

REQUEST FOR PROPOSALS

Niagara Falls Heritage Gateways

Architecture & Engineering Consulting Services for the Design of a
Public Plaza, Outdoor Recreation Space, Observation Deck and Pocket Park in Downtown Niagara Falls



USA Niagara
Development
Corporation



Issued: July 8, 2022

Pre-Proposal Site Tour: July 26, 2022

Submit Questions by: August 2, 2022

Proposals Due: August 22, 2022 at 3:00PM ET

Primary Contact:

Paul Ray, Senior Project Manager

Secondary Contact:

Rob Sozanski, Project Manager

Send all inquiries to: NFHeritageGateways@esd.ny.gov

CONTENTS

I. INTRODUCTION	3
II. BACKGROUND	4
III. GATEWAY #1: PUBLIC PLAZA & RECREATION SPACE.....	6
IV. GATEWAY #2: OBSERVATION DECK.....	8
V. GATEWAY #3: POCKET PARK.....	9
VI. HERITAGE CHECKPOINTS	10
VII. SCOPE OF SERVICES.....	11
VIII. REQUIRED PROPOSAL CONTENTS	14
IX. SELECTION CRITERIA	15
X. PROPOSAL SUBMISSION INSTRUCTIONS	16
XI. RESERVED RIGHTS.....	17
XII. DEVELOPER DUE DILIGENCE	17
XIII. GENERAL PROVISIONS	18
XIV. CONTRACTUAL REQUIREMENTS.....	20
1. Conflicts of Interest	20
2. State Finance Law Sections 139-j and 139-k forms.....	20
3. Vendor Responsibility Questionnaire	21
4. Iran Divestment Act	21
5. Executive Order 177	21
6. Executive Order 16.....	22
7. Non-Discrimination and Contractor & Supplier Diversity Requirements.....	22
8. Encouraging the Use of NYS Businesses in Contract Performance Form.....	26
9. Certification under State Tax Law Section 5-a	26
10. Project Sunlight	26
11. Insurance Requirements.....	26
12. W-9 Form	26

APPENDICES

Appendix A. Downtown Niagara Falls Development Strategy: Executive Summary
Appendix B. Downtown Niagara Falls Development Opportunities
Appendix C: Downtown Niagara Falls Heritage Path: Concept Design Report
Appendix D: Downtown Niagara Falls Development Strategy: Design Precedents
Appendix E: Canal Site Survey
Appendix F: 305 Buffalo Ave Survey
Appendix G: Canal Site Environmental Assessment (Phases I & II)
Appendix H: 305 Buffalo Ave Environmental Assessment (Phase I)
Appendix I: 101 Buffalo Ave Survey
Appendix J: 101 Buffalo Ave Environmental Assessment (Phase I)

I. INTRODUCTION

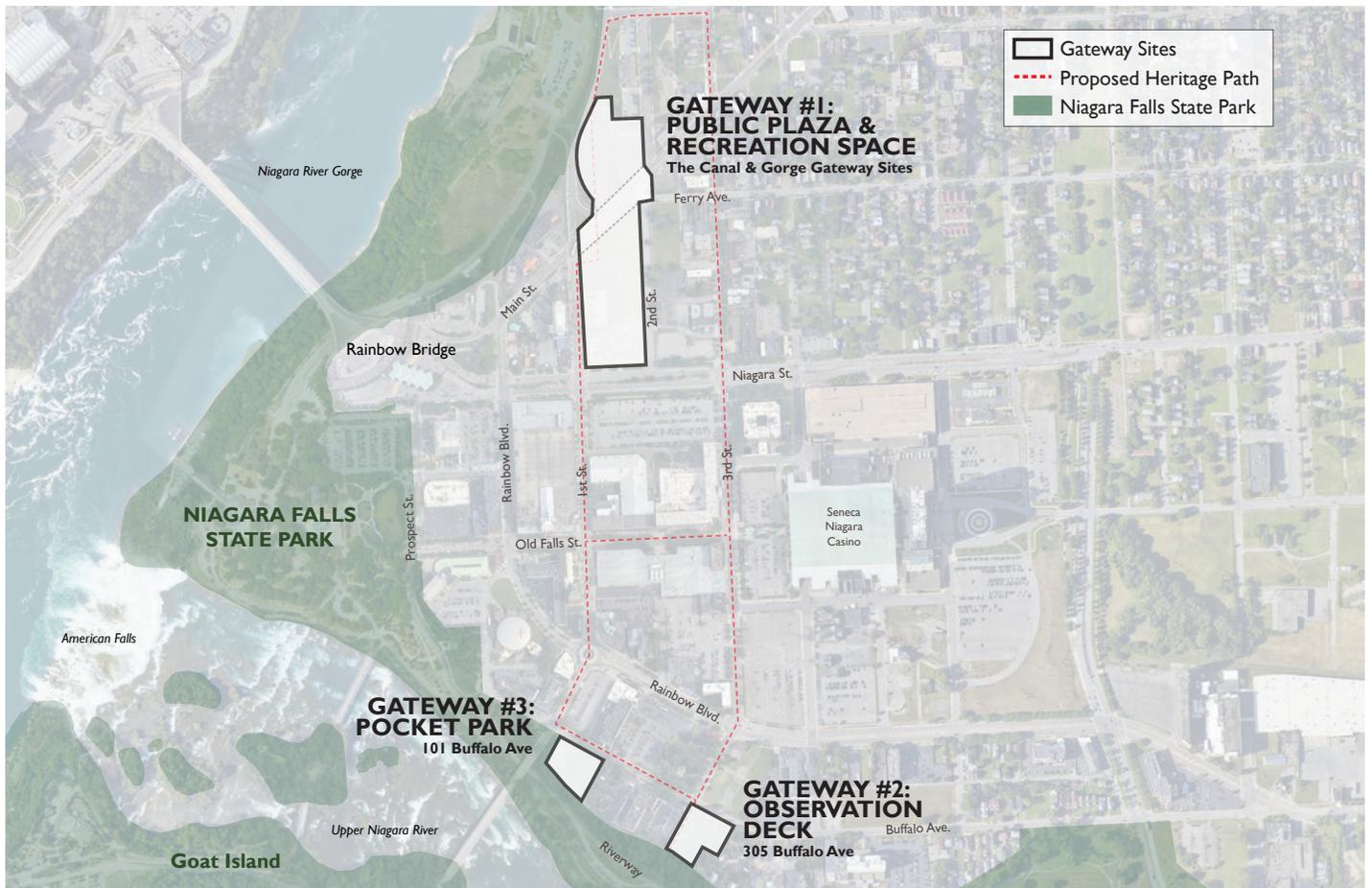
USA Niagara Development Corporation (USA Niagara), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (ESD), is seeking to retain a professional architectural and engineering (A/E) consultant firm and/or team (the “Consultant”) for design and construction administration services for the construction of three proposed public gateway features in downtown Niagara Falls, New York (the Project). Together, the gateways will define the northern and southern ends of a proposed “Downtown Niagara Fall Heritage Path,” which is intended to help expand activities downtown while strengthening the connections between downtown Niagara Falls and Niagara Falls State Park.

The northern gateway will combine a public plaza that interprets the historic “hydraulic canal” that once ran through the city to feed one of its first power stations and a public recreation/activity space along the State Park border. The two southern gateways will include an observation deck that looks out over the American Rapids on the Upper Niagara River and a pocket park at the base of the American Rapids Bridge to Goat Island. Additionally, the project will include four embedded “heritage checkpoints” or interpretative stations to create small destinations/activity nodes along the Heritage Path.

