or services to be provided are being/have been performed; that use of ESD personnel, supplies and facilities is documented; that the MWBE and SDVOB requirements, as provided by OCSD, are being met; and that the established starting and completion dates for major components of the contract are being/have been met.

ESD employees assigned the responsibility of monitoring the work should be familiar with the type of work being performed and with the specific terms of the contract, including MWBE and SDVOB participation goals.

The frequency and manner in which the vendor's performance will be monitored should be clearly stated to the vendor and directly related to the terms of the contract.

Written documentation pertaining to vendor performance, such as progress reports, site visit reports, payment and expenditure data, Memoranda of verbal discussions, MWBE and SDVOB utilization plans and written correspondence should be maintained and reviewed by the initiating Department.

Periodic visits to the work sites should be made where appropriate to review work in progress and work completed. Site visit reports should be completed and include the observations of pertinent matters, such as the number and type of persons employed by the vendor, adequacy of the facilities and equipment, and quality of performance, including any deficiencies in the performance of the work, which may have an impact on satisfactory completion of the project.

The evaluation of the vendor's performance should take into consideration the quantity and quality of the work performed; the timeliness of submission of contract deliverables; the adequacy of cost and performance records and other supporting documentation; the ability of the vendor to meet MWBE and SDVOB participation goals; and whether the extent of performance, to date, is commensurate with the amount the contractor has been paid.

All MWBE and SDVOB performance should be reported to OCSD.

Performance that is below expectations or established standards should be reported to ESD management immediately. All deficiency reports should be specific and in writing. Management should review deficiency reports and take appropriate action, which may include termination of a contract.

All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head. No payment should be made unless the work is satisfactory and in accordance with the terms of the contract. Approval

on the Payment Authorization form attests to this. ESD's prompt payment procedures can be found at 21 NYCRR 4214.3, available here.

12. Ethical Considerations

12.1 Procurement Contracts Involving Former Employees Of ESD

Public Officers Law § 73 and ESD's Ethics Guidelines impose restrictions on former ESD officers and employees deriving compensation from ESD contracts or appearing before ESD. Accordingly, evaluation team members should carefully review lists of all proposed staff submitted by vendors to identify any former ESD employees. If a former ESD employee is identified, review his/her employment history to ensure it is appropriate and allowable. Direct any questions to the ESD Ethics Officer.

12.2 Conflicts Of Interest

All actions of ESD staff, including but not limited to procurement, are subject to ESD's Ethics Policies and the provisions of Public Officers Law §§ 73 and 74. Evaluation team members should ensure that they do not have any conflict of interest with respect to any bidder, and should alert the ESD Ethics Officer immediately upon identifying any potential conflict. For particularly large or complex solicitations, especially where outside consultants are assisting with the evaluation process, the project team should consider having each member of the evaluation team complete an Evaluation Conflict Disclosure Statement. Procurement counsel can advise on how to use this form.

12.3 Unfair Advantage Prohibited

Firms that develop or draft specifications, requirements, statements of work, or requests for bids or proposals for a procurement must be excluded from competing in any resulting procurement.

13. Implementation Of These Guidelines

ESD's Legal Department, in conjunction with Contracts Administration, shall be responsible for preparing for approval by the CEO such supplemental procedures as may be required to effectively implement these Guidelines, as well as preparing proposed amendments to the Guidelines for approval by the CEO and the ESD Directors when and as required.

14. Reporting

Annually, ESD's VP/Contract Administration shall prepare for the Directors' review a report on Procurement Contracts as of the end of each fiscal year, summarizing procurement activity by ESD for the period of the report, including a listing of all contracts entered into, the selection process used to select vendors, the status of existing Procurement Contracts and required Schedules of MWBE

Participation. ESD's VP/Contract Administration shall also prepare, on an annual basis, a report for submission to:

a. The Division of Budget;
b. The Department of Audit and Control;
c. The Senate Finance Committee;
d. The Assembly Ways and Means Committee;
e. Members of the public (upon receipt of reasonable requests therefor); and
f. The Commissioner of Economic Development.

The reports shall include these Guidelines, any amendments thereto, and an explanation of the amendments.

15. Effect On Awarded Contracts

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. These Guidelines reflect best and customary practice but are not intended to be rules of law. Note, however, that certain contracts may not be "valid or enforceable" without OSC approval. (See Section 10.4)

Item II. B.

NEW YORK STATE OF OPPORTUNITY. | USA Niagara Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
July 29, 2025

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: Property Disposition Guidelines

REQUEST FOR: Adoption of Property Disposition Guidelines, Re-Appointment of Contracting Officer and Authorization to Take Related Actions

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I. Background

The Public Authorities Accountability Act, Chapter 766 of the 2005 Laws of New York was signed into law in 2006 and was amended by the Public Authorities Reform Act of 2009 (collectively, the "Act"). The Act establishes standards for the governance and operation of public authorities such as New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and its subsidiaries, including USA Niagara Development Corporation ("USAN").

Title 5-A of the Act requires the annual adoption of guidelines with respect to property disposition. On March 27, 2025, ESD Directors adopted the 2025 Guidelines Regarding Disposition of Property (the "Guidelines"). A copy of ESD's Guidelines is attached. USAN Directors are being requested to adopt the Guidelines on behalf of USAN.

II. Guidelines Regarding Disposition of Property

In conformity with the Act, as amended and described below, the Guidelines generally provide for:

a. appointment of a contracting officer;
b. disseminating and posting the Guidelines;
c. inventory and reporting of status of corporation property; and
d. obligations of the corporation with respect to pricing and methods of disposition.

The obligations with respect to pricing generally require disposition of property at no less than fair market value as determined after publicly advertising for bids. Property consists of both real

and personal property and appraisals are required for disposition of real property and certain other not readily valued property.

The most significant exceptions to the bidding requirement are negotiated transfers to the State or any political subdivision and circumstances described in Section 7 of the Guidelines. These exceptions can permit sole sourcing.

Section 7 of the Guidelines provides for disposing of property without soliciting bids or for less than fair market value. If the transfer is to a government or other public entity or the purpose of the transfer is within the purpose or mission of the Corporation, disposal is permitted. If not, the transfer is subject to denial by the governor, senate or assembly. In a permitted sale below fair market value or without bids, certain transactional information must be submitted to the Board, which must make a written determination that there is no reasonable alternative to the transfer.

Finally, for most larger negotiated transactions, including exchanges, leases and real property dispositions, an explanatory statement of the transaction must be sent 90 days in advance of such disposal to the Comptroller, Director of the Budget, Commissioner of General Services and the Legislature.

Staff is also recommending that the Board re-appoint the Executive Vice President, Real Estate Development, ESD or his/her designee (or any successor Executive Vice President), as the Contracting Officer.

III. Environmental Review

ESD staff has determined that the requested approval of Property Disposition Guidelines and appointment of an officer constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this approval. At such time that any property disposition is proposed, it would be subject to environmental review pursuant to SEQRA.

IV. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and Article 3 of New York State Veterans' Services Law, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity has reviewed the Property Disposition Guidelines and has determined that MWBE and SDVOB participation goals will not apply to this project.

V. Requested Action

The Directors are requested to adopt the attached Guidelines; re-appoint the Executive Vice President, Real Estate Development, ESD or his/her designee (or any successor Executive Vice President) the Contracting Officer for purposes of the Guidelines; and to authorize the taking of related actions.

VI. Recommendation

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

Attachments
Resolution
ESD 2025 Disposition Guidelines

July 29, 2025

USA NIAGARA DEVELOPMENT CORPORATION ("USAN") – Property Disposition Guidelines – Adoption of Property Disposition Guidelines; Re-Appointment of Contracting Officer; and Authorization to Take Related Actions

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WHEREAS, USAN wishes to comply with Title 5-A of the Public Authorities Accountability Act, as amended by the Public Authorities Reform Act of 2009 (collectively, the "Act"), which mandates that public benefit corporations including USAN prepare annual Guidelines regarding Disposition of Property (the "Guidelines") attached hereto; and

WHEREAS, Empire State Development ("ESD") has prepared the Guidelines in accordance with the Act; and

WHEREAS, USAN has reviewed said Guidelines and found them to be satisfactory; and

WHEREAS, the Guidelines require the appointment of a Contracting Officer;

NOW, THEREFORE, IT IS HEREBY RESOLVED, that in accordance in the materials presented to this meeting, and ordered filed in the records of the Corporation, the Guidelines are amended and hereby adopted; and it is further

RESOLVED, that the Executive Vice President, Real Estate Development, ESD or his/her designee (or any successor Executive Vice President) is hereby re-appointed as the USAN Contracting Officer as required and set forth in the Guidelines; and it is further

RESOLVED, that the President and his designee(s) 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 Resolutions and implement the Guidelines and to take all related actions.

