



NIAGARA FALLS URBAN RENEWAL AGENCY
745 Main Street
Niagara Falls, New York 14302

TO: The Members of the Niagara Falls Urban Renewal Agency
FROM: Mayor Robert Restaino, Chairman
RE: **NFURA Meeting Scheduled for:**

Wednesday, January 31th, 2024 at 5:00 P.M.
City Hall – City Council Chambers
745 Main Street, Niagara Falls, New York

AGENDA

1. Roll Call
2. Approval of Minutes: Meeting of November 29th, 2023 VOTE
3. Approval of URA Meeting Schedule for 2024 VOTE
4. Election of Chief Financial Officer VOTE
5. Election of Alternate Financial Officer VOTE
6. Election of Secretary VOTE
7. Election of Acting Secretary (Board's discretion) VOTE
8. URA Mission Statement VOTE
9. URA Investment Guidelines VOTE
10. URA Property Disposition Policy VOTE
11. Approval of Banking Resolution VOTE
12. 502 Niagara Sale Agreement: Approval to allow the URA Executive to execute the agreement between TM Montonte Development and the URA, pending resolution of the highlighted text. VOTE
13. Old Business
14. New Business
15. Adjournment VOTE



NIAGARA FALLS URBAN RENEWAL AGENCY
745 Main Street
Niagara Falls, New York 14302

Niagara Falls Urban Renewal Agency
Meeting Minutes
Wednesday, November 29, 2023, 5:00 P.M.
City Hall – City Council Chambers
745 Main Street, Niagara Falls, New York

Mayor Robert Restaino called the meeting to order at 5:00PM

ROLL CALL

Present:

Mayor Restaino
Michael Hooper
David Zajac
Doug Mooradian
Vincent Cauley

Staff Present:

Chris Mazur, URA Counsel
Vickie Hall, Planning Clerk

Absent:

Donta Myles
Traci Bax
Kenny Tompkins
Doreen O'Connor

APPROVAL OF THE MINUTES

A motion to approve the meeting minutes from July 19, 2023 was made by **Michael Hooper** and seconded by **Doug Mooradian**.

VOTE

Mayor Restaino	YES
Michael Hooper	YES
David Zajac	YES
Doug Mooradian	YES
Vincent Cauley	YES

APPROVAL OF THE 2024 BUDGET

A motion to approve the 2024 Budget was made by **Michael Hooper** and seconded by **Doug Mooradian**.

VOTE

Mayor Restaino	YES
Michael Hooper	YES
David Zajac	YES
Doug Mooradian	YES
Vincent Cauley	YES

OLD BUSINESS

Mr. Mazur stated that the purchase and sale agreement for the URA property located at 502 Niagara Street was incomplete. The developer had requested time extensions that we believe were unreasonable and comments have been submitted to the developer to address.

Mayor Restaino stated that in short, the timeline was excessive.

NEW BUSINESS – None

ADJOURNMENT

A motion to adjourn was made by **Mr. Hooper** and seconded by **Mr. Cauley**.

Urban Renewal Agency

TO: Urban Renewal Agency

FROM: Kevin Forma, Director of Planning

RE: 2024 Meeting Schedule

As the Board is aware, the meeting schedule for each calendar year is set by resolution of the Board. The proposed schedule for calendar year 2024 shall be as follows:

January 31, 2024

March 27, 2024

May 29, 2024

July 17, 2024

September 25, 2024

November 13, 2024

Unless you are notified otherwise, all meetings shall be held:

LOCATION: City Hall - Council Chambers

(745 Main Street, Niagara Falls, NY)

TIME: 5:00 p.m.

NIAGARA FALLS URBAN RENEWAL AGENCY

MISSION STATEMENT

1993-1994

The mission of Niagara Falls Urban Renewal Agency is to protect and promote the safety, health, morals and welfare of the people of Niagara Falls, to promote the sound growth and development, to correct substandard, insanitary, blighted, deteriorated or deteriorating conditions, factors and characteristics by the clearance, re-planning, reconstruction, redevelopment, rehabilitation, restoration or conservation of such areas, to undertake public and private improvement programs related thereto and to encourage of participation in these programs by private enterprise, and to undertake any or all of the purposes specified in Articles 15 and 15-A of the General Municipal Law and in accordance with Article 18 of the Constitution of the State of New York.

The Bylaws provide that the purpose of the Agency is to carry out such urban renewal projects as the City of Niagara Falls, by action of the City Council, shall authorize.

NIAGARA FALLS URBAN RENEWAL AGENCY

INVESTMENT GUIDELINES

1993-12-26

These Investment Guidelines (“Guidelines”) are adopted as required by Section 2925 of the New York Public Authorities Law.

ARTICLE 1 Scope

These Guidelines shall govern the investment and reinvestment of Investment Funds and the sale and liquidation of investments, as well as the monitoring, maintenance, accounting, reporting and internal controls by and of the Niagara Falls Urban Renewal Agency (hereinafter the “Agency”) with respect to such investment, sale, reinvestment and liquidation.

ARTICLE 2 Investment Objectives

The Agency’s investment activities shall have as their first and foremost objective the safeguarding of the principal amount of the Investment Funds. Additional considerations regarding the Agency’s investment activities shall be liquidity of investments, realization of a reasonable return on investments and diversification of investments.

ARTICLE 3 Permissible Investments.

The Agency may invest its Investment Funds in any and all of the following, if and to the extent permitted by statutes, regulations and bond resolutions applicable at the time of investment of such Investment Funds:

- a. Obligations of the State or the United States Government;
- b. Obligations the principal and interest of which are guaranteed by the State or the United States Government;
- c. Certificates of deposit, whether negotiable or non-negotiable, and banker’s acceptances of any of the fifty largest banks in the United States which bank, at the time of investment, has an outstanding unsecured, uninsured and unguaranteed debt issue ranked by two nationally recognized independent rating agencies at a rating category that is no lower than the then current rating of the Agency’s bonds, notes or other obligations.

ARTICLE 4 Operating Procedures.

Only the following persons shall be authorized to make investments behalf of the Corporation: the Chairman of the Corporation’s Directors; and, other designated members of the Board. Any bank or trust company organized under the laws of any state of the United States of America or any national banking association authorized as an official depository of the City of Niagara Falls, New York may transact banking business with the Agency.

NIAGARA FALLS URBAN RENEWAL AGENCY

PROPERTY DISPOSITION POLICY

10/15/2013

Niagara Falls Urban Renewal Agency (the “Agency”) is subject to the provisions of Article 15-A of the General Municipal Law regulating acquisition and disposition of real property. The Agency has no personal property. Accordingly, no additional property disposition policy is needed.

NIAGARA FALLS URBAN RENEWAL AGENCY

BANKING RESOLUTION

Resolution No. 53.4246

RESOLVED, that the Niagara Falls Urban Renewal Agency (the “Agency”) continue to maintain checking or savings accounts and certificates of deposit in M&T Bank, and be it further;

RESOLVED, that the officers set forth in the Constitution and By-Laws of the Agency are authorized to sign such banking resolutions, account agreements, signature cards and other instruments necessary to effectuate this resolution.

PURCHASE, SALE AND DEVELOPMENT AGREEMENT

THIS PURCHASE, SALE AND DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of the date last executed below (the “**Effective Date**”), by and between the **NIAGARA FALLS URBAN RENEWAL AGENCY**, a public benefit corporation having an address at 745 Main Street, Niagara Falls, NY 14301 (the “**Seller**” or “**URA**”) and **TM MONTANTE DEVELOPMENT**, having an address at 2760 Kenmore Ave, Tonawanda, NY 14150 (“**Purchaser**”) hereinafter together referred to as the “**Parties.**”

RECITALS:

WHEREAS, Seller is the owner of a parcel of land known and described as 502 Niagara Street, Niagara Falls, NY 14303, SBL#159.29-3-38; and

WHEREAS, Purchaser submitted a proposal for the above referenced parcel of land, dated June 3, 2022 and attached hereto as **Exhibit “A”**.

WHEREAS, Purchaser desires to purchase, and Seller desires to sell, the Property (as defined below) on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Purchaser and Seller agree as follows:

1. Description of the Assets. Seller hereby agrees to sell and convey, and Purchaser agrees to purchase from Seller, on the terms and conditions set forth herein:

All of Seller's right, title and interest in and to the Property, which Property is more particularly described on **Exhibit “B”** attached hereto together with the buildings constructed thereon, all improvements thereon and all of the right, title and interest Seller

has or may have to all streets, highways, alleys, driveways, easements, rights-of-way, appurtenances, privileges, waters, contracts, permits, certificates, approvals and agreements relating to the Property.

2. Purchase Price. The purchase price for the Property shall be one dollar (\$1.00) United States funds (the “**Purchase Price**”) payable upon execution of this Agreement.

2.1 Default. If Seller is unable to transfer its right, title and interest to Purchaser in accordance with the terms of this Agreement, Seller's sole liability shall be to terminate this Agreement in which event Seller shall be released from all liability under this Agreement. Notwithstanding the foregoing, if Seller willfully defaults under this Agreement, Purchaser shall have the option of either terminating this Agreement or of bringing an action for specific performance. If Purchaser shall fail to perform any of its obligations hereunder, Seller's sole remedy shall be to retain the Property and thereupon Purchaser and Seller shall each be released from all liability under this Agreement.

3. Title. Purchaser, at its sole cost and expense, shall secure within sixty (60) days after the Effective Date: (i) fully guaranteed tax and title searches for the Property sufficient for the title company to issue a fee policy of title insurance dated after the date of this Agreement and a local tax certificate, where not covered by the search (“**Abstract of Title**”); (ii) a survey of the Property (the “**Survey**”) and (iii) UCC searches for every fee owner of the Property for the past five (5) years (“**UCC Searches**”); the Abstract, the Survey and the UCC Searches are collectively referred to as the “**Title Documents**”). Purchaser may, on or before the expiration of the Inspection Period, notify Seller in writing that it has disapproved any title exceptions or survey matters set forth on the Title Documents and shall notify Seller of any such disapproved title exceptions (“**Disapproved Encumbrances**”). Seller shall within Twenty (20) days after receipt of notice of the Disapproved Encumbrances, (“**Seller's Response Deadline**”) notify Purchaser in writing (“**Seller's Response**”) whether Seller elects to: (i) cure any such Disapproved Encumbrances on or prior to the Closing Date, or (ii) not to cure any such Disapproved Encumbrances. Seller may, but shall not be obligated to attempt to cure the Disapproved Encumbrances; provided, however, Seller must in all events cure any and all (x)

mortgage, mechanics lien or other monetary matter encumbering the Property regardless of whether such matter is objected to by Purchaser (“**Monetary Liens**”) and (y) Schedule B-1 title requirements applicable to the Seller pursuant to the terms and conditions of the Disapproved Encumbrances, both of which shall be deemed Disapproved Encumbrances for purposes of this Agreement (“**Title Requirements**” together with Monetary Liens, the “**Required Title Curatives**”). If Seller fails to deliver Seller’s Response to Purchaser by the Seller Response Deadline, then Seller shall be deemed to have elected not to cure any of the Disapproved Encumbrances. If Seller is unable or unwilling to cure or cause the removal of the Disapproved Encumbrances or notifies Purchaser that it will not cure the Disapproved Encumbrances at or prior to Seller’s Response Deadline, then Purchaser will have the option to either: (i) waive the Disapproved Encumbrances and proceed to Closing (as hereinafter defined); or (ii) terminate this Agreement by written notice to Seller in which event neither party shall have any further rights or obligations hereunder. Except the Required Title Curatives, Any exception documents not objected to prior to the expiration of the Inspection Period shall be deemed to be Permitted Exceptions and Purchaser shall be deemed to have waived any right to object to same. Notwithstanding the foregoing, if Purchaser receives notice of any additional exceptions to title that became matters of record after the effective date of the title commitment obtained by Purchaser, Purchaser shall promptly notify Seller, but in any event not more than two (2) business days after receipt of any such additional exceptions. Seller shall then have five (5) business days to notify Purchaser if it will cure such additional exceptions prior to Closing. “Permitted Exceptions” shall mean, except for the Required Title Curatives, any exceptions appearing on the Title Commitment and matters shown on the Purchaser’s Survey which have not been objected to in writing by Purchaser to Seller pursuant to this Section 3.

