

Buffalo Urban Development Corporation

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Buffalo Urban Development Corporation
Board of Directors Meeting

Date: Tuesday, January 25, 2022
Via Conference Call
Time: 12 Noon

1.0 CALL TO ORDER

2.0 READING OF THE MINUTES *(Action) (Enclosure)*

3.0 MONTHLY FINANCIAL REPORTS

3.1 Finance Update & Audit Plan for Year Ended December 31, 2021 *(Information)*

4.0 NEW BUSINESS

4.1 Northland Central - Manna Culinary Second Lease Amendment *(Action)(Enclosure)*

4.2 308 Crowley Project - Land Sale to Enterprise Folding Box Co., Inc. *(Action)(Enclosure)*

4.3 308 Crowley Project Update *(Information)*

4.4 Cammarata Consulting, LLC Agreement Renewal *(Information)*

4.5 Buffalo Lakeside Commerce Park - Project Update *(Information)*

4.6 Ralph C. Wilson, Jr. Centennial Park - Project Update *(Information)*

4.7 Northland Beltline Corridor Update *(Information)*

4.8 Race For Place Project Update *(Information)*

5.0 LATE FILES

6.0 TABLED ITEMS

7.0 EXECUTIVE SESSION

8.0 ADJOURNMENT *(Action)*

Hon. Byron W. Brown, Chairman of the Board • Dennis Penman, Vice Chairman • Brandye Merriweather, President
Rebecca Gandour, Executive Vice President • Mollie Profic, Treasurer • Atiqa Abidi, Assistant Treasurer • Kevin J. Zanner, Secretary

**Minutes of the Meeting
of the
Board of Directors
of
Buffalo Urban Development Corporation**

Via Video Conference Call & Live Stream Audio

**December 21, 2021
12:00 p.m.**

Directors Present:

Mayor Byron W. Brown (Chair)
Trina Burruss
Daniel Castle
James W. Comerford
Janique S. Curry
Dennis W. Elsenbeck
Darby Fishkin
Dottie Gallagher
Thomas Halligan
Thomas A. Kucharski
Brendan R. Mehaffy
Dennis M. Penman (Vice Chair)
Darius G. Pridgen
Maria R. Whyte

Directors Absent:

Michael J. Finn
Kimberley A. Minkel
David J. Nasca

Officers Present:

Brandye Merriweather, President
Rebecca Gandour, Executive Vice President
Mollie M. Profic, Treasurer
Kevin J. Zanner, Secretary
Atiqa Abidi, Assistant Treasurer

Guests Present: Cristina Cordero, Gardiner & Theobald; Alexis M. Florczak, Hurwitz & Fine, P.C.; Ellen E. Grant, Deputy Mayor, City of Buffalo; Kevin Gulvin, Gardiner & Theobald; Arthur Hall, BUDC Senior Project Manager; Lisa Hicks, Office of Strategic Planning; Jamee Lanthier, ECIDA Compliance Officer; and Antonio Parker, BUDC Project Manager.

- 1.0** **Roll Call** – Mayor Brown called the meeting to order at 12:06 p.m. The Secretary called the roll, and a quorum of the Board was determined to be present. Ms. Burruss and Mr. Halligan joined the meeting prior to the presentation of agenda item 3.1. Agenda item 4.5 was presented prior to agenda items 4.1 and 4.2.

The meeting was held via Zoom in accordance with the provisions of Part E of Chapter 417 of the Laws of 2021, which amended Article 7 of the Public Officers Law to authorize public entities to conduct meetings and take such action authorized by law without permitting in public in-person access to meetings and to authorize such meetings to be held remotely by conference call or similar service,

provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

- 2.0 Approval of Minutes – Meeting of November 30, 2021** – The minutes of the November 30, 2021 meeting of the Board of Directors were presented. Ms. Gallagher made a motion to approve the meeting minutes. The motion was seconded by Ms. Curry and unanimously carried (12-0-0).

Following the presentation and approval of the minutes, Mayor Brown recognized Mr. Comerford for his service to the City of Buffalo and as a member of the Board of Directors and wished him well in his retirement. Mayor Brown also informed the Board that Mr. Hall is leaving BUDC for the private sector and thanked him for his contributions as BUDC Senior Project Manager.