* * *

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION D/B/A EMPIRE STATE DEVELOPMENT

GUIDELINES REGARDING DISPOSITION OF PROPERTY

I. Definitions. As used herein, unless a different meaning is required by the context.

1. "Contracting officer" shall mean the Executive Vice President, Real Estate Development, ESD (or any successor Executive Vice President) who shall be appointed by resolution of the Board of Directors to be responsible for the disposition of property.

2. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with these guidelines.

3. "Property" shall mean personal property in excess of five thousand dollars in value, real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

II. Duties of the Corporation with respect to guidelines related to the disposal of property.

1. a. The Contracting Officer shall be responsible for the Corporation's compliance with, and enforcement of these guidelines.

b. The Corporation's contracting activities shall comply with Title 5-A of the Public Authorities Law, the New York State Urban Development Act (the "Act") and any other applicable law for the disposal of property.

c. These guidelines shall be annually reviewed and approved by the Board of Directors.

d. On or before the thirty-first day of March in each year, the Corporation shall file with the comptroller a copy of the guidelines most recently reviewed and approved by the Corporation, including the name of the Corporation's designated contracting officer. At the time of filing such guidelines with the comptroller, the Corporation shall also post such guidelines on the Corporation's internet website. Guidelines on the Corporation's internet website shall be maintained on such website at least until the procurement guidelines for the following year are posted on such website.

2. Inventory. The Corporation shall:

a. maintain adequate inventory controls and accountability systems for all property under its control;

b. periodically inventory such property to determine which property shall be disposed of;

c. produce a written report of such property in accordance with subdivision three of this section;

d. transfer or dispose of such property as promptly as possible in accordance with Section III.

3. Reporting

a. The Corporation shall publish, not less frequently than annually, a report listing all real property of the Corporation. Such report shall include a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Corporation and the name of the purchaser for all such property sold by the Corporation during such period.

b. The Corporation shall deliver copies of such report to the comptroller, the director of the budget, the commissioner of general services, the legislature and Authorities Budget Office.

III. Disposal of Corporation's property.

1. Supervision and direction. Except as otherwise provided in this section, the contracting officer shall have supervision and direction over the disposition of property of the Corporation.

2. Custody and control. The custody and control of the property of the Corporation, pending its disposition, and the disposal of such property, shall be performed by the Corporation or by the commissioner of general services when so authorized under this section.

3. Method of disposition. Subject to Section II of these guidelines, the Corporation may dispose of property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the contracting officer deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, that no disposition of real property, or any interest in real property, shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction and, provided further, that no disposition of any property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be

made without a similar appraisal.

4. Sales by the commissioner of general services. When it shall be deemed advantageous to the state, the Corporation may enter into an agreement with the commissioner of general services where under such commissioner may dispose of property of the Corporation under terms and conditions agreed to by the Corporation and the commissioner of general services. In disposing of any such property of the Corporation, the commissioner of general services shall be bound by the terms of this title and references to the contracting officer shall be deemed to refer to such commissioner.

5. Validity of deed, bill of sale, lease or other instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Corporation, purporting to transfer title or any other interest in property under these guidelines shall be conclusive evidence of compliance with the provisions of these guidelines insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

6. Bids for disposal; advertising; procedure; disposal by negotiation; explanatory statement.

a. all disposals or contracts for disposal of property of the Corporation made or authorized by the contracting officer shall be made after publicly advertising for bids except as provided in paragraph c of this subdivision.

b. Whenever public advertising for bids is required under paragraph a of this subdivision:

(i) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property;

(ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and

(iii) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the state, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

c. Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to paragraphs a and b of this subdivision but subject to obtaining such competition as is feasible under the circumstances, if:

(i) the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical

significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of under paragraphs a and b of this subdivision, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

(ii) the fair market value of the property does not exceed fifteen thousand dollars;

(iii) bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

(iv) the disposal will be to the state or any political subdivision, and the fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or

(v) under the circumstances permitted by section 7; or

(vi) such action is otherwise authorized by law.

d. (i) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

(A) any personal property which has an estimated fair market value in excess of fifteen thousand dollars;

(B) any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses (C) and (D) of this subparagraph;

(C) any real property disposed of by lease if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars;

(D) any real property or real and related personal property disposed of by exchange, regardless of value or any property any part of the consideration for which is real property.

(ii) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under section II of these guidelines not less than ninety days in advance of such disposal, and a copy thereof shall be preserved in the files of the Corporation.

e. For purposes of Section c(ii), (v) and Section d of this paragraph 6 when an appraisal is not feasible or practical, fair market value shall be determined by the board of directors based on the recommendation of the contracting officer. In making such recommendation, the contracting officer shall make due inquiry of values of comparable property including, as appropriate, geographic location, use, occupancy, condition, obsolescence, outstanding debts, taxes and liens and intended future use.

7. Disposal of property for less than fair market value

(a) No asset owned, leased or otherwise in the control of a public authority may be sold, leased, or otherwise alienated for less than its fair market value except if:

(i) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;

(ii) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or

(iii) in the event a public authority seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the authority's mission, purpose or governing statutes, such authority shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during months of January through June, provided that if the legislature receives notification of such proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed with sixty days of such notification of the proposed transfer to the governor, senate and assembly, the public authority may effectuate such transfer. Provided, however, that with respect to a below market transfer by a local authority that is not within the purpose, mission or governing statute of the local authority, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which such local authority resides, and the transfer is of property obtained by the authority from that political subdivision, then such approval shall be sufficient to permit the transfer.

(b) In the event a below fair market value asset transfer is proposed, the following information must be provided to the authority board and the public:

(i) a full description of the asset;

(ii) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the board.

(iii) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer.

(iv) a statement of the value to be received compared to the fair market value;

(v) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and

(vi) the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.

(c) Before approving the disposal of any property for less than fair market value, the board of an authority shall consider the information described in paragraph b of this subdivision and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.

Dated: March 27, 2025

Item II. C.

NEW YORK STATE OF OPPORTUNITY. USA Niagara Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
July 29, 2025

TO:	The Directors
FROM:	Anthony Vilardo
SUBJECT:	Consulting Services Amendment – Niagara Falls Heritage Gateways Design
REQUEST FOR:	Authorization to Enter into a Contract Amendment for Consultant Services and to Take Related Actions

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CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor:	Practice for Architecture Urbanism DPC ("PAU")
Scope of Services:	Architecture & Engineering Services
Contract Term:	The amendment will add eight (8) months to the contract term, extending it through December 31, 2026
Original Contract Amount:	Not to exceed $2,100,000
Current Contract Amount:	Not to exceed $2,441,663
Proposed Amendment Amount:	Not to exceed $500,000
New Proposed Total Contact Amount:	Not to exceed $2,941,663
Funding Source:	NYS Budget Appropriations made available through the Regional Economic & Community Assistance Program (RECAP)

II. Background

In 2018, USA Niagara Development Corporation ("USAN") began purchasing vacant parcels near Niagara Falls State Park to return long-dormant land back to productive use. In total, USAN acquired 7 buildings and over 8 acres of vacant land through its Strategic Land Acquisition Program. With the land now acquired, USAN has begun to focus on projects that will activate the sites and attract new developments. Future infill, mixed-use developments will enhance the tourism industry, evolve a downtown neighborhood, diversify the economy, and benefit those who live and work in Niagara Falls.

On July 8, 2022, USAN issued a request for proposals titled "Niagara Falls Heritage Gateways" to select a qualified Architecture and Engineering team to provide design services and construction administration services for a project that will activate three of USAN's sites. Pursuant to the resulting process, Practice for Architecture Urbanism ("PAU") was scored the highest by the designated scoring committee and was approved by the USAN Board for contract approval in November 2022.

To date, two of the four proposed gateways—Gorge Gateway Park and Hydraulic Power Plaza—are under construction and a third—the Riverway Tree Walk—is in its final design stage. This amendment would allocate additional resources to expand the scope of the fourth and final gateway, the "Cataract House Memorial." While some funding for this gateway was provided in the original contract amount, a series of workshops with local stakeholders and representatives from Niagara Falls State Park revealed the need for a more intensive community engagement process and a more ambitious design.

The gateway would create a memorial at the former site of the Cataract House in Niagara Falls State Park—once the city of Niagara Falls' most exclusive lodging, hosting presidents and other visiting dignitaries, all the while serving as a terminus on the Underground Railroad. The site-specific interpretation will pay homage to the many freedom seekers who passed through the Cataract House in the years leading up to the Civil War as well as Niagara Falls' role in the boarder Civil Rights Movement. The project would seek to elevate public recognition of freedom seekers as well as those who facilitated their efforts. Moreover, its strategic location in Niagara Falls State Park would help draw visitors to the site while strengthening connections with neighboring institutions, such as the Niagara Falls Underground Railroad Heritage Center.