While this work will take place on separate publicly-owned sites—each with unique design considerations and constraints—it should establish a consistent foundational design language for the broader Heritage Path that can be replicated and applied for future locations along the proposed trail. Overall, the project should meet the following design objectives:

- Create context sensitive designs that address needs of residents and tourists;
- Provide public space that complements and facilitates future infill
- Development on parcels adjacent to the trail; and
- Create/enhance safe connections between Niagara Falls State Park and downtown street grid.

The following document provides site-specific design objectives, required design elements for each site, required scope of work and proposal submission requirements. Additional resources and previous work on the Project can be found in the attached appendices.



Project Overview Map

II. BACKGROUND

Over the last 40 years, modern highway features such as the Rainbow Bridge plaza, the wide boulevard of Niagara Street and the former Robert Moses Parkway blocked access to the Upper Niagara River and the Niagara Gorge and acted as impediments to the free flow of pedestrians between Niagara Falls State Park and the City's downtown district. While millions visit Niagara Falls State Park each year, many of them only visit sites within the park itself and are not aware of the myriad amenities that exist in downtown Niagara Falls. Downtown is directly adjacent to the State Park, but connections between the park and the city are not always obvious and—in some places—are dominated by vast open tracks of vacant land or intimidating street crossings.

Additionally, the land market in downtown Niagara Falls has historically languished because of a conundrum; while the City's economy was stagnant as it restructured away from its heavy industrial history, parcels near Niagara Falls State Park continued to have high valuation given their proximity to this globally-recognized destination. Thus, many local and out-of-town investors often practiced land speculation—the long-term holding of land in hopes of future appreciation in value. Bolstered in part by the 2003 establishment of casino gaming on downtown lands that are now part of the Seneca Nation, speculators would hold parcels for years without building anything new or updating existing structures. This resulted in several key properties in downtown Niagara Falls remaining largely vacant, partially vacant, or underutilized for as long as 30 years. These properties—many dating to the city's ill-fated urban renewal program in the 1970s and 80s—continue to serve as deterrents to significant investments in downtown Niagara Falls.

In 2018, through its “Strategic Land Acquisition Program” USA Niagara began purchasing some of these vacant/underutilized properties in the downtown tourist district now totaling seven buildings and over eight acres of vacant land. With these key parcels now acquired, USA Niagara has begun to focus its attention on strategies that will reactivate these properties.

The first step in this process was the creation of a formal strategy to ensure new development is done in a thoughtful manner that responds to the character of downtown. The resulting “Downtown Niagara Falls Development Strategy” illustrates a range of interim interventions and attainable development guidelines to re-imagine a more vibrant downtown in the near-term while building momentum and continuing to promote sustainable dynamic growth over time.

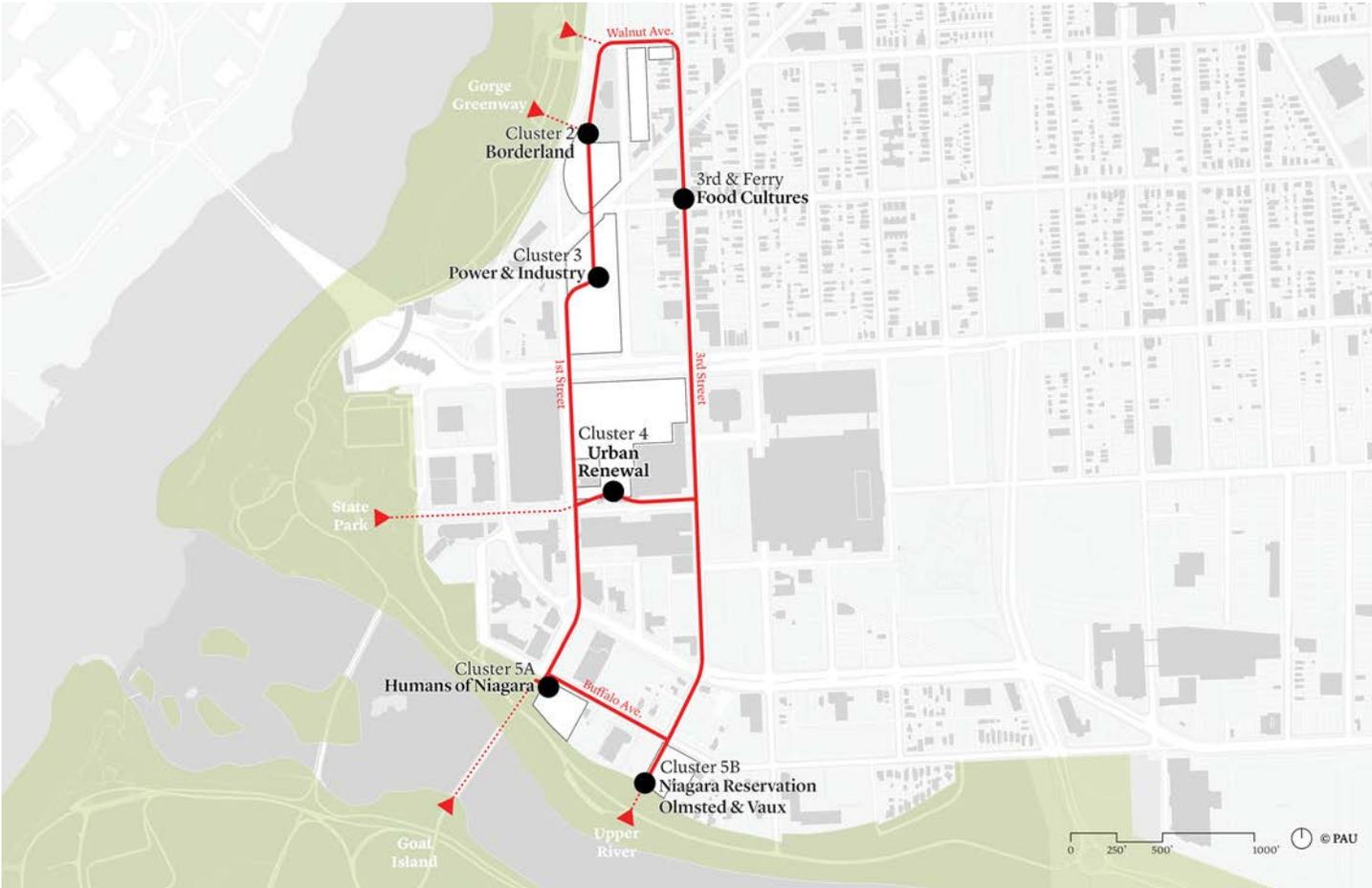
The process to develop the strategy began with an analysis of both historic and contemporary conditions, followed by a study of the local needs of the city and its citizens. The strategy links the history, community and cultures that are embedded in downtown Niagara Falls, ensuring a clear connection to and relationship with the City.

Over time, USA Niagara will work with private sector partners to design and build mixed-use infill developments that reflect the character and history of Niagara Falls. Each site has been studied and appropriate future uses have been recommended to respond to the urban context, local needs and market conditions. Concepts for each site work together as a comprehensive framework promoting activity and development, amplifying their cumulative positive impact on downtown and the city as a whole. While this strategy will serve as a guide for future work, USA Niagara will address each development individually to ensure they respond to the ever-evolving needs of Niagara Falls.

