

USA NIAGARA DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

THURSDAY

MARCH 21, 2019

USA NIAGARA DEVELOPMENT CORPORATION

Meeting of the Directors

At the offices of the
USA Niagara Development Corporation
222 First Street, 7th Floor
Niagara Falls, N.Y. 14303

Thursday

March 21, 2019 – 3:00 p.m.

AGENDA

I. CORPORATE ACTIONS

- A. Approval of Minutes of the December 20, 2018 Directors' Meeting
- B. USA Niagara Development Corporation – Annual Operating and Capital Budgets – Approval of the Corporation's Fiscal Year ("FY") 2019-20 Annual Operating and Capital Budgets (April 1, 2019 – March 31, 2020)
- C. Niagara Falls Convention and Conference Facility Civic Project and Old – Falls Street – Calendar Year ("CY") 2019 Operating and Capital Budgets and Amendment to Management Agreement – Approval of the Niagara Falls Convention and Conference Facility and Old Falls Street CY 2019 Operating and Capital Budgets; Approval of First Quarter 2020 Funding; Authorization to Disburse Funds; and Authorization to Amend the Management Agreement with Spectra Venue Management

II. FOR CONSIDERATION

- A. Cataract Commons Civic Project – General Project Plan – Findings and Determinations Pursuant to Sections 10(d) and 10(g) of the New York State Urban Development Corporation Act (the "Act"); Adoption of the Proposed General Project Plan; Authorization to Hold a Public Hearing; Authorization to Provide USAN Funds for the Project; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions
- B. Procurement of Construction Services – Authorization to Enter into a Contract for Construction Services and to Take Related Actions
- C. Niagara Gorge Corridor Project: Parkway Removal – Main Street to Findlay Drive, Niagara Falls, NY; Amended Funding Agreement with the New York Power Authority; Design Support and Monitoring Services during Construction – Authorization to Enter into an Amended Agreement with the Power Authority of the State of New York; Authorization to Enter into an Amended Grant Disbursement Agreement with the New York State Office of Parks, Recreation, and Historic Preservation; Make a Determination of No Significant Effect of the Environment; and Take All Related Actions

III. FOR INFORMATION

A. Conference Center Niagara Falls & Old Falls Street (Oral Report)

Item I. A.

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USA NIAGARA DEVELOPMENT CORPORATION

Meeting of the Directors
held at the USA Niagara Offices
222 First Street – 7th Floor
Niagara Falls, New York 14303

and

ESD New York City Regional Office
633 Third Avenue
New York, New York 10017

December 20, 2018

MINUTES

In Attendance Directors:

Francine DelMonte – Chair
Paul Nanula
Michael Williamson

Present for USA Niagara:

Paul Tronolone – Acting President
Douglas Bressette – Treasurer
(via videoconference)
London C. Cruz – Corporate Secretary
(via videoconference)
Elizabeth R. Fine – General Counsel
(via videoconference)
Elaine A. Kloss – Chief Financial Officer
(via videoconference)

**Present for ESD
(via videoconference):**

Julia Borukhov – Financial Project Manager
Daniel DaSilva – Director, Subsidiary Finance
Eugene Kwiatkowski – Senior Director of Budgeting
Kathleen Mize – Deputy Chief Financial Officer &
Controller
Debbie Royce – Corporate Secretary

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**Present for ESD Western
New York Regional Office:**

John Risio – Project Manager
Rob Sozanski – Project Associate
Jocelyn Viola – Administrative & Office Manager

**Present for ESD Buffalo
Regional Office:**

Stephen F. Gawlik – VP, Poly & Capital Projects & Senior
Legal Counsel
Chanel Maddigan – Senior Legal Counsel
Laura Magee – Deputy Director, Public Affairs
Bryon Price – Project Manager

Also Present:

Ed Riley – Managing Partner, Brine Wells Development
Anthony Vilaro – Director of Business Development, City
of Niagara Falls
The Public
The Press

The meeting of the USA Niagara Development Corporation (“USAN”), a wholly-owned subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), was called to order at 3:00 p.m. by Chair DelMonte. It was noted for the record that notices to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

The Chair went on to note for the record the guidelines by which the public is allowed to comment on items on the Agenda.