USAN staff would continue to provide project management for the project in partnership with staff from Niagara Falls State Park.

III. Contractor Selection Process

On July 8, 2022, USAN advertised for the Niagara Falls Heritage Gateways Design Services Project in the New York State Contract Reporter. The Request for Proposals ("RFP') sought to retain a qualified Architecture and Engineering team to provide design services and construction administration services for the Project. On August 22, 2022, USAN received and opened seven

(7) proposals. After reviewing all proposals and interviewing the top four ranked teams, a Selection Committee comprised of representatives from USAN, New York State Parks, Recreation & Historic Preservation, and the City of Niagara Falls, gave the highest score to the proposal submitted by PAU and they were recommended as the preferred consultant.

USAN received a Contract Reporter Exception on July 11, 2025, for this contract amendment. A competitive procurement process was considered as an alternative, but ultimately dismissed as not in USAN's best interest. Each gateway is being designed as a part of a boarder network of sites that will act as a transition from Niagara Falls State Park and downtown Niagara Falls. The current vendor is completing all other aspects of this broader Heritage Gateways network so it would be inefficient to onboard a new vendor for this one task. Also, utilizing a different vendor would result in some duplicative efforts and costs as well as delay the final design of the project. Finally, there will almost certainly be increased costs due to the second vendor's need to familiarize itself with the overall project, synergize its work with the existing consultant, and perform its own administrative tasks. A contract amendment with PAU – the current consultant under contract – is the preferred alternative.

IV. Scope of Work

The proposed scope of work will include Site and Inventory Analysis, Framework Planning, Concept Design, Schematic Design, and Community Engagement.

V. Contract Term, Price and Funding

The proposed amendment will add $500,000 to the total contract amount. The amendment will extend the contract for eight (8) months through December 31, 2026. The funding source is NYS Budget Appropriations made available through the Regional Economic & Community Assistance Program (RECAP), which is a different funding source than the original contract.

VI. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. Pursuant to New York State Executive Law Articles 15-A and Article 3 of New York State Veterans' Services Law, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Contractor shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise (MWBEs) and Service-Disabled Veteran-owned Businesses (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(m)) to achieve an overall MWBE Participation Goal of 30% and an SDVOB Participation Goal of 6%.

VII. Environmental Review

USAN/ESD staff has determined that the requested authorization, which involves engaging a consultant to undertake design efforts that do not commit USAN to implementing any future project, constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize the Corporation to enter into a contract amendment with PAU for an additional $500,000 and an overall contract amount not to exceed $2,941,663; (3) extend the contract for an additional 8 months; and (4) to authorize the taking of all related actions.

IX. Recommendation

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

X. Attachment

Resolution

July 29, 2025

USA NIAGARA DEVELOPMENT CORPORATION – Consulting Services Amendment – Niagara Falls Heritage Gateways Design – Authorization to Enter into a Contract Amendment with Practice for Architecture Urbanism DPC to provide Consultant Services and to Take Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Practice for Architecture Urbanism DPC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract amendment with Practice for Architecture Urbanism DPC for an additional amount not to exceed FIVE HUNDRED THOUSAND ($500,000), for an amended total contract amount not to exceed $2,941,663 and to extend the term of the contract for an additional 8 months through December 31, 2026, for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee 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.

* * *

Item II. D.

NEW YORK STATE OF OPPORTUNITY. USA Niagara Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
July 29, 2025

TO:	The Directors
FROM:	Anthony Vilardo, President
SUBJECT:	Procurement of Equipment Installation Services – Old Falls Street Play Pod
REQUEST FOR:	Authorization to Enter into a Contract for Equipment Installation Services and to Take all Related Actions

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CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor:	Red Rose Landscaping LLC
Scope of Services:	Equipment Installation Services
Contract Term:	One year upon award of contract
Contract Amount:	Not to exceed $403,650 ($351,000 + $52,650 contingency)
Funding Source:	Buffalo Regional Innovation Cluster 17-18

II. Background

The project is located at 102 Old Falls Street on property acquired by USA Niagara Development Corporation's ("USAN") Strategic Land Acquisition Program. The existing building on the site has been demolished and a new building will soon be constructed on the north portion of the site. Construction on the northern portion will begin in early summer of 2025. The southern portion of the site—along Old Falls Street ("OFS") —will be developed in the future, but plans have not been finalized. In the interim, USAN will install a semi-permanent fence along the edge of the property to shield the vacant land from view of people walking along OFS. Additionally, a small public space will be created at the corner of OFS and First Street that provides shade, seating, games, and other amenities. This short-term installation is aimed at activating the space and providing additional amenities on OFS until future development takes place.

The project components include the following:

- Shade Structure: A fabric shade structure will be installed at the corner of the site.
- Perimeter Fencing: An eight-foot-tall wood privacy fence will be installed along Old Falls Street. The fence will slope up to 16' at the at the corner of OFS and First Street. The fence will have undulations that create small areas for along the OFS face for benches and planters. The taller section at the corner will include tiered bench seating, a repurposed mural, and lighting.
- Site Furnishings: Site furnishings will consist of tables, chairs, games, and benches. New LED see-saws and swings will also be incorporated.

III. Contractor Selection Process

In order to procure a qualified general contractor, USAN advertised in the *New York State Contract Reporter* on April 11, 2025. USAN followed all standard ESD bidding procedures. The basis for award of a contract was set forth as the lowest responsible bidder on the base contract.

Two bids were received by the submission deadline (May 2, 2025), one from Red Rose Landscaping LLC and one from Miller Construction Services. USAN is proposing to enter into a contract with the lowest responsive bidder, Red Rose Landscaping LLC. Their base bid price is listed below.

Contractor	**Base Bid Price (Basis of Award)**
Miller Construction Services	$615,000
Red Rose Landscaping LLC	$351,000

Red Rose Landscaping LLC is a full-service landscaping company based in Tonawanda that has experience working with public sector clients, such as the University at Buffalo.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has; a) considered proposed contractor'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 the proposed contractor to be responsible.

IV. Scope of Work

Contractor tasks will include the following:

- Permit Applications
- Tests and Inspections
- Construction Layout

- Field Engineering and Surveying
- Installation of the Work
- Cutting and Patching
- Progress Cleaning
- Starting and Adjusting
- Protection of Installed Construction
- Construction Waste Management and Disposal
- Closeout Procedures

V. Contract Term, Price, and Funding

This contract will include all services up to the completion of the contract. The proposed term is one year upon award of contract. The contract amount with Red Rose Landscaping LLC to complete the above scope of work shall not exceed $403,650, inclusive of contingency. The basis or method of payment for this contract will be based on an "hourly plus reimbursable" basis, payable in releases as the work is completed.

Funding sources will be NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster. No USAN Corporate funds will be used to fund the contract.

VI. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. Pursuant to New York State Executive Law Articles 15-A and Article 3 of New York State Veterans' Services Law, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Contractor shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise (MWBEs) and Service-Disabled Veteran-owned Businesses (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(m)) to achieve an overall MWBE Participation Goal of 30% and an SDVOB Participation Goal of 6%.

VII. Environmental Review

The City of Niagara Falls Planning Board, as lead agency, completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and the implementing regulations of the New York State Department of Environmental Conservation. This review found the project to be an Unlisted Action, which would not have a significant effect on the environment. The Planning Board issued a Negative Declaration on February 11, 2025. ESD staff reviewed the Negative Declaration and supporting materials and concurs. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

VIII. Requested Action

The Directors are requested to (1) make a Determination of Responsibility with respect to the proposed contractor; (2) make a Determination of No Significant Effect on the Environment; (3) authorize USAN to enter into a contract with Red Rose Landscaping LLC for an amount not to exceed $403,650, inclusive of contingency; and (4) to authorize the taking of all related actions.

IX. Recommendation

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

X. Attachments

Resolutions

July 29, 2025

USA NIAGARA DEVELOPMENT CORPORATION – Procurement of Equipment Installation Services – Old Falls Street Play Pod – Authorization to Enter into a Contract with for Equipment Installation Services and to Take All Related Actions

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RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Red Rose Landscaping LLC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Red Rose Landscaping LLC in an amount not to exceed FOUR HUNDRED THREE HOUSAND SIX HUNDRED FIFTY DOLLARS ($403,650), inclusive of contingency, for the purposes and services, and substantially on the terms and conditions, set forth in the Materials presented to this meeting with such changes as the President and Chief Executive Officer Designate of the Corporation or his designee(s) may deem appropriate, subject to the availability of the funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the President and Chief Executive Officer Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing.