4. Right to Enter Property and Conduct Testing. Purchaser shall have the right, during the Inspection Period, to inspect the Property (including the improvements located on the Property) on reasonable notice to the Seller. In connection therewith Purchaser or its agents shall have the right to do environmental, surveying, engineering and other tests with respect to the Property and the buildings and improvements located on the Property. The buildings located on the Property shall not be disturbed during any such inspection. Purchaser shall provide Seller with evidence of insurance as may be required by Seller. Purchaser shall indemnify and hold Seller

harmless for any and all damage, cost and expense, including reasonable attorney's fees, arising out of Purchaser's, or its employees', agents' or contractors', activities on the Property pursuant to the inspection rights granted herein (but Purchaser shall not be liable to Seller if Purchaser's inspections result in the discovery of conditions, environmental or otherwise, that may require Seller to undertake corrective measures or incur other costs). Following any invasive testing Purchaser shall restore the Property to the condition existing prior to such invasive testing.

5. Inspection Period. Purchaser shall have a period of ninety (90) days commencing on the Effective Date (the "**Inspection Period**") to determine, in Purchaser's sole and absolute discretion, as to whether or not the condition of the Property is acceptable to Purchaser. In the event Purchaser determines that the Property is not acceptable to Purchaser for no reason or for any reason then Purchaser may, at its sole and absolute election, (a) terminate this Agreement by giving Seller written notice of its election to terminate within on or prior to the expiration of the Inspection Period, or (b) proceed to Closing. If Purchaser shall not have notified Seller of the release of this contingency in writing prior to the expiration of said Inspection Period then the contingency shall be deemed to have been waived.

6. Seller's Representations and Warranties. Seller represents and warrants to the Purchaser that the following matters are true and correct as of the date hereof and as of the Closing Date:

6.1 Authorization. Seller is the lawful owner of the Property and has full power and authority to enter into this Agreement and perform Seller's obligations under this Agreement.

6.2 Consents. No permit, approval, or authorization of, or designation, declaration or filing with, any governmental authority or any other person or entity on the part of Seller is required in connection with the execution or delivery by Seller of this Agreement or the consummation of the transactions contemplated hereby except for the approval of this Agreement by the URA Board.

6.3 Litigation, etc. To the best of Seller's knowledge after due inquiry, there is no suit, action or litigation, administrative hearing, arbitration, labor controversy or negotiation, or other proceeding or governmental inquiry or investigation known to Seller, affecting Seller or the Property pending or, to the best of Seller's knowledge after due inquiry, threatened against the Seller or Property which, if resolved adversely, would have a material adverse effect on the Property or on the ability of Seller to consummate the transactions contemplated hereby. There are no known judgments, consent decrees or injunctions against, affecting or binding upon Seller. Seller has received no notice of any violations of any governmental law, ordinance, requirement, order or regulation the violation of which would have a material adverse effect on the Property or on the ability of Seller to consummate the transactions contemplated hereby, and to Seller's best knowledge after due inquiry, Seller has received no notice of any claimed default with respect to any of the foregoing. Seller has no actual knowledge of any threatened or pending claims that could have a negative impact on Purchaser's ability to develop the Property for Purchaser's intended use.

6.4 Condemnation. Seller has not received a written notice that a condemnation action has been filed or threatened against the Property.

6.5 No Other Contracts/ Rights of Possession. Seller is not a party to any unrecorded contracts which will affect the Purchaser from and after the Closing and Seller has no knowledge of any right to possession of all or any portion of the Property except Seller.

6.6 No Encumbrances. There are no known easements, utility lines without easements, rights of way, gas, timber, mineral rights, tenant leases or other encumbrances except as set forth in the Abstract of Title. Seller warrants that it will not further encumber the Property without the Purchaser's prior written consent.

The representations and warranties set forth above shall survive the Closing until the last day of the twelfth (12th) calendar month thereafter.

7. Seller's Deliveries. Seller shall deliver to Purchaser any documents in Seller's possession relating to the operation/ownership of the Property within five (5) business days after the Effective Date.

8. Conditions Precedent to Closing. Purchaser's obligation to perform under this Agreement shall be subject to the following conditions precedent:

8.1 Transfer of Documents. Purchaser shall have received and approved all documents as specified in this Agreement.

8.2 Payments by Seller. Purchaser shall have received an amount equal to all payments which are the obligation of Seller under this Agreement.

8.3 Payment by Purchaser. Seller shall have received, in immediately available U.S. funds by cash, bank wire, bank check or certified check the balance of the Purchase Price, plus all payments which are the obligation of Purchaser under this Agreement.

9. Intentionally Omitted.

10. Seller's Closing Documents. The Property shall be conveyed and transferred by Seller to Purchaser on the Closing Date (as hereinafter defined) by the following instruments:

10.1 Property. A bargain and sale deed with lien covenants in proper statutory form for recording, duly executed by Seller and acknowledged (the "**Deed**") so as to convey to Purchaser good and marketable title in fee simple to the Property, free and clear of all claims, liabilities, obligations, security interest, liens, judgments and encumbrances except as specifically provided otherwise herein and such other documents as may be appropriate or necessary to convey the real property interest intended to be conveyed.

10.2 FIRPTA Affidavit. An affidavit required by Section 1445 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the Regulations pursuant thereto, and acceptable to the Purchaser (the "**FIRPTA Affidavit**").

10.3 Miscellaneous. Any other documents, instruments or agreements called for hereunder which have not previously been delivered or which are reasonably necessary to close the transaction as contemplated by this Agreement.

11. Prorations and Adjustments. There shall be prorated and adjusted as of midnight on the day preceding the Closing Date the following items: water and sewer charges, all non-delinquent real estate taxes and assessments with respect to the Property (if any) computed on a fiscal year basis and prepaid special assessments, including any Payment in Lieu of Taxes, agreements and all items in the current county tax bill and such other items as are customarily adjusted in transactions of this nature. At Closing the Seller shall obtain final gas and electric meter readings and terminate the existing gas and electric service. Purchaser shall then obtain its own gas and electric service at the Property. The provisions of this paragraph 11 shall survive the Closing and the transfer of title.

12. Closing. The Purchaser and the Seller agree that the purchase and sale contemplated by this Agreement will be consummated as follows:

12.1 Title Transfer. The Seller agrees to convey all of Seller's right, title and interest in the title to the Property to the Purchaser by the Deed and such other appropriate or necessary transfer instruments necessary on the Closing Date (as hereinafter defined).

12.2 Closing Date. The closing (the "**Closing**") of this transaction will take place at the offices of the Seller, or at such other location as shall be agreed to by the parties hereto, or via escrow no later than the thirtieth (30th) date after the expiration or waiver of the Inspection Period (the "**Closing Date**").

13. Closing Costs. The expenses of Closing shall be paid in the following manner:

13.1 Seller's Costs. In connection with the consummation of this transaction, Seller shall pay:

- (a) Any and all prorations or adjustments required by this Agreement in favor of Purchaser or according to local custom; and

(b) The filing fee for the TP-584.

13.2 Purchaser's Costs. In connection with the consummation of this transaction, Purchaser shall pay:

- (a) All fees in connection with the recording of the Deed and the RP-5217 along with the transfer tax;
- (b) Any and all prorations or adjustments required by this Agreement in favor of Seller or according to local custom.
- (c) The cost of the title insurance premium, should Purchaser elect to obtain a policy.

Each party shall pay its own attorney's fees and related costs.

14. Insurance, Damage, Destruction or Eminent Domain.

14.1 Damage or Destruction. In the event that the Property shall be damaged or destroyed, whether in whole or part, by fire or any other casualty or act of God between the date of execution hereof and the Closing Date Purchaser shall have the sole option of (i) terminating this Agreement in which event neither party shall have any further rights or obligations hereunder or (ii) proceed with this transaction.

Seller further agrees to give immediate written notice to Purchaser of any damage or destruction.

14.2. Eminent Domain. If, prior to the Closing Date, eminent domain proceedings materially affecting the Property shall be threatened or commenced by any competent public authority against the Property or any portion thereof which would materially and adversely affect the continued operation of the Property, Purchaser shall have the option to (i) proceed with this transaction and pay the Purchase Price, in which event any compensation paid or payable as a result of such eminent domain proceedings

shall be and become the sole property of Purchaser or (ii) terminate this Agreement in which event Seller shall retain such award, and thereafter both parties shall be released from any further liability hereunder. Seller agrees that it shall give to Purchaser written notice of any such threatened or actual eminent domain proceedings within five (5) days after Seller first becomes aware thereof, and upon the giving of such notice, Purchaser shall thereafter have fifteen (15) days within which to exercise the options granted in this paragraph by written notice to Seller and, if Purchaser fails to do so within said fifteen (15) day period, Purchaser shall be deemed to have elected to have terminated this Agreement.

If the eminent domain proceedings do not materially affect the Property, Purchaser shall have no right to terminate this Agreement, but shall receive a credit or an assignment, upon transfer of title under this Agreement, of any compensation paid or payable as a result of such eminent domain proceedings. In the event of any such non-material taking, Seller shall not compromise, settle or adjust any claims to such award without Purchaser's prior written consent (which will not be unreasonably withheld).

15. Broker's Commission. The parties hereto represent that no broker was involved in connection with the sale contemplated by this Agreement.

16. Intentionally Omitted.

17. Intentionally Omitted.

18. Miscellaneous.

18.1 Capacity. Each individual and entity executing this Agreement hereby individually represents and warrants that he and/or it has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he and/or it is executing this Agreement to the terms hereof.

18.2 Entire Agreement. This Agreement constitutes the entire Agreement between the Purchaser and the Seller relating to this sale and supersedes all other prior agreements and representations in connection with said sale. There are no agreements,

understandings, warranties or representations between the Purchaser and the Seller except as set forth herein.

18.3 No Amendment or Waiver. This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular unless the same shall be in writing and signed by the parties hereto.

18.4 Notice. Any notice, demands, requests or communication of any kind required or permitted hereunder shall be sufficiently given if sent by: (i) personal delivery, (ii) reputable overnight carrier; (iii) United States registered or certified mail, postage prepaid, return receipt requested; or (iv) telecopy (with confirmation of receipt thereof), to the parties at their address set forth above or at such other address each may designate from time to time.

If to Seller:

Niagara Falls Urban Renewal Agency
745 Main Street
Niagara Falls, New York 14301
Attn: Executive Director

With a copy to:

URA General Counsel
745 Main Street
Niagara Falls, New York 14301

If to Purchaser:

TM Montante Development
2760 Kenmore Ave
Tonawanda, NY 14150
Attn: Christian Campos, President
ccampos@montante.com

With a copy to:

LIPPES MATHIAS LLP

50 Fountain Plaza, Suite 1700

Buffalo, New York 14202-2216

Attention: Blaine S. Schwartz, Esq.

Vadim V. Belous, Esq.

Email: bschwartz@lippes.com

vbelous@lippes.com

Any such notice, demand, request or communication shall be deemed to have been duly given or served on the date shown on the return receipt or other evidence of delivery, if mailed, or on the date shown on the confirmation receipt, if faxed. Notices served by an attorney for a party shall have the same validity as if served by the party itself.

18.5 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York. If any provisions of this Agreement shall be unenforceable or invalid, the same shall not affect the remaining provisions of the Agreement venue for any action or proceeding will be in Niagara County, New York.

18.6 Parties. Except as otherwise provided in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, executors, administrators, successors and assigns.

18.7 No Assignment. Purchaser is hereby prohibited from assigning transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the URA, which may be withheld for any or no reason. Notwithstanding the forgoing, contract can be assigned to 502 Niagara Street NF LLC, which is wholly owned by Montante Group LLC, without seller's prior consent.

18.8 Headings. Section headings of this Agreement have been inserted for convenience of reference only and will in no way modify or restrict any provisions hereof or be used to construe any such provision.

18.9 Additional Acts. Each party hereto shall from time to time perform such additional acts as the other party may reasonably request to effectuate the intent of this Agreement.

18.10 Interpretation and Enforcement. If suit or action is filed to interpret or enforce this Agreement, the prevailing party shall be entitled to be awarded its reasonable attorneys' fees and disbursements through all appeals in addition to other costs and disbursements allowed by law, including those incurred on appeal.

18.11 Counterparts. This Agreement may be executed in counterparts, each of which when taken as a whole shall constitute one fully executed Agreement.

18.12 Calculation of Time. Whenever a period of time in this Agreement is stated as a number of days (and does not reference "Business Days"), it shall be construed to mean calendar days; provided, however, that when any period of time provided herein would end upon, or any specific date provided herein or any document executed in connection herewith would end upon, or shall fall on, a Saturday, Sunday, or legal holiday, such period shall be deemed to end upon the next day following which is not a Saturday, Sunday or legal holiday. For purposes of this Agreement, a "Business Day" means a calendar day other than a Saturday, Sunday or a day observed as a legal holiday by the United States federal government, the State of New York.