3.0 Monthly Financial Reports

- 3.1 683 Northland Master Tenant, LLC Financial Statements** – Ms. Profic presented for information purposes the financial statements for 683 Northland Master Tenant, LLC for the period ending November 30, 2021.

- 3.2 BUDC Consolidated Financial Statements** – Ms. Profic presented the consolidated financial statements for BUDC and its affiliates, 683 Northland LLC and 683 WTC, LLC for the period ending November 30, 2021. Mr. Kucharski made a motion to accept the BUDC consolidated financial statements. The motion was seconded by Mr. Comerford and unanimously carried (14-0-0).

4.0 New Business

- 4.1 Ralph C. Wilson, Jr. Centennial Park – Gardiner & Theobald CD Phase Cost Estimate** – Mr. Parker presented his December 21, 2021 memorandum regarding a proposed change order to the Gardiner & Theobald agreement. The change order is for a cost estimate at the 50 percent construction document (CD) phase of the project in the amount of \$50,000. These services are recommended by the Centennial Park project team, which includes Gardiner & Theobald, BUDC and the City of Buffalo and are necessary to ensure the project is completed within its current budget. This item was reviewed by the Downtown Committee at its December 15, 2021 meeting and recommended for Board approval. Following Mr. Parker's presentation, Mr. Mehaffy made a motion to: (i) approve an amendment to the agreement in order for Gardiner & Theobald to provide the Construction Documents Cost Estimate in the amount of \$50,000; and (ii) authorize the President or Executive Vice President to execute such documents and take such actions as may be necessary to implement this action. The motion was seconded by Mr. Pridgen and unanimously carried (14-0-0).

- 4.2 Ralph C. Wilson, Jr. Centennial Park – Gardiner & Theobald Contract Extension Amendment** – Mr. Parker presented his December 21, 2021 memorandum regarding a proposed amendment to the Gardiner & Theobald agreement. The initial agreement, approved by the BUDC Board on November 26, 2019, provided for Gardiner & Theobald's project and cost management services through December 2021. An amendment to the agreement in the amount of \$1,885,000 is requested for Gardiner & Theobald to continue its services through the procurement and construction phases of the project. This item was reviewed by the Downtown Committee at its December 15, 2021 meeting and recommended for Board approval. Following Mr. Parker's presentation, Mr. Mehaffy made a motion to: (i) approve the amendment to the Agreement to extend Gardiner & Theobald's project and cost management services through the procurement and construction phases of the Centennial Park project in the amount of \$1,885,000; and (ii) authorize the President or Executive Vice President to execute such documents and take such actions as

may be necessary to implement this action. The motion was seconded by Mr. Penman and unanimously carried (14-0-0).

4.3 Buffalo Lakeside Commerce Park– Property Owners Association – Ms. Gandour presented her December 21, 2021 memorandum regarding the proposed governance structure for Buffalo Lakeside Commerce Park Property Owners Association, Inc (POA). Following Ms. Gandour's presentation, Mr. Kucharski made a motion to: (i) approve the proposed slate of Directors and Officers for the POA; (ii) authorize the calling of a membership meeting of the POA for the purpose of electing the POA Board of Directors; and (iii) authorize the calling of a POA Board of Directors meeting for the purpose of electing officers. The motion was seconded by Ms. Burruss and unanimously carried (14-0-0).

4.4 Buffalo Lakeside Commerce Park – Project Update – Ms. Gandour reported that the Zephyr Investors project continues to move forward. It is anticipated that the multi-party agreement approved by the Board at the November meeting will be executed soon.

4.5 Ralph C. Wilson, Jr. Centennial Park – Project Update – Ms. Gandour reported that representatives from Gardiner & Theobald team presented a detailed project update at the December 15, 2021 meeting of the Downtown Committee, which included a report that the schematic design and design development phases have been completed, and that the project team is currently at the 50% completion mark for the construction documents phase. Coordination with Harbor Pointe HOA has continued, and two options have been presented with respect to the grading and flooding conditions in the area. Ms. Gandour also noted that the work completed by the Army Corp of Engineers on the shoreline has held up well, even with respect to recent inclement weather. Ms. Gandour also noted that representatives from Gardiner & Theobald were available to address any questions regarding the project.

