



USA NIAGARA DEVELOPMENT CORPORATION

Meeting of the Directors

Monday

June 21, 2021 – 11:00 a.m.

AGENDA

I. CORPORATE ACTIONS

- A. Approval of Minutes of the March 22, 2021 Directors' Meeting
- B. USAN Procurement Guidelines – Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

II. FOR CONSIDERATION

- A. 466 Third Street Land Use Improvement Project – General Project Plan – Determination of Responsibility with Respect to the Proposed Preferred Developer; 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 for the Sale of Real Property; 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
- B. Procurement of Consultant Services – Rainbow Center Mall Adaptive Reuse Phase II: Schematic, Final Design and Construction Administration - Authorization to Enter into a Contract Amendment for Consultant Services and to Take Related Actions

Item I. A.

DRAFT – SUBJECT TO REVIEW AND REVISION

USA NIAGARA DEVELOPMENT CORPORATION

Meeting of the Directors

Conducted Via Teleconference

March 22, 2021

MINUTES

In Attendance Directors: Francine DelMonte – Chair
Paul Nanula
Michael Williamson

Present for USA Niagara: Elaine A. Kloss, Chief Financial Officer
Ray Paul, Senior Project Manager
John Risio, Project Manager
Loul Rizek, Office Manager
Debbie Royce, Acting Corporate Secretary
Anthony Vilardo, President

Present for ESD: Julia Borukhov, Financial Project Manager
Thomas Brennan, Senior Vice President – Internal Audit
Felisa Hochheiser, Director of Compliance
Robert Jones, Vice President - Contractor Administration
Stephen Konopko, Vice President - Internal Audit
Eugene Kwiatkowski, Senior Director of Budgeting
Pamm Lent, Director of Communications - WNY
Kathleen Mize, Deputy Chief Financial Officer and Controller
Laura Magee, Deputy Director - Public Affairs
Paul Tronolone, Vice President - Policy, Planning & Project Management

Also Present: Honorable Robert Restaino - Mayor of Niagara Falls

Following the roll call and confirmation that a quorum was present, the meeting of the Directors of the USA Niagara Development Corporation was called to order at 11:30 a.m. by Chair DelMonte.

Next, the Chair asked everyone to please mute their phones until they were ready to

DRAFT- SUBJECT TO REVIEW AND REVISION

speak and to state their name before speaking.

Chair DelMonte noted that due to public health concerns and as authorized by an Executive Order by the Governor, the meeting would be conducted by teleconference.

Chair DelMonte then noted that the public had been given the opportunity to comment on the Agenda items by submitting their written comments by 4:30 p.m. on Friday, and noted that no comments were received from the public.

The Chair then asked the Directors if anyone had any potential conflicts 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 December 14, 2020 Directors' meeting. Upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE DECEMBER 14, 2020 MEETING OF THE DIRECTORS OF THE USA NIAGARA DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on December 14, 2020 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 respect ratified and approved as actions of the Corporation.

* * *

Chair DelMonte then asked Anthony Vilaro to present an item relating to a request to

DRAFT- SUBJECT TO REVIEW AND REVISION

approve the Corporation's fiscal year 2021-2022 Annual Operating and Capital Budgets.

Mr. Vilaro explained that the Directors were being asked to approve an operating budget in the amount of \$703,655, which includes \$538,000 in personnel services and \$123,000 in non-personnel services.

Mr. Vilaro further explained that the total budget represents a 6.6 percent decrease from the 2020-2021 fiscal year operating budget, due to reductions in personal services and insurance expenditures.

Mr. Vilaro noted that this year's proposed capital budget of \$24,144,760 includes design and other soft costs, legal costs, property management and maintenance costs, insurance costs, demolition, site cleaners and other miscellaneous costs.

Mr. Vilaro further noted that it is anticipated that the proposed funds will cover related costs for the Hotel Niagara, the Wyndham Garden Inn, the Cataract Commons Project, as well as maintenance and site preparations associated with property secured through the Strategic Land Acquisition Program and soft costs for design and support services related to the Rainbow Mall Civic Improvement Project.

DRAFT- SUBJECT TO REVIEW AND REVISION

Following the full presentation, Chair DelMonte called for 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 Corporation’s Annual FY 2021-22 Operating and Capital Budgets (April 1, 2021 – March 31, 2022)

RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the “Materials”), the Corporation’s proposed FY 2021-22 Annual 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 Annual 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.