19. Special Developer Provisions.

19.1 Exclusive Developer. The Seller hereby confirms the designation by the URA Board of the Purchaser as its "Preferred Developer" for the development of the Property pursuant to a unanimous vote of the URA Board on November 9, 2022 of which is attached as **Exhibit "C"**. The Developer has been designated by the Seller to be the Preferred Developer and agrees to develop the Property for the purposes substantially

described in the Development Proposal, dated June 3, 2022, attached hereto as **Exhibit A** and incorporated herein (the “**Proposal**”). The Proposal is currently for the construction of a new four (4) story mixed use building, approximately 32,500 SF that will contain 33 residential units (mix of studio and one (1) bedroom units), approximately 6,375 SF of commercial space and a 5,560 SF common area. The development is also proposed to provide parking space for approximately 27 vehicles on site. It is understood, acknowledged and agreed by Seller that the attached Proposal is a concept design and not the final design, and that Purchaser may amend the design and site plan from time to time as the design is finalized, but any changes that alter the structure from being a mixed use building with commercial use occupying all or any part of the first floor with residential units constructed above shall require the seller's prior written consent, such consent to not be unreasonably withheld. Any amended Proposal issued by Purchaser conforming with the forgoing will automatically supersede and replace the Proposal attached as **Exhibit A** .

19.2 Community Benefit Goals. In the construction of the project (the “**Project**”), the Purchaser shall use commercially reasonable efforts to meet the following project labor goals:

19.2.1 WNY Labor (defined as construction employees residing in Niagara County, Erie County, Chautauqua County, Cattaraugus County, Allegany County, Wyoming County, Genesee County, and Orleans County): 90% of the total number of construction workers (this includes the City Labor).

19.2.2 City Labor (defined as individuals residing in the City of Niagara Falls): 15% of the total number of construction workers (this includes the City Minority Labor).

19.2.3 City Minority Labor (defined as minority group construction employees residing in the City of Niagara Falls): 7% of the total number of construction workers.

After Closing, the Purchaser shall provide the Seller with written payroll documentation substantiating its substantial compliance with the foregoing.

19.3 Construction of the Project. The Purchaser shall have sole responsibility for the supervision of the Project and the Property during construction of the Project, as well as for all safety precautions and programs which are necessary in the performance of the work. In no event shall the Seller have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures nor shall the Seller have control over or responsibility for safety precautions and programs in connection with the Project. The Purchaser shall commence construction of the Project no later than the last day of the eighteenth (18th) calendar month following the Closing, subject to the right to extend that deadline upon delivery of written notice to the Seller provided (i) the extension is requested as the result of circumstances beyond the Purchaser's reasonable control including, but not limited to Purchaser's securing required municipal approvals, closing on public and private financing, securing approvals related to Brownfield Cleanup Program Credits, and unforeseen market conditions, and (ii) the Purchaser is continuing in good faith using commercially reasonable efforts to advance the Project (the "Commencement Date"). Notwithstanding the foregoing, the Project shall be substantially completed not later than the last day of the twenty fourth (18th) calendar month after the Commencement Date, subject to the right to extend this deadline provided the Purchaser is continuing in good faith using commercially reasonable efforts to advance the Project.

19.3.1 In the event construction of the Project has not commenced on or before the Commencement Date, subject to any force majeure, the Seller shall have the right to re-purchase the Property from Purchaser for the Purchase Price (the "**Purchase Option**"). Should the Seller elect the Purchase Option, it shall deliver ten (10) days advance written notice to Purchaser at which time, if Purchaser has not commenced construction of the Project or formally requested an extension of the Commencement Date, Purchaser, in exchange for the Seller's delivery of the Purchase Price to Purchaser, shall deliver a quit claim deed for the Property along with a TP-584 and RP-5217 to the Seller.

19.4 As-Is. Except with respect to those matters that are the subject of the representations, warranties, and/or covenants of Seller specifically contained herein (i) Purchaser shall rely solely upon its own investigation with respect to the Property, including, without limitation, the Property's physical (including condition or safety of the

Property and the structural integrity of all improvements located on the Property), environmental (including presence or absence of hazardous materials at the Property) or economic condition (including operation, performance, income potential of the Property, and the market and leasing conditions and potential for and of the Property), compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto, (ii) Purchaser is accepting the Property “as-is, where-is, with all faults”.

19.5 Regional Council Capital Fund-Capital Grant- Project #AC500/CFA#72894

- (a) The City is the named grantee in a certain Incentive Proposal (“IP”) which has been issued for the property by the Empire State Development (“ESD”). This grant is in the amount of \$1,500,000 and the designated beneficiary in this IP will be the Purchaser. A copy of the IP is attached hereto and labeled **Exhibit “D”**. It is understood and agreed by Purchaser that the attached IP is a “draft” and that ESD may be amending the IP from time to time. It is further understood that the URA has requested that ESD amend the IP to name Purchaser as the Beneficiary of the grant and that disbursements be applied for and made on a quarterly basis. Any amended IPs issued by ESD will supersede and replace the IP attached as **Exhibit D**. Purchaser agrees to be bound in all respects by the requirements contained in the IP attached as **Exhibit D** and any superseding IPs issued by ESD.
- (b) URA agrees, commencing with the first quarter following the Commencement Date, to apply to ESD for reimbursement on behalf of the Beneficiary of the grant for eligible construction costs advanced by Purchaser. Upon receipt of those grant funds from ESD, URA agrees to remit grant funds to the Purchaser to be further utilized for construction costs of the Project. This will occur each quarter during the construction of the Project until the sum of \$1,500,000.00 is advanced with the understanding that the final installment of 10% of the grant amount will be finally disbursed by ESD following the completion of construction of the Project and the issuance by the City of a Certificate of

Occupancy and Completion. URA's obligation to remit grant funds to Purchaser is contingent upon URA receiving the grant funds from ESD. In the event grant funds are not received by URA, URA shall have no liability to Purchaser

- (c) Compliance with Regional Council Capital Fund-Capital Grant- Project #AC500/CFA#72894 and Indemnification. Purchaser acknowledges that it is familiar with all the terms, limitations and conditions of the IP, including the documentation and certifications necessary to draw grant funds. Purchaser shall comply with all applicable terms, limitations and conditions of the IP. Except to the extent caused by the City of Niagara Falls or Seller, Purchaser shall indemnify the City and URA against any and all costs URA or the City incurs as a result of noncompliance with the IP, including the specific elements of compliance set forth in this Agreement and any and all other terms, limitations and conditions of the IP not specifically set forth herein. The City or URA shall promptly provide written notice to Purchaser of any notice of default that City or URA receives under the IP. Purchaser shall have the right to cure any default by the City or URA under the IP within the cure period(s) set forth therein.

Purchaser shall insure investment of a minimum of ten percent (10%) of the total Project cost of equity into the Project as required by the IP.

- (d) Insurance. Purchaser shall maintain Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than \$1 Million per occurrence, \$2 Million aggregate and \$3 Million umbrella and agrees to be bound by the requirements contained in the GDA as concerns insurance. The City, URA, and ESD shall be named additional insured and certificate holder on a primary and non-participatory basis, with full waiver of subrogation, or equivalent acceptable to ESD. Purchaser shall also maintain or arrange for such additional insurance as required under the IP.

(e) MWBE Participation Goals. Purchaser shall adhere to all MWBE contract participation goals contained in the IP and take the steps required in the IP in this respect.

In the event that liquidated damages are assessed against Purchaser for failure to comply with MWBE requirements contained in the IP, Purchaser shall pay such liquidated damages in a timely fashion. Purchaser shall comply with the Equal Employment Opportunity Policies as required by the IP and take the steps required in the IP in this respect.

(f) Other Project Funds. Purchaser has represented to City that it has or will have sufficient funding available to construct the Project.

(g) Reimbursement for Costs and Expenses. Purchaser shall pay all title recording or filing fees, title insurance fees and related fees, and shall reimburse City for any out of pocket expenses, including costs or expenses which City is required to pay pursuant to the IP.

(h) Documentation for Release of Funds. Purchaser shall provide to City or URA the following:

- Proof of formation of all entities participating in the project, including applicable certificates of incorporation, articles of organization, partnership agreements, secretary of state filing receipts, resolutions authorizing the submission of grant applications and entering into the transactions contemplated hereunder and any other documents the City or URA may require showing proper formation of the entities and proper authorization of the transactions.
- Copies of all loan commitments and other grant approvals for funding of all aspects of the Project.
- Proof of availability of all equity to be contributed to the project at the time the applicable funds are released in form acceptable to City or URA.

- A copy of the building permit or permits for the Project;
- Copies of insurance policies or binders naming City, URA, and ESD as additional insureds in the form and in the amounts as required by the IP. Contractors and subcontractors employed by Purchaser are similarly bound by the insurance requirements contained in the IP.
- All documentation and certifications required to draw funds under the IP, including, but not limited to Capital Grant Payment Requisition Form, Asbestos Free Building Certificate for alterations and demolitions, Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j(3) and § 139-j(6)(b), Construction schedule, Monthly Requisition(s)(G7021703) with Project Cost Control Report, Certificate of Occupancy (CO), Contractor's Affidavit, Contractor's Receipt and Waiver of Lien, Subcontractor's Receipt and Waiver of Lien, Affidavit and Final Waiver of Claims and Liens and Release of Rights, Unconditional Waiver and Release, Consultant's Code Certification Letter, Contractor's and Consultant's Certification of Completed Construction, Unconditional Waiver and Release of Architect and Construction Manager, ESD Project Payment Request and Monthly Project Cost Control Report.
- Prior to any disbursement of Grant Funds, the construction loan for the Project shall be closed and the equity available to the appropriate entity and scheduled for investment in the Project under the terms of the applicable operating agreement. Purchaser shall submit to City a copy of the applicable construction loan agreement(s) as proof that the construction loan proceeds, and a copy of the applicable operating agreement as proof that equity are available for disbursement.
- Disbursement of grant funds shall be made not more than quarterly, and shall be paid directly to City or URA to reimburse Purchaser for payment of an eligible expense. Disbursement of grant funds shall be made only upon receipt by the City or URA of Regional Council Capital Fund-Capital Grant funds. The draw request to City or URA shall include copies of paid

contractor invoices and, if applicable, a cancelled check or other proof of payment, all as required in the IP.

- Grant fund disbursement shall be made in amounts in the discretion of the City or URA appropriate to the level of completion of the Project and shall approximate the ratio of Grant Funds to the Project costs for that category of expenditure. Project shall document expenditure of other Project funds for each draw. If requested, the Purchaser shall document to the City or URA availability of funds to pay Project costs.
- Each quarter, upon submittal by Purchaser to City of the documents required under this Section, City shall promptly request ESD funds pursuant to the IP. Upon City's or URA's receipt of any IP Funds, the City or URA shall promptly remit such proceeds to the Purchaser.
- All work shall conform to the New York State Uniform Building and Fire Prevention Code. All work shall also conform to federal lead-based paint requirements. Upon reasonable written notice, City of Niagara Falls Code Enforcement Department shall have access to the construction at all times for purposes of inspection to insure compliance with the applicable building codes. In addition, City or URA officials, or designees, shall have access to the construction sites at all times for purposes of inspection. Regardless of the foregoing, City shall not have any duty to supervise the work of the Project, and the quality and conduct of such work shall be the responsibility of the Purchaser. The right of inspection set forth herein does not create any obligation or liability on the part of City.
- Approved eligible Project costs shall be fully reimbursed less a retainage of 10% of the maximum principal grant amount (\$150,000.00). Final draw in the amount as set forth in the IP shall be paid when the work on the Project has been completed, the construction contracts fully performed, all certifications, waivers, reports and releases required by the IP have been provided to City or URA, all Project costs have been documented, and

certificates of completion or temporary or permanent certificates of occupancy for the Project have been issued.

- (i) Time for Disbursement. Unless otherwise terminated as set forth herein, funding covered by this Agreement will be fully disbursed in accord with the terms of this Agreement or any extended period approved by ESD, URA, or City.

- (j) Indemnification. Purchaser shall indemnify and save the City and URA harmless from and against any and all damages, claims, suits, actions or costs for personal injury or property damage arising from the work performed in connection with this Project, including any act or omission of the Purchaser, its employees, contractors, subcontractors, agents, assigns but excluding any intentional or negligent act or omission of the City, URA, its employees, agents or independent contractors.

- (k) Other Purchaser Obligations.
 - The Purchaser shall make or cause to be made all payments due under any payment-in-lieu of tax agreement covering the Project real property.
 - The Purchaser shall comply with all grant agreements and commitments of all other participants in the financing of the Project.