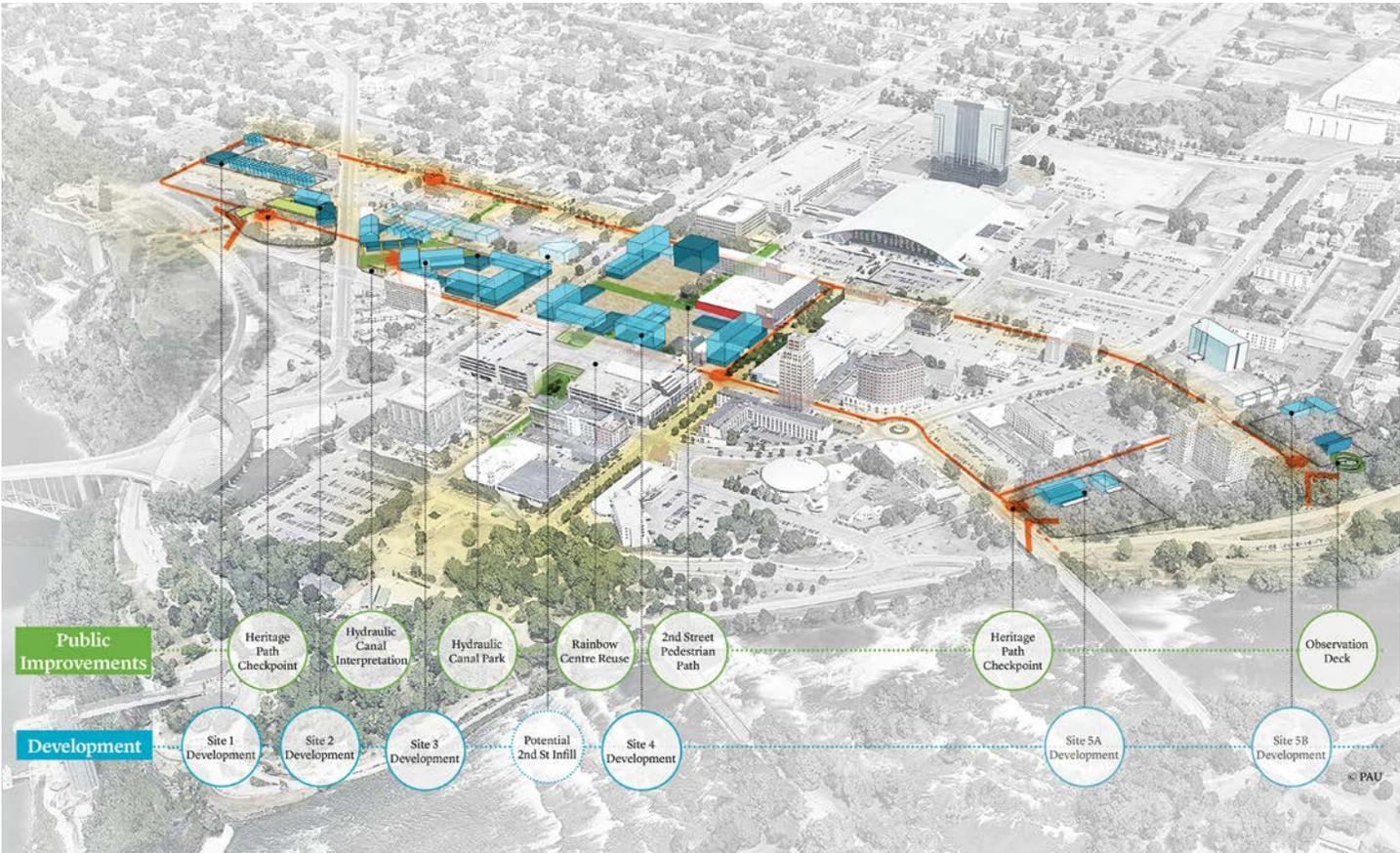
Proposed implementation of the Development Strategy includes the construction of several public infrastructure investments, including the aforementioned “Heritage Path” (see map on page 5) that will tell stories about Niagara Falls' history while providing improvements needed to better connect downtown amenities with the natural assets of the State Park. The proposed Heritage Path consists of several checkpoints that link together the numerous cultural, historical and natural assets of downtown Niagara Falls. This includes two gateway features, six heritage checkpoints, several smaller learning opportunities and consistent wayfinding signage to guide people along the way. The proposed 1.6-mile path would form a loop connecting the north and south ends of Niagara Falls State Park, passing through downtown. Additionally, the proposed “Hydraulic Canal Interpretative Plaza” will become an important northern gateway to the Heritage Path, providing a seamless connection between the State Park and downtown Niagara Falls, while the “Upper Rapids Observation Deck” will do the same at the southern end.

Additional Resources:

- See Appendix A for an executive summary of the Downtown Niagara Falls Development Strategy
- See Appendix B for concept level designs for future infill developments and site-level requirements



Proposed Heritage Path and Checkpoints Through Downtown Niagara Falls



Development Strategy's Vision For Long-Term Build Out of Downtown Niagara Falls

III. GATEWAY #I: PUBLIC PLAZA & RECREATION SPACE

This gateway will be constructed on two publicly-owned properties. The USA Niagara-owned “Canal Site” site at the north end of downtown will be the home of a new public plaza. The segment of the Hydraulic Canal that once crossed this site—which was decommissioned and filled in the 1960s—originally diverted water from the Upper Niagara River (above the Falls) to first mechanically power early industry and eventually the world’s first large-scale hydroelectric generating plan (see page 7). To tell this unique history, the public plaza should interpret the historic Hydraulic Canal through design. Following the historic alignment of the original canal, the design elements should tell the story of the site’s history and the City’s industrial heritage. Additionally, the City of Niagara Falls-owned park parcel directly to the north—named the “Gorge Gateway Site”—should include opportunities for outdoor recreation and public gathering spaces, while creating a new connection between downtown and the State Park.

Design objectives:

- Provide accessible public space for residents and tourists
- Create new opportunities for family-friendly activities
- Create new pedestrian connection between downtown Niagara Falls and Niagara Falls State Park
- Interpret the Hydraulic Canal and other historical infrastructure
- Support plans for future mixed-use development

Required design elements:

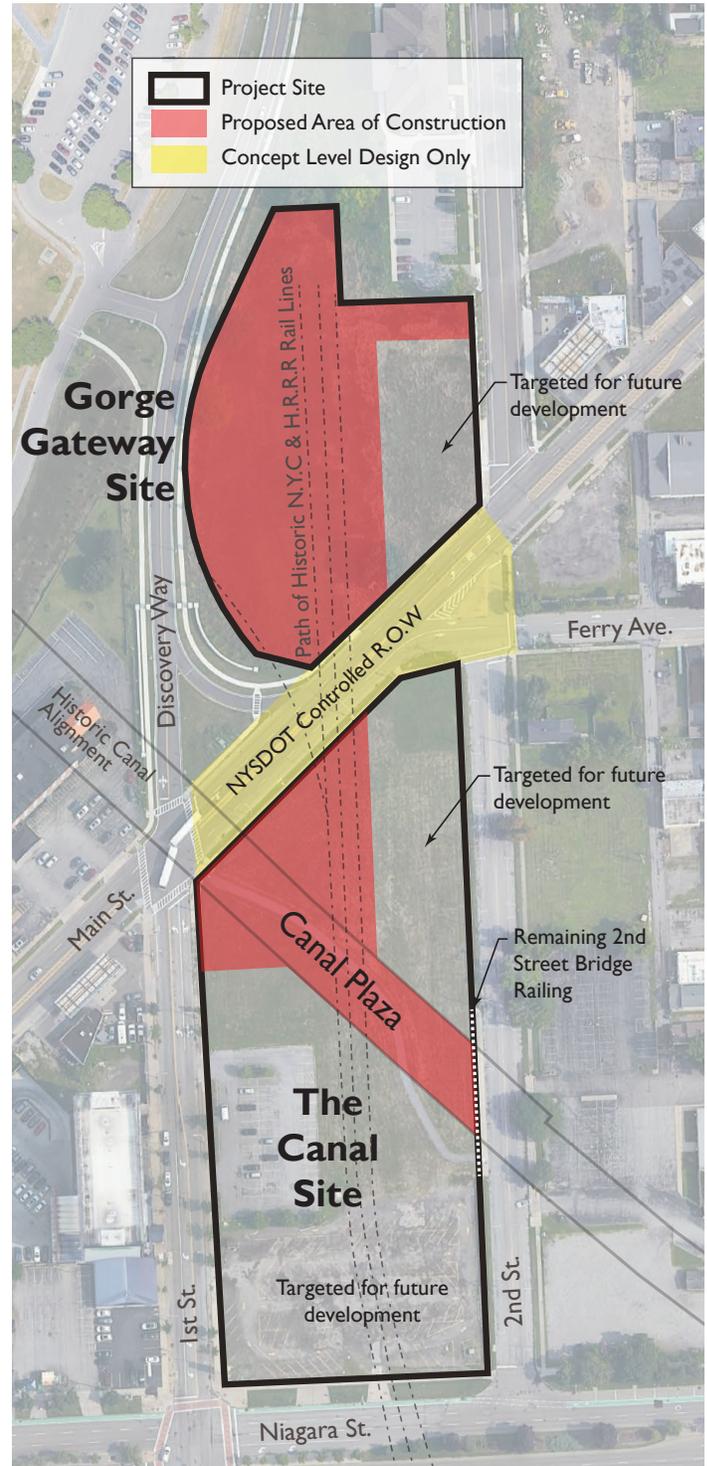
- Wayfinding signage consistent with existing standards
- Seating
- Lighting
- Landscaping
- Shade structures
- Concept-level design for improvements to Main Street