* * *

Next, Chair DelMonte called on Mr. Vilaro to present an item related to the 2021 calendar year operating budget and the first quarter 2022 funding for the Niagara Falls Convention and Conference Facility and the Old Falls Street Project.

DRAFT- SUBJECT TO REVIEW AND REVISION

Mr. Vilaro explained that on July 27, 2020 the Directors approved an amendment to an agreement with Global Spectrum, LP d/b/a Spectra Venue Management (“Spectra”) to extend their contract term by one year beginning January 1, 2021 and expiring on December 31, 2021.

Mr. Vilaro further explained due to the COVID-19 pandemic, Niagara Falls Convention and Conference Facility is currently closed and has experienced an unprecedented loss of business resulting in negative cash flow.

Mr. Vilaro noted that the proposed budget for the calendar year 2021 is for the Conference Center and Old Falls Street operating calendar year budget and we will pre-fund the first quarter of the 2022 calendar, which is the end of USA Niagara’s fiscal year.

Mr. Vilaro further noted that (1) the operating budget for the Conference Center of Niagara Falls is proposed to be in the amount of \$406,696; (2) there are no incentive fees for the Conference Center expected in the calendar year 2021; (3) the operating budget for Old Falls Street is \$584,839; and (4) with incentive fees the total budget could potentially be in the amount of \$593,256 for a total operating budget for the two entities totaling \$991,531.

Following the full presentation, Chair DelMonte called for 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:

DRAFT- SUBJECT TO REVIEW AND REVISION

USA NIAGARA DEVELOPMENT CORPORATION – Approval of the CY 2021 Niagara Falls Convention and Conference Facility and Old Falls Street Operating Budgets; Approval of First Quarter 2022 Funding; and Authorization to Disburse Funds

RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the “Materials”), the Corporation’s proposed CY 2021 Niagara Falls Convention and Conference Facility and Old Falls Street Operating Budgets in a cumulative amount not to exceed \$999,952 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 2022 (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 2021 Niagara Falls Convention and Conference Facility and Old Falls Street Operating Budgets be approved and ratified, and the same hereby are, authorized to disburse funds substantially in accordance with the CY 2021 Niagara Falls Convention and Conference Facility and Old Falls Street Operating 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 Mr. Vilardo to present the next item on the Agenda related to a request to adopt the proposed General Project Plan for the 500 and 512 Third Street Restoration/Rehabilitation Land Use Improvement Project.

DRAFT- SUBJECT TO REVIEW AND REVISION

Mr. Vilaro explained that in January 2020, TM Montante Development was selected as the preferred developer for 500 and 512 Third Street to develop these parcels into two mixed-use commercial developments.

Mr. Vilaro further explained that 500 Third Street will contain ground floor space suitable for retail or restaurant use as well as commercial space above and 512 Third Street will contain retail or restaurant space in the adjacent outdoor areas.

Mr. Vilaro further noted that the properties are connected through a finished outdoor seating area which can be utilized by on-site tenants or for special events.

Mr. Vilaro noted that on October 11, 2009, USA Niagara received several RFP proposals for all of the Third Street holdings, but only one was received for these respective properties.

Mr. Vilaro explained that TM Montante Development intends to complete the estimated project in two stages with the first being the construction of either 500 or 512 Third Street, which will be Phase 1 and Phase 2 will be the remaining property and will depend on where they get a tenant signed.

Lastly, Mr. Vilaro noted that the purchase price for both parcels will be \$1.00 and the reimbursement to USA Niagara for any costs associated with the portion of the cleanup at 503 Third Street.

DRAFT- SUBJECT TO REVIEW AND REVISION

Following the full presentation, Chair DelMonte called for 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 – 500 and 512 Third Street Restoration/Rehabilitation 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 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

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 500 and 512 Third Street Restoration/Rehabilitation Land Use Improvement 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

DRAFT- SUBJECT TO REVIEW AND REVISION

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 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.

* * *

DRAFT- SUBJECT TO REVIEW AND REVISION

Chair DelMonte then called on Mr. Vilardo to present the last item on the Agenda related to the Adoption of the Proposed General Project Plan for the 554 and 558 Third Street Land Use Improvement Project.

Mr. Vilardo explained that this project will support SJI Main, LLC's ("SJI") phased investment in a mixed-use development project located on the corner of Main and Third Street and will consist of the creation of 36 residential apartments and six commercial spaces.