4.6 Northland Beltline Corridor Update – Mr. Hall presented the Northland Beltline Corridor Project update as follows:

Northland Central – NWTC/ESD/BUDC Memorandum of Understanding: The report on the inventory update has not yet been made available but will be reviewed once received.

683 Northland: GURF #20 in the amount of \$47,272.85 is under review by ESD, and it is anticipated that a response will be received soon.

Solar Microgrid (Substation): Frey and BUDC recently met to discuss clean energy and community benefit standards. Testing has been completed on the substation and cleaning of debris is expected to move forward shortly.

Management/Maintenance: Bank on Buffalo continues to move forward with the design for its 683 Northland location and is anticipated to open in January 2022. The Mancuso Group has scheduled a tenant meeting for January 26, 2022. Garwood Medical has installed the red shed ramp and railing gate. The Mancuso Group has selected Fox Fence to restore and repair the gate at 631 Northland. Murals by Albright Knox at the Chelsea lot at 714 Northland have been completed. The landscaping/snow removal contractor (Landscape Associates) has transitioned its services to snow removal.

Build Back Better Grant Update: Western New York was selected as a finalist in the Build Back Better grant competition and will compete in the second stage of the competition for additional grant funding.

Northland Video Series (“A Neighborhood of Opportunity Video”): Sandy White and her marketing team have scheduled meetings with videographers to capture video footage and drone shots of the Northland Corridor. There will be four videos which are currently being edited.

- 4.7 **Race for Place Project Update** – Ms. Merriweather presented an update regarding the Race for Place initiative. Review of proposals for the Smart Corridor RFP issued by the City of Buffalo are underway. Go Bike Buffalo, Wendel and others are exploring implementation options with respect to the Ellicott Street Placemaking Strategy. A Loan Committee meeting will be rescheduled for January to discuss proposed changes to the BBRP loan program. The holiday edition of Queen City Pop-Up recently wrapped up and was very successful for the participating small businesses.
- 4.8 **308 Crowley Project Update** – Mr. Parker reported that Regional Environmental Demolition continues to work through the SHPO process. The phase 2 demolition work is anticipated to begin in early January. Ms. Merriweather added that BUDC counsel continues to work through the appraisal process with respect to the sale of another parcel of land to Enterprise Folding Box.
- 5.0 ^{*} **Late Files** – None.
- 6.0 **Tabled Items** – None.
- 7.0 **Executive Session** – None.
- 8.0 **Adjournment** – There being no further business to come before the Board, upon motion made by Mr. Comerford and seconded by Ms. Fishkin, the December 21, 2021 Board of Directors meeting was adjourned at 12:47 p.m.

Respectfully submitted,

Kevin J. Zanner, Secretary

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Item 4.1

MEMORANDUM

TO: BU DC Board of Directors

FROM: Rebecca Gandour, Executive Vice President

RE: Northland Central - Manna Culinary Second Lease Amendment

DATE: January 25, 2022

At the September 24th, 2019 meeting of the Board of Directors, the Board authorized BU DC to enter into a lease with Manna Culinary Group Inc. (Manna @ Northland) for the 3,921+/- square feet of restaurant space at Northland Central (683 Northland). An amendment to the lease was approved by the BU DC Real Estate Committee at its September 22, 2020 meeting.

In December of 2021, BU DC and Mancuso Business Development Group, received a request from Manna @ Northland for an additional lease amendment. The COVID-19 pandemic has had devastating impacts on the restaurant and hospitality industry and has resulted in a significant decrease in anticipated revenues, specifically within the catering services for Manna @ Northland. The business plan that was completed for Manna @ Northland during the summer of 2019 was highly dependent on high level of occupancy within the building and significant revenue from catering events. As a direct result of the pandemic, both revenue drivers have been severely impacted. Despite the many challenges, Manna @ Northland has established themselves as an anchor within the community.

Mancuso Business Development reviewed the request and is recommending that monthly lease payments be reduced to \$1,300 per month from January 1, 2022 to October 31, 2024. The total reduction in payments over the term of the lease is estimated to be \$43,600 and requires BU DC Board approval consistent with the BU DC Northland Leasing Policy.