- (l) Remedies for Violation. In the event that the URA at any time, in its sole discretion, determines that the Purchaser is not in compliance with this Agreement or any of the terms, limitations and conditions herein, the obligation of the URA to transfer any grant funds to Purchaser shall cease.

In the event of violation of any term of this Agreement or of termination of this Agreement, Purchaser shall not receive any grant funds, which have not been disbursed by the City or URA to Purchaser.

In the event of violation of any term of this Agreement or of termination of this Agreement, the Purchaser shall repay or cause to be repaid to the City or URA on demand, in City's or URA's sole option, so much of the Grant as has been advanced at the time of violation or termination by URA, or so much of the Grant Funds as relates to a violation.

URA shall provide to Purchaser written notice of any violation of this Agreement and thirty (30) days to cure such violation. The obligation to transfer Grant Funds shall be suspended during any such cure period. The Purchaser shall give written notice of any violation to any investors or senior creditors providing funds to the Project. URA shall accept cure of any violations from any such investor or senior creditor. URA shall provide more than thirty (30) days to cure any violation in the event that URA, in its sole discretion, determines that such cure reasonably cannot occur in such thirty (30) day period and steps to cure the violation have commenced within the thirty (30) day period and are prosecuted diligently to completion.

In the event any action or proceeding is commenced by URA to enforce the terms of this Agreement or to enforce any remedy as a result of violation of this Agreement, Purchaser shall pay all of URA's costs, including, without limitation, actual and reasonable attorney fees.

(m) Books and Records; Project Audit.

- (i) Purchaser will maintain accurate books and records concerning the project for the term of this Agreement and for three (3) years from the expiration or earlier termination of this Agreement and will make those books and records available to the City, URA, ESD, its agents, officers and employees during Purchaser's business hours upon reasonable request.
- (ii) URA, ESD, and the City shall have the right, upon reasonable notice, to conduct, or cause to be conducted, one or more audits, including field inspections, of the Purchaser to assure that the Purchaser is in

compliance with this Agreement. This right to audit shall continue for three (3) years following the expiration or earlier termination of this Agreement.

- (n) Status of Purchaser. Purchaser is an independent contractor with regard to the Project described in this Agreement and is not an agent of the URA. Purchaser shall indemnify and hold URA harmless from and against any and all claims or losses resulting from any act or omission of Purchaser, its officers, agents, employees or assigns, in carrying out the terms of this Agreement and the constructing of the Project. Purchaser shall solely be responsible for all matters relating to payment of its employees, including payment of social security, withholding tax and like payroll deductions, and compliance with worker's compensation laws and all other laws and regulations governing such matters.
- (o) Conflict of Interest. No official or employee of URA has or shall have any personal interest, direct or indirect, in the Project, or Purchaser or in any limited liability company, trust, corporation, partnership or association hired by Purchaser for the Project.
- (p) Photographs and Other Publicity. URA shall have the right to photograph, videotape or otherwise record (the "**Recordings**") the Project and Project activities. The Recordings shall be the property of URA. URA shall have unrestricted authority to publish, disclose or distribute the Recordings in any fashion for any use connected with URA business.
- (q) Amendment. This Agreement represents the entire agreement of the parties and may be altered or amended only upon written instrument, duly approved and executed by the parties.
- (r) Survival and Conflict. The terms of this Agreement and the IP shall survive the disbursement of the Grant Funds to Purchaser, and the closing and transfer of title. In the event of any conflict between the terms of any other documents

signed in connection with the Loan and this Agreement, the terms of this Agreement shall prevail.

- (s) Counterparts. This Agreement may be executed in any number of counterparts, each of which thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, with the same effect as if all parties hereto had signed the same signature page.

- (t) Notices. All notices or other communications with respect to the subject matter of this Agreement shall be written, and shall be either personally delivered (so long as the delivery service issues receipts of delivery), sent by certified mail, postage prepaid, return receipt requested, or delivered by any reputable overnight courier service which issues receipts of delivery, to the parties at the addresses first set out herein, and shall be deemed effective as of the date of delivery or date of refusal to accept delivery by the addressee (as evidenced by the receipt).

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

SELLER:

PURCHASER:

NIAGARA FALLS URBAN RENEWAL AGENCY

TM MONTANTE DEVELOPMENT

By: _____

By: _____

Date: _____

Date: _____

EXHIBIT "A"
PROPOSAL

502 NIAGARA STREET

DEVELOPMENT PROPOSAL

June 2022



TM Montante
DEVELOPMENT

June 3, 2022

Attn: Eric Cooper
City Hall of Niagara Falls
745 Main Street, #305
Niagara Falls, NY 14301

Re: Proposal for Development of 502 Niagara Street, Niagara Falls, NY

Dear Mr. Cooper,

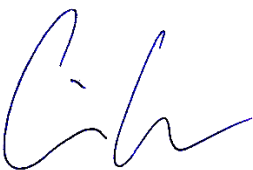
TM Montante Development (“TMMD”) is pleased to present the following proposal for the development of 502 Niagara Street. Development of this property will build upon the momentum in downtown Niagara Falls generated by several recent projects, including TMMD’s 616 Niagara just two blocks east.

Our plan is to develop and construct a 4-story, approximately 32,500 SF building, featuring 33 market rate residential units and ground floor commercial space. The Project will not only address the significant level of demand for high quality, market rate apartments in the downtown core of Niagara Falls, but it will also serve as a catalyst for future investment along Niagara Street by demonstrating that new, mixed-use buildings can be viably developed in the City of Niagara Falls.

We believe that our multi-disciplinary approach, which combines development, design, construction and property management services, along with our proven commitment to the growth of the City of Niagara Falls, make us the ideal candidate for this project, and it is our hope that this comes across in the text and images on the following pages.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Campos', written in a cursive style.

Christian Campos
President, TM Montante Development

DEVELOPMENT PLAN

TM Montante Development (“TMMD”) is proposing the development and new construction of a 4-story, approximately 32,500 SF building, located at 502 Niagara Street, at the corner of 5th and Niagara Streets (the “Project”). We are proposing a mix of uses for the Project, including ground floor retail and market rate housing above, supported by a 27-space surface parking lot located behind the building.

We continue to believe in the demand for quality market rate residential units in downtown Niagara Falls, as indicated by several of our recently completed projects. Our 616 Niagara project, completed in 2020, is at full capacity; our residential units at 453 3rd Street are at full capacity; and our recently completed residential project at 460 3rd Street is on target to fill all 6 apartments within the coming month.

In this proposal we would take title to the parcel, secure necessary incentives to ensure project viability, and invest the capital required to develop and construct the building. Immediately after establishing site control, TMMD would secure, clean, and stabilize the site, which would include maintenance leading up to construction. Prior to construction, TMMD will also engage environmental and geotechnical consultants as well as a design team to design the Project, and will obtain all required entitlements.

Additionally, during the pre-construction phase, we will market the property to retail operators to find the best tenant(s) for the ground floor retail space. Marketing efforts would be consistent with those utilized on our nearby projects and include significant outreach and high-visibility signage. We have demonstrated success securing and maintaining quality commercial tenants at our Niagara Falls properties, including Niagara University and NGTI at 616 Niagara, and Power City Eatery and Ashker’s Juice Bar in our 3rd Street buildings.

Once site control is secured, we anticipate a 12-18 month due diligence, design and entitlement period, followed by a 12 month construction period. The estimated completion date for the Project is the latter half of 2024.

CONCEPTUAL SITE PLAN

The proposed Project consists of a 4-story mixed-use building, located at the corner of 5th and Niagara Streets, and a 27-space parking lot located behind the building, accessible from 5th Street. Building servicing would be accessible from the parking lot.



PROPOSED PROGRAMMING

USE		SF	%	
Residential	Unit Type	Unit Count	20,565	63%
	Studio	6		
	1 BR	27		
	Total	33		
Commercial			6,375	20%
Common Area			5,560	17%
TOTAL			32,500	

PROJECT RENDERINGS



View of the Project looking Northeast from Niagara Street.



View of the proposed parking and servicing area, located behind the building, with 5th Street in the foreground.



View of the proposed building, looking northwest.



View of the proposed retail Storefront, looking North along Niagara Street.

ACQUISITION AND FINANCING

Development and construction of this Project requires significant investment and carries considerable risk.

TMMD is proposing to pay \$1 for the acquisition of 502 Niagara Street. The simple justification for this is that the Project carries a considerable amount of risk due to market conditions in Niagara Falls as well as the current costs of construction and financing. Minimizing acquisition costs alleviates some project risk and allows TMMD to redirect those funds towards getting the Project designed, developed and constructed. We will also be contributing personnel and overhead costs to advance this Project that, as mentioned above, carries a considerable amount of risk. Further, TMMD will provide guarantees on all loans – construction, permanent, and bridge – needed to complete the Project.

TMMD also plans to secure several incentives, which will be critical to the Project's viability. We are currently exploring the potential for a grant from Empire State Development; a property tax, mortgage recording tax, and sales tax abatement through the Niagara County Industrial Development Agency ("NCIDA"); as well as a National Grid grant. TMMD may also look to secure Brownfield Tax Credits from New York State as a source of capital for the Project.

CONCLUSION

TMMD believes that the highest and best use for this parcel is a new mixed-use building with ground floor retail and market rate housing above. This Project will build upon momentum generated by TMMD's 616 Niagara project on Niagara Street and will provide in-demand market rate residential housing in one of downtown Niagara Falls' emerging neighborhoods, while also complementing the vision outlined in the City of Niagara Falls' Comprehensive Plan.

This Project will be complex and challenging, however, based on our previous successes on Niagara and 3rd Streets, we are confident that we are the right team to get it done. Our team is passionate about development in Niagara Falls, and as our previously completed projects along Niagara Street and 3rd Street demonstrate, our team has the capability and the vision to deliver high-quality projects that contribute positively to the growth and evolution of Niagara Falls.

EXHIBIT "B"
LEGAL DESCRIPTION

All that Tract or Parcel of Land, situate in the City of Niagara Falls, County of Niagara and State of New York, part of Lot 41 Mile Reserve, known as and being Subdivision Lots Nos. 42 and 44 on the east side of Fifth Street as shown on a Map of the Village of Niagara Falls (now City of Niagara Falls), County of Niagara and State of New York made by Jesse P. Haines, Surveyor, in 1861, and filed in the Niagara County Clerk's Office, December 20, 1861 under Cover No. 391, being bounded and Described as follows: BEGINNING at the intersection of the northerly line of Niagara Street with the east line of Fifth Street; thence running northerly along the easterly line of Fifth Street, a distance of 132 feet to the northerly line of Subdivision Lot No. 44; thence running westerly along the northerly line of Subdivision Lot No. 44, a distance of 132 feet a point which is the northeast corner of Subdivision Lot No. 44; thence running southerly along the westerly line of an alley (also the easterly of Subdivision Lots Nos. 44 and 42), a distance of 132 feet to the northerly line of Niagara Street; thence running westerly along the northerly line of Niagara Street, a distance of 132 feet to the point of beginning.