Feasibility of the following elements should be explored during the design process:

- A flexible recreational space following the geometry of the Hydraulic Canal that includes design features that can also accommodate an ice-skating surface during winter months (e.g., portable refrigerated rink pads, location for portable compressor, etc.)
- A public event/concert lawn that complements the slightly sloped nature of the parcel, including a multi-use concert stage/overlook structure and other supporting infrastructure (on Gorge Gateway site).

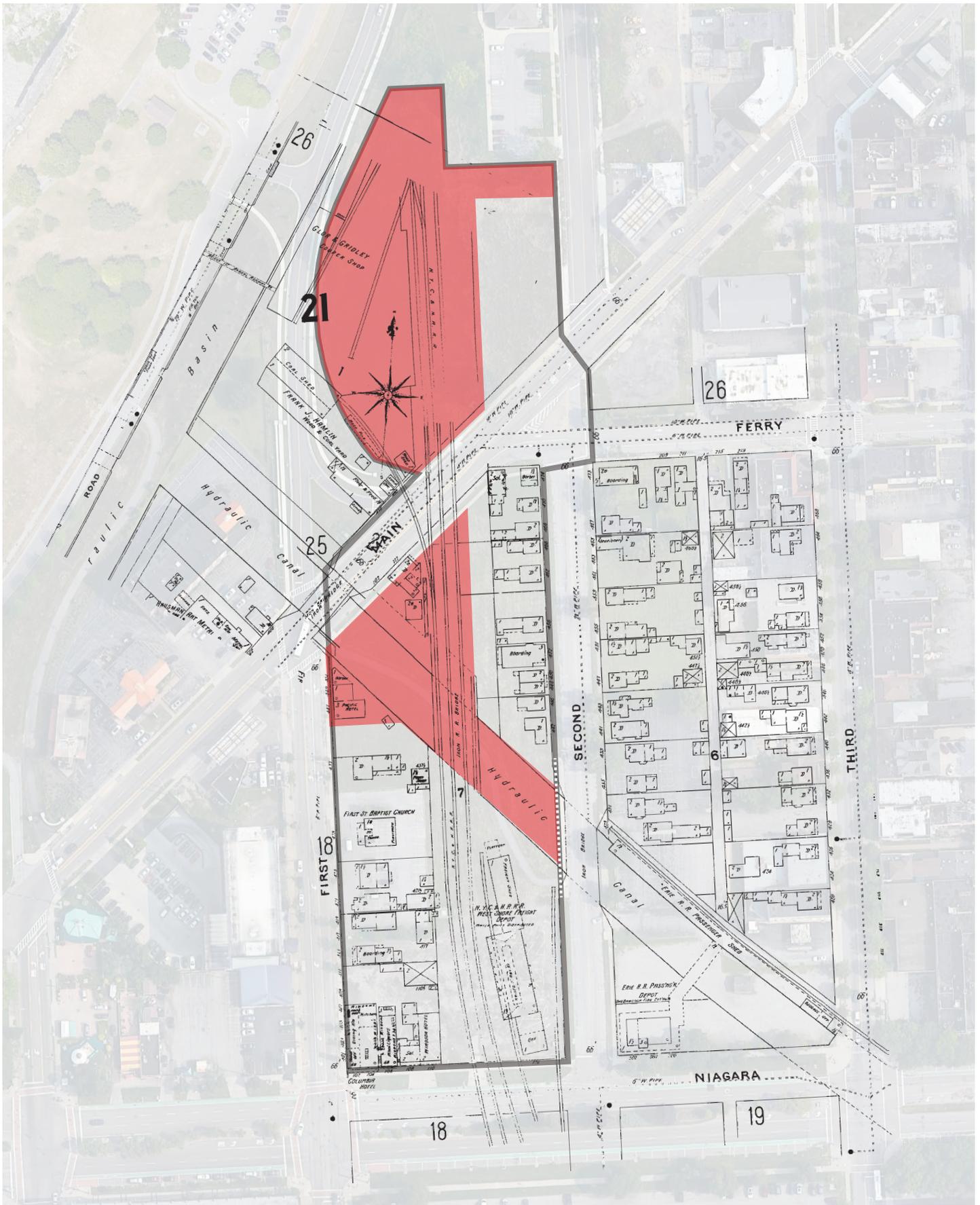
Additional Resources:

- See Appendix B for concept level designs for future adjoining developments on both sites
- See Appendix C for concept level designs of the Canal Plaza and themes for Heritage Path checkpoints
- See Appendix D for a brief history of the hydraulic canal and design precedents



Gateway #I Project Site

Site Historic Context



Current Aerial Overlaid with Features from the 1897 Sanborn Map

IV. GATEWAY #2: OBSERVATION DECK

This gateway will be located at 305 Buffalo Avenue and include the construction of an observation deck along the border of Niagara Falls State Park that enables panoramic views of the American Rapids and Goat Island. The deck—to be constructed in partnership with New York State Office of Parks, Recreation, and Historic Preservation (NYSOPRHP) officials—should be connected to a recently-completed 3rd Street path/stairs that provide a connection between the city street grid and the State Park through the site. The location also takes advantage of the high elevation where the deck should be constructed above much of the existing foliage in the State Park below.