The Chair then asked the Directors if they had any potential conflicts of interest with regard to any of the items on the Agenda and if so, to make that information known at this time. If any potential conflicts exist, the Chair continued, the Directors would be reminded at

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the appropriate time to recuse themselves from the vote on any such item. It was noted that no conflicts exist.

The Chair then called for the approval of the Minutes of the August 15, 2018 Directors' meeting. Upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE AUGUST 15, 2018 MEETING OF THE DIRECTORS OF THE USA NIAGARA DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on August 15, 2018 as presented to this meeting, are hereby approved and all actions taken by the Directors present at such meeting as set forth in such Minutes, are hereby in all respect ratified and approved as actions of the Corporation.

* * *

Chair DelMonte then asked Paul Tronolone, Acting President of USAN, to present the first Agenda item, a request for the appointment of Officers of the Corporation.

Mr. Tronolone thanked Chair DelMonte for the introduction and commenced his presentation.

Mr. Tronolone stated that with the departure of Chris Schoepflin, former President of USAN, the position of USAN President is vacant. He further stated that two additional positions, the Board Treasurer and the Board Secretary, were left vacant with changes in

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personnel and in the latter case, after the passing of the previous Board secretary, Eileen McAvoy.

Moreover, Mr. Tronolone explained that the item for consideration involved three appointments of Officers of the Corporation.

Next, Mr. Tronolone stated that he would assume the interim role of Acting President to undertake the day-to-day administrative duties of the Corporation, pending the appointment of a new President. Mr. Tronolone then explained that he is currently working with Empire State Development's ("ESD") Human Resources Department staff to identify candidates for a new USAN President.

Furthermore, Mr. Tronolone requested that the Board appoint Douglas Bressette to the office of the Treasurer of USA Niagara. He stated that Mr. Bressette currently holds the Treasurer position with USA Niagara's parent corporation, Empire State Development, and joined ESD this year after a 30-year career in the private sector.

Mr. Tronolone stated that it has been customary for the ESD Treasurer to serve as the Treasurer of USAN. He then requested that the Board make the office of Treasurer of ESD as an ex-officio treasurer of the USAN Board.

Mr. Tronolone explained that the position with ESD would automatically hold the position with USAN, relieving the Board of subsequent Board appointments.

Next, Mr. Tronolone requested that the Board appoint London Cruz to replace former Corporate Secretary Eileen McAvoy. He stated that Mr. Cruz joined ESD in 2017, serves as a paralegal in ESD's Law Department and has performed the USAN Board's corporate secretarial duties for several months.

Mr. Tronolone stated that the credentials of Mr. Brissette, Mr. Cruz and himself were included in the Board materials. He then requested that the Directors approve the appointments effective immediately and in accordance with all the associated rights and protections of the New York State Urban Development Corporation Act and USAN's corporate bylaws.

Chair DelMonte called for questions or comments.

Hearing none, Chair DelMonte thanked Mr. Tronolone for filling the role of Acting President, congratulated Mr. Gawlik and thanked Mr. Cruz for joining the USAN team.

Mr. Gawlik noted that Mr. Bressette was present via video-conference.

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Chair DelMonte stated that Mr. Tronolone has been an asset to USAN and the projects he has been involved with over the last 20 years.

Chair DelMonte then stated that this will be a seamless transition for Mr. Tronolone.

Chair DelMonte also stated that Mr. Schoepflin' s departure is a loss for those who had the opportunity to work with him over the years.

Furthermore, Chair DelMonte stated that she considers Mr. Schoepflin a friend and a wonderful colleague that has shepherded the USAN operation well throughout his tenure.

Chair DelMonte then stated that it was great that Mr. Tronolone was able to serve as the Acting President to facilitate USAN' s priorities.

Chair DelMonte thanked all USAN staff in New York, stated that the Board enjoys working collaboratively and appreciates that there is a solid team in place.

Chair DelMonte asked if there were any questions or comments from the Directors or any comments from the public.