The BU DC Real Estate Committee reviewed this item during their January 18th, 2022 meeting and is recommending approval.

Hon. Byron W. Brown, Chairman of the Board • Dennis Penman, Vice Chairman • Brandye Merriweather, President
Rebecca Gandour, Executive Vice President • Mollie Profic, Treasurer • Atiqa Abidi, Assistant Treasurer • Kevin J. Zanner, Secretary

ACTION:

We are requesting that the BUDC Board of Directors approve a lease amendment with Manna Culinary Group Inc. (Manna @ Northland) consistent with the terms outlined in this memorandum and to authorize the President or Executive Vice President to execute the lease amendment on behalf of 683 Northland Master Tenant, LLC.

Hon. Byron W. Brown, Chairman of the Board • Dennis Penman, Vice Chairman • Brandy Merriweather, President
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Item 4.2

MEMORANDUM

TO: BUDC Board of Directors
FROM: Brandye Merriweather, President
SUBJECT: Sale of Vacant Land at 308 Crowley to Enterprise Folding Box Co., Inc.
DATE: January 25, 2022

BUDC's core mission includes the acquisition of brownfield and distressed properties and the re-positioning of these properties for future redevelopment and a return to productive use. To that end, BUDC and the Mayor's Office of Strategic Planning previously identified the former manufacturing complex located at 308 Crowley Avenue in the Riverside section of the City of Buffalo as a strategic brownfield acquisition for BUDC. In June of 2018, BUDC acquired the site through a wholly owned subsidiary limited liability company (King Crow, LLC).

The Board of Directors previously approved the sale of (i) a .91+/- acre portion of the 308 Crowley site to Enterprise Folding Box Co., Inc. ("Enterprise Folding Box") a neighboring manufacturing business located at 75 Isabelle Street, and (ii) a .655+/- acre parcel of land improved by a vacant two-story cinder block constructed building.

Enterprise Folding Box desires to purchase an additional 2.082+/- acre parcel of vacant land at the 308 Crowley site. BUDC executive staff and Enterprise Folding Box representatives negotiated the terms of a Land Sale Agreement, with a proposed purchase price for the parcel in the amount of \$60,000.00. As part of the transaction, the purchaser will pay a \$5,000 deposit upon execution of the Land Sale Agreement, with the deposit to become non-refundable after expiration of an abbreviated due diligence period. The property is being sold in as-is condition. An appraisal of the property was also obtained, which valued the parcel at less than the proposed purchase price. The Real Estate Committee reviewed the proposed sale transaction at its January 18, 2022 meeting and is recommending that the Board of Directors adopt the attached resolution to approve the sale of the Real Property to Enterprise Folding Box.

ACTION:

We are requesting that the Board of Directors adopt the attached Resolution to approve the sale of a 2.082+/- acre parcel at 308 Crowley to Enterprise Folding Box Co., Inc.

Hon. Byron W. Brown, Chairman of the Board • Dennis Penman, Vice Chairman • Brandye Merriweather, President
Rebecca Gandour, Executive Vice President • Mollie Profic, Treasurer • Atiqa Abidi, Assistant Treasurer • Kevin J. Zanner, Secretary

**RESOLUTION OF THE BOARD OF DIRECTORS OF
BUFFALO URBAN DEVELOPMENT CORPORATION
(BUDC) TO ENTER INTO A LAND SALE AGREEMENT
WITH ENTERPRISE FOLDING BOX CO., INC. OR AN
AFFILIATED ENTITY FOR THE SALE OF
APPROXIMATELY 2.082 ACRES OF REAL PROPERTY
LOCATED AT 308 CROWLEY AVENUE IN THE CITY OF
BUFFALO, NEW YORK**

WHEREAS, BUDC is authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as amended, to relieve and reduce unemployment, promote and provide for additional and maximum employment, improve and maintain job opportunities, lessen the burdens of government and to combat community deterioration and blight, all to promote the general and public welfare of the people of the City of Buffalo; and