Design objectives:

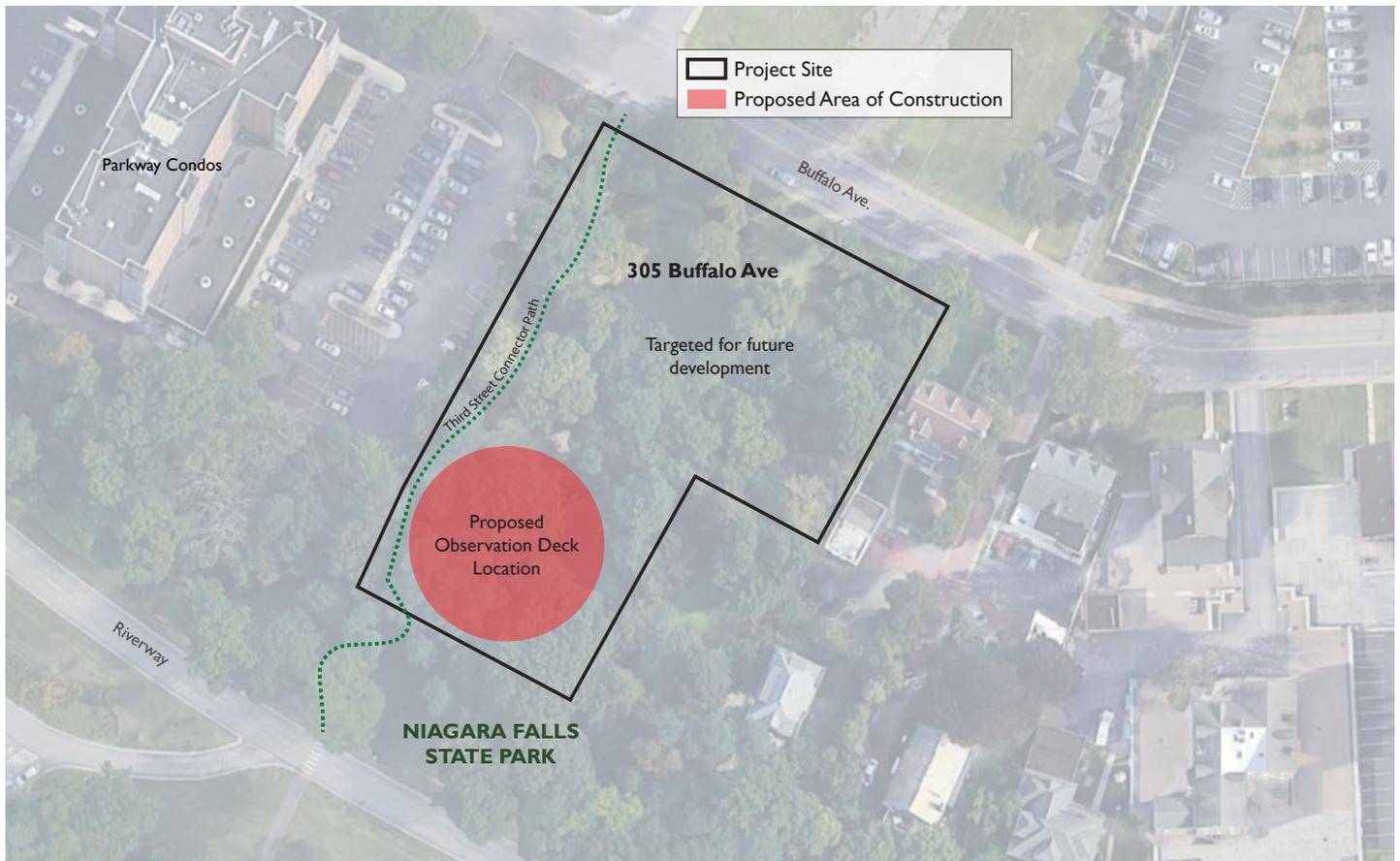
- Provide views of the upper rapids and Goat Island
- Have minimal impact on natural setting in Niagara Falls State Park
- Connect to/build off the 3rd Street Connector Path and Stairway
- Allow public access with potential connection to future infill development

Required design elements:

- Wayfinding signage consistent with existing standards
- Seating
- Lighting
- Landscaping
- Pathway to the Third Street Connector Path

Additional Resources:

- See Appendix B for concept level designs for future adjoining development
- See Appendix C for concept level designs of the observation deck
- See Appendix D for design precedents
- See Appendix F for site dimensions



Gateway #2 Project Site

V. GATEWAY #3: POCKET PARK

This gateway will be located at 101 Buffalo Avenue and include the construction of a small pocket park at the corner of Buffalo Avenue and 1st Street. This park will serve as a resting area and for people to orient themselves as move between the State Park and downtown. The pocket park will also be a transition point from an urban setting in downtown to a more natural setting in the State Park.

Design objectives:

- Have minimal impact on natural setting in Niagara Falls State Park
- Allow public access with potential connection to future infill development

Required design elements:

- Wayfinding signage consistent with existing standards
- Seating
- Lighting
- Landscaping

Additional Resources:

- See Appendix B for concept level designs for future adjoining development
- See Appendix D for design precedents
- See Appendix I for site dimensions



Gateway #3 Project Site

VI. HERITAGE CHECKPOINTS

The project will also include embedded “heritage checkpoints” (four in total) that will comprise the first phase of the broader Downtown Niagara Falls Heritage Path. The checkpoints should include information and artistic interpretations that educate visitors about the history and culture of Niagara Falls. This could include traditional printed boards and other physical exhibits but could be supplemented by digital experiences such as augmented reality exhibits accessed via mobile devices. Checkpoint should be organized around the themes shown below.

Borderland Theme

This checkpoint should be integrated into the design for the Gorge Gateway Site and explore the history of Native Americans, Freedom Seekers, and others who made their way to the American-Canadian border over the years. A partnership with the Underground Railroad Museum could provide content and facilitate the execution of this history checkpoint.

Power & Industry Theme

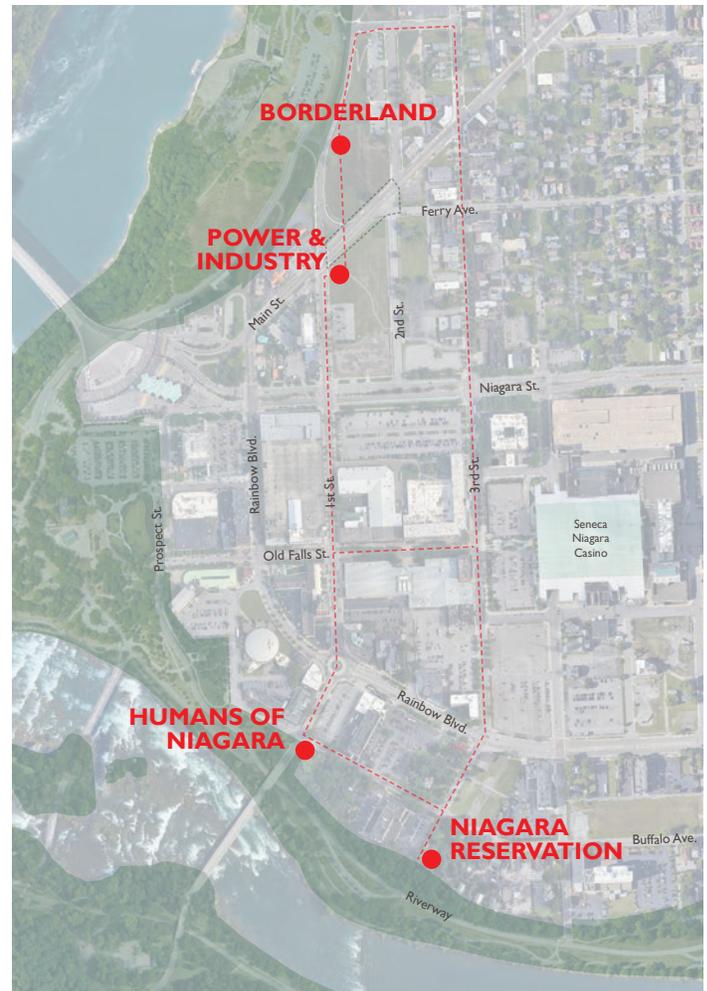
This checkpoint should be integrated into the design for the Canal Site and explore Niagara Falls’ industrial history, with special attention paid to the former hydraulic canal. This checkpoint should reflect on the implications of large-scale electricity production and the changes in the American way of life. A partnership with New York Power Authority and the Tesla Society could be explored.