Hearing none, and upon a motion duly made and seconded, the following resolution

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was unanimously adopted:

USA Niagara Development Corporation - Appointment of Officers – Acting President, Treasurer and Corporate Secretary

BE IT RESOLVED, that Paul Tronolone be, and he hereby is, appointed to the office of President in an acting capacity, to the USA Niagara Development Corporation (the “Corporation”); and be it further,

RESOLVED, that Douglas Bressette be, and he hereby is, appointed to the office of Treasurer to the Corporation, and that the position be made ex-officio to the corresponding title with the New York State Urban Development Corporation d/b/a Empire State Development; and be it further,

RESOLVED, that London Cruz be, and he hereby is, appointed to the office of Corporate Secretary, to the Corporation; and be it further,

RESOLVED, that in accordance with and for all the purposes of the New York State Urban Development Corporation Act and the bylaws of the Corporation, including but not limited to the indemnification provisions thereof, the foregoing individuals are an “officer” of the Corporation; and be it further

RESOLVED, that any and all actions taken by the foregoing individuals since their nominations to the offices identified herein be and hereby are ratified as the acts and deeds of the Corporation.

* * *

Next, Chair DelMonte stated that Mr. Tronolone would present the following Agenda item, a request for, among other things, an authorization to adopt a proposed general project plan for the 201 Rainbow Boulevard Hotel Restoration Land Use Improvement Project.

Mr. Tronolone thanked Chair DelMonte for the introduction and commenced his presentation.

Mr. Tronolone stated that the Agenda item involved the approval of a General Project

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Plan to restore and reopen the historic Hotel Niagara.

By way of background, Mr. Tronolone stated that the Board of Directors previously selected Brine Wells Development, LLC (“the company”) of Syracuse, New York as the preferred developer and as a responsible vendor as defined by state law. He further stated that this selection was made after the acquisition of Hotel Niagara for \$4.4 million and a competitive procurement process in July of 2017.

Mr. Tronolone further stated that the Board previously authorized USAN to begin negotiations on a formal development agreement with the company to acquire and restore the Hotel Niagara.

Mr. Tronolone explained that the action to approve the General Project Plan is the next step to permit USAN to sign the formal Land Disposition and Development Agreement (“LDA”) with the company, for a \$42 million restoration project.

Next, Mr. Tronolone stated that the \$42 million amount includes \$4.4 million in acquisition costs that the Board previously appropriated.

Furthermore, Mr. Tronolone stated that there are some contingencies with the agreement, including finalizing the financing package and the syndication of historic tax credits

that will be used. He explained that this is a major step in the project.

Mr. Tronolone stated that Mr. Ed Riley, a managing partner of Brine Wells Development, LLC, was present. He then welcomed Mr. Riley to the meeting.

Mr. Tronolone stated that pursuant to the terms of the LDA, the company will restore the Hotel Niagara property into a 160-room upper-scale grade hotel, including a restaurant and banquet facilities, which will be open to the general public.

Mr. Tronolone further stated that over the course of the past year's negotiation of the LDA, the company has undertaken considerable investigatory and design work at some risk, including but not limited to: (i) full design work and consultation with the State Historic Preservation Office and the National Parks Service for state and federal historic tax credits, (ii) local approvals in consultation with the State Department of Transportation, and (iii) extensive negotiations and coordination with prospective hotel brands to secure private financing.

Next, Mr. Tronolone summarized the key points of the General Project Plan.

Mr. Tronolone explained that USAN will provide the property to the company for \$1 and provide a development incentive of \$3.5 million sourced from Governor Cuomo's Buffalo Billion Economic Development Program for Western New York.

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Mr. Tronolone further stated that within 30 days of closing on the property and after the developer has secured their approvals and finalized financing, which is anticipated by August of 2019, the company must begin construction of the project within 24 months, or by August of 2021.

Mr. Tronolone explained that the company will hire and pay all construction personnel using New York State prevailing wage rights and will make a good faith effort to negotiate a written agreement within Niagara Building and Trades.

Moreover, Mr. Tronolone explained that the company will enter into a labor peace agreement with the local labor organization representing local hotel workers, which is in accordance with the New York State Public Authorities Law.

Next, Mr. Tronolone explained that the project has a goal of creating 150 full-time construction jobs and within 5 years of operation, the developer must take steps to create 67 full-time equivalent permanent jobs.

The project, Mr. Tronolone continued, is subject to USAN's requirements for Minority and Women Owned Business Enterprises. The goal, Mr. Tronolone explained, is 15% for Minority Owned Businesses and 15% for Women Owned Businesses as a percentage of the \$7.9 million in assistance provided. He further explained that the \$7.9 million consists of \$4.4

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million in acquisition and \$3.5 million in incentives.