WHEREAS, in furtherance of these purposes, BUDC is empowered, among other things, to assist with the environmental remediation and redevelopment of brownfield sites and other environmentally distressed properties and returning such properties to productive use, and to sell or convey such properties; and

WHEREAS, in accordance with the BUDC Property Disposition Guidelines ("Guidelines") and applicable provisions of the New York Public Authorities Law ("PAL"), and subject to such exceptions and/or requirements set forth in the Guidelines and the PAL, BUDC may dispose of real property by sale, exchange, transfer, for cash, credit or other property, with or without warranty, and upon such terms and conditions as are determined by BUDC to be appropriate and reasonable and consistent with the Guidelines; and

WHEREAS, BUDC is the sole member of King Crow, LLC, a limited liability company formed by BUDC to hold title to the real property and improvements located at 308 Crowley Avenue, Buffalo, New York; and

WHEREAS, Enterprise Folding Box Co., Inc. (the "Company"), a neighboring manufacturing business located at 75 Isabelle Street adjacent to 308 Crowley, approached BUDC about acquiring an approximately 2.082 acre vacant parcel of real property located at 308 Crowley (the "Real Property"); and

WHEREAS, BUDC and the Company have negotiated a proposed purchase price for the Real Property of \$60,000.00, an amount that is greater than the appraised fair market value of the Real Property.

NOW, THEREFORE, BE IT RESOLVED BY THE BUFFALO URBAN DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. BUDC has determined that the proposed sale of the Real Property to the Company is within the purpose, mission and statutory authority of BUDC, including the provisions of the BUDC Restated Certificate of Incorporation.

Section 2. BUDC hereby approves the sale by King Crow LLC of the Real Property to the Company for the purchase price of \$60,000.00.

Section 3. The President and the Executive Vice President of BUDC are each hereby authorized to negotiate and execute a Land Sale Agreement for the sale of the Real Property to the Company, such agreement to be in a form acceptable to BUDC counsel.

Section 4. The President and Executive Vice President are each hereby authorized and directed for and in the name and on behalf of King Crow, LLC and BUDC to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses, to enforce or waive any conditions precedent to closing in the Land Sale Agreement, and to do all such further acts and things as may be necessary or, in the opinion of President or Executive Vice President acting, desirable and proper in connection with the sale and closing of the transaction to effect the purposes of these resolutions.

Section 5. These resolutions shall take effect immediately.

Dated: January 25, 2022

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Late File

MEMORANDUM

TO: BUDC Board of Directors

FROM: Rebecca Gandour, BUDC Executive Vice President

SUBJECT: Build Back Better Program Subaward - Memorandum of Understanding

DATE: January 25, 2022

The New York State Urban Development Corporation d/b/a Empire State Development (ESD) has been awarded a \$500,000 grant through the US Economic Development Administration (EDA) for Phase 1 of the Build Back Better Regional Challenge (BBB). As part of the implementation of the EDA grant, ESD has requested that BUDC enter into the attached memorandum of understanding (MOU) to provide BUDC funding in the amount of \$46,429 to complete pre-development activities related to the Northland Corridor as part of the regional strategy to advance the manufacturing sector in WNY and prepare the Phase 2 application. BUDC staff will focus on redevelopment efforts related to 631 Northland, 537 E. Delavan and 777 Northland and upgrades to the substation at 644 Northland.

The BUDC Real Estate Committee received an update regarding the Build Back Better program at the January 18th, 2022 meeting, but the MOU was not received in time to share with the Committee. The MOU has been reviewed by BUDC staff and counsel, and based on that review, BUDC staff is recommending that the Board approve the MOU.

ACTION:

I am requesting the BUDC Board of Directors accept the \$46,429 sub-award from ESD related to the EDA Build Back Better Challenge and authorize the BUDC President or the BUDC Executive Vice President to execute the MOU and take such actions as are necessary to implement this authorization.

**BUILD BACK BETTER PROGRAM SUBAWARD
MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), dated as of January 3, 2022 is between the New York State Urban Development Corporation d/b/a the Empire State Development (“ESD”), a public benefit corporation of the State of New York with its principal place of business located at 633 Third Avenue, 37th Floor, New York, NY 10017 and the Buffalo Urban Development Corporation (the “Subrecipient”), a not-for-profit corporation formed under the laws of New York State with a principal place of business at 95 Perry Street, Buffalo, New York 14203.