Mr. Vilardo further explained that as part of the Strategic Land Acquisition Program two vacant lots adjacent to this project was acquired, which was formerly for residential use. He noted that since there was not a large market for a residential project and in order to support this multi-million dollar investment, Directors' approval is being sought to sell these parcels to SJI Development.

Following the full presentation, Chair DelMonte called for 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 – 554 and 558 Third Street Land Use Improvement Project – General Project Plan – Determination of Responsibility with Respect to the Proposed Preferred Developer; 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 Enter Into Necessary Agreements; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

DRAFT- SUBJECT TO REVIEW AND REVISION

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 554 and 558 Third Street Land Use Improvement Project (the “Project”), the Corporation hereby finds SJI Main, LLC to be responsible; and be it further

RESOLVED, that the Corporation 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

DRAFT- SUBJECT TO REVIEW AND REVISION

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 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 resolution.

* * *

Before officially adjourning the meeting, Chair DelMonte noted that this would be Director Nanula’s last meeting as he has elected to step down from the Board. Chair DelMonte thanked Director Nanula and noted appreciation for all of the work and time he has put in as a member of the Board.

There being no further business, the meeting was adjourned at 11:50 a.m.

Respectfully submitted,

Debbie Royce
Acting Corporate Secretary

Item I. B.



FOR CONSIDERATION

June 21, 2021

TO: The Directors

FROM: Anthony Vilaro

SUBJECT: USAN Procurement Guidelines

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

I. Background

In July 2020, the USA Niagara Development Corporation (“USAN” or “the Corporation”) Directors adopted 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 public authorities in the past year. New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) staff from the Legal Department, Contracts Administration and Finance Departments, reviewed the Guidelines and incorporated the following changes:

- Clarifying that discretionary purchases for MWBE firms over \$250,000 must be approved by the Board;
- When a member of a prequalified firm leaves the firm to one that is not on the prequalified list, the prequalification follows the member;
- Clarifying the role of the procurement director during a bid evaluation and vendor selection; and
- Establishing a protocol for debriefing unsuccessful bidders post submission and award.

Accordingly, the 2021 Guidelines have been revised to incorporate these revisions, as well as the changes for consistency.

On March 25, 2021, the ESD Board adopted the revised Guidelines (the “2021 Guidelines”), which are designed to govern procurements by ESD and its subsidiaries, such as USAN. A copy of the 2021 Guidelines is attached. Approval is sought for the adoption by the USAN Directors of the 2021 Guidelines.

II. Procurement Guidelines Summary

The 2021 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 the Guidelines have not been followed.

The 2021 Guidelines define the universe of procurement transactions subject to the policies and procedures. Generally, all USAN procurements 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 2021 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of the Corporation's Bid Opening Guidelines and the compilation of a procurements record for every covered procurement contract.

The 2021 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 2021 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 2021 Guidelines presented to the Directors for approval.

ESD subsidiaries are required to approve their own Procurement Guidelines in terms virtually identical to the 2021 Guidelines, with any departure therefrom fully explained by the subsidiary Board. One deviation from the 2021 Guidelines adopted by the ESD Board is being recommended. As the ESD adopted guidelines require Board approval of contracts over \$250,000, due to the type of contracts and their amounts typically entered into by USAN, staff believe that the appropriate contract amount requiring USAN Board approval should be

\$150,000, not the \$250,000 reflected in the 2021 Guidelines. This will permit the Corporation to efficiently approve and move contracts forward but provides appropriate oversight of contract review to the USAN Board.

III. Environmental Review

ESD staff on behalf of USAN has determined that approval of the 2021 Guidelines does not constitute an action as defined by the New York State Environmental Quality Review Act and its implementing regulations. No further environmental review is required in connection with the requested approval.

IV. Requested Action

The Directors are requested to adopt the 2021 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, except that the all contracts entered into by the Corporation that exceed \$150,000 shall require approval by the Directors.

V. Recommendation

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

Attachments

Resolution

2021 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

June 21, 2021

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

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 2021 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 the date hereof, with the exception that any contracts entered into by the Corporation that exceed a contract amount of \$150,000 shall require approval by the Corporation's directors; 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.

* * *

Item II. A.



FOR CONSIDERATION

June 21, 2021

TO: The Directors

FROM: Anthony Vilaro

SUBJECT: 466 Third Street Land Use Improvement Project – General Project Plan

REQUEST FOR: Determination of Responsibility with Respect to the Proposed Preferred Developer; 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 for the Sale of Real Property; 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

GENERAL PROJECT PLAN

Developer: Cataract Development Corporation

Contact: Jason Cafarella, Partner

Project Location: 466 Third Street, Niagara Falls, New York

Proposed Project: USAN will transfer a USAN-owned mixed-use building to Cataract Development Corporation in order to rehabilitate and renovate the building for new retail and residential development.