Mr. Tronolone stated that there are other potential sources of assistance that the developer is seeking, including a National Grid grant, private bank financing and a Niagara County Industrial Development Agency standard payment in lieu of taxes agreement or PILOT agreement.

Mr. Tronolone stated that within ten days of executing the LDA, the company will provide USAN with a \$50,000 deposit in the form of a cashier's check or irrevocable letter of credit to secure timely submission of all required submittal and meeting milestones.

Mr. Tronolone further stated that the Board materials explained a series of required statutory findings that the project must meet to be considered a land development project as well as the general project which sets forth how this goal was met.

Mr. Tronolone stated that USAN conducted a full review of the project and found that it will not result in any significant adverse environmental impacts, which is in accordance with the State Environmental Quality Review Act.

Mr. Tronolone then requested that the Directors authorize the following: (i) make the necessary findings and authorize the adoption of the General Project Plan; (ii) authorize USAN

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to hold a public hearing on the General Project Plan; (iii) authorize the sale of real property and provide financial assistance to the project; (iv) authorize USAN to enter into the LDA and any other necessary agreements; (v) make a determination of no significant effect on the environment and take all related actions.

Chair DelMonte asked if there were any questions or comments from the Directors.

Chair DelMonte then thanked Mr. Riley for attending the meeting.

Next, Chair DelMonte asked how the project will compare to Hotel Syracuse.

Mr. Riley responded that there will be the same degree of restoration in the public spaces and explained that some of the computer-generated renderings were available. He further explained that the artistic work, the decorative painting and the faux painting in some of the areas will be to the same degree and likened the look to the ballroom of Hotel Syracuse.

Next, Mr. Riley stated that the rooms will be smaller than Hotel Syracuse in order to provide as many rooms as possible in the hotel; therefore, they will take all the space from the corridor wall to the perimeter wall.

Mr. Riley stated that the area will be demolished, and new rooms will be constructed

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based on the rhythm of the windows and façade. He noted that the rooms will be larger than standard sized full-service hotel rooms.

Next, Mr. Riley stated that all the room products will be new and characterized them as not being as contemporary as those found in the Hotel Syracuse. He further stated that the hotel will be kept in a historic fashion.

Moreover, Mr. Riley stated that the Hotel Niagara will not be a full-service Marriot or Hilton, but rather, a part of their collection. He explained that Marriot issued a letter of intent for either an autograph or tribute collection. Mr. Riley noted that this will allow for the customization of the rooms and will enable the hotel to retain the name Hotel Niagara.

Mr. Riley stated that the company would like to build off the Hotel Niagara brand and ensure that the public is aware that the hotel will be restored with a historic flare.

Next, Mr. Riley stated that the company plans to have Shaughnessy's sports bar and a three-course meal restaurant located in the hotel.

Mr. Riley explained that the company will discuss theming as well as menu options with their staff and Marriot. He added that a rooftop bar/lounge will be a great addition.

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During negotiations with the New York State Historic Preservation Office (“SHPO”) and the Interior Department, Mr. Riley continued, the company obtained approval for two small additions at the top. He explained that these additions would add a small bar, add a service area, cover approximately 50% of the seats on the roof and add new restrooms.

Mr. Riley stated that the area will be a self-contained lounge primarily for outdoor activities; however, it can also be used during rainy weather with a covered area. Mr. Riley added that this will bring a lot of business to the hotel, especially in season.

Chair DelMonte asked if there will be any construction challenges.

Mr. Riley stated that there will be construction challenges. He further stated that a few issues were found with the building during the company’s review process.

Next, Mr. Riley stated that the façade of the building needs to be pinned back to the structure. Moreover, Mr. Riley stated that there are some structural issues that need to be analyzed to determine room layouts and logistics.

Mr. Riley stated that the biggest concern is the exterior of the façade; however, he explained, there is a simple way to place that back in with an anchoring system and control joint to avoid movement in the future.

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Mr. Riley further explained that the anchoring system also enables the avoidance of tearing down the parapet at the top and provides the ability to bring it back and fix it in place.

Next, Mr. Riley stated that the terra cotta on the building is in good shape except for one façade.

Chair DelMonte commented that she suspects Mr. Riley will be spending some time in Niagara Falls.

Mr. Riley responded that he will be spending a lot of time in Niagara Falls.

Chair DelMonte asked if the Board will be seeing Mr. Riley more frequently.