* * *

July 29, 2025

USA NIAGARA DEVELOPMENT CORPORATION – Authorization to Enter into a Contract with Red Rose Landscaping LLC – Determination of No Significant Effect on the Environment.

RESOLVED, that based on the material submitted to the Directors with respect to the Contract for Equipment Installation Services with Red Rose Landscaping LLC, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

* * *

Item II. E.

NEW YORK STATE OF OPPORTUNITY. USA Niagara Development Corporation

A Subsidiary of Empire State Development

FOR CONSIDERATION
July 29, 2025

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: 201 Rainbow Boulevard Hotel Restoration Land Use Improvement Project – Modified General Project Plan

REQUEST FOR: Adoption of the Proposed Modified General Project Plan; Authorization to Hold a Public Hearing; Authorization to Provide Financial Assistance for the Project; Authorization to Enter into Necessary Agreements; and Authorization to Take All Related Actions

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I. Introduction:

USA Niagara Development Corporation ("USAN"), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), proposes the undertaking of the Hotel Niagara Restoration Project (the "Project"), located on a highly visible site on Centennial Circle, at 201 Rainbow Boulevard in downtown Niagara Falls.

The Project involves the sale/transfer of the historic Hotel Niagara property to a private company to facilitate a $58.8 million restoration and reuse of the hotel. The proposed restoration would be conducted in accordance with federal/state historic preservation standards and result in a full-service, 160-room "upper-upscale" hotel with a full-service restaurant, lounges and banquet facilities, all open to the general public.

II. Project Background:

Constructed between 1923 and 1925, the 12-story, Hotel Niagara is the oldest standing hotel in the City of Niagara Falls. The Hotel Niagara is one of many beautiful buildings designed by the famed Buffalo architect duo of August Esenwein and James Johnson, also the designers of the neighboring United Office Building, now the Giacomo Hotel & Residence.

By 2007, after the property had changed hands multiple times—and its branding progressively moved to cheaper and more economy-based hotel flags—the hotel was closed for the first of two efforts to fully restore it to its former glory. After two failed attempts, by 2016 the hotel remained closed with primary interior demolition/asbestos abatement in partial states of completion.

After a lack of progress on restoring this iconic building, USAN acquired the property from then owner JSK International Corporation for $4.4 million in July 2016. USAN then launched a competitive procurement process for the selection of a preferred developer by issuing a Request for Proposals ("RFP") for the property's sale/restoration, with the USAN Board of Directors ultimately designating Brine Wells Development, LLC as the preferred developer.

On December 20, 2018, the USAN Board of Directors, among other things: i) adopted a General Project Plan ("GPP") for the Project and (ii) authorized the commitment of funds in the total amount of $3.5 million for the Project. A copy of the December 2018 Board materials and GPP are attached hereto as Attachment A. The GPP and all findings and determinations made by the Board shall remain in full force and effect except as modified below to reflect changes to the proposed Project.

III. The Proposed Modified GPP:

Since the GPP was approved by the Board, the cost estimates and program of the Project have been refined by the developer requiring a modification of the Project. As such, USAN staff recommends certain modifications to the GPP. The proposed modifications are attached hereto as Attachment B, with a summary description as follows:

(a) The developer has made minor modifications to the descriptions of the food/beverage and meeting/banquet facilities available to the hotel patrons and general public, with no effect to the quality level of the Project as originally proposed. Additionally, updates have been made to the average salary of the full-time positions which will be created, and the Sources & Uses of Funds, financing partners, and the tentative project timeline have all been updated as well.

(b) In addition to the previously committed $3.5 million in USAN assistance toward the Project, an additional $4 million incentive (total $7.5 million incentive) has been proposed to be provided to the developer. The Project will receive direct and indirect financial assistance totaling $11.9 million (inclusive of USAN's purchase price of $4.4 million). This public investment would advance a total investment now estimated at $58.8 million (up from $42 million). Due to current market conditions, which have increased project costs and the access to capital financing, additional financial assistance is required to ensure that the Project is successful. The funding sources are NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster (original funding $3.5 million) and the Regional Economic & Community Assistance Program (additional funding $4 million). No USAN corporate funds would be used to fund the Project.

(c) The aforementioned changes will be incorporated into a revised Land Disposition and Development Agreement ("LDDA"). Upon adoption of the modified GPP, USAN and Brine Wells Development, LLC and/or its affiliate (Hotel Niagara Development, LLC) will enter into the revised LDDA which provides the detailed conditions, covenants, warranties and other terms and provisions for the Project.

IV. Labor Peace Agreement

Public Authorities Law Section 2879-b prohibits public authorities from providing financing for any project that includes, as a principal function, a hotel with more than fifteen employees unless a labor peace agreement ("LPA") is entered into with a labor organization representing hotel employees in the state, for a period of at least five years. An LPA is an agreement between the Project developer (or its contractors) and a labor organization prohibiting the labor organization and its members from engaging in labor activities that disrupt the hotel's operations. The Land Disposition and Development Agreement ("LDDA") between USAN and Brine Wells shall require that Brine Wells, as a material condition of said agreement, enter into an LPA satisfactory to ESD/USAN in compliance with Public Authorities Law Section 2879-b.

V. Responsible Vendor Determination

Staff has examined the proposed contractor's "responsibility" as defined in State Finance Law §163, and as provided in ESD's Procurement Guidelines. Based on this analysis of financial and organizational capacity, legal authority to do business in New York, integrity of principals, and past performance on contracts, staff concludes that the proposed contractor is a responsible vendor.

VI. Non-Discrimination and Contractor & Supplier Diversity:

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. Pursuant to New York State Executive Law Articles 15-A and Article 3 of New York State Veterans' Services Law, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Developer shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise (MWBEs) and Service-Disabled Veteran-owned Businesses (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(m)) to achieve an overall MWBE Participation Goal of 30% and an SDVOB Participation Goal of 3%. The overall goal shall include a Minority Business Enterprise Participation Goal of 15% and a Women Business Enterprise Participation Goal of 15% related to the total value of ESD's funding.

VII. Environmental Review:

The Directors made a Determination of No Significant Effect on the Environment for the proposed Project at their meeting of December 20, 2018. This determination addressed all aspects of the 201 Rainbow Boulevard Hotel Restoration Land Use Improvement Project, inclusive of anticipated refinements under this Modified GPP. Therefore, no further environmental review is required in connection with this action.

VIII. Requested Actions:

The Directors are requested to: a) adopt the Modified GPP; b) authorize a public hearing on the Modified GPP; c) authorize the commitment of funds in the total amount of $7,500,000 for the Project; d) authorize the entrance into necessary agreements; and e) authorize the taking of all actions related to the foregoing.

IX. Attachments:

Resolution
Attachment A – Board Materials dated December 20, 2018, and General Project Plan
Attachment B – Modified General Project Plan

July 29, 2025

USA Niagara Development Corporation -- 201 Rainbow Boulevard Hotel Restoration Land Use Improvement Project – Adoption of Modified General Project Plan; Authorization to Hold a Public Hearing; Authorization to Provide Financial Assistance for the Project; Authorization to Enter into Necessary Agreements; and to Take Related Actions

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BE IT RESOLVED, that on the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the USA Niagara Development Corporation (the "Corporation"), relating to the 201 Rainbow Boulevard Hotel Restoration Land Use Improvement Project (the "Project"), the Corporation hereby adopts the proposed Modified General Project Plan (the "Plan") for the Project submitted to this meeting, together with such changes therein as the President or other proper officers of the Corporation may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the President or other proper officers of the Corporation that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the President or other proper officers of the Corporation be, and each of them hereby is, authorized to enter into an agreement, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, including the commitment of Corporation funding in the total amount of $7,500,000 for the Project, with such changes as the President or other proper officers of the Corporation may deem appropriate, and be it further

RESOLVED, that, subject to the requirements of Section 16(2) of the New York State Urban Development Corporation Act of 1968, as amended (the "Act") and upon effectiveness of the Plan, the Corporation is hereby authorized to enter into a revised Land Disposal and Development Agreement ("LDDA") and/or all other agreements necessary to carry out the transaction, including a deed and other necessary conveyance documents to effectuate the real property transfer contemplated by the LDDA; and be it further

RESOLVED, that the provision of USAN financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President of the Corporation or other proper officers be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all related actions as he may in his sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

* * *

Attachment A

FOR CONSIDERATION
December 20, 2018

TO: The Directors

FROM: Paul Tronolone

SUBJECT: 201 Rainbow Boulevard Hotel Restoration Land Use Improvement Project – General Project Plan

REQUEST FOR: Findings and Determinations Pursuant to Sections 10(c) and 10(g) of the New York State Urban Development Corporation Act (the "Act"); Adoption of the Proposed General Project Plan; Authorization to Hold a Public Hearing; Authorization of the Sale of Real Property; Authorization to Provide Financial Assistance for the Project; Authorization to Enter Into Necessary Agreements; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

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GENERAL PROJECT PLAN

Developer: Brine Wells Development LLC

Contact: Mr. Edward M. Riley, Managing Member

Project Location: 201 Rainbow Boulevard, Niagara Falls, New York ("Hotel Niagara")

Proposed Project: Historic restoration/rehabilitation of property

Employment Goals: 150 direct FTE construction jobs; 67 direct FTE permanent jobs

Financing Sources: USAN financial assistance; National Grid grant; M&T Bank financing

I. INTRODUCTION

The USA Niagara Development Corporation ("USAN"), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), proposes the undertaking of the **Hotel Niagara Restoration Project** (the "Project") in the City of Niagara Falls, Niagara County, New York.