Niagara Reservation Theme

This checkpoint should be integrated into the Upper Rapids Observation deck. It should describe the Nation’s first state parks foundation and the history of how famed landscape architect Frederick Law Olmsted spearheaded the preservation effort and designed the park in collaboration with Calvert Vaux.

Humans of Niagara Theme

This checkpoint should showcase the diverse humans that have contributed to the ever-evolving cultural landscape of Niagara Falls, from the voices of the native Haudenosaunee people to the contributions of the current residents and Global tourists. The checkpoint should be inclusive and represent the diversity of people through a variety of interwoven perspectives.



Proposed Heritage Checkpoint Locations

Objectives:

- Educate visitors about the history of Niagara Falls through storytelling and visualization methods
- Create a design language for other future Heritage Path checkpoints
- Inform people about other opportunities to learn about Niagara Falls’ history at other locations throughout the City
- Orient people and help them navigate through downtown

Additional Resources:

- See Appendix C for more information about Niagara Falls’ history and themes for heritage checkpoints
- See Appendix D for design precedents

VII. SCOPE OF SERVICES

The Consultant or team must possess training, skills, and experience in the following areas of expertise:

- Architecture, landscape architecture, and urban design.
- Land surveying/mapping.
- Civil/structural engineering.
- Construction cost estimating.
- Preparation of preliminary/final design and construction documents/packages to support contractor solicitations and permits.
- Historic/cultural resource investigations and SHPO consultation related to Section 14.09 of the NYS Historic Preservation Act and Section 106 of the National Historic Preservation Act.
- Environmental assessment documentation related to the New York State Environmental Quality Review Act.
- Environmental investigations/screening, as necessary, based upon information in previously completed Phase 1 and Phase 2 environmental site assessments (ESAs) for each subject parcel.

Necessary architectural and engineering services should include, but are not be limited to, the scope of work listed in the following tasks.

Task 1: Agency Coordination & Project Management

The Consultant must:

- Coordinate with the Project Team and various utility companies as required to determine the project constraints, landscape guidelines, and operational/maintenance issues. This task also includes project management and scheduling updates throughout the duration of the project. Consultant shall also confer with public code officials and ensure compliance with local, regional, and state/federal laws and
- Work with a technical advisory group with representatives from the USA Niagara, NYSOPRHP, and the City of Niagara Falls regarding future plans for programming to ensure the physical design supports the anticipated uses of the project.

Task 2: Stakeholder Engagement

The consultant must:

- Create and implement a stakeholder engagement plan that includes outreach to various groups throughout the project including downtown organizations, businesses and residents.
- Create content and manage logistics for stakeholder outreach including, but not limited to, in person meetings, online webinars, surveys, social media posts and press releases.

Task Deliverables: Stakeholder Engagement Plan and supporting content for outreach campaign

Task 3: Existing Conditions Analysis

The Consultant must:

- Partner with a NYS licensed land surveyor for topographic survey to document the existing structures and underground utilities at both sites.
- Update and supplement any survey information provided by USA Niagara. The boundary surveys developed during acquisition of the Canal Site, 305 Buffalo Ave and 101 Buffalo Ave are available to facilitate this work (see Appendices E, F and I).
- Prepare a digital base map for the project in Adobe Illustrator format. The base map will depict record right-of-way, existing utilities, record easements, and the aerial topographic and record boundary information.

Task Deliverables: Updated survey information and digital base map

Task 4: Historical Interpretation & Archaeological Exploration

The Consultant must:

- Review existing plans and historical documents to ensure any interpretive elements of the design are accurate and relevant to the project site.
- Explore the feasibility of unearthing portions of the Hydraulic Canal.
- Consult with the State Historic Preservation Office (SHPO) of NYSOPRHP to evaluate and avoid any potential impacts to resources on or eligible for inclusion on the State/National Registers of Historic Places.
- Consult with Niagara Falls National Heritage Area staff to design relevant physical and educational elements.
- Design educational elements (static and/or digital) to be displayed and/or accessed on the site.

Task Deliverables: Historic Interpretation Plan

Task 5: Concept Design & Schematic Design (up to 30% Design Completion)

The Consultant must:

- Develop a minimum of three (3) design concepts for the project.
- Provide an estimate of probable costs. The estimate should include major components and identify escalation factors.
- Develop/apply evaluation criteria to rationally assess and weigh the relative advantages and disadvantages of each alternative. This assessment should be developed in manner suitable for public and stakeholder review.

Task Deliverables: Schematic Design Report

Tasks 6: Design Development (up to 60% Design)

The Consultant must issue schematic design documents that are in compliance with the program, the budget and the schedule as set forth by USA Niagara.

The Consultant must:

- Prepare a schedule for the construction period, identify phased work and any long-lead time for specialty items.
- Provide an estimate of probable costs. The estimate shall include major components and identify escalation factors. Cost estimates should be updated at the end of each task.
- Issue drawings and specifications. In general, drawings must indicate the existing conditions and proposed new construction. Drawings and/or specifications should include:
 - Site plans
 - Existing utilities
 - Renderings
 - Archaeological
 - Civil and structural
 - Landscape
 - Mechanical, electrical drawings and plumbing (if applicable).
 - Any hazardous or contaminated materials remediation/disposal or asbestos abatement/disposal, including coordination with any applicable regulatory agencies governing the handling/disposal of such materials.
 - Demolition, including any foundation modifications.

Task Deliverables: Design Development Report

Task 7: Construction Documents (100% Design)

The Consultant will be responsible for issuing construction documents that are in compliance with the program, the budget and the schedule as set forth by USA Niagara.

The Consultant must:

- Provide complete specification sections and front-end documents.
- Prepare a final estimate of probable cost.
- Confer with all necessary regulatory agencies and incorporate their comments into the construction documents.
- Apply for, provide documentation for, and secure all necessary permits and regulatory approvals on behalf of USA Niagara.
- Develop the scope of work for a Request for Proposals for third-party monitoring services during abatement (if applicable) and any other special inspection services required during construction.
- Prepare documentation for, and present the information to support review/approval by the USA Niagara/ESD boards of directors (as required) and the City of Niagara Falls' Planning Board, inclusive of documentation to support a finding under the New York State Environmental Quality Review Act (assumed to require the completion of a full environmental assessment form [EAF] and any technical attachments, but not and environmental impact statement). Produce original Contract Documents, stamped and signed by an architect or engineer appropriately licensed to practice in the State of New York.

Task Deliverables: Construction Drawings, Specifications and RFP Scope

Task 8: Bidding and Awarding

The Consultant will be responsible to provide assistance during the contract(s) advertising and award process.

The Consultant must:

- Assist in pre-qualifying potential bidders
- Attend pre-bid meetings
- Assist in the development of responses to bidder inquiries
- Assist in the preparation of addenda as needed
- Assist in the development of responds to Requests for Information submitted by potential bidders
- Assist in reviewing bids
- Provide a written recommendation as to the low bid submission and contract award

Task Deliverables: Contract Award Recommendation

Task 9: Construction Administration

The Consultant must:

- Provide construction contract administration services in compliance with USA Niagara's construction schedule.
- Be a representative of, and advise and consult with, USA Niagara during the construction phase.
- Provide Office Engineering services, including:
 - Check detailed construction drawings, submittals, shop and erection drawings, and substitutions submitted by the Contractor for compliance with permits and contract documents.
 - Address Request for Information (RFIs) from the Contractor and Inspectors.
 - Prepare record (as-built) drawings (paper copies and AutoCad format digital files) on original contract documents as per the data supplied by Contractor.
 - Prepare preliminary and final punch lists for substantially completed construction work.
 - Responses to Requests for Information from the Contractor.