Mr. Riley stated yes and explained that he will be in Niagara Falls two days a week during construction. He then characterized himself as being very hands on.

Chair DelMonte asked if this renovation project is the second for Mr. Riley.

Mr. Riley responded that this project is his third hotel renovation project and explained that they also have a Hyatt in Syracuse and the Marriot in Syracuse. Mr. Riley further explained that Hotel Niagara is his 20th or 21st hotel restoration project.

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Director Williamson commented that as a former resident of Syracuse, he was familiar with the Hotel Syracuse renovation and stated that it was exciting to think that Hotel Niagara can also be transformed. He further commented that it was also exciting that the developer has taken a certain risk on their own to meet some of the prerequisites to start the project.

Mr. Riley stated that they have drawings finished, have been through the historic process in Niagara Falls as well as the process of the Department of Transportation.

Next, Mr. Riley stated that the company has received letters of interest from three groups for the historic tax credits.

Mr. Riley explained that the safe harbor regulations in the new tax law will pose a challenge due to impacts on the historic tax credits. He further explained that the tax credits were preserved; however, they must be taken over five years and can no longer be taken in one year.

Mr. Riley stated that this new regulation has driven down the price down from where it was; however, the company would like to address that issue and explained that they have previously worked with US Bank.

Mr. Riley stated that they have also received interest from other banks, such as Chase

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and M&T. Mr. Riley further stated that half to three-quarters of M&T's Board of Directors Committee have been through the property and have reviewed the plans. Mr. Riley then explained that they are also working with M&T and noted that he attempts to have additional backups as a precaution.

Next, Mr. Riley characterized the company's progress as being far down the line and stated that a bid was put out. He explained that they will put out a hard bid as soon as they arrive at the next step.

Mr. Riley stated that the company knows what the numbers are and what they will be in the future.

Mr. Riley explained that they will try to use as much local help as possible for the restoration. He further explained that they will target the neighborhoods around the hotel.

Mr. Riley noted that the company is proud of the fact that about 55% of their employees in Syracuse are from distressed neighborhoods near the hotel. He explained that many were previously unemployed and were recently educated regarding 401(k) accounts and insurance.

Moreover, Mr. Riley stated that the hotel is unionized and explained that a collective bargaining agreement was signed in June of the current year. Mr. Riley further stated that the

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hotel is organized, which was part of the Labor Peace Agreement. He then explained that the same process will take place at Hotel Niagara along with the same business model.

Chair DelMonte commented that this process was good for the community and the company's employees. She further stated that the uptick in tourism in Niagara Falls throughout the last few years has been driven by the improvement in hotels and accommodations that are now offered in the area.

Chair DelMonte thanked Brine Wells Development, LLC for their investment, time and attention.

Hearing no further questions or comments from the Directors and no comments from the Public, upon a motion duly made and seconded, the following resolution was unanimously

adopted:

USA NIAGARA DEVELOPMENT CORPORATION – 201 Rainbow Boulevard Hotel Restoration Land Use Improvement Project – General Project Plan – Findings and Determinations Pursuant to Sections 10(c), and 10(g) of the New York State Urban Development Corporation Act (the "Act"); Adoption of the Proposed General Project Plan; Authorization to Hold a Public Hearing; Authorization of the Sale of Real Property; Authorization to Provide Financial Assistance for the Project; Authorization to Enter Into Necessary Agreements for the Project; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the

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“Materials”), a copy of which is hereby ordered filed with the records of the USA Niagara Development Corporation (the “Corporation”), relating to the 201 Rainbow Boulevard Hotel Restoration Project (the “Project”), the Corporation hereby makes the requisite findings pursuant to Sections 10(c) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), specifically: (1) that the area in which the project is to be located is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the municipality; (2) that the project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area for recreational and other facilities incidental or appurtenant thereto; and (3) that the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole; and be it further

RESOLVED, that on the basis of the Materials which indicate that no residential or business relocation is required, as no families, individuals, or businesses reside in nor are they to be displaced from the Project area; the Corporation hereby finds that the requirements of Section 10(g) of the Act are satisfied; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or in the event such office is vacant, the Chief Financial Officer, General Counsel or their designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation, or in the event such office is vacant, the Chief Financial Officer, General Counsel or their designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take such actions as may be considered necessary or appropriate in connection with the holding of the public hearing required pursuant to Sections 6 and 16 of the Act, including, without limitation, the providing, filing or making available of copies of the Plan or a digest thereof and the finding required by Section 10 of the Act relating to the Project, the fixing of a date for such hearing, the publication of a notice relating to the Plan and such hearing in accordance with the Act; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer of the Corporation or in the event such office is vacant, the Chief Financial Officer, General Counsel or their designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing; and be it further