WHEREAS, ESD has been awarded a \$500,000 grant (the “Prime Award”) through the US Economic Development Administration (“EDA”) for Phase 1 of the Build Back Better Regional Challenge (“BBB”) which will assist ESD and its partners complete and submit a Phase 2 application seeking federal funding to support high-tech manufacturing initiatives in Western New York; and

WHEREAS, ESD desires to grant a subaward to be a portion of the Prime Award to Subrecipient to perform services with respect to the Phase 2 BBB application in accordance with all EDA requirements, regulations and guidelines as well as other applicable law; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, EDA and Subrecipient hereby agree as follows:

1. Scope of Services and Budget. Subrecipient shall, in a satisfactory manner as determined by ESD, perform all activities described in the scope of services as approved by ESD and attached hereto as Exhibit A, as may be amended from time to time (the “Approved Services”) and in accordance with the program budget as approved attached hereto as Exhibit B, as may be amended from time to time (the “Approved Budget”).
2. Prior Approval for Changes. Subrecipient may not make any changes, directly or indirectly to the Approved Services or in the Approved Budget without the prior written approval of ESD.
3. Payment of Funds. ESD agrees to reimburse Subrecipient for costs actually incurred and paid by Subrecipient in accordance with the Approved Budget attached hereto as Exhibit B and for the performance of the Approved Services under this Agreement in an amount not to exceed \$46,429.00 (the “Total Agreement Funds”). Costs incurred shall only be as necessary and allowable to carry out the purposes and activities of the Approved Services and may not exceed the maximum limits set in the Approved Budget.
4. Compliance with Program Requirements. The activities conducted pursuant to this Agreement and all costs incurred and all expenses charged shall be in strict conformance with and subject to the following: i) BBB program requirements; ii) the

Uniform Administration Requirements, Cost Principles and Audit Requirements for Federal Awards (2 C.F.R. Part 200); iv) the Specific Award Conditions attached hereto as Exhibit C; v) all federal, state and local laws, rules and regulations; and vi) the Certifications and Assurances attached hereto as Exhibit D.

5. Invoices. Subrecipient shall submit invoices to ESD, not more often than monthly, setting forth actual expenditures of Subrecipient in accordance with this Agreement. Invoices shall be submitted in a format and with documentation supporting expenses as may be required by ESD.
6. Contingency. The payment of funds to Subrecipient under the terms of this Agreement shall be contingent on the receipt of such funds by ESD from the EDA as part of the Prime Award and shall be subject to Subrecipient's continued eligibility to receive funds under the applicable provisions of state and federal laws and the terms and conditions of the Prime Award. If the amount of funds that ESD receives as part of the Prime Award is reduced, ESD reserves the right to reduce the amount of funds awarded under, or to terminate, this Agreement.
7. Financial Management. Subrecipient shall maintain a financial management system and financial records and shall administer funds received pursuant to this Agreement in accordance with all applicable federal and state requirements, including without limitation the Uniform Administration Requirements, Cost Principles and Audit Requirements for Federal Awards (2 C.F.R. Part 200) and the Specific Award Conditions. Subrecipient shall adopt such additional financial management procedures as may from time to time be prescribed by ESD if required by applicable laws, regulations or guidelines from its federal and state government funding sources. Subrecipient shall maintain detailed, itemized documentation and records of all income received and expenses incurred pursuant to this Agreement.
8. Limitations on Expenditures. Subrecipient shall not be reimbursed or otherwise compensated for any expenditures incurred or services provided that are; i) not permitted by EDA program requirements; (ii) reasonable and necessary to carry out the work stated in the Approved Services; (iii) documented by contracts or other evidence of liability consistent with established ESD and Subrecipient procedures; and (v) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement.
9. Financial and Other Reports. Subrecipient shall submit to ESD such reports and back-up data as may be required by EDA or ESD, including without limitation such reports which enable ESD to submit its own reports to EDA. This provision shall survive the expiration or termination of this Agreement with respect to any reports which ESD or Subrecipient is required to submit to EDA following the expiration or termination of this Agreement.
10. Improper Payments. Any item of expenditure by Subrecipient under the terms of this Agreement which is found by auditors, investigators, and other authorized

representatives of ESD, EDA, the U.S. Government Accountability Office or the Comptroller General of the United States to be improper, unallowable, in violation of federal or state law or the terms of the Specific Award Conditions, or involving any fraudulent, deceptive, or misleading representations or activities of Subrecipient, shall become Subrecipient's liability, to be paid by Subrecipient from funds other than those provided by EDA under this Agreement or any other agreements between EDA and Subrecipient. This provision shall survive the expiration or termination of this Agreement.