The Project involves the sale/transfer of the historic Hotel Niagara property to a private company to facilitate a $42 million (when including $4.4 million or acquisition costs) restoration and reuse of the hotel on a highly-visible site on Centennial Circle in downtown Niagara Falls. The proposed restoration would be conducted in accordance with federal/state historic preservation standards and result in a full-service, 160-room "upper-upscale" hotel with restaurants, lounges and banquet facilities, all open to the general public.

As previously authorized by the USAN Board of Directors in July 2017, the Preferred Developer for the Project is Brine Wells Development, LLC ("Brine Wells" or "the developer"), a New York State-based land development company. In August 2016, the company completed a historic restoration of the Hotel Syracuse in Syracuse, NY. Now the Marriott Syracuse, the hotel underwent a $75 million restoration and now contains 261 guestrooms, two historic ballrooms, an IACC certified conference space, six food and beverage venues and a completely restored lobby.

As the ESD subsidiary with a mission to facilitate revitalization of the tourism industry in downtown Niagara Falls, NY, USAN is adopting this General Project Plan ("GPP") in accordance with the New York State Urban Development Corporation ("UDC") Act, which permits ESD and its subsidiaries to undertake activities in furtherance of Land Use Improvement projects in areas in need of redevelopment, particularly those in danger of becoming substandard or blighted.

The Project, which is consistent with the 2009 City of Niagara Falls Comprehensive Plan, City Zoning requirements, and USAN policies for new development to support its tourism base, would include actions in furtherance of tourist industry goals. Support for these findings is discussed herein.

II. BACKGROUND

Constructed between 1923 and 1925, the 12-story, originally 193-room Hotel Niagara (the "Property") is the oldest standing hotel in the City of Niagara Falls, located at 201 Rainbow Boulevard (see **Figures 1 and 2**). It is especially notable in that the hotel was not the vision of one investor or hotelier that financed and constructed the Hotel Niagara, but instead the local community and its leaders. Upon completion in 1925, the local Niagara Falls Gazette boasted that the Hotel Niagara was an example of civic cooperation and achievement of which the city and its citizenry may well be proud. The Hotel Niagara is one of many beautiful buildings designed by the famed Buffalo architect duo of August Esenwein and James Johnson, also the designers of the adjoining United Office Building (See **Figure 3**), now the Giacomo Hotel & Residence.

By 2007, after the Property had changed hands multiple times—and its branding progressively moved to cheaper and more economy-based hotel flags—the hotel was closed for the first of two efforts to fully restore it to its former glory. After two failed attempts, by 2016 the Property remained closed with primary interior demolition/asbestos abatement in partial states of completion.

In consideration of the lack of progress on restoring this iconic building, on March 23, 2016, the USAN Board of Directors authorized the acquisition of the Property from then owner JSK International Corporation for $4.4 million with funds under the Governor's "Buffalo Billion" Economic Development Initiative.

In July 2016, USAN closed on its acquisition of the Property and in August launched a competitive procurement process for the selection of a preferred developer by issuing a Request for Proposals ("RFP") for the Property's sale/restoration. In October 2016, a USAN/ESD Selection Committee reviewed four responses received to the RFP. The USAN Board of Directors would ultimately designate Brine Wells as the preferred developer on July 18, 2017.

Brine Wells proposes a ~$42 million (when including $4.4 million for acquisition costs) historic restoration/rehabilitation of the Property into a full-service, 160-room hotel, classified by industry standards as "upper-upscale" (i.e., on a quality level equivalent to a full-service Hyatt, Hilton or Marriott). Brine Wells will pay USAN $1 to purchase the Property and will request an economic development incentive of $3.5 million. Brine Wells would seek state/federal historic tax credits and will be required to be design/implement the restoration in a manner that is consistent with the U.S. Secretary of Interior Standards for the Treatment of Historic Properties, determined in consultation with the New York State Historic Preservation Officer ("SHPO"), and where applicable, the U.S. National Park Service.

III. COMPLIANCE WITH THE PUBLIC AUTHORITIES LAW

Pursuant to the provisions of the Public Authorities Law ("PAL"), ESD and its subsidiaries are required to dispose of property through a competitive bid process and for fair market value unless a specific statutory exception applies.

With respect to the property to be transferred to Brine Wells, the consideration paid by the developer will be $1 in exchange for Brine Wells' historic restoration of the Hotel Niagara. As the purchase price is for less than fair market value, the PAL requires the following information to be provided to support the below market transfer:

(i) A full description of the asset: The Project Area is a 0.53 acre lot in Niagara Falls, New York, containing the 113,200 square foot building, the historic "Hotel Niagara".

(ii) An appraisal of the fair market value of the asset: Pursuant to an independent appraisal of the property, the appraised value range is $3,900,000 to $4,500,000.

(iii) A description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any to the communities in which the asset is situated as are required by the transfer: As more fully described in these materials, the project involves restoring the historic Hotel Niagara and returning it to a productive and self-sustaining use. The public benefit expected includes the

creation of new jobs, increasing the tax base, and supporting investment in Niagara Falls. Job creation includes 150 full-time equivalent (FTE) direct construction jobs and 67 direct FTE positions as follows: Executives (13 FTE, Avg. Salary $81,231); Mid-level Managers (10 FTE, Avg. Salary $43,200); Service Staff (16 FTE, Avg. Salary $38,750); Housekeeping (22 FTE, Avg. Salary $33,090); Parking & Front Desk (6 FTE, Avg. Salary $27,333).

(iv) A statement of the value to be received compared to the fair market value: While the purchase price of the Property will be $1.00, the Project will represent a major new development to continue efforts to grow tourism-related economic and recreational activity in Niagara Falls.

(v) The names of the private parties participating in the transfer: Brine Wells Development LLC. M&T Bank and National Grid are also involved in project financing.

(vi) The names of the private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used:

Pursuant to the RFP issued by USAN in August 2016, responses, each proposing historic restoration of Hotel Niagara, were received by:

- **Brine Wells** (ESD/USAN economic development incentive of $3.5 million. When $1 purchase price is considered together with USAN's purchase price of $4.4 million for the property in 2016, the Project direct and indirect financial assistance totals $7.9 million);
- **Merani Hotel Group** ($2MM, with ESD holding $1.9MM as a secured convertible/forgivable loan to be released upon obtainment of Certificate of Occupancy, the balance of $100,000 and closing costs to be funded by MHG at closing);
- **McGuire Development Company** ($1MM);
- **HLM Holding, LLC** ($4.4MM plus 20% at a maximum value of $5.28MM based on 50% of profit realized on an annual basis after all expenses are paid on an annual basis of not to exceed $264,000 per annual).

Each response proposed historic restoration of Hotel Niagara. The goal of the transfer of the property is historically appropriate restoration and reuse of the Hotel Niagara with mixed uses that will contribute to visitor and resident offerings in Niagara Falls. Due to the Project that will be completed by Brine Wells and its expected contribution to the development of Niagara Falls which will help to entice further development, a below market transfer of the property is required. Please see Section VI. A "Land Use Improvement Project Findings" for more detailed information on anticipated project benefits. As described in these materials, there is no reasonable alternative to the below market property transfer that would achieve the same purpose of such transfer.