- The Consultant must provide Field Engineering services, including:

- Periodic visits to the site to observe the work in progress and provide appropriate reports, including attendance at weekly progress meetings. Provide written reports from site visits.
- Observation and reporting to USA Niagara on any performance tests required by contract documents.

Task 10: Redrawn Parcel Boundaries

The Consultant must:

- Partner with a NYS licensed land surveyor to redraw parcel boundaries that will separate future publicly-owned land from land for future infill developments.
- Take all necessary steps to complete the filing of new boundaries with Niagara County, including all State, City and County approvals.

Task Deliverables: Updated survey

VIII. REQUIRED PROPOSAL CONTENTS

Proposals should demonstrate an understanding of the requirements and present the following information presented in the order shown below, clearly divided by numbered sections. Proposals must include the following:

Cover Letter and/or Executive Summary

- A summary of your organization's or team's ability to undertake the services being solicited for in this RFP.
- Present key abilities of your proposed team and discuss any critical "distinguishers" describing why your organization should be selected over others.

Respondent Qualifications

- A summary of the Respondent team, with a complete organizational chart of key team members.
- Descriptions of Respondent team's qualifications, including:
 - Brief resumes of key professionals (each no more than one [1] page in length).
 - Project sheets showing relevant completed efforts by the team within the last ten (10) years, with a particular emphasis on similar projects including: an overall project description; an image(s) illustrating the project, the cost of the project; the time necessary to complete the project; and names, addresses and telephone numbers of project references who may be contacted during the period of proposal evaluation.

NYS Licensing Requirements

Respondents (and any proposed sub-consultants) required to certify documents must present evidence that they are licensed, as applicable, to practice engineering, architecture, landscape architecture, land surveying in the State of New York.

Scope/Approach

Respondents should provide (at a minimum):

- An overall description of their approach to meet the objectives of the Project
- Key scope of service items
- Preliminary drawings and/or renderings that illustrate their approach on each site
- Proposed stakeholder engagement methods
- Proposed historical interpretation methods
- Techniques to best meet the Project Schedule
- Any assumptions forming the basis of the cost estimate

Proposed Schedule

Respondents must submit a proposed schedule, indicating the time needed to complete each task and anticipated timing of project and stakeholder meetings.

Fee Proposal

Respondents must provide a proposed fee for all services delineated by the tasks identified in Section VII. The proposal must include a detailed staffing plan broken down by task, including the hourly rate of each member of the Respondent team that will be working on the project.

Fee proposals must also include a list of anticipated reimbursable expenses and the rate charged for each without markup.

Although proposed fees will be taken into account, USAN reserves the right to negotiate a lower or different fee structure with any Consultant that is selected.

Required Forms and Certifications (attach as appendices)

All completed certifications, forms, affidavits, etc. required in section XIV of this RFP ("Contractual Requirements") must be attached as appendices to the proposal in the following order:

- Conflict of Interest Attestation
- State Finance Law Sections 139-j and 139-k Form
- Vendor Responsibility Questionnaire Form (completed form or VendRep System receipt)
- Iran Divestment Act Affirmation (on company letterhead)
- Executive Order 177 Certification
- Executive Order 16 Form
- OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
- OCSD-2 - Staffing Plan
- OCSD-4 - MWBE and SDVOB Utilization Plan
- Diversity Practices Questionnaire
- Encouraging the Use of NYS Businesses Form
- ST-220-CA Form
- W9 Form

IX. SELECTION CRITERIA

The proposals will be evaluated and scored/ranked using a “best value” selection process, which looks at a variety of evaluation factors that includes, but is not limited to the propose fee, the expertise of the team and approach to the work. Specifically, the Selection Committee will consider such criteria that, in USA Niagara’s sole and absolute discretion, are in the best interests of USA Niagara. The criteria listed below are of significant concern:

Proposed Fee (20 Points)

Experience of the Team (25 points)

- Experience of Respondent team staff being assigned to the project in general, and in particular, providing consulting services to municipalities, economic development agencies and/or other governmental agencies.
- Quality of work product as demonstrated in submitted work samples of past relevant projects.
- Demonstrated ability to complete projects in an expeditious manner.

Feasibility of Approach (25 points)

- Approach in methodology with respect to the scope of services that demonstrates maximum comprehension of and ability to provide such services.
- Commitment of principals to lead the team and devote time to the project.
- Ability of the prime Consultant to identify qualified subconsultants.

Design Creativity (20 points)

- Use of innovative methods and techniques to interpret historical elements of the project.
- Sensitivity of the design to the site context and downtown landscape.
- Creative use of topography/grade changes.
- Use of interesting design elements that will draw people on to the sites year-round.

Diversity Practices (10 points)

Respondents to the RFP will be evaluated for Diversity Practices using a Diversity Practices Questionnaire. Up to 10 points will be awarded based upon the contents of the Diversity Practices Questionnaire submitted by each respondent to the RFP.

X. PROPOSAL SUBMISSION INSTRUCTIONS

Proposal Submission

A PDF copy of the proposal (with appendices) must be sent to NFHHeritageGateways@esd.ny.gov prior to the deadline shown on the cover of this document. Please use subject line “Niagara Falls Heritage Gateways Proposal.”

Additionally, six (6) hard copies and one (1) electronic copy of the proposal (in the form of a flash drive) identified by “Niagara Falls Heritage Gateways Proposal” must be received at the address shown below prior to the deadline shown on the cover of this document.

Proposal packages must be firmly sealed in an envelope and contain the Respondent’s name and return address. Late submissions will not be accepted. At the discretion of USA Niagara, requests for deadline extensions may be considered prior to the deadline and, if granted, announced on the NYS Contract Reporter Website.

Send proposal hard copies and flash drive to:

Paul Ray, Senior Project Manager
USA Niagara Development Corporation
222 First Street, 7th Floor
Niagara Falls, NY 14303

RFP Inquiries

USA Niagara will accept written questions via email from prospective Respondents no later than deadline shown on the cover of this document. Questions should be submitted via email to the address shown on the cover.

No contact related to this solicitation with USA Niagara/ESD Board members, staff or consultants, other than emails to the designated email account for the solicitation will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.

Pre-Proposal Meeting/Tour

A **non-mandatory** pre-proposal meeting and tour of the sites for prospective respondents will be held at **10:00 a.m. on July 26, 2022. To participate in the meeting, please RSVP to Loul Rizek at 716-284-2556 or Loul.Rizek@esd.ny.gov prior to close of business on July 25, 2022.** Interested submitters may schedule independent site visits by emailing the primary contact listed on the cover.

Respondents will be required to provide “sign-in sheet” information—company name, address/phone, and contact person email. USA Niagara representatives will be present at the meeting to provide an overview of the RFP and any necessary clarification for completing required forms. Given the age and length of vacancy of the property, participants should dress appropriately for the tour, including proper footwear.

RFP Timeline

RFP Release:

July 8, 2022

RSVP deadline for pre-proposal meeting/tour:

July 25, 2022

Pre-proposal meeting/tour:

July 26, 2022 @ 10:00 a.m.

Deadline to submit questions:

August 2, 2022

Deadline to submit Proposals:

August 22, 2022 by 3:00 p.m.

XI. RESERVED RIGHTS

USA Niagara/ESD reserves the right to short list proposals and to interview prospective teams prior to final scoring. USA Niagara/ESD also reserves the right to seek final and best offers from bidders prior to making any contract award.