RESOLVED, that, subject to the requirements of Section 16(2) of the Act and upon effectiveness of the Plan, the Corporation is hereby authorized to enter into a Land Disposal and Development Agreement (“LDA”) and/or all other agreements necessary to carry out the transaction, including a deed and other necessary conveyance documents to effectuate the real

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property transfer contemplated by the LDA; and be it further

RESOLVED, that, on the basis of the materials submitted to the Directors, the Directors hereby find that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer; and be it further

RESOLVED, that the Corporation is hereby authorized to accept a Development Deposit of FIFTY-THOUSAND DOLLARS (\$50,000) from Brine Wells with ten days of execution of the LDA to secure its obligation for timely submission of all documents and information deemed necessary by USAN as outlined under the General Terms and Conditions contained in the request for proposals; and be it further

RESOLVED, that the Corporation is hereby authorized to provide a financial incentive up to the amount of \$3,500,000 for the Project, upon sub-allocation of such funds from the Buffalo Billion Fund; and be it further

RESOLVED, that based on the Materials submitted to the Directors with respect to the Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment; and be it further

RESOLVED, that the provision of USAN financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer or in the event such office is vacant, the Chief Financial Officer, General Counsel or their his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

* * *

Chair DelMonte then asked Stephen Gawlik, Vice President of Poly and Capital Projects/
Senior Legal Counsel, to present the second Agenda item, a request for the authorization to enter into an amended agreement for legal services.

Mr. Gawlik stated that Hodgson Russ had been primarily performing title work associated with all the property acquisitions and dispositions that USAN has been involved with

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and explained that the firm is on ESD's and USAN's pre-approved counsel list.

Mr. Gawlik stated that every three to four years, ESD and USAN completes a competitive procurement and preapproves various law firms for work under various area. He further stated that Hodgson Russ is on that list and have been doing work for several years on these projects. Mr. Gawlik then requested Board approval for an increase in their contract amount from \$100,000 to \$200,000.

Mr. Tronolone explained that the \$350,000 previously approved by the Board was for due diligence. He further explained that the additional \$100,000 will come from the amount previously approved by the Board. Mr. Tronolone noted that USAN will need to amend the contract.

Next, Mr. Gawlik stated that any amount that the Buffalo Billion pot pays for consists of work that is Buffalo Billion related and he concluded that these projects are related.

Director Williamson asked if the amount is going from \$100,000 to \$200,000.

Mr. Gawlik responded yes.

Mr. Tronolone stated that the amounts were changing from \$99,500 to \$199,500.

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Hearing no further questions or comments from the Directors and no comments from the Public, upon a motion duly made and seconded, the following resolution was unanimously adopted:

USA NIAGARA DEVELOPMENT CORPORATION – Authorization to Enter into an Agreement for Legal Services and to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the USA Niagara Development Corporation (the “Corporation”), the Corporation hereby finds the Hodgson Russ (the “Firm”) to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to amend a contract with the Firm for an additional \$100,000 contract amount and for an additional one year term effective January 31, 2019, unless extended by the President of the Corporation, or in the event such office is vacant, the Chief Financial Officer, General Counsel or their designee, for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation, or in the event such office is vacant, the Chief Financial Officer, General Counsel or their designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

* * *

Next, Chair DelMonte asked Mr. Tronolone to present the USAN President’s Report, explained that the item was being presented for informational purposes only and noted that no votes would be required.

Mr. Tronolone stated that the corporate structure was recently changed regionally, and a leadership team led by himself, Stephen Gawlik, Steve Ranalli and Amanda Mays was created.

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He explained that Mr. Randall leads the Erie Canal Harbor Development Corporation and Amanda Mays is the newly appointed Regional Director.

Mr. Tronolone stated that Amanda Mays was originally hired by USAN as the Senior Project Manager to replace Holly Ortman approximately a year and a half ago. He further stated that Ms. Mays has been a stellar employee and was selected as the new Regional Director.

Mr. Tronolone explained that all members of the leadership team are at a parallel, work together and meet weekly to review all items related to the Buffalo office, regional offices and subsidiaries. The purpose of the creation of this team, Mr. Tronolone continued, was to encourage the cross-pollination of staff.

Mr. Tronolone stated that there are approximately 40 staff members that work in western New York with a multitude of professional skills. He further stated that USAN is looking to marshal those resources as best as possible; and therefore, some USAN staff may also work on Erie Canal Harbor Development Corporation matters.

Next, Mr. Tronolone discussed the Parkway and stated that the Department of Transportation commenced the first of three contracts to start the implementation phase of the Parkway Removal Project.

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Mr. Tronolone stated that there was a public meeting held, led by Rob Sozanski, three weeks prior and noted that there were over one hundred attendees. He then explained that this process had been handed off to the Department of Transportation, an engineer-in-charge was appointed and that a project office had been established.

Mr. Tronolone thanked the city of Niagara Falls and Anthony Vilaro, Director of Business Development for the city of Niagara Falls, for their assistance with helping USAN create a project website on the city of Niagara Falls' website. He explained that the website will contain updated information regarding the project's construction.

Chair DelMonte asked Mr. Vilaro if the two streets most impacted, Whirlpool and Third, will be the last to be reconstructed.

Mr. Vilaro responded no, stated that Whirlpool street will be the first to be reconstructed and explained that Whirlpool Street is the first contract. Mr. Vilaro further stated that the southern section of Whirlpool Street, the area that intersects with Third and Cedar, will cease to exist; therefore, all traffic will feed into Third Street.

Next, Mr. Vilaro stated that there were complaints regarding the condition of the road expressed at a recent housing meeting. He explained that he knew the road would be part of the Parkway Removal Project and previously decided not to undertake a major project that

DRAFT – SUBJECT TO REVIEW AND REVISION

would be addressed a year or two later.

Mr. Tronolone stated that the Parkway will be reconstructed by the Spring of 2020 and most of the work will be completed at the end of the next construction season. He further stated that the landscaping would be completed after the reconstruction.

Moreover, Mr. Tronolone stated that the removal process of the overpass over the Whirlpool Bridge will commence in January or February.

Next, Mr. Vilaro stated that the anticipated completion date for the removal process is Victoria Day.

Mr. Tronolone explained that the Whirlpool Bridge will be closed for a period of 30 or 60 days. He further explained that there is an agreement in place with the Bridge Commission to allow that the construction and the demolition continue; however, the actual contract for the last phase of the project has not been awarded yet.

Mr. Tronolone added that the contract will be awarded by the spring of next year for landscaping services. Mr. Tronolone further explained that the removal of the Whirlpool Bridge overpass will be completed before commencing the bidding process for the last contract.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Vilardo stated that the city will be reconnected to the waterfront for the first time in two generations.

Chair DelMonte stated that it is impressive that this project will be completed.

Mr. Vilardo then stated that as the project is broken into three phases, it allows for the project to be completed much more expeditiously as opposed to the undertaking of one large project.

Chair DelMonte thanked Mr. Tronolone for his presentation.

Chair DelMonte asked if there were any questions or comments from the Directors or any comments from the public. Hearing none and there being no further business, the meeting was adjourned at 3:32 p.m.

Respectfully submitted,

London C. Cruz
Corporate Secretary

Item I. B.



FOR CONSIDERATION

March 21, 2019

TO: The Directors

FROM: Paul Tronolone

SUBJECT: USA Niagara Development Corporation – Annual
Operating and Capital Budgets

REQUEST FOR: Approval of the Corporation’s Fiscal Year (“FY”) 2019-20 Annual
Operating and Capital Budgets (April 1, 2019 – March 31, 2020)

I. Background

State Finance Law requires that prior to the commencement of each fiscal year on April 1st, the Directors of USA Niagara Development Corporation (“USAN” or the “Corporation”) adopt annual operating and capital, if applicable, budgets. Attached for your review and approval are the proposed FY 2019-20 Annual Operating Budget (“Operating Budget”) and FY 2019-20 Annual Capital Budget (“Capital Budget”) for USAN.