11. **Term.** This Agreement shall terminate on December 31, 2022 and final payment request(s) under this Agreement must be received by ESD no later than thirty (30) days from the earlier of the expiration date or termination date of this Agreement. No payment request will be accepted by ESD after this date without authorization from ESD. In consideration of the execution of this Agreement by ESD, Subrecipient agrees that acceptance of final payment from ESD will constitute an agreement by Subrecipient to release and forever discharge ESD, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which Subrecipient has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement. Subrecipient's obligations to ESD under this Agreement shall not terminate until all closeout requirements are completed to the satisfaction of ESD and EDA. Such requirements shall include, without limitation, submitting final reports to EDA and providing any closeout-related information requested by ESD and EDA. This provision shall survive the expiration or termination of this Agreement.
12. **ESD Responsibilities.** ESD shall be the project lead and will be responsible for submission of the Phase 2 application to EDA in coordination with Subrecipient and other project partners. ESD shall monitor, evaluate and provide guidance and direction to Subrecipient in the conduct of Approved Services performed under this Agreement. ESD has the responsibility to determine whether Subrecipient has spent funds in accordance with applicable laws, regulations, including the federal audit requirements and agreements and shall monitor the activities of Subrecipient to ensure that Subrecipient has met such requirements. ESD may require Subrecipient to take corrective action if deficiencies are found.
13. **Cooperation.** Subrecipient shall cooperate fully with any reviews or audits of the activities under this Agreement by authorized representatives of ESD, EDA, the U.S. Government Accountability Office or the Comptroller General of the United States and Subrecipient agrees to ensure to the extent possible the cooperation of its agents, employees and board members in any such reviews and audits. This provision shall survive the expiration or termination of this Agreement.
14. **Record Retention and Access.** Subrecipient shall maintain all records, books, papers and other documents related to its performance of Approved Services under this

Agreement (including without limitation personnel, property, financial and medical records) for a period of 3 years following the date that ESD makes the last payment to Subrecipient under this Agreement, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Agreement. Subrecipient shall make all records, books, papers and other documents that relate to this Agreement available at all reasonable times for inspection, review and audit by the authorized representatives of ESD, EDA, the U.S. Government Accountability Office and the Comptroller General of the United States.

15. Independent Contractor Relationship. The relationship of Subrecipient to ESD is that of an independent contractor and not of an employee/employer. It is expressly understood that any individual performing services under this Agreement on behalf of Subrecipient shall not be deemed to be an employee or independent contractor of ESD, and such individual shall not be entitled to tax withholding, workers' compensation, unemployment compensation or any employee benefits, statutory or otherwise, from ESD. Subrecipient agrees that it is solely responsible for the reporting and payment of income, social security and other employment taxes due to the proper taxing authorities with respect to such personnel. Subrecipient agrees to indemnify, defend and hold harmless ESD and its directors, officers, employees and agents from and against any and all costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney's fees, relating to the reporting and payment of income, social security and other employment taxes and the provision of employee benefits (including but not limited to workers' compensation, unemployment insurance and health insurance coverage or assessable payments required under the Patient Protection and Affordable Care Act, P.L.111-148) with respect to such individual performing services under this Agreement on behalf of Subrecipient. This provision shall survive the expiration or termination of this Agreement.
16. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Agreement.

[Signatures appear on following page]

IN WITNESS WHEREOF, this Agreement has been duly executed by Parties as set forth below.

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION d/b/a EMPIRE STATE
DEVELOPMENT

Name:

Title:

BUFFALO URBAN DEVELOPMENT CORPORATION

Name:

Title: