



April 25, 2024

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State of New York Authority Budget Office
P.O. Box 2076
Albany, New York 12220
Via email only to: info@abo.ny.gov

RE: 90 DAY NOTICE under the Public Authority Accountability Act of 2005 for the Disposal of Property by Negotiation by the Herkimer County Industrial Development Agency for conveyance by negotiation to Marcus Ventures, Inc., a New York Corporation

Dear Sir, Madam or Designated Representative:

Pursuant to subparagraph (ii) of paragraph (d) of subdivision (6) of Section 2897 of Title 5-A of the Public Authorities Law (the "PAL"), the Herkimer County Industrial Development Agency (the "Agency") submits this letter as an explanatory Statement.

As authorized by paragraph (d) of subdivision (6) of section 2897 of Title 5-A of the PAL, the Agency intends to dispose of approximately 21.902± acres (the "Property") in the Town of Frankfort, New York (the "Agency Lands") by negotiation to Marcus Ventures, Inc. (the "Company") upon not less than ninety (90) days from the date of this notice. The location of the real property to be conveyed to the Company (the "Property") is more particularly described as lands formerly belonging to Kristine A. Russell and set forth in legal description attached hereto as Exhibit "A".

Background. The Agency is the owner of the described Lands which are located in the Town of Frankfort, Herkimer County, New York. The Agency acquired title to the parcel from Kristine A. Russell in June of 2021. The Agency took the necessary action to make the site, a vacant farm, into a shovel ready development site, including zoning approvals, engineer work, SEQRA review, together with bringing water and sewer to the site. The Property is zoned Planned Development – Commercial and is benefited by utility improvements. The site is also located across from a 930,500 square foot Tractor Supply regional distribution facility.

420 E. German Street, Box 1 Suite 101A, Herkimer, NY 13350 315-866-3000

"This institution is an equal opportunity provider, employer and lender."

The proposed Disposition is within the purpose, mission, statement and relevant statutes with respect the Herkimer County Industrial Development Agency. The Agency Land was being actively promoted as an opportunity to conduct business in Herkimer County. The Agency promotes the Agency Lands on its web-site and also advertises its business parks through New York States website called "State Book." The Agency has its business parks available on a national scale with different site selectors and realtors as well as advertising through trade shows, local mailings and banks.

The goals of the Agency include creating job opportunities in the County of Herkimer and encouraging economic development.

Justification for Conveyance By Negotiation. The Property has an estimated fair market resale value of \$18,000.00 per acre. This value is determined by a 2021 real estate appraisal prepared by Donato Real Estate Appraisal and Consulting, an independent real estate appraisal company. The appraisal company was retained to ascertain a market value for the acquisition and resale of land. In addition, comparable lands of the Agency directly across from the site have sold for \$15,000.00 per acre. The stated monetary consideration for the sale of subject 21.902± acres is \$1,300,00.00, in excess of the full market value per acre as measured by the aforementioned appraisal.

The Agency entered into a negotiated agreement with the Company following regional marketing. Public advertising for bids to ascertain a fair market value for the Disposition of the property pursuant to the general requirements of the law is not appropriate and will not be utilized due to:

- (i) The offered price greatly exceeds the value of the independent appraisal;
- (ii) Regional marketing which was utilized. It is a transparent and open process affording all prospective developers an equal opportunity to evaluate the property in question and purchase;
- (iii) A legally recognized exception allowing for property disposal by negotiation. In this case, based upon the economic development benefit of this Disposition benefitting the political subdivision and the residents of Herkimer County. The Company is able to utilize Agency lands together with contiguous land resulting in a high sale value and projected increased development potential; and

(iv) The development and promotion of a business park is not the same as the disposition of surplus property being disposed of without regard to purpose. To effectively attract a legitimate developer willing to invest a significant amount of money, cost certainty and fair treatment are paramount. The negotiated price based upon factors readily available to the public and all potential developers is most appropriate. Equally as important is the fact that the Agency can control who it sells to and maintain the integrity of the Business Park.

As a general proposition, the economic development benefit of the proposed Disposition includes attracting a regionally recognized tenant to establish a warehouse and distribution facility in a distressed area, achieve a better use of the lands, increase the tax base and derivatively trickle down money to the community in the purchase of fuels, food and personal goods.

More specifically, the Company is proposing to develop 81 acres, which includes the 21.902 acres owned by the Agency in the Town of Frankfort, to construct regional warehouse and distribution facility with a major U.S. supplier which will create jobs and support transportation.

The parties anticipate a closing shall occur on or about September 1, 2024.

Kindly direct any correspondence to the undersigned with a copy to Anthony G. Hallak, Felt Evans, LLP, 4 – 6 North Park Row, Clinton, New York 13323.

Should you have any questions or comments, please do not hesitate to call.

Sincerely,

**HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

John J. Piseck, Jr., Contracting Officer

cc: Comptroller of the State of New York
Director of the Budget of the State of New York
Commissioner, The New York State Office of General Services
Speaker of the New York State Assembly
President of the New York State Senate

EXHIBIT "A"

SURVEYOR'S DESCRIPTION
Lands Belonging To Kristine A. Russell

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the Town of Frankfort, County of Herkimer, State of New York, said parcel shown on the map entitled "ALTA / NSPS Land Title Survey Showing Lands Belonging To Kristine A. Russell Known As #2571 Higby Road (County Route #96)", prepared by Emrich Land Surveying PLLC, dated April 13, 2021; said parcel more particularly described as follows:

BEGINNING at intersection of the northerly highway boundary of Higby Road, County Route #96 with the southeasterly division line of lands belonging to Cross Nicasro as described in Book 938 of Deeds at Page 509, marked by a capped iron rod found; Thence along the southeasterly and southwesterly division line of said lands of Nicasro the following four (4) courses and distances:

- 1) N 32°06'05" E a distance of 974.11 feet to a capped iron rod set;
- 2) S 59°04'00" E a distance of 1010.00 feet to a capped iron rod set;
- 3) N 31°14'00" E a distance of 414.00 feet to a capped iron rod set;

And 4) S 58°19'40" E a distance of 353.52 feet to its intersection with the westerly highway right of way of New York state route 5S, S.H. No. 5219, marked by a capped iron rod set; Thence along said highway right of way the following three (3) courses and distances:

- 1) S 1°20'15" E, 372.44 feet to a highway monument found;
- 2) S 79°10'25" W, 416.40 feet to a point; And
- 3) S 78°15'30" W, 101.43 feet to a point on the northerly highway boundary of Higby Road;

Thence along said highway boundary S 88°06'35" W, 137.67 feet to a point; Thence N 89°56'20" W, 1262.33 feet to the POINT OF BEGINNING, being 954,061± square feet or 21.902± acres, be the same more or less.

BEING the same premises conveyed to the Herkimer County Development Agency by Deed dated June 8, 2021 and recorded in the Herkimer County Clerk's Office on July 23, 2021 as Instrument #RP2021-3412.

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