IV. PROJECT DESCRIPTION

A. Objectives and Purpose of Transfer

The overall objectives of the Project and the purposes of the transfer to Brine Wells are as follows:

- Restoring the original grandeur and splendor of the Hotel Niagara Property while finding uses that contribute to a lively, urbane setting and a substantial increase in street-level interaction;

- Revitalizing an underutilized area that would be in danger of becoming further substandard and a blighting influence on this section of downtown Niagara Falls if actions are not taken to facilitate new investment;

- Realization of restoration/reuse of the Hotel Niagara that employs techniques, materials, and design features that are fully consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (the "Secretary's Standards");

- Realizing a development that best complements or achieves synergies related to, but not limited to: the Hotel Niagara's proximity to Niagara Falls State Park; expanding the operating performance of other established uses in the downtown area by expanding the overall level of activity downtown; and creating or enticing further redevelopment and/or desired land use types on surrounding sites/areas of downtown;

- Expanding the availability of goods, services, and entertainment venues available to visitors, residents, and the public in general;

- Public benefits such as creating new jobs (this Project has employment goals of creation of 150 direct FTE construction jobs and 67 direct FTE permanent jobs), increasing the tax base, and supporting investment in Niagara Falls;

- Stabilizing and preserving the Hotel Niagara Property's value; and

- Reaching a mutually-beneficial public/private partnership with the goal of restoring the Hotel Niagara and returning it to a productive and self-sustaining use.

- Completing the restoration/rehabilitation and reuse of the property in the most expeditious manner that is feasible.

B. Scope of the Restoration/Reuse

The Project shall involve a ~$42 million (when including $4.4 million for acquisition costs) historic restoration/rehabilitation of the Property into a full-service, 160-room hotel, classified by industry standards as "upper-upscale" (i.e., on a quality level equivalent to a full-service

Hyatt, Hilton or Marriott). The Project also calls for:

- A full-service restaurant within the hotel at ground level of hotel;
- A roof -top bar and terrace lounge on the thirteenth floor;
- A cocktail lounge/bar at ground level of hotel
- Two major ballrooms and stage area on the second floor
- Three meeting/banquet rooms on second floor; and
- Bride, groom, and common suites, plus exercise facilities on third floor.

All food/beverage and meeting/banquet facilities shall be available to both hotel patrons and the general public. Selected renderings of exterior and interior restorations are presented in **Figures 4 and 5**.

C. Purchase Price/Transfer of the Property

Brine Wells will pay USAN $1 to purchase the Property and receive an ESD/USAN economic development incentive of $3.5 million. Thus, when considered together with USAN's purchase price of $4.4 million in 2016, the Project will receive direct and indirect financial assistance totaling $7.9 million, subject to availability of funding.

Brine Wells will also seek state/federal historic tax credits for the Project. Other potential financial assistance would include a National Grid Grant; M&T Bank financing; historic tax credits; a Niagara County Industrial Development Agency ("IDA") standard payment in lieu of taxes ("PILOT") agreement, along with abatement of sale tax for construction materials, and abatement of mortgage recording tax. However, the other potential financing is not in any way guaranteed by USAN or ESD as part of the Project.

The entity which USAN/ESD will be contracting with and selling the Property to, will be Brine Wells or a related entity controlled by Brine Wells. The team has not made a final decision whether the Property will be self-operated or a "soft branded" hotel flag (i.e., various boutique lines of the major national/international hotel companies that permit design flexibility for unique historic properties); nevertheless it will be primarily branded as the "Hotel Niagara".

The budget for the Project, including a list of sources and uses, follows below.

Brine Wells Development, LLC
Sources & Uses of Funds

Anticipated Funding Sources	
Owner's Equity/Bank Financing/Historic Tax Credits	$34,100,000
USAN Incentives	$3,500,000
GRAND TOTAL	**$37,600,000**
Funding Uses	
Construction Hard Costs	$27,600,000
FF&E and OS&E	$5,000,000
Soft Costs	$5,000,000
GRAND TOTAL	**$37,600,000**

D. Land Disposition and Development Agreement

Upon adoption of this GPP, USAN and Brine Wells and/or its affiliate will enter into a Land Disposition and Development Agreement ("LDA") which provides the detailed conditions, covenants, warranties and other terms and provisions for the Project. The LDA has been negotiated between USAN and Brine Wells and involves a series of business terms, which include:

- Requiring construction to commence within thirty (30) business days after the Closing Date and completed by no later than twenty-four (24) months after the Date of Commencement of Construction;

- Requiring the developer to hire and pay all construction personnel working at the Property at NYS prevailing wage rates to make a good faith effort to negotiate a written agreement with the Niagara County Building Trades on the construction of the Project;

- Requiring the developer to take such steps necessary to ensure that the Project directly creates 150 full-time equivalent (FTE) construction jobs and for a period of five (5) years after completion of the Project, take such steps necessary to create 67 FTE permanent jobs; failure to satisfy such job creation requirements shall constitute an event of default under the LDA;

- Requiring the developer to seek historic tax credits, and regardless of their use, undertake the restoration/rehabilitation work in accordance with SHPO and Secretary of Interior Standards for the Treatment of Historic Properties; and

- Requiring the developer to enter into a formal agreement/process to identify goals/initiatives to reasonably maximize the Project's positive community impact on the Niagara Falls/Niagara County community, including efforts to maximize local hiring and ethical/local food system practices.

E. Acceptance of Development Deposit

The LDA stipulates that Brine Wells must deliver a deposit ("Deposit") of $50,000 to USAN, within 10 business days after execution of the LDA for the Project. The Deposit may be in the form of a cashier's check or an irrevocable and unconditional standby letter of credit, satisfactory in all respects to USAN and ESD in their sole discretion.

The Deposit secures the developer's obligation for timely submission of all documents and information deemed necessary by USAN in connection development plans and construction documents, as well as proceeding with construction in a timely manner as set forth in the approved Project completion schedule.

F. Tentative Project Timeline

- Execute LDA ..... December 2018
- Public Hearing on GPP ..... January 2019
- Review by Public Authorities Control Board ..... January 2019
- Approvals for Project..... March 2019
- Transfer of Property to Brine Wells.....August 2019
- Start of Construction .....August 2019
- Certificate of Occupancy .....August 2021

V. STATUTORY BASIS

A. Land Use Improvement Project Findings – UDC Act Section 10(c)

USAN, pursuant to Section 10 of the UDC Act, has made the findings set forth below:

1. *That the area in which the project is to be located is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the municipality.*

   The Property was formerly a full-service hotel in downtown Niagara Falls, but it has been vacant, gutted, unfinished, unusable, and unoccupied for several years. The Property, an underutilized parcel which has been closed since 2007, currently detracts value from

surrounding uses and has the potential of becoming further substandard if actions are not taken to facilitate new investment there. There is relatively no economic activity derived from the hotel site, notwithstanding that the Project Area is strategically located providing unparalleled views of Niagara Falls, and within yards of the entrance to Goat Island within the Niagara Falls State Park, which enjoys 9 million annual visitors. The City as a whole has experienced chronically high jobless rates. The Property is in an underutilized area that would be in danger of becoming further substandard and a blighting influence on this section of downtown Niagara Falls if actions are not taken to facilitate new investment. Restoring the property in accordance with federal/state preservation standards has the potential—together with other recent downtown projects—to begin to establish a cluster of uses to re-establish the economic importance of downtown Niagara Falls as a "place" of tourism-related activities, which would also directly and indirectly create new employment opportunities. Full restoration of the historic Hotel Niagara—the largest and most visible property on this City block—has the potential to shift the trajectory of the subject property and surrounding property, particularly given the visibility and iconic nature of the structure in the public consciousness. Other adjoining properties (e.g., Conference Center Niagara Falls, St. Peter's Church, Giacomo Hotel and Residence, etc.) would directly benefit through proximity to a restored upper-upscale hotel.

2. *That the project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area for recreational and other facilities incidental or appurtenant thereto.*

   The Project would represent a major new development to continue efforts to grow tourism-related economic and recreational activity downtown. The Project consists of a major, iconic mixed-use hotel property that will be restored in kind to its previous grandeur that would further expand the tourism industry in downtown Niagara Falls. The enhanced uses generated by the Project will attract people to the Project Area and will, accordingly, help support local businesses. The Project will also generate substantial tax revenues for the City and the State. The Project will provide a significant contribution to establishing a dense cluster of tourism-related uses in downtown Niagara Falls, which is a primary public policy goal of USAN to aid in the rehabilitation of the area and the revitalization of the tourism industry here.

   In 2009, the City of Niagara Falls adopted an update to its Comprehensive Plan, which outlined a number of policies to revitalize downtown Niagara Falls to best complement and derive economic benefit from downtown's direct adjacency to its most valuable and recreational resource, Niagara Falls State Park and the Falls themselves. The Project advances the City's Comprehensive Plan policies, such as historic preservation policies noted on page 61 of the City's Plan: "The City of Niagara Falls should continue to protect its remaining historic structures and districts throughout the City by collaborating with building owners to designate heritage buildings for preservation under the appropriate State of New York legislation with approval of the City."