**""EXHIBIT "C"
URA OGGVPI 'O P WGU**

NIAGARA FALLS URBAN RENEWAL AGENCY
Minutes of Meeting November 9th, 2022
745 Main Street
Niagara Falls, New York

Present:

Mayor Restaino
John Spanbauer
Michael Hooper
David Zajac
Traci Bax
Doug Mooradian

Absent:

Donta Myles
Kenny Thompkins
Doreen O'Connor

Staff Present:

Candace Hout, Planning Clerk
Kevin Forma, Executive Director of City Planning
Chris Mazur, URA Counsel

Mayor Robert Restaino called the meeting to order at 5:00PM

1. Roll Call

Mayor Restaino
John Spanbauer
Michael Hooper
David Zajac
Traci Bax
Doug Mooradian

2. Approval of Meeting Minutes

A motion to approve the meeting minutes from May 18, 2022 was made by MR. SPANBAUER and seconded by MS. BAX

POLLED VOTE:

In Favor:	6
Opposed:	0
Approved	Unanimously

NIAGARA FALLS URBAN RENEWAL AGENCY
Minutes of Meeting November 9th, 2022
745 Main Street
Niagara Falls, New York

3. Approval for the Appointment of Kevin Forma as Executive Director

MAYOR RESTAINO explained the Eric Cooper was the previous Director of the URA and he moved on to another position. MAYOR RESTAINO stated that Kevin Forma has now taken the position of Director of Planning and part of the duties also include the appointment as Executive Director of URA. MAYOR RESTAINO stated that there is a memorandum for the appointment of MR. FORMA as the new Executive Director of the URA in the member packet

A motion to approve Kevin Forma as Executive Director of the URA was made by MS. BAX and seconded by MR. SPANBAUER

POLLED VOTE:

In Favor:	6
Opposed:	0
Approved	Unanimously

4. Approval for the Appointment of Candace Hout as Recording Secretary

MAYOR RESTAINO explained that Sarina Deacon was the previous Recording Secretary for the URA and she moved on to another position. MAYOR RESTAINO stated that there is a memorandum to the appointment of MS. HOUT as the new Recording Secretary of the URA

A motion to approve Candace Hout as the Recording Secretary of the URA was made by MR. SPANBAUER and seconded by MS. BAX

POLLED VOTE:

In Favor:	6
Opposed:	0
Approved	Unanimously

5. Approval of the Sale of Property – 502 Niagara Street

MAYOR RESTAINO spoke about the authorization to negotiate and effectuate a sale of 502 Niagara Street to TM Montonte. And to transfer the property upon the successful execution of an agreement. MAYOR RESTAINO stated that the URA does not have the title yet and that the city foreclosed on the property and made a determination to transfer the bid to the URA but the transfer never happened. MAYOR RESTAINO stated that while the acceptance of the property was approved by a previous board not a consisting of existing members, the transfer was never carried out. MAYOR RESTAINO stated that we now have a party interested in obtaining the property so the request to the board to authorize the negotiation and the effectuate of the sale of this property to

NIAGARA FALLS URBAN RENEWAL AGENCY
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Niagara Falls, New York

the third party contractor which means URA will need to go through the process of finalizing the acceptance of the property and then deeding it out TM Montonte.

MR SPANBAUER asked if we knew the market value of the property.

MAYOR RESTAINO stated that he has not had a conversation or seen any proposal in regard to the property. MAYOR RESTAINO continued by saying URA is also receiving the benefit in transferring the property because the property has remediation work that needs to be done. Once we get the property into the hands of a developer, they can not only develop the property, but also assume the responsibilities of remediation.

MR HOOPER asked if we can get appraisal of the property.

MAYOR RESTAINO stated that we can do that if board would like to authorize the payment of an appraisal and that it would be the board's decision.

MR HOOPER stated that he was looking to avoid any kind of problems later.

MAYOR RESTAINO stated the property is in need of remediation because it was a dry cleaner, as well as a gas station and that significant remediation work will be necessary in order for it to be of any commercial value.

MR MOORADIAN asked if TM Montonte would be able to provide a rough estimate of what they think the cost of the remediation would be.

MAYOR RESTAINO stated that is something that can be brought up the when the Executive Director negotiates the agreement and then all of that information can be brought back to the board before URA enters into the agreement with TM Montonte, but at this point we are asking for the authorization to negotiate with the developer and we can return to the board to effectuate the sale.

MR MOORADIAN stated that due to the exorbitant costs of remediation obtaining the cost estimate only strengthens URA's case that we should be transferring the property; it should not be the city that has that property it should be with somebody who is going to do something with it.

MAYOR RESTAINO stated that if we are authorized to negotiate, we can bring the Agreement back to the board for discussion and approval. MAYOR RESTAINO suggested that the request be modified allowing the board to authorize the Executive Director to negotiate an agreement for the sale of 502 and prior to the final sale there would be subsequent to a discussion with the full board to approve. MAYOR RESTAINO inquired if the modified language meets everyone's

NIAGARA FALLS URBAN RENEWAL AGENCY
Minutes of Meeting November 9th, 2022
745 Main Street
Niagara Falls, New York

approval then we would modify the application to simply authorize the Executive Director to negotiate an agreement with TM Montonte.

MAYOR RESTAINO restated the amended application to approve a motion to authorize the Executive Director to negotiate an Agreement for the sale of 502 Niagara street with TM Montonte.

A motion to approve the authorization of negotiation of an Agreement for the sale of 502 Niagara Street was made by MR. HOOPER and seconded by MR. SPANBAUER

POLLED VOTE:

In Favor:	6
Opposed:	0
Approved	Unanimously

6. Approval to Authorize NFURA counsel to pursue the removal of Negotiate the sale per the existing agreement with Sandstone Springs

MAYOR RESTAINO spoke about the approval to authorize the NFURA counsel to pursue the removal of Sandstone Springs and stated that Sandstone Springs is the lessee and that there is an existing Agreement in place for quite some time that authorizes Sandstone Springs to exercise an option to purchase after so many months of leasing the property and that the window it coming to a close a the end of the month..

MAYOR RESTAINO stated that this application is seeking authorization to take whatever steps are necessary to remove and terminate the agreement should Sandstone Springs not effectuate their purchase option. MAYOR RESTAINO stated that there are no additional leasing options permitted. The lease ends at the end of November, and at the sunset of the lease, what was supposed to happen is an option to purchase. Essentially rent to own.

MAYOR RESTAINO also stated the period of time within which they have to do effectuate the purchase, is quickly approaching its end, at which point rather than reconvene the Board to take action, URA Counsel is requesting that the board authorize Counsel to pursue the removal of Sandstone Springs if they fail to exercise the purchase option.

MR SPANBAUER asked if they are leasing do we not want to extend the lease, or has the URA asked him to leave and if URA has any other options.

MAYOR RESTAINO stated that they are in arrears, in terms of rent somewhere just over \$150,000 and they pay in sporadic fits.

NIAGARA FALLS URBAN RENEWAL AGENCY
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Niagara Falls, New York

KEVIN FORMA stated that we did get three recent checks and that none of them actually cover anything in terms of the back rent owed, everything was forward past when their lease is over.

MAYOR RESTAINO stated what we're doing is making sure that before we do anything with those checks, which could be construed as extending their lease term, we want URA Counsel to be able to be authorized to take action, once the lease term option to purchase has passed.

MR SPANBAUER stated that he did not know that were that far behind.

MAYOR RESTAINO stated that Maria Brown, who manages URA finances is lamenting Sandstone Springs and their failure to make good on the amount of money that they owe. They are supposed to pay a monthly rent on the annual rent of \$48,000. They are well behind that.

A motion to approve the authorization of negotiation and effectuation was made by MR. SPANBAUER and seconded by MR. MOORADIAN.

POLLED VOTE:

In Favor:	6
Opposed:	0
Approved	Unanimously

7. Approval of the 2023 Budget

MAYOR RESTAINO spoke about the 2023 Budget. MAYOR RESTAINO stated the 2023 Budget is less than it was in 2022 in terms of expenses.

A motion to approve the 2023 Budget of the URA was made by MR. SPANBAUER and seconded by MS. BAX

POLLED VOTE:

In Favor:	6
Opposed:	0
Approved	Unanimously

8. Old Business

There was no old business to discuss.

9. New Business

There was no new business to discuss.

10. Adjournment

NIAGARA FALLS URBAN RENEWAL AGENCY
Minutes of Meeting November 9th, 2022
745 Main Street
Niagara Falls, New York

A motion to adjourn the meeting was made by MR. MOORADIAN and seconded by MR. SPANBAUER.

The meeting adjourned at 5:15 PM.

**EXHIBIT “D”
INCENTIVE PROPOSAL**

March 27, 2023

Mr. Kevin Forma
Director of Planning and Environmental
City of Niagara Falls
745 Main Street, Room 305
Niagara Falls, NY 14302

Dear Mr. Forma:

On behalf of New York State and Empire State Development, please let me express my enthusiasm for working with you and the City of Niagara Falls (the “City”) on its South-End Downtown Gateway Area Revitalization project in New York State.

As we understand the project, the City of Niagara Falls will leverage \$7.5 million in private investment, for the design and construction of a new mixed-use building to be developed by TM Montante in the City’s South End.

To encourage you to proceed with this project, we are offering the City of Niagara Falls a state incentive valued at **\$1,500,000**.

Please review the attached [Incentive Proposal](#) to see how New York State and Empire State Development are prepared to assist the City of Niagara Falls with its project located in the Western Region of New York State. If you choose to accept our offer, please acknowledge your decision by endorsing the last page of the attached proposal and returning one copy to me and one copy, to Glendon McLeary, Vice President of Empire State Development’s Loans and Grants Department, by May 1, 2023.

Should you have any questions or wish to discuss the offer further, please do not hesitate to call Robert Sozanski, your project manager, at (716) 846-8249.

Very truly yours,



Karen Utz
Regional Director

cc: Glendon McLeary
Robert Sozanski

Attachment: ESD Incentive Proposal

REGIONAL COUNCIL AWARD – INCENTIVE PROPOSAL

City of Niagara Falls

April 2, 2018

Revised March 27, 2023

This **Incentive Proposal** outlines the general terms and conditions of the incentive package being offered by Empire State Development (“ESD”)* to the City of Niagara Falls to assist with its revitalization efforts in Niagara Falls, Niagara County. This offer is subject to the availability of funds, completion of any applicable (1) non-discrimination and contractor diversity, (2) environmental and historic and (3) smart growth review requirements, approval by the ESD Directors, applicable statutes, and compliance with program requirements.

* The New York State Department of Economic Development and the New York State Urban Development Corporation, d/b/a Empire State Development, are collectively referred to as ESD.

I. GENERAL INFORMATION

- a) **Recipient Name:** City of Niagara Falls
- b) **Beneficiary Name:** TM Montante Development
- c) **Contact Information**
Mr. Kevin Forma
Director of Planning and Environmental
City of Niagara Falls
745 Main Street, Room 305
Niagara Falls, NY 14302
Phone: (716) 286-4477
E-mail: kevin.forma@niagarafallsny.gov
- d) **Project Location**
502 Niagara Street, Niagara Falls NY
- New York State Empire Zone:** N/A
- e) **Type of Business**
Real Estate

II. PROJECT SPECIFICS

- a) **Project Description:** Leverage \$7.5 million in private investment for the design and construction of a new, mixed-use 32,500 sf building at 502 Niagara Street in Niagara Falls' South End neighborhood. The building is anticipated to be 4 stories, with 33 market rate apartments and ground floor commercial space
- b) **Estimated Schedule:** Begin: January 2024
Complete: December 2025
Estimated ESD Directors' Approval: December 2023

III. PROJECT BUDGET

You have informed us that the following costs will be incurred to complete this project. It is understood that these costs are estimates, based on the best information available to date. If these figures change, please inform your ESD contact as soon as possible.

Construction/Renovation:	\$7,000,000
Soft Costs (Architecture & Engineering):	<u>\$2,000,000</u>
Total Estimated Cost:	\$9,000,000

IV. ESD INCENTIVES

Regional Council Capital Fund – Capital Grant – Project #AC500/CFA#72894

- a) **Amount:** \$1,500,000
- b) **Use of Funds:** Reimbursement for a portion of construction/renovation costs and architectural/engineering fees.
- c) **Requirements:** Funds will be disbursed as reimbursement for eligible expenses during the course of design and/or construction no more frequently than quarterly, in compliance with the Design & Construction Requirements and in proportion to ESD's funding share (not to exceed 16.6% per structure), assuming that all project approvals have been completed and funds are available. Expenses can be incurred by the City and/or developers. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require.

All disbursements require compliance with program requirements and must be requested by no later than April 1, 2026. Expenditures incurred prior to April 2, 2018 are not eligible project costs and cannot be reimbursed by grant funds.

The Grant is being offered in connection with the project as described in the CFA (or ESD application) and that funds will only be made available for projects that are undertaken as described in the CFA (or ESD application), except as expressly authorized by ESD.

- d) Financial Disclosure:** Financial disclosure, consisting of three years of audited financials or three years of tax returns plus interim financials if the most recent financial report is older than six months, on Beneficiary and all corporate and personal guarantors acceptable to ESD must be provided prior to ESD Directors' approval.
- e) Reporting:** The Beneficiary will report to ESD on May 1 every year for three years, starting one year after full disbursement of funds, the number and type of private sector investments leveraged by the South End Gateway District Revitalization Program, including but not limited to, any adaptive reuse of buildings, building improvements, new entertainment venues, restaurants, or any other significant private sector investment in the targeted area.

General Requirements

- **Equity:**
The Beneficiary will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Recipient's written acceptance of ESD's Incentive Proposal. Equity is defined as cash injected into the project by the Recipient or by investors and should be auditable through Recipient financial statements or Recipient accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project or grants from a government source.
- **Fees:**
The Beneficiary will provide a \$250 Application Fee, due when this Incentive Proposal is returned and a 1% commitment fee (\$15,000) due after ESD Directors' approval at the time a Grant Disbursement Agreement is executed. In addition, the Recipient will reimburse ESD for any direct expenses incurred in connection with this project, including costs related to holding a public hearing, attorney fees, appraisals, surveys, title insurance, credit searches, filing fees, and other requirements deemed appropriate by ESD.
- **Non-discrimination and Contractor Diversity:**
ESD's Non-discrimination & Contractor and Supplier Diversity policy will apply to the project. The Beneficiary shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall Minority and Women Business Enterprise (MWBE) participation goal of **30% (\$450,000)** related to the total value of ESD's funding and to solicit and utilize MWBEs for any contractual opportunities generated in connection with the project. A further explanation of the MWBE requirements is attached hereto.

The Recipient is **encouraged** to use "Good Faith Efforts," pursuant to 9 NYCRR §252.2(m), to utilize NYS-certified Service-Disabled-Veteran-owned Business Enterprises ("SDVOBs") in the execution of the grant. Any utilization of SDVOBs would be in addition to goals established pursuant to Article 15-A of the Executive Law with respect to MWBEs. Should SDVOBs be utilized, a further explanation of the SDVOB reporting requirements is attached hereto.
- **Design and Construction Review:**
Upon acceptance of this Incentive Proposal and prior to moving forward with the project, ESD's Design and Construction ("D&C") staff will meet with the Beneficiary to discuss ESD's required review of design and construction documents, addendum, cost estimates and monitoring of the bid and contract award process. D&C will, at its option, attend design and construction meetings and monitor all progress. D&C will review all change orders and contractor requisitions and verify that all requirements have been satisfied prior to approving the release of ESD funds, including acceptable completion of D&C requirements, submission of lien waivers and other forms.
- **Environmental, Historic and Smart Growth Review:**
Please note in particular the Environmental, Historic and Smart Growth Review requirements at the end of the attached

document, which, if applicable, must be satisfied prior to ESD Directors' approval of funding. The ESD Planning & Environmental Review office may contact your office for further information regarding status of the environmental, historic and smart growth review for your project.

▪ **Environmental Sustainability:**

ESD encourages the environmentally sustainable practice of recycling construction and demolition debris rather than disposition in a landfill.

▪ **Insurance Requirements:**

The Beneficiary shall maintain Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate and Three Million Dollars (\$3,000,000) umbrella. In addition, if the grant contemplates the purchase, construction or renovation of any buildings or equipment, the Recipient shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

▪ **Modification:**

ESD reserves the right to review and reconsider project and property selections in the event of material changes in the project plans or circumstances.

▪ **Reservations of Rights Concerning Funding Commitment:**

It is expected the project will proceed in the time frame set forth by the Applicant. If the implementation of a project fails to proceed as planned and is delayed for a significant period of time and there is, in the exclusive judgment of ESD, doubt as to its viability, ESD reserves the right to cancel its funding commitment to such project.

▪ **Next Steps After Accepting this Incentive Proposal:**

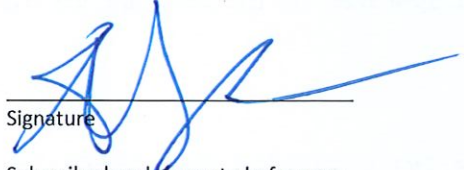
Within approximately 30 days of your acceptance of this Incentive Proposal, your Project Manager will acknowledge receipt of the signed Incentive Proposal and will provide a guide to the ESD Approval and Disbursement Process and relevant contact information. Prior to ESD Directors' approval, ESD will require updated project information and Declarations and Certifications. Please note that ESD Directors' approval typically occurs at project completion.

AFFIRMATION

STATE OF NEW YORK)
) ss.:
COUNTY OF Niagara ,

The Undersigned, being duly sworn, deposes and says:

1. I, Kevin A. Foerma, am the Executive Director of the Niagara Falls ULA (the "Recipient"), a municipality that is duly organized and validly existing under the laws of New York, and is authorized to do business and is in good standing in the State of New York.
2. I have read and know the contents of the Incentive Proposal prepared by the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") dated the 27 day of MARCH, 2023
3. I have reviewed all of the information provided by the Recipient to ESD to assist in ESD's preparation of the Incentive Proposal, including information provided on Recipient's behalf by third-party consultants
4. I know all of the information provided by Recipient or its third-party consultants to be true and complete in all material respects. To the extent such information involves projections about future performance, these projections have been prepared in good faith, based upon reasonable assumptions.
5. Recipient did not make a decision to undertake the project described in the Incentive Proposal prior to December 13, 2017.
6. Recipient hereby accepts the terms of the Incentive Proposal.
7. Receipt of the Incentive Proposal was a material factor in Recipient's decision to undertake the above-referenced project.
8. Recipient agrees to allow the Department of Taxation and Finance to share Recipient tax information with Empire State Development.
9. Recipient authorizes the Commissioner of Labor to disclose, to employees of both the New York State Department of Labor, the New York State Department of Economic Development, and the Urban Development Corporation, (dba Empire State Development), all records filed by the Recipient in making Unemployment Insurance (U.I.) reports and contributions required by State Labor and Tax Law, including, but not limited to, all information contained in or relating to the quarterly combined withholding, wage reporting and U.I. returns, the registration for U.I., the New Hire file, and all records of U.I. delinquencies. In addition, this authorization shall include all information contained in any survey reports requested by the Department of Labor on behalf of the U.S. Department of Labor, Bureau of Labor Statistics including, but not limited to, the Current Employment, Occupational Employment, multiple worksite, and annual refiling surveys. The use of information and records released pursuant to this authorization shall be limited to government purposes concerning the Recipient and assistance described in this incentive proposal to monitor compliance with worker protection laws and with the conditions and requirements associated with the financial assistance being requested.
10. Recipient certifies, under penalty of perjury, that the Recipient is in substantial compliance with all environmental, worker protection, and local, state and federal tax laws.

Signature 

Subscribed and sworn to before me
this 26th day of July, 2023
Susan G. Knotts
Notary Public

SUSAN G. KNOTTS
Notary Public, State of New York
Qualified in Niagara County
Reg. No. 01KN6336442
Commission Expires Feb. 01, 2024

ENVIRONMENTAL, HISTORIC AND SMART GROWTH REVIEW REQUIREMENTS

Approval of funding by ESD, a public benefit corporation of the State of New York, requires compliance with environmental, historic and smart growth review requirements under New York State regulations. The information below provides a brief guide to the review processes. If you have any questions about the required documentation or how to proceed in these areas, please contact ESD's Planning & Environmental Review Office at (212) 803-3252 or 3253. **Physical work on an ESD-funded project may not be started prior to the completion of any necessary environmental, historic and/or smart growth review.**

Environmental Review under State Environmental Quality Review Act (SEQRA)(6 NYCRR Part 617)

- Projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of a site or structure require review under SEQRA. Certain listed activities are not subject to any review because they involve actions with little, if any, environmental impact, referred to as "Type II" Actions. Conversely, SEQRA also includes a list of actions that are assumed to be more apt to result in impacts, referred to as "Type I" Actions, which are subject to formal review. If a proposed action is neither listed on the Type II or Type I lists, it is referred to as an "Unlisted Action" and is also subject to review under SEQRA.
- The applicant must demonstrate compliance with SEQRA if the project does not meet the definition of a Type II Action. If SEQRA review is required for the project, the review must be completed by a lead agency such as a municipal planning or zoning board, common council, county industrial development agency, or state regulatory or funding agencies.
- Please note that if the project consists of more than one phase, a SEQRA review must be completed for all known or reasonably foreseeable phases of the project, not only the phase that is the subject of ESD funding. An environmental review of only a portion of a project constitutes improper segmentation under SEQRA and is not accepted except in special circumstances.
- Required SEQRA documentation:

If the project has already been determined to have no significant effect on the environment, the following two documents must be provided:

1. Environmental Assessment Form (EAF) –Short EAF or Full EAF, as appropriate for the project. All parts must be fully completed and approved by the lead agency that reviewed the project; and
2. Negative Declaration

(Note: If the project was approved by a lead agency on or after October 7, 2013, the new EAFs must be used and a separate Negative Declaration form is not required.)

If a Positive Declaration was made for the project, indicating that the project may have a significant adverse impact on the environment, the following documents must be provided:

1. Draft and Final Environmental Impact Statement (DEIS and FEIS) – digital copy is preferable; and
2. Lead Agency Statement of Findings

- If your SEQRA review has not yet been completed, please provide in an addendum to this application information about the status of the review and designated lead agency for the review, and submit “Part 1” of a Short EAF or Full EAF as appropriate for your project. Subsequent EAF Parts are completed by the lead agency based upon the information you include in Part 1.

For further information about SEQRA, please visit the New York State Department of Environmental Conservation’s web site at <http://www.dec.ny.gov>.

Historic Review

- Projects involving a building, structure, district, or site, including underground or underwater sites, listed on or eligible for listing on the State or National Register of Historic Places (S/NRHP) must be evaluated by the State Historic Preservation Office (SHPO) of the New York State Office of Parks, Recreation and Historic Preservation in accordance with Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law.
- Buildings that are more than 50 years old and/or those that are historically, architecturally, or culturally significant, as well as project locations wholly or partially within an identified archeologically-sensitive area or a land area that typically contains archeological resources, may meet the eligibility criteria for S/NRHP listing.
- The applicant must demonstrate compliance with Section 14.09. In order to initiate the SHPO consultation process, the applicant must submit the project for review by SHPO through the Cultural Resources Information System (CRIS) found at <https://cris.parks.ny.gov/Default.aspx>. Upon completion of the SHPO consultation process, SHPO will determine whether or not the project will have an adverse impact on historical or cultural resources and will provide a letter of comment on the project.
- Required SHPO documentation:
 - Letter of No Adverse Impact determination or
 - Letter of Resolution – required if SHPO determines that the project will have an Adverse Impact on historic or cultural resources.

Smart Growth

The State Smart Growth Public Infrastructure Policy Act of 2010 requires that public infrastructure projects approved, undertaken, supported or financed by a State Infrastructure Agency, which includes ESD, to the extent practicable, are consistent with relevant Smart Growth Criteria specified in the law. Projects that involve ESD approval of funding for public infrastructure (e.g., publicly-supported roads, bridges, streetscapes, other transportation systems, drinking water, sewers, drainage systems, and utilities) will require the completion of a Smart Growth Impact Statement prior to approval of funding. (Note: Projects that only involve Excelsior Jobs Tax Credits do not require Smart Growth review.) ESD staff will advise you if a Smart Growth Impact Statement is required.

PARTICIPATION REQUIREMENTS FOR NEW YORK STATE CERTIFIED MWBES

ESD is required to comply with and implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (MWBE Regulations) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

Approval of funding by ESD, a public benefit corporation of the State of New York, is conditioned upon and subject to the following requirements:

- a) Recipient agrees to fully comply and cooperate with ESD in the implementation of New York State Executive Law Article 15-A. These requirements include contracting opportunities for *New York State certified* Minority-owned Business Enterprises (“MBEs”) and Women-owned Business Enterprises (“WBEs”), collectively MWBES.
- b) For purposes of this project, ESD hereby establishes the following MWBE participation requirements:

Overall MWBE Participation Requirement: 30% (totaling no less than \$450,000)

- c) For purposes of providing meaningful participation by MWBES on the project and achieving the project goals established herein, Recipient should reference the directory of New York State certified MWBES found at the following internet address:

<https://ny.newnycontracts.com>

Additionally, Recipient may contact ESD’s Office of Contractor and Supplier Diversity (“OCSD”) to discuss additional methods of maximizing participation by MWBES on the project.

- d) Recipient is required to submit a completed Non-Discrimination and Equal Employment Opportunity Policy Agreement (Form OCSD-1) prior to the first disbursement.
- e) For all incentives the Recipient and any contractors or sub-contractors are required to provide to OCSD (i) an MWBE Staffing Plan (Form OCSD-2) prior to the first disbursement, where ESD’s effective contribution is equal to or greater than \$250,000, and (ii) Workforce Utilization Reports (Form OCSD-3) on a monthly basis, for construction contracts in excess of \$100,000, or quarterly basis, for services and commodities contracts in excess of \$25,000, until the final disbursement of project funds. If the first disbursement is also the final disbursement, the Recipient may submit only the final Workforce Utilization Report. Workforce Utilization Reports must be submitted to OCSD via email in, **excel format only**, to kelly.forsey@esd.ny.gov.

The Recipient shall also require each of its sub-contractors to submit a Workforce Utilization Report (Form OCSD-3) on a monthly basis, for construction contracts in excess of \$100,000, or

- quarterly basis, for services and commodities contracts in excess of \$25,000, until the final disbursement of project funds. The Workforce Utilization Report must be sent by email in excel format only to ESD.
- f) Recipient is required to submit an MWBE Utilization Plan (Form OCSD-4) no later than ten (10) days after the execution of this Incentive Proposal.
- If additional time is required to prepare an acceptable and effective MWBE Utilization Plan, the Recipient may submit a written extension request to OCSD or the assigned OCSD Project Manager. The extension request must explain why additional time is needed and provide an estimated date of submission for the MWBE Utilization Plan.
 - Any modifications or changes to the MWBE Utilization Plan after the execution of this Incentive Proposal and during the performance of the project must be reported on a revised MWBE Utilization Plan and submitted to OCSD for approval.
- g) ESD will review the submitted MWBE Utilization Plan and advise the Recipient of acceptance or issue a Notice of Deficiency within twenty (20) days of receipt.
- h) If a notice of deficiency is issued, Recipient agrees that it shall respond to the Notice of Deficiency within seven (7) business days of receipt by submitting to OCSD 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 Recipient and direct the Recipient to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals (Form OCSD-5, Waiver Request). Failure to file the Waiver Request in a timely manner may result in a finding that Recipient has intentionally or willfully failed to comply with the requirements of New York State Executive Law Article 15-A and the MWBE provisions outlined herein.
- i) ESD may find that Recipient has willfully or intentionally failed to meet the MWBE project requirements under the following circumstances:
1. If a Recipient fails to submit an MWBE Utilization Plan;
 2. If a Recipient fails to submit a written remedy to a Notice of Deficiency;
 3. If a Recipient fails to submit a request for waiver; or
 4. If ESD determines that the Recipient has failed to document "Good Faith Efforts."
- j) Recipient shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the project. Requests for a partial or total waiver of established goal requirements made subsequent to the execution of the Incentive Proposal may be made at any time during the term of the project to ESD, but must be made no later than prior to the submission of a request for final payment on the project.
- k) The Recipient 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% 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

Periodic compliance and payment reports may be submitted electronically through the New York State Contract System, found at <https://ny.newnycontracts.com>. The New York State Contract System provides automated electronic alerts to the Recipient and any identified sub-contractors and sub-vendors and allows for the electronic reporting and confirmation of the relevant data by all tiers of identified subcontractors. Payment information and confirmation must be submitted by the 10th day following the end of each month or quarter, as applicable. For additional information regarding this process, please contact OCSD.

Periodic compliance and payment reports may also be completed manually (Form OCSD-6, MWBE Compliance & Payment Report) and submitted to OCSD or the assigned OCSD Project Manager.

- l) “Good Faith Efforts” is the standard applied to the MWBE participation requirements in all applicable ESD incentives. Recipients shall adhere to this standard and ensure that proactive and ongoing efforts are made throughout the length of the project to include MWBE participation in all categories where MWBE participation potential exists. In order for OCSD to evaluate “Good Faith Efforts”, Recipients must maintain detailed records of its efforts to include MWBEs in the performance of the project.

For additional details regarding “Good Faith Efforts,” please review 5 NYCRR §142.8 (MWBE Rules and Regulations), available at:

http://esd.ny.gov/MWBE/Data/OFFICIAL_COMPILATION_OF_MWBEREGS.pdf

- m) Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Recipient must document “Good Faith Efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the project. The Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals and requirements set forth herein, such a finding may result in the recapture of grant proceeds. Such MWBE Recapture may be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Recipient achieved the MWBE project goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the project.
- n) Recipient’s demonstration of Good Faith Efforts shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, other applicable federal, state or local laws.

Any questions relating to the MWBE requirements stated herein may be directed to OCSD at kelly.forsey@esd.ny.gov. Recipient may also address any inquiries relating to the above MWBE requirements to the respective OCSD Project Manager.

Forms OCSD-1 through OCSD-6 may be completed by hand, or fillable Word versions are available upon request. Documents relating to MWBE requirements outlined herein must be provided to OCSD in one of the following ways:

1. In an email to kelly.forsey@esd.ny.gov;
2. Through the New York State Contract System (<https://ny.newnycontracts.com>); or
3. By postal mail, addressed to:
Empire State Development
Office of Contactor & Supplier Diversity
633 Third Avenue, 35th Floor
New York, NY 10017

All communications to OCSD must clearly identify the ESD project number and provide pertinent details.

PARTICIPATION REQUIREMENTS FOR NEW YORK STATE CERTIFIED SDVOBS

ESD is required to comply with and implement the provisions of New York State Executive Law Article 17-B and 9 NYCRR Part 252 (SDVOB Regulations) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

Approval of funding by ESD, a public benefit corporation of the State of New York, is conditioned upon and subject to the following requirements:

- a) Recipient agrees to fully comply and cooperate with ESD in the implementation of New York State Executive Law Article 17-B. These requirements include contracting opportunities for *New York State certified* Service-Disabled-Veteran-owned Business Enterprises (SDVOBs).
- b) For purposes of this project, ESD hereby establishes the following SDVOB participation requirements:

Overall SDVOB Participation Requirement: 2% (totaling no less than \$30,000)

- c) For purposes of providing meaningful participation by SDVOBs on the project and achieving the project goals established herein, Recipient should reference the directory of New York State certified SDVOBs found at the following internet address:

<https://online.ogs.ny.gov/SDVOB/search>

Additionally, Recipient may contact ESD's Office of Contractor and Supplier Diversity ("OCSD") to discuss additional methods of maximizing participation by SDVOBs on the project.

- d) Recipient is required to submit a SDVOB Utilization Plan (Form OCSD-4) no later than ten (10) days after the execution of this Incentive Proposal.
 - If additional time is required to prepare an acceptable and effective SDVOB Utilization Plan, the Recipient may submit a written extension request to OCSD or the assigned OCSD Project Manager. The extension request must explain why additional time is needed and provide an estimated date of submission for the SDVOB Utilization Plan.
 - Any modifications or changes to the SDVOB Participation Plan after the execution of this Incentive Proposal and during the performance of the project must be reported on a revised SDVOB Utilization Plan and submitted to OCSD for approval.
- e) ESD will review the submitted SDVOB Utilization Plan and advise the Recipient of acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- f) If a notice of deficiency is issued, Recipient agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD 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 Recipient and direct the Recipient to submit, within five (5) business days, a request for a partial or total waiver of SDVOB participation goals (Form OCSD-5, SDVOB Waiver Form). Failure to file the waiver request in a timely manner may result

in a finding that Recipient has intentionally or willfully failed to comply with the requirements of Article 17-B of the Executive Law and the SDVOB provisions outlined herein.

- g) ESD may find that Recipient has willfully or intentionally failed to meet the SDVOB project requirements under the following circumstances:
1. If a Recipient fails to submit a SDVOB Utilization Plan;
 2. If a Recipient fails to submit a written remedy to a Notice of Deficiency;
 3. If a Recipient fails to submit a request for waiver; or
 4. If ESD determines that the Recipient has failed to document "Good Faith Efforts".
- h) Recipient shall attempt to utilize, in good faith, any SDVOB identified within its SDVOB Utilization Plan, during the performance of the project. Requests for a partial or total waiver of established goal requirements made subsequent to the execution of the Incentive Proposal may be made at any time during the term of the project to ESD, but must be made no later than prior to the submission of a request for final payment on the project.
- i) Recipient is required to submit a periodic SDVOB Compliance and Payment Report to OCSD by the 10th day following each end of month, for construction contracts in excess of \$100,000, or quarter, for services and commodities contracts in excess of \$25,000, over the term of the project documenting the progress made toward achievement of the project goals.

Periodic compliance and payment reports may be submitted electronically through the New York State Contract System, found at <https://ny.newnycontracts.com>. The Contract System provides automated electronic alerts to the Recipient and any identified sub-contractors and sub-vendors and allows for the electronic reporting and confirmation of the relevant data by all tiers of identified subcontractors. For additional information regarding this process, please contact OCSD. Compliance and payment reports may also be completed manually (Form OCSD-6, SDVOB Compliance & Payment Report) and submitted to OCSD or the assigned OCSD Project Manager.

- j) "Good Faith Efforts" is the standard applied to the SDVOB participation requirement in all applicable ESD incentives. Recipients shall adhere to this standard and ensure that proactive and ongoing efforts are made throughout the length of the project to include SDVOB participation in all categories where SDVOB participation potential exists. In order for OCSD to evaluate "Good Faith Efforts", Recipients must maintain detailed records of its efforts to include SDVOBs in the performance of the project.

For additional details regarding Good Faith Efforts, please review section [252.2\(m\) of NYCRR 9 \(SDVOB Rules and Regulations\)](#), found at: <https://ogs.ny.gov/Veterans/>

- k) Where SDVOB goals have been established herein, pursuant to 9 NYCRR § 252.2 (m), Recipient must document "Good Faith Efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the project. The Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the SDVOB participation goals and requirements set forth herein, such a finding may result in the recapture of grant proceeds. Such SDVOB Recapture may be calculated as an amount equaling the difference between: (1) all sums identified for payment to SDVOBs had the Recipient achieved

the SDVOB project goals; and (2) all sums actually paid to SDVOBs for work performed or materials supplied under the project.

- I) Recipient's demonstration of Good Faith Efforts shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, other applicable federal, state or local laws.

Any questions relating to the SDVOB requirements stated herein may be directed to ESD's Office of Contractor and Supplier Diversity at kelly.forsey@esd.ny.gov. Recipient may also address any inquiries relating to the above SDVOB requirements to the assigned OCSD Project Manager.

Forms OCSD-1 through OCSD-6 may be completed by hand. Documents relating to the SDVOB requirements outlined herein must be provided to OCSD in one of the following ways:

1. In an email to kelly.forsey@esd.ny.gov or
2. the New York State Contract System (<https://ny.newnycontracts.com>) or
3. through postal mail, addressed to:

Empire State Development
Office of Contactor & Supplier Diversity
633 Third Avenue, 35th Floor
New York, NY 10017

All communications to OCSD must clearly identify the ESD project number and provide pertinent details.



OCSD-1 M/WBE AND SDVOB PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

I, _____ (CONTRACTOR OR GRANT REPRESENTATIVE),
the _____ (GRANTEE/COMPANY NAME)
agree to adopt the following policies with respect to the project being developed or services rendered at
_____.

NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
(c) At the request of the ESD, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
(d) Organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors shall 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.
(e) The organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this contract.

MWBE PARTICIPATION (MWBE)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.



OCSD-1 M/WBE AND SDVOB PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

- (2) Request a list of State-certified M/WBEs from ESD's Office of Contractor and Supplier Diversity ("OCSD") and solicit bids from the listed vendors directly. OCSD may be reached via email at OCSD@ESD.NY.GOV.
(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
(4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
(5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

SDVOB PARTICIPATION (SDVOB)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the SDVOB contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified SDVOBs, including solicitations to contractor associations.
(2) Request a list of State-certified SDVOBs from ESD's Office of Contractor and Supplier Diversity ("OCSD") and solicit bids from the listed vendors directly. OCSD may be reached via email at OCSD@ESD.NY.GOV.
(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective SDVOBs.
(4) Where feasible, divide the work into smaller portions to enhanced participations by SDVOBs and encourage the formation of joint venture and other partnerships among SDVOB contractors to enhance their participation.
(5) Document and maintain records of bid solicitation, including those to SDVOBs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting SDVOB contract participation goals.
(6) Ensure that progress payments to SDVOBs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage SDVOB participation.

Agreed on this _____ day of _____ 20_____.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____



OCSD-1 M/WBE AND SDVOB PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

Minority & Women-owned Business Enterprise-Equal Employment Opportunity Liaison

_____ (name of designated contractor/grantee liaison) is designated as the Minority and Women-owned Business Enterprise Liaison responsible for administering the Minority and Women-owned Business Enterprises-Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

- _____ % Minority Business Enterprise Participation
- _____ % Women’s Business Enterprise Participation
- _____ % **TOTAL/OVERALL M/WBE Participation Goal**

EEO Contract Goals

- NOT APPLICABLE % Minority Labor Force Participation
- NOT APPLICABLE % Female Labor Force Participation

SDVOB Contract Goals

- _____ % Service Disabled Veteran Business Participation

(Signature of Contractor’s Authorized Representative)

- *Name: _____
- *Company: _____
- *Title: _____
- *Phone: _____
- *Fax: _____
- *Address: _____



OCSD-2

STAFFING PLAN

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

Submit with Bid or Proposal – Instructions on page 2

Contract No.:	Project Location:	Report includes Prime Contractor/Subcontractors: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor Subcontractor Name(s):
Contract Name / Details:		
Company Name: Company Address and Contract Details:		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran				
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		(M)	(F)	(M)	(F)	
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		

PREPARED BY (Signature):	NAME:	ALTERNATE TEL:
DATE:	TITLE:	EMAIL:
	TELEPHONE:	OTHER:



OCSD-2

STAFFING PLAN

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

General Instructions: All Contractors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (Form OCSD-2) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form for the contractor's and/or Subcontractor's total work force.

Instructions:

- 1. Enter the Contract or Solicitation number that this report applies to along with the name and address of your company or organization.
2. Check off the appropriate box to indicate if the Contractor completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Contractor's total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name and contact details of the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION:

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- WHITE (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
BLACK a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
HISPANIC a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
ASIAN & PACIFIC ISLANDER a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE) a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES:

- DISABLED INDIVIDUAL any person who: - has a physical or mental impairment that substantially limits one or more major life activity(ies)
- has a record of such an impairment; or
- is regarded as having such an impairment.
VIETNAM ERA VETERAN a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
GENDER Male or Female



Instructions for Submitting the Workforce Utilization Report

The Workforce Utilization Report (“Report”) is to be submitted on a monthly basis for construction contracts, and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor’s and/or subcontractor’s total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor’s and/or subcontractor’s total workforce, information on the contractor’s and/or subcontractor’s total workforce shall be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to ESD within ten (10) days of the end of each month or quarter, whichever is applicable.

Instructions for Completing the Workforce Utilization Report

1. Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. Enter the number of the contract that the Report applies to along with the name and address of the contractor or subcontractor for which the Report has been prepared.
3. Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report.
4. Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor’s or subcontractor’s total workforce.
5. Verify that job titles are provided under the column titled “SOC Job Title” for each employee whose work will be reflected on the Report. If a necessary job title is not included, please add the corresponding job category, title and corresponding job code to the “EEO 1 Job Categories” “SOC Job Title” and “SOC Job Code” columns from the list of job categories, SOC titles, and SOC codes reflected on the attached Classification Guide.
6. In the first group of boxes, identify the number of hours worked by persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
7. In the second group of boxes, identify the number of persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
8. Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

Race/Ethnic Identification

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to



OCSD-3A

Workforce Utilization Report Instruction Sheet

belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Resources

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact the Office of Contractor and Supplier Diversity (OCSD) at OCSD@esd.ny.gov.



OCSD-4

MWBE AND SDVOB UTILIZATION PLAN

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE and SDVOB Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) and/or Service Disabled Veteran Owned Business (SDVOB) under the contract. Attach additional sheets if necessary.

*** indicates mandatory fields**

* Contractor Name: _____

* Representative Name: _____

* Phone: _____

* Fax: _____

* Email: _____

* Total Dollar Value of Contract/Grant: \$_____

Address: _____

Town, State & Zip: _____

* ESD Contract/Project Number: _____

RFP/RFQ/Solicitation Number: _____

* MWBE Goal: MBE _____% + WBE _____% = MWBE GOAL _____%

* SDVOB Goal: _____%

1. * Certified MWBE or SDVOB Firm Name, Contact Person's Name, Address, Phone and Email.	2. * Check All That Apply	3. * Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary, Attach Contract if available)	5. Dollar Value of Contract (if unavailable or yet undetermined, indicate \$1)
A.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			
B.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			



OCSD-4

6. If unable to fully meet the MWBE and/or SDVOB goals set forth in the contract, the Contractor must submit a Waiver Request form, which may be obtained from the Office of Contractor and Supplier Diversity, at OCSD@ESD.NY.GOV.

PREPARED BY (Signature): _____ DATE: _____
Preparer's Name (Print or Type): _____
Preparer's Title: _____
Date: _____

TELEPHONE NO.: _____ EMAIL ADDRESS: _____

**** FOR OCSD USE ONLY ****

REVIEWED BY: _____ DATE: _____

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLES 15-A AND 17-B, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

UTILIZATION PLAN APPROVED?
 YES NO Date: _____

Contract No.: _____
Project No. (if applicable): _____
Contract Award Date: _____
Estimated Date of Completion: _____
Amount Obligated Under the Contract: _____
Description of Work: _____

NOTICE OF DEFICIENCY ISSUED?
 YES NO Date of Issue: _____

NOTICE OF ACCEPTANCE ISSUED?
 YES NO Date of Issue: _____

The MWBE Certification status of the firms listed on this form **MUST** be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises.

This directory is available at <https://ny.newnycontracts.com>.

The SDVOB Certification status of the firms listed on this form **MUST** be verified using the Directory of New York State Certified Service-Disabled Veteran-Owned Businesses.

This directory is available at <https://online.ogs.ny.gov/SDVOB/search>.



Request for Waiver	
Grantee / Contractor Name:	Fed ID No.:
Full Address:	Contract / Project Number:
Project Details (Project Name, Project Location):	Have you Previously submitted a Waiver Request? (YES/NO)
Current Contract Value:	MWBE Goal: MBE % + WBE % Overall MWBE Goal: % SDVOB Goal: %

By submitting this form and the required information, the Contractor certifies that every "Good Faith Effort" has been taken to promote MWBE and SDVOB participation pursuant to the MWBE and SDVOB requirements set forth under the contract. Review [5 NYCRR § 142.8](#) and [9 NYCRR § 252](#), Contractor's Good Faith Efforts, for the precise definition of "Good Faith Effort." Failure to adequately demonstrate Good Faith Efforts will result in a denial of your Waiver Request. It is the Contractor's responsibility to ensure that adequate, clear and complete information is presented to the Office of Contractor and Supplier Diversity ("OCSD").

***UTILIZATION VALUE MET:**

MBE: \$ _____ | WBE: \$ _____ | SDVOB: \$ _____

***CONTRACTOR IS REQUESTING :**

- MBE Waiver** – A waiver of the MBE Goal for this procurement is requested.
REQUESTED MBE GOAL: _____%
- WBE Waiver** – A waiver of the WBE Goal for this procurement is requested.
REQUESTED WBE GOAL: _____%
- OVERALL MWBE Waiver** – A waiver of the MWBE Goal for this procurement is requested.
REQUESTED MWBE GOAL: _____%
- SDVOB Waiver** – A waiver of SDVOB Participation Goal for this procurement is requested.
REQUESTED SDVOB GOAL: _____%

PREPARED BY (Signature): _____ Date: _____

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT THAT IT HAS MADE GOOD FAITH EFFORTS, PURSUANT TO 5 NYCRR §142.8 AND/OR 9 NYCRR §252, TO INCLUDE THE PARTICIPATION OF NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES AND SERVICE DISABLED VETERAN OWNED BUSINESSES IN THE ABOVE PROJECT OR CONTRACT. CONTRACTOR HEREBY AGREES TO PROVIDE ANY AND ALL RELEVANT DOCUMENTATION IN SUPPORT OF THE DEMONSTRATION OF ITS GOOD FAITH EFFORTS AND ACKNOWLEDGES THAT IT HAS PROVIDED WITH THIS WAIVER REQUEST ALL AVAILABLE DOCUMENTATION SUPPORTING ITS GOOD FAITH EFFORTS.

*Name and Title of Preparer:	*Telephone Number:	*Email:
-------------------------------------	---------------------------	----------------



Contractor's Good Faith Efforts

- (a) Contractors must document their good faith efforts toward utilizing certified firms, including but not limited to, those identified within a utilization plan. Such documented efforts, shall include, at a minimum:
- (1) Copies of its solicitations of certified firms enterprises and any responses thereto;
 - (2) If responses to the contractor's solicitations were received, but a certified firm was not selected, the specific reasons that such firm was not selected;
 - (3) Copies of any advertisements for participation by certified firms timely published in appropriate general circulation, trade, MWBE and SDVOB oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
 - (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified firms enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
 - (5) 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 firms.
- (b) In addition to the information provided by the contractor in subdivision (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
- (1) where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontract or supplier opportunities in the contract;
 - (2) the number of certified firms in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
 - (3) the actions taken by the contractor to contact and assess the ability of certified firms located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
 - (4) whether the contractor provided relevant plans, specifications or terms and conditions to certified firms sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
 - (5) the terms and conditions of any subcontract or provision of suppliers offered to certified firms and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;
 - (6) whether the contractor offered to make up any inability to comply with the certified firms goals in the subject State contract in other State contracts being performed or awarded to the contractor;
 - (7) the extent to which contractor's own actions, including but not limited to, any failure by contractor to discharge contractor's duties pursuant to this Part, Articles 15-A or 17-B of the Executive Law, contributed to contractor's inability to meet the maximum feasible portion of the contract goals;
 - (8) whether the contractor knowingly utilized one or more certified firms, in the performance of the subject State contract, that contractor knew or reasonably should have known could not perform a commercially useful function.



- (9) whether the contractor submitted compliance reports, which identified certified firms that contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned. and
- (10) any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.

<p>Submit with the bid or proposal or if submitting after award submit to:</p> <p>Empire State Development Office of Contractor and Supplier Diversity 633 Third Avenue, 35th Floor New York, New York 10017</p>	***** FOR OCSD USE ONLY *****	
	REVIEWED BY:	DATE:
	<p>Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/> SDVOB: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____</p> <p>* <u>Comments:</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	



OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

OCSD-6

MWBE AND SDVOB COMPLIANCE AND PAYMENT REPORT

CONTRACTOR/GRANTEE: _____
 ADDRESS: _____
 TOWN/COUNTY/ZIP: _____
 CONTACT PERSON: _____
 TELEPHONE: _____
 EMAIL: _____

ESD OCSD REPRESENTATIVE: _____
 CONTRACT/PROJECT NAME: _____
 CONTRACT/PROJECT #: _____
 PROJECT START DATE: _____
 PERCENT COMPLETE: _____
 ACTUAL COMPLETION DATE: _____

REPORTING PERIOD: Monthly for the Month of: (Month) (Year)
 Quarterly (Check Applicable): Quarter 1 (4/1-6/30) | Quarter 2 (7/1-9/30) | Quarter 3 (10/1-12/31) | Quarter 4 (1/1-3/31)

Attach MWBE and SDVOB executed contracts, wire transfer confirmations and cancelled checks as proof of payment to the identified MWBEs and SDVOBs. This report should be completed and signed by an officer of the Reporting Company. Attach additional sheets if necessary.

PRIME CONTRACTOR, if different from above (Name, Address, Contact Person, Title and Phone # with area code)	PRIME CONTRACT AMOUNT	MWBE or SDVOB SUBCONTRACTOR (Name, Address, Contact Person, Title and Phone # with area code)	NYS CERTIFICATION (Check One)	DESCRIPTION OF SERVICES	CONTRACT AMOUNT	PAYMENTS PREVIOUSLY REPORTED	PAYMENTS ON CURRENT REPORT	TOTAL PAYMENTS TO DATE
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$	\$	\$	\$

CERTIFICATION: I, _____ (Print Name), the _____ (Title) of the Reporting Company above, do certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief, the information contained herein is complete and accurate.

SIGNATURE: _____ DATE: _____

Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.



Exhibit G-6

MWBE AND SDVOB COMPLIANCE AND PAYMENT REPORT

SUBMIT REPORT TO: Office of Contractor and Supplier Diversity
 Empire State Development
 633 Third Avenue, 35th Floor
 New York, NY 10017

Completed forms may be emailed directly to OCSD at ocsd@esd.ny.gov. All email submissions must include ESD's project/contract number(s), and the name and contact information of the individual or firm submitting the information.

QUESTIONS? Please contact the OCSD's Compliance Managers or email the office at ocsd@esd.ny.gov.

Danielle Adams	Danah Alexander	Kelly Forsey	Jordan Kaplan	Denise Ross
(518) 474-2569	(212) 803-3244	(716) 846-8238	(212) 803-3659	(212) 803-3226
Danielle.Adams@esd.ny.gov	Danah.Alexander@esd.ny.gov	Kelly.forsey@esd.ny.gov	Jordan.kaplan@esd.ny.gov	Denise.Ross@esd.ny.gov
R E G I O N S :				
Capital District Mohawk Valley SUNY Poly Portfolio Department of Economic Development ESD Procurement Contracts ESD Subsidiaries – CCDC, QWDC, LMDC, ESNMC	North Country NYC- Brooklyn, Bronx, Queens Long Island ESD Subsidiaries – HCDC, MSDC	Finger Lakes Western New York ESD Subsidiaries – ECHDC, USA Niagara	Central NY Southern Tier ESD Subsidiary – AYCDC	Mid-Hudson NYC- Manhattan Staten Island