Financing Sources: Bank and Equity Financed

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 466 Third Street Land Use Improvement Project (the “Project”) in the City of Niagara Falls, Niagara County, New York.

The Project involves Cataract Development Corporation’s (“Cataract” or “the Developer”) acquisition of a USAN-owned building located at 466 Third Street (the “Property”) as part of a full rehabilitation of the building, into a mixed-use development with five apartment units and two commercial storefronts. The Project will add value to the Third Street Business District, create new jobs and provide new residential opportunities.

Cataract, of Niagara Falls, New York, owns other properties in the Third Street neighborhood, and has a history of rehabilitating once thriving, locally significant buildings and reviving them to their past glory and charm. They aim to enhance the surrounding neighborhood both aesthetically and functionally, while creating a valued, accessible, and successful residential and commercial community.

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 development 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, USAN Urban Design Standards, and USAN policies for new development to support its tourism base and investment in downtown sustainable neighborhoods, would include actions in furtherance of these goals. Support for these findings is discussed herein.

II. BACKGROUND

On August 18, 2018, the USAN Board of Directors approved acquisition of several properties, including 466 Third Street, as part of the strategic land acquisition program funded through the second phase of Governor Andrew M. Cuomo’s “Buffalo Billion” Economic Development Initiative. The program is intended to assemble long-dormant properties located near Niagara Falls State Park to remove blight from the downtown area and expand the density of uses there toward the establishment of a year-round, sustainable neighborhood. In March 2019, USAN closed on the Property.

The Property includes a first-floor commercial space rented by a local pizzeria, a second first-floor vacant restaurant space, and a vacant, mostly gutted second story. USAN competitively procured the redevelopment of the Property as part of a Request for Proposals (“RFP”) issued in July of 2019. No proposals that complied with the redevelopment criteria were received in response to the RFP. Cataract’s proposal was submitted to USAN in November of 2020. Cataract will pay USAN \$1 to purchase the Property.

III. PROJECT DESCRIPTION

A. Objectives and Purpose of Transfer

The overall objectives of the Project and the purposes of the transfer of the Property to Cataract

are as follows:

- Supporting the restoration/rehabilitation of a mixed-use commercial building that contributes to a lively, urbane setting and a substantial increase in street-level interaction;
- Supporting the revitalization of 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;
- Realizing a development that best complements or achieves synergies related to, but not limited to: the Project's proximity to Niagara Falls State Park; expansion of the operating performance of other established uses in the downtown area by increasing the overall level of activity downtown; and enticement of further redevelopment and/or desired land use types on surrounding sites/areas of downtown;
- Expanding the availability of market-rate residential options, goods, services, and entertainment venues available to visitors, residents, and the public in general;
- Public benefits such as creating new jobs (FTE construction jobs and a number of direct FTE positions are expected to be created depending on the future tenants), increasing the tax base, and supporting investment in Niagara Falls;
- Stabilizing and preserving the Project's adjacent property values;
- Reaching a mutually beneficial public/private partnership with the goal of restoring the property and returning it to a productive and self-sustaining use; and
- Completing the restoration/rehabilitation and reuse of the Project's adjacent properties in the most expeditious manner that is feasible.

B. Scope of the Restoration/Reuse

The Project will result in the Developer's \$225,000 restoration/rehabilitation of the Property into a vibrant, mixed-use commercial development which is critical for the continued development of the Third Street Business District.

The Project includes a full restoration of the Property, with five high quality market-rate residential units, and two commercial spaces for retail tenants. Restoration work will also include the building systems and the façade.

C. Purchase Price/Transfer of the Property

The Developer will pay USAN \$1 to purchase the Property. As such, the Project will receive indirect financial assistance when USAN's 2019 purchase price of \$200,000 is considered.

The entity which USAN/ESD will be contracting with and selling the Property to, will be Cataract

Development Corporation.

D. Land Disposition and Development Agreement

Upon adoption of this GPP, USAN and Cataract 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 Cataract and involves a series of business terms, which include:

- The Property will be accepted “As is” by the Developer. As such, the Developer will invest in required significant capital improvements in order to lease the Property to its fullest extent.
- The Developer agrees to accept title to the Property subject to the License and Occupancy Permit Agreement between the Property’s current commercial tenant and USAN dated August 19, 2019, and a declaration of covenants, conditions and restrictions as is customary and appropriate for such a Project.
- Requiring construction to commence within twelve (12) months of execution of the LDA, subject to the right to extend that deadline provided Developer has continued in good faith using commercially reasonable efforts to continue advancing the Project. Developer will thereafter be required to complete construction of the Property within eighteen (18) months, subject to extensions for customary force majeure events.
- Requiring the Developer to enter into a formal agreement/process to identify goals/initiatives to reasonably maximize the Developer’s positive community impact on the Niagara Falls/Niagara County community.

E. Tentative Project Timeline

- Public Hearing on GPP.....July 2021
- Review by Public Authorities Control Board.....August 2021
- Execute LDASeptember 2021
- Transfer of Properties to the Developer.....September 2021
- Start of Construction.....By September 2022
- Completion of ConstructionBy March 2024

IV. 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 includes adjacent blighted buildings. With new investment, the Property has the potential to be a catalytic project for the Third Street neighborhood. The Property 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 marginal activity derived from the Property, notwithstanding that the Project Area is located within walking distance of the Niagara Falls State Park, which enjoys 9 million annual visitors. The City of Niagara Falls (the “City”) has experienced chronically high jobless rates. Restoring the Property to an active use 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 economic activity, which would also directly and indirectly create new employment opportunities. The Project has the potential to shift the trajectory of surrounding properties as well, (e.g., the Verrazzano Apartments, Wine on Third, Power City Eatery, several nearby hotels and the Conference & Event Center Niagara Falls would all directly benefit through proximity to restored active mixed-use developments).

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.*

This Project was a result of USAN’s strategic land acquisition program to actively seek out and acquire vacant and underutilized properties in downtown Niagara Falls for infill development. Plans for reuse of such properties must adhere USAN’s already-established urban design guidelines, as well as be consistent with policies of the City of Niagara Falls 2009 Comprehensive Plan and development regulations.

The Project will result in the Developer’s restoration/rehabilitation of a mixed-use commercial building in the downtown Third Street Business District. The enhanced uses generated by the Developer’s investment will attract people to the Project Area and will, accordingly, help support local businesses. The Developer’s investment will also generate substantial tax revenues for the City and the State.

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.*

Cataract Development Corporation is a private enterprise and an integral part of the Project. The Project will encourage tourism-related uses in downtown Niagara Falls, fostering participation and further opportunities for private enterprises. Furthermore, the LDA will include terms requiring the Developer to identify goals and initiatives to maximize their long-term goals on the Niagara Falls and Niagara County community.

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.

V. 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, the consideration paid by the Developer will be \$1 in exchange for the restoration/rehabilitation of the Property. 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 Property is located at 466 Third Street in Niagara Falls, New York, and consists of a two-story, brick, mixed-use, row-type, multi-tenant, commercial building with two first-floor restaurants and upper-level vacant/gutted apartments containing 10,640 square feet, constructed in 1924, and is situated on an 8,712 square foot, or 0.2-acre site. There are zero lot lines with other abutting buildings on each side.
- (ii) An appraisal of the fair market value of the asset: Pursuant to an independent appraisal of the property, the appraised value range is \$200,000 to \$240,000.
- (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 will result in the restoration/rehabilitation of a mixed-use building, returning it to productive and self-sustaining uses. The public benefit expected includes the creation of new jobs, increasing the tax base, support of investment in Niagara Falls and revitalization of an important downtown business district.

- (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, the Project will represent a major new development to continue efforts to grow tourism-related economic and recreational activity and increase investment in sustainable neighborhoods in downtown Niagara Falls.
- (v) The names of the private parties participating in the transfer: Cataract Development Corporation.
- (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: USAN received one proposal in response to the RFP, from Tasty Alimentos LLC. The proposal was not accepted and no actual offer was made for the Property.

The purpose of the transfer is to encourage development in Niagara Falls. Due to the scale of the investment that will be completed by Cataract and its expected contribution to the development landscape of Niagara Falls, a below market transfer of the Property is required. Please see Section IV. A “Land Use Improvement Project Findings” for more detailed information on anticipated Project benefits.

VI. RESPONSIBLE VENDOR DETERMINATION

USAN 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.

VII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Articles 15-A and 17-B, 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 and procurements. The Office of Contractor and Supplier Diversity has reviewed the project and has determined that there exists no potential for MWBE and SDVOB participation. As such, participation goals will not be established or required for this project.

VIII. 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, transfer of the USAN owed property located at 466 Third Street, 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.

IX. CONCLUSION

The proposed Project will support Cataract’s \$225,000 investment to restore/rehabilitate a mostly vacant mixed-used commercial building in downtown Niagara Falls. 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.

X. RECOMMENDATION

Based on the foregoing, USAN staff recommends that the Directors Make a Determination of Responsibility with Respect to the Proposed Preferred Developer, Make the Requisite Findings and Determinations Pursuant to Sections 10(c), and 10(g) of the New York State Urban Development Corporation Act (the “Act”); Adopt the Proposed General Project Plan; Authorize the Holding of a Public Hearing; Authorize the Sale of Real Property; Authorize the Entering into Necessary Agreements; Make a Determination of No Significant Effect on the Environment; and Take All Related Actions.

XI. ADDITIONAL SUBMISSION TO DIRECTORS

Resolution

Figure 1: Site Location Map

Figure 2: Current Site Conditions

USA NIAGARA DEVELOPMENT CORPORATION – 466 Third Street Land Use Improvement Project – General Project Plan – Determination of Responsibility with Respect to the Proposed Preferred Developer; 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 Enter Into Necessary Agreements; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

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 466 Land Use Improvement Project (the “Project”), the Corporation hereby finds Cataract Development Corporation to be responsible; and be it further

RESOLVED, that the Corporation 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 will 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 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 resolution.