The Project also advances USAN's ongoing policies to improve the quality and historic character of downtown by facilitating lodging offerings and the overall setting of the downtown landscape to enhance visitor experience and to facilitate extended stays. Most recently, market research commissioned by USAN specifically recommends public incentives to overcome obstacles to new private investments in upscale and upper-upscale hotel facilities in downtown Niagara Falls.

3. *That the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole.*

   Brine Wells is a private enterprise and an integral part of the Project. The Project as a whole will encourage tourism-related uses in downtown Niagara Falls, fostering participation and further opportunities for private enterprises. The allocation of State funding would be used to leverage private funds to realize the full program of restoration for the Hotel Niagara. Furthermore, the LDA will include terms requiring the developer to enter into a formal agreement/process to identify goals and initiatives to maximize the project's long-term goals on the Niagara Falls and Niagara County community, including efforts to maximize local hiring and training, efforts on the use of ethical and local food systems, etc.

B. Displacement Findings – UDC Act Section 10(g)

USAN, pursuant to Section 10(g) of the UDC Act, makes the following finding:

That there is a feasible method for the relocation of families and individuals displaced from the project area into decent, safe and sanitary dwellings, which are or will be provided in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places of employment.

No residential or business relocation is required because no families, individuals, or businesses would be displaced at the Project site.

VI. LABOR PEACE

Public Authorities Law Section 2879-b prohibits public authorities from providing financing for any project that includes, as a principal function, a hotel with more than fifteen employees unless a labor peace agreement ("LPA") is entered into with a labor organization representing hotel employees in the state, for a period of at least five years. An LPA is an agreement between the Project developer (or its contractors) and a labor organization prohibiting the labor organization and its members from engaging in labor activities that disrupt the hotel's operations. The LDA shall require that Brine Wells, as a material condition of said agreement, enter into an LPA satisfactory to ESD/USAN in compliance with Public Authorities Law Section 2879-b.

VII. RESPONSIBLE VENDOR DETERMINATION

As noted in the July 18, 2017, Board Materials, staff has examined the proposed contractor's "responsibility" as defined in State Finance Law §163, and as provided in ESD's Procurement Guidelines. Based on this analysis of financial and organizational capacity, legal authority to do business in New York, integrity of principals, and past performance on contracts, staff concludes that the proposed contractor is a responsible vendor.

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, USAN and ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned businesses (MWBEs) and Service-Disabled Veteran-Owned Businesses ("SDVOBs") in the performance of ESD contracts. Accordingly, ESD's Non-discrimination and Contractor & Supplier Diversity policy will apply to the Project.

The Project shall be subject to a 15% MBE, a 15% WBE, and a 3% SDVOB contracting requirement, calculated as a percentage of the $7.9 million in financial assistance provided the Project. The MBE/WBE and SDVOB contracting requirements shall apply to the Preferred Developer and may be achieved through all parties retained by the Developer for any design, pre-construction, and construction efforts, as well as for materials purchased on the Project.

IX. ENVIRONMENTAL REVIEW

USAN, as lead agency, completed an environmental review of the action pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. This review found that the Project, which involves authorizing the sale/transfer of the Hotel Niagara property to the designated Preferred Developer, and an in-kind restoration/rehabilitation by that Preferred Developer of the hotel and its ancillary banquet and other food/beverage uses in accordance with Federal Secretary of Interior Standards for the Treatment of Historic Properties, to be an Unlisted Action that would not result in significant adverse impacts on the environment. Therefore, staff recommends that the Directors make a Determination of No Significant Effect on the Environment.

Due to the building's inclusion on the National Register of Historic Places, USAN/ESD staff will continue to ensure that proper consultation is being conducted with the New York State Historic Preservation Office ("SHPO") pursuant to the requirements of Section 14.09 of the State Historic Preservation Act, as well as with the National Park Service as part of securing historic tax credits for the Project.

X. CONCLUSION

The proposed Project will restore a major iconic feature of downtown Niagara Falls and result in the addition of lodging, banquet/meeting, and food/beverage uses. This would contribute to further building a dense cluster of activity in the core of the downtown district and would

contribute to municipal needs by further supporting revitalization of the downtown district and expanding economic activity in the City's tourism industry.

XI. RECOMMENDATION

Based on the foregoing, USAN staff recommends the making of the requisite findings and determinations pursuant to Sections 10(c), and 10(g) of the New York State Urban Development Corporation Act (the "Act"); Adoption of the Proposed General Project Plan; Authorization to Hold a Public Hearing; Authorization of the Sale of Real Property; Authorization to Provide Financial Assistance for the Project; Authorization to Enter Into Necessary Agreements for the Project; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions.

XII. ADDITIONAL SUBMISSION TO DIRECTORS

Resolution
Figure 1: Site Location Map
Figure 2: Property Map
Figure 3: Current Photo of Hotel Niagara
Figure 4: Selected Exterior Renderings of Planned Restoration
Figure 5: Selected Interior Renderings of Planned Restoration

December 20, 2018

USA NIAGARA DEVELOPMENT CORPORATION – 201 Rainbow Boulevard Hotel Restoration Land Use Improvement Project – General Project Plan – Findings and Determinations Pursuant to Sections 10(c), and 10(g) of the New York State Urban Development Corporation Act (the "Act"); Adoption of the Proposed General Project Plan; Authorization to Hold a Public Hearing; Authorization of the Sale of Real Property; Authorization to Provide Financial Assistance for the Project; Authorization to Enter Into Necessary Agreements for the Project; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

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BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the USA Niagara Development Corporation (the "Corporation"), relating to the 201 Rainbow Boulevard Hotel Restoration Project (the "Project"), the Corporation hereby makes the requisite findings pursuant to Sections 10(c) of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"), specifically: (1) that the area in which the project is to be located is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the municipality; (2) that the project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area for recreational and other facilities incidental or appurtenant thereto; and (3) that the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole; and be it further

RESOLVED, that on the basis of the Materials which indicate that no residential or business relocation is required, as no families, individuals, or businesses reside in nor are they to be displaced from the Project area; the Corporation hereby finds that the requirements of Section 10(g) of the Act are satisfied; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the "Plan") for the Project submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or in the event such office is vacant, the Chief Financial Officer, General Counsel or their designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation, or in the event such office is vacant, the Chief Financial Officer, General Counsel or their designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take such actions as may be considered necessary or appropriate in connection with the holding of the public hearing required pursuant to Sections 6 and 16 of the Act, including, without limitation,

the providing, filing or making available of copies of the Plan or a digest thereof and the finding required by Section 10 of the Act relating to the Project, the fixing of a date for such hearing, the publication of a notice relating to the Plan and such hearing in accordance with the Act; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer of the Corporation or in the event such office is vacant, the Chief Financial Officer, General Counsel or their designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing; and be it further

RESOLVED, that, subject to the requirements of Section 16(2) of the Act and upon effectiveness of the Plan, the Corporation is hereby authorized to enter into a Land Disposal and Development Agreement ("LDA") and/or all other agreements necessary to carry out the transaction, including a deed and other necessary conveyance documents to effectuate the real property transfer contemplated by the LDA; and be it further

RESOLVED, that, on the basis of the materials submitted to the Directors, the Directors hereby find that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer; and be it further

RESOLVED, that the Corporation is hereby authorized to accept a Development Deposit of FIFTY-THOUSAND DOLLARS ($50,000) from Brine Wells with ten days of execution of the LDA to secure its obligation for timely submission of all documents and information deemed necessary by USAN as outlined under the General Terms and Conditions contained in the request for proposals; and be it further

RESOLVED, that the Corporation is hereby authorized to provide a financial incentive up to the amount of $3,500,000 for the Project, upon sub-allocation of such funds from the Buffalo Billion Fund; and be it further

RESOLVED, that based on the Materials submitted to the Directors with respect to the Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment; and be it further

RESOLVED, that the provision of USAN financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer or in the event such office is vacant, the Chief Financial Officer, General Counsel or their his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

Figure 1

Hotel Niagara Property Map

Figure 2

Figure 3

Figure 4

Figure 4

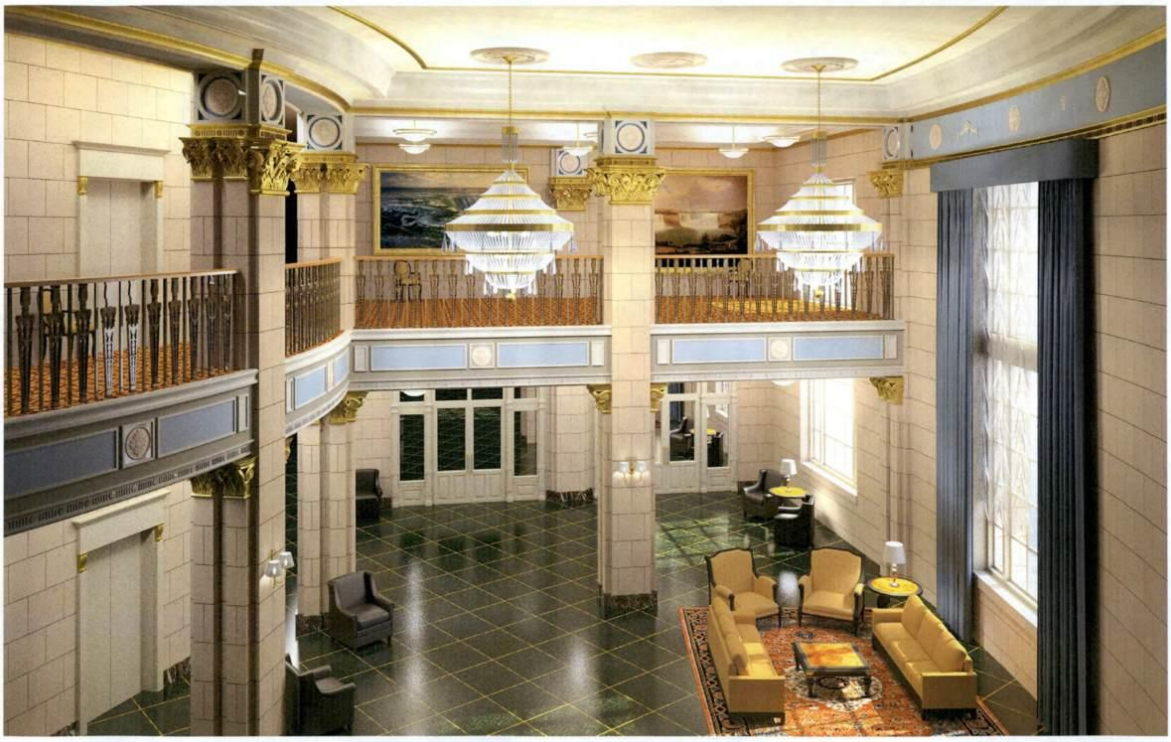

Figure 5

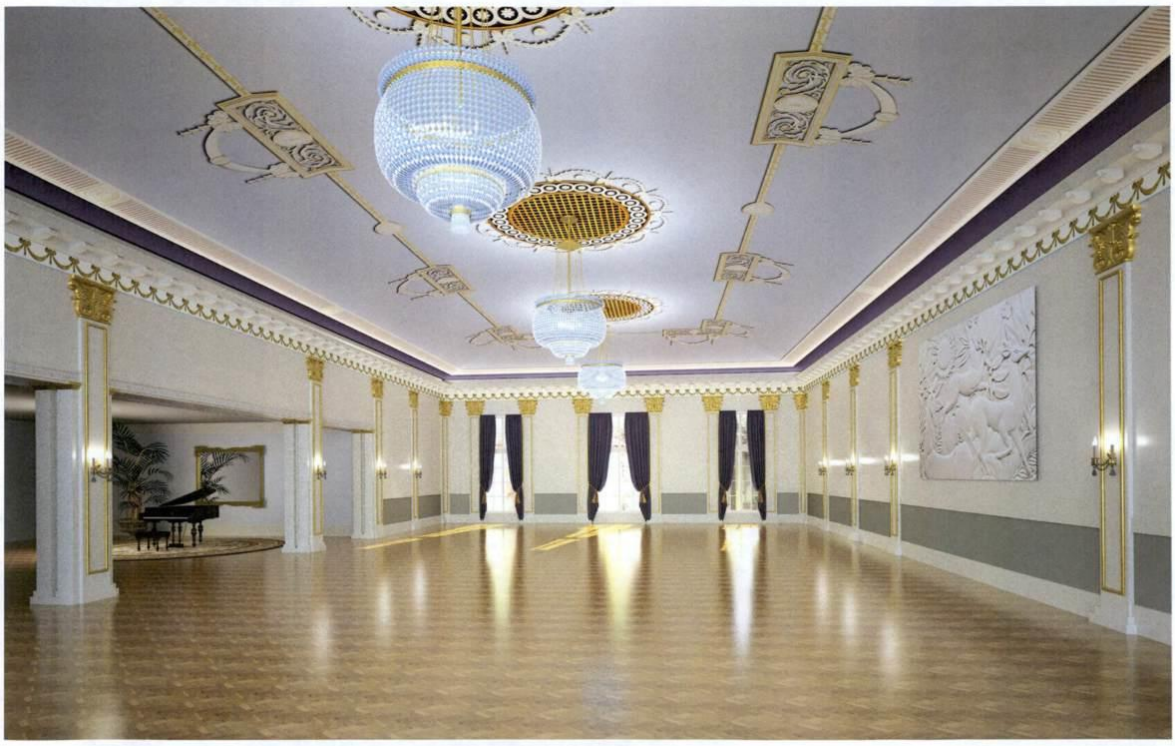

Figure 5

Attachment B

USA Niagara Development Corporation

201 Rainbow Boulevard Hotel Restoration
Niagara Falls, New York

Land Use Improvement Project

July 2025 Modified General Project Plan

(Original General Project Plan adopted December 20, 2018)

The USA Niagara Development Corporation ("USAN"), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), adopted a General Project Plan ("GPP") on December 20, 2018, to undertake the 201 Rainbow Boulevard Hotel Restoration Land Use Improvement Project (the "Project") in the City of Niagara Falls, Niagara County, New York.

Except as noted below, the GPP remains unmodified and in full force and effect. The modification is as follows:

1. In the summary overview, change Developer to Hotel Niagara Development LLC c/o Brine Wells Development, LLC; 205 S. Townsend Street, Syracuse, NY 13202.

Delete and replace Financing Sources with: USAN financial assistance, National Grid Streetscape Grant, Castle Green Finance, X-Caliber Funding & Commercial Loans.

2. In Section I Introduction, second paragraph, delete $42 million and replace with $58.8 million.

3. In Section II Background, last paragraph, delete $42 million and replace with $58.8 million; delete $3.5 million and replace with $7.5 million.

4. In Section III Compliance with the Public Authorities Law, (iii), delete FTE position descriptions/salaries and replace with the following:

Executives (10 FTE, Avg Salary $92,500); Mid-level Managers (10 FTE, Avg Salary $56,200); Service Staff (16 FTE, Avg Salary $45,700); Housekeeping (25 FTE, Avg Salary $35,200); Parking and Front Desk (6 FTE, Avg Salary $32,400).

5. In Section IV Project Description, the following sections have modifications:

B. Scope of the Restoration/Reuse

Delete ~$42 million and replace with $58.8 million.

Delete and replace all bullets points with the following:

- A full-service restaurant within the hotel at ground level of hotel;
- A roof-top bar and terrace lounge on the thirteenth floor;
- A sports bar at the ground level;
- One major ballroom with pre-function area on the second floor;
- Five meeting / private dining areas on the second floor;
- Bridal suite and common suite on the third floor; and
- Exercise facilities in the lower level of the hotel.

C. Purchase Price/Transfer of the Property

First paragraph, delete $3.5 million and replace with $7.5 million; delete $7.9 million and replace with $11.9 million; second paragraph, delete M&T Bank and replace with Castle Green Finance, X-Caliber Funding & Commercial Lending.

Project Sources & Uses of Funds; delete table and replace with the following:

Anticipated Funding Sources	
Owner's Equity/CPACE/Bank Financing	$32,250,000
Historic Tax Credits	$13,907,000
USAN Incentives	$7,500,000
USAN Property Contribution	$4,400,000
Miscellaneous grants/rebates	$750,000
GRAND TOTAL	**$58,807,000**
Funding Uses	
Construction Hard Costs	$34,800,000
FF&E and OS&E Costs	$7,869,500
Property Acquisition Costs (previously paid by USAN)	$4,400,000
Soft Costs, Fees, and other Costs	$11,737,500
GRAND TOTAL	**$58,807,000**

F. Tentative Project Timeline

Delete timeline and replace with the following update:

- Execute LDDA……July 2025
- Public Hearing on MGPP……September 2025
- Review by Public Authorities Control Board……..October 2025
- Approvals for Project……..October 2025
- Transfer of Property……October 2025
- Start of Construction……October 2025
- Certificate of Occupancy……October 2027

6. In Section VIII Non-Discrimination and Contractor & Supplier Diversity, second paragraph, delete $7.9 million and replace with $11.9 million.