The FY 2019-20 Operating Budget of \$727,897 proposes a total of \$622,617 in personal services (salaries and benefits for 5 employees) and a total of \$105,280 in non-personal services (primarily office occupancy, insurance and other administrative expenses). The total budget represents approximately a 10% increase from the FY 2018-19 operating budget primarily due to the provision for a full-time President and additional insurance expense. Consistent with previous years’ operating budgets, the FY 2019-20 Operating Budget will be advanced by Empire State Development (“ESD”), USAN’s parent, with the expectation of reimbursement at a later date.

The Corporation’s FY 2019-20 Capital Budget is \$40,939,692 and includes acquisition costs of \$14,605,000; design and other soft costs of \$2,125,657; legal costs of \$108,464; property management/maintenance costs of \$1,400,000; insurance costs of \$600,000; demolition and site clearance costs of \$6,000,000; construction costs of \$7,244,302; and other miscellaneous costs of \$8,856,269. It is anticipated that the proposed funding will cover costs related to USAN’s strategic acquisition program; the Hotel Niagara restoration, the close-out of the Hyatt Place Project and the upcoming Cataract Commons Project; as well as the costs of design support services during construction for the Niagara Gorge Corridor – Parkway Removal Project.

Funding for the Corporation's Capital Budget includes funds from USAN/City of Niagara Falls Memorandum of Understanding ("MOU"). Funds are made available to the Corporation under the 2009 and 2014 Agreements with the City of Niagara Falls in support of the Conference Center Niagara Falls/Old Falls Street and economic development projects located within the Corporation's development district. Funding for costs related to USAN's strategic acquisition program, the Hotel Niagara, Hyatt Place, and Cataract Commons projects, will be through NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster a/k/a "Buffalo Billion" (Phases I & II). Funding for design support services during construction for the Parkway Removal Project will be via a funding agreement with the New York Power Authority. Individual project expenses will be approved by the Directors under separate actions. No USAN Corporate funds are included in the Capital Budget.

II. Environmental Review

Approval of USAN's Operating and Capital Budgets for Fiscal Year 2019-20 constitutes a Type II ministerial action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with this request. Capital projects are approved by the Corporation's Board of Directors under separate actions and, as necessary, will be subject to environmental review prior to such Board approval.

III. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority- and Women-owned Business Enterprises (MWBES) and Service-Disabled Veteran-owned Businesses (SDVOBs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity will review each new project to determine goals on a case-by-case basis.

IV. Requested Action

The Directors are requested to ratify and approve the Corporation's proposed FY 2019-20 Annual Operating Budget in the amount of \$727,897 and Annual Capital Budget in the amount of \$40,939,692 (subject to individual project approvals), and to authorize the Corporation to undertake tasks and incur expenditures consistent with advancing the scope of work contemplated in the proposed budgets.

V. Attachments

Resolution

The Corporation's proposed FY 2019-20 Operating Budget

The Corporation's proposed FY 2019-20 Capital Budget

March 21, 2019

USA NIAGARA DEVELOPMENT CORPORATION – Approval of the Corporation’s Annual FY 2019-20 Operating and Capital Budgets (April 1, 2019 – March 31, 2020)

RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the “Materials”), the Corporation’s proposed FY 2019-20 Annual Operating and Capital Budgets are hereby approved and adopted in all respects, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, that the Corporation is hereby authorized to undertake tasks and incur expenditures consistent with advancing the scope of work contemplated in the proposed budgets, subject to the availability of funds; and be it further

RESOLVED, that the Directors shall make individual approvals and authorizations for items under the Annual Capital Budget; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to execute and deliver on behalf of the Corporation all documents, instruments and agreements that the President shall deem necessary and appropriate to carry out these resolutions; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to take any action necessary and appropriate to carry out the foregoing.

* * *

**Empire State Development
USA Niagara Development Corp
Operating Spending Plan FY 2019-20**

	Board Approved Budget FY 2018-19	Budget Plan FY 2019-20
<u>PERSONAL SERVICES</u>		
Salaries	\$ 404,777	\$ 451,172
Fringe Benefits	153,815	171,445
TOTAL PERSONAL SERVICES	\$ 558,592	\$ 622,617
HEADCOUNT	5.5	5.0
<u>NON-PERSONAL SERVICES</u>		
Professional Fees		
Legal / Accounting Fees	\$ 500	\$ 250
Consultant Fees	0	0
Total Professional Fees	\$ 500	\$ 250
Other Non-Personal Services		
Employee Travel & Meals	\$ 500	\$ 250
On-line Services/ Due