Figure 1: Site Location Map

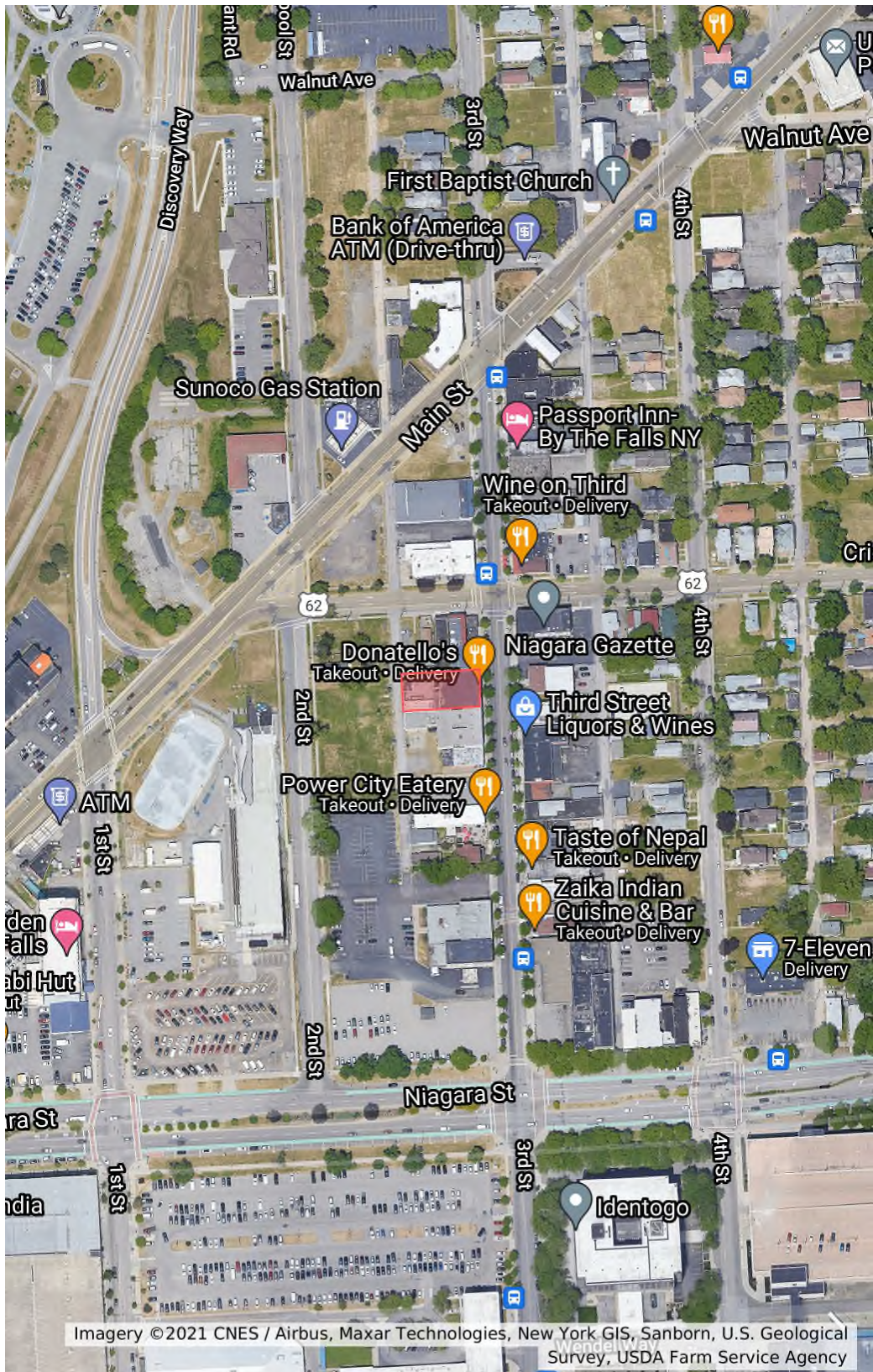


Figure 2: Property Photo



Item II. B.



FOR CONSIDERATION

June 21, 2021

TO: The Directors

FROM: Anthony Vilaro

SUBJECT: Procurement of Consultant Services – Rainbow Center Mall Adaptive Reuse Phase II: Schematic, Final Design and Construction Administration

REQUEST FOR: Authorization to Enter into a Contract Amendment for Consultant Services and to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor: Marvel Architects, PLLC

Scope of Services: Architecture & Engineering Services

Contract Term: Thirty months from award (anticipated start July 2021; anticipated completion date January 2024) unless otherwise extended by the President of the Corporation.

Contract Amount: Original amount \$312,407.58
Modification: \$3,993,255 (\$3,630,232+\$363,023 contingency)
Revised contract amount: \$4,305,663

Funding Source: NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster a/k/a “Buffalo Billion”. No USAN Corporate funds will be used to fund the contract.

II. Background

The Rainbow Centre Mall was originally built as a public-private partnership with the Cordish Company constructing and subsequently leasing an approximately 290,000 square feet shopping mall one block away from the entrance to Niagara Falls State Park. The mall was incorporated primarily into the first two levels of a pre-cast concrete parking structure owned by the City of Niagara Falls (the "City"). Opening in 1982, the mall lost its anchor tenant in 2000 and ceased to function as a tradition mall with the last tenants vacating the property in late 2007.

In October 2010, the USA Niagara Development Corporation ("USAN") Board of Directors approved the General Project Plan for the development of a new Tourism and Hospitality Center. Promoted as the Niagara Falls Culinary Institute (the "Culinary Institute") and operated by Niagara County Community College ("NCCC"), the Culinary Institute involved the rehabilitation and reuse of approximately 90,000 square feet at the southern end of the former mall. The space and the land upon which the Culinary Institute occupies was transferred to Niagara County, which will continue to own this property in agreement with the City.

In 2014, USAN solicited proposals from private sector partners for the redevelopment of the remaining Rainbow Centre Mall space not occupied by the Culinary Institute. After designating a preferred developer for the project, USAN and the developer entered into an extended due diligence and negotiation period, which did not result in a feasible project.

On December 6, 2019, USAN and the City announced plans to undertake the adaptive reuse of the remaining mall space as a Civic Improvement Project (the "Project"). Guided by the recommendations of a panel of experts from the Urban Land Institute, the Project aims to establish greater public access and walkability, create commercial opportunities, and modernize parking resources to support new and existing businesses at and near the mall site. These modifications will create up to +/- 150,000 square feet of available space that could be repurposed for uses that would benefit downtown Niagara Falls, including attractions or other entertainment venues or partnerships with the Culinary Institute, such as an expansion of programming.

USAN and the City have signed a Project term sheet which will allow USAN to procure and retain, at its expense, consultants necessary to develop plans and specifications necessary to allow construction of the Project. USAN will contribute all Project costs, up to a maximum amount to be agreed to between USAN and the City, based upon the approval of a final Project budget and program.

Although USAN solicited proposals for the entirety of the design process, the decision was made to only authorize a contract through conceptual design and scoping due to budget uncertainties given the size and scope of the project. USAN entered into a contract with Marvel Architects for this initial phase on May 5th, 2020. Work was completed during July 2020. Now that the

work of the initial phase has been completed, USAN seeks to award the final design of the Project.

III. Contractor Selection Process

In order to procure a consultant for the proposed Project, USAN utilized the list of prequalified architecture/engineering consultant firms, which was adopted by the USAN Board of Directors on November 21, 2017. As such, the solicitation was not advertised on the New York State Contract Reporter. Instead, on December 9, 2019, USAN issued a Request for Proposals (“RFP”) to 15 select firms seeking to retain a professional architecture/engineering consultant firm and/or team to provide design and engineering services to repurpose the remaining space in the former Rainbow Centre into a high-density, mixed-use development with restored pedestrian access through the center of the building and active ground-level uses.

A pre-proposal meeting was held on January 3, 2020, in Niagara Falls and was also broadcasted via Webex for those who RSVP’d. A total of eight firms were in attendance. On January 31, 2020, USAN received a total of four proposals to the RFP from Cannon Design; Gensler Architecture, Design and Planning, P.C.; Kideney Architects, P.C.; and Marvel Architects, PLLC.

A Selection Committee consisting of six members (five from USAN/ESD and one from the City) evaluated the responses. Proposal scoring was based on the RFP criteria which included the cost of services proposed by each team and their consultant experience, including their track record in delivering successful projects for ESD and other local agencies. Other criteria included consideration of the quality of the team’s project approach, project schedule, and the team’s adherence to ESD’s diversity practices. The committee scored the proposal from Marvel Architects, PLLC (“Marvel” or the “Consultant”) as the highest and recommended that Marvel was the most qualified firm to best meet the objectives of the Project.

Marvel is one of the world’s leading adaptive reuse architectural practices and has completed almost two dozen adaptive reuse / historic projects of various scales. Their holistic design practice includes an urban design unit, which helps them to consider the impact of their work at the neighborhood, district, and even regional scale. Their primary goal is activation: creating sites that are vital, walkable, multi-modal, that serve a mix of audiences and groups throughout the day and seasons of the year. With offices in New York and San Juan, Marvel is an international firm dedicated to creativity and diversity. The firm includes 110 professionals: architects, landscape architects, urban planners, designers and administrative support, dedicated to shaping the built environment at all scales. From largescale masterplans and capital project scope development to streetscape design; and from affordable housing and cultural institutions to high-end residential and hospitality, Marvel sees every project as an opportunity to create spaces of engagement.

The Marvel team includes Wendel – an architecture, engineering, planning and construction management firm headquartered in Williamsville, New York; Walter P Moore and Associates- a parking consultant based in Houston, Texas and Trophy Point – a certified Service-Disabled,

Veteran-Owned Small Business that will provide construction cost estimating services for the Project out of their Blasdell, New York office.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff; 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

The Consultant team will provide necessary Architecture & Engineering Services for the Project. USAN and the City will later select a Construction Manager ("CM") for the construction phase of the Project; as such no CM scope of work is included in this contract.

In summary, the scope of work is organized under two phases which were bid out as part of the RFP issued in December 2019. Phase I: Preliminary Design, which included scoping and conceptual design, was approved by the USAN Board of Directors in March 2020 and completed in July of 2020. The Board is now being asked to approve a contract amendment for Phase II: Schematic, Final Design and Construction Administration.

Marvel will be responsible for working with USAN, the Culinary Institute, Stakeholder Focus Groups, and associated agencies (NFTA, City Engineering and Public Works Departments, etc.) to finalize design, bid construction and then oversee construction administration.

V. Contract Term, Price and Funding

This contract will include all services up to the completion of the contract. The proposed term is thirty months upon award of contract. The basis or method of payment for this contract will be based on a combination of lump sum payments and time and materials, not to exceed \$4,305,663.

Funding source will be NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster a/k/a "Buffalo Billion. 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 Contract. The Recipient 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 Contract 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% related to the total value of USAN funding.

Marvel is a NYS-certified MWBE and may utilize its certification towards the goal.

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 Marvel for an amount not to exceed \$4,305,663; and (3) to authorize the taking of all related actions.

IX. Recommendation

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

X. Attachment

Resolution

June 21, 2021

USA NIAGARA DEVELOPMENT CORPORATION – Procurement of Consultant Services – Rainbow Center Mall Adaptive - Reuse Phase II: Schematic, Final Design and Construction Administration - Authorization to Enter into a Contract Amendment for Consultant Services and to Take Related Actions

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 Marvel Architects, PLLC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract amendment with Marvel Architects, PLLC in an amount not to exceed FOUR MILLION, THREE HUNDRED AND FIVE THOUSAND, SIX HUNDRED AND SIXTY-THREE DOLLARS (\$4,305,663) 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.

* * *