USA Niagara/ESD reserves the right to reject a proposal if any document or item listed in this RFP is incomplete, improperly executed, indefinite, ambiguous, and/or is missing. Additionally, factors such as, but not limited to the following may also disqualify a respondent without further consideration:

- Evidence of collusion among respondents;
- Any attempt to improperly influence any member of the evaluation panel;
- Discovery that a respondent purposely misled or knowingly provided false or inaccurate information in a proposal;
- A respondent's default under any type of agreement, which resulted in the termination of that agreement;
- Information leading to a determination that a respondent would not be certified as a "Responsible Vendor" as defined by the State Comptroller; and
- Existence of any unresolved litigation or legal dispute between the respondents and ESD, USA Niagara, and/or the State of New York.

USA Niagara/ESD reserves the right to reject any and all proposals and to waive any informalities or irregularities in procedure or proposals submitted.

XII. DEVELOPER DUE DILIGENCE

Respondents should assume that the Property will be disposed of "AS IS" and "WHERE IS" without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent's purpose.

USA Niagara will post information regarding the RFP on the New York State Contract Reporter website (www.nyscr.ny.gov). Respondents are encouraged to check back for updates. USA Niagara makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the potential Respondents or to the Respondents.

Respondents must rely solely on their own independent research and investigations for all matters, including costs, title, survey, development, financing, construction, and remediation, and shall not rely on the information provided in connection with this RFP.

Upon selection of a preferred respondent, USA Niagara reserves the right to enact a holding fee of \$500 per month during the due diligence and construction periods, fully refundable upon completion of the project. If the respondent is unable to complete the project, USA Niagara will retain the fee as compensation for incurring expenses during this period.

XIII. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a Respondent or the acceptance of such a response by USA Niagara/ESD does not obligate USA Niagara/ESD in any manner. USA Niagara/ESD reserves the right to:

- amend, modify or withdraw this RFP;
- revise any requirement of this RFP;
- require supplemental statements or information from any responsible party;
- accept or reject any or all responses hereto;
- extend the deadline for submission of responses hereto;
- negotiate potential contract terms with any Respondent;
- communicate with any Respondent to correct and/or clarify responses which do not conform to the instructions contained herein;
- cancel, or reissue in whole or in part, this RFP, if USA Niagara/ESD determines in its sole discretion that it is its best interest to do so; and
- extend the term of any agreement on terms consistent with this RFP.

USA Niagara/ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Respondent.

All information submitted in response to this RFP is subject to the Freedom of Information Law (“FOIL”), which generally mandates the disclosure of documents in the possession of USA Niagara/ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the USA Niagara and/or ESD Directors, which meetings are subject to the Open Meetings Law.

USA Niagara/ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the “Response Information”) for any purpose. By submitting a Proposal, each Respondent waives any and all claims against USA Niagara or ESD relating to USA Niagara’s/ESD’s retention or use of the Response Information.

Required Approvals

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller (“OSC”) pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

Performance

The Contractor's performance will be assessed by the USA Niagara/ESD according to the achievement of the Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. The Corporation will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to USA Niagara/ESD, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

Additional Services Requested

USA Niagara/ESD may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Corporation, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the USA Niagara/ESD. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify USA Niagara/ESD of any proposed changes in staff immediately. USA Niagara/ESD has an absolute right and discretion to approve or disapprove any proposed changes in staff. USA Niagara/ESD, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of USA Niagara/ESD. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

XIV. CONTRACTUAL REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Respondent's submission as well as information about ESD's procurement requirements.

I. Conflicts of Interest

Respondents must attest they have read, understood and will comply with the following provisions <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 USA Niagara and/or 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 USA Niagara and/or 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 USA Niagara and/or 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.

2. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed below; the completion by Respondents of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDweb site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

https://cdn.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

The Procurement Requirements also require USA Niagara/ESD staff to obtain and report certain information when contacted by Respondents during the Restricted Period, make

a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a Respondent is found to have knowingly and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.PDF

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

3. Vendor Responsibility Questionnaire

All Respondents to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD and its subsidiaries. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility ESD requires that all Respondents register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible

vendors. Respondents are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry. Per the website, Respondents are to “Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).”

4. Iran Divestment Act

Every Proposal made to ESD or its subsidiaries pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each respondent and each person signing on behalf of any respondent 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 respondent is not 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 the Office of General Services. For further information and to view this list please go to: <https://ogs.ny.gov/iran-divestment-act-2012>

5. Executive Order 177

In accordance with New York State Executive Order 177, all Respondents must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification form can be found at: <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

6. Executive Order 16

In accordance with New York State Executive Order 16

(“EO-16), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

“By submission of a 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 in compliance with EO-16.”

The required certification for can be found at: <https://esd.ny.gov/sites/default/files/EO-16-Certification.pdf> and must be signed and included in all Proposals.

7. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD and its subsidiaries are required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of ESD contracts.

7.1 Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an **overall combined goal of 30 percent for MWBE participation** (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation.

The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at OCSD@esd.ny.gov.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval. ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- If a respondent fails to submit an MWBE Utilization Plan;
- If a respondent fails to submit a written remedy to a notice of deficiency;
- If a respondent fails to submit a request for waiver; or
- If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

7.2 Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#).

The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure

that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a MONTHLY basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3: <https://esd.ny.gov/sites/default/files/>

[OCSD-3-Workforce-Utilization-Report.xlsx](#)

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report.pdf>

Form OCSD-7: <https://esd.ny.gov/sites/default/files/OCSD-7-MWBE-Expedite-Request-Form.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov

7.3 Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, Respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire: <https://cdn.esd.ny.gov/corporateinformation/Data/RFPs/JavitsConstructionManagement/Addendum%202.pdf>.

7.4 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Respondents are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

7.4.1 Contract Goals

ESD hereby establishes an **overall goal of 6% for SDVOB participation**, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Respondent/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>

Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

7.4.2 SDVOB Utilization Plan

In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4 with their bid.

The Utilization Plan shall list the SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.

ESD will review the submitted SDVOB Utilization Plan and advise the Respondent/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

If a notice of deficiency is issued, Respondent/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent/Contractor and direct the Respondent/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:

- If a Respondent fails to submit an SDVOB Utilization Plan;
- If a Respondent fails to submit a written remedy to a notice of deficiency;
- If a Respondent fails to submit a request for waiver; or
- If ESD determines that the Respondent has failed to document good faith efforts.

If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

7.4.3 Request for Waiver

Prior to submission of a request for a partial or total waiver, Respondent/Contractor shall speak to the Designated Contacts at ESD for guidance.

In accordance with 9 NYCRR § 252.2(m), a Respondent/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Respondent may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D)

& (E) will apply. If the documentation included with the Respondent's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to ESD.

7.4.4 Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- Copies of solicitations to SDVOBs and any responses thereto.
- Explanation of the specific reasons each SDVOB that responded to Respondents/Contractors' solicitation was not selected.
- Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- Other information deemed relevant to the waiver request.

7.4.5 Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

6.4.6 Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

8. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Respondents for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here:

<https://cdn.esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

9. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract 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 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Respondents to this solicitation must include in their

Proposals a properly completed Form ST-220-CA (<https://esd.ny.gov/sites/default/files/ST220CA.pdf>) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

10. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

11. Insurance Requirements

The Designated Developer will be required to provide appropriate insurance coverage as determined by USA Niagara Development Corporation and Empire State Development once the structure of the transaction with the Designated Developer has been finalized

USA Niagara Development Corporation and Empire State Development must be named as an additional insured on a primary and non-contributory basis on certain policies. All policies should include a waiver of subrogation in favor of USA Niagara Development Corporation and Empire State Development .

12. W-9 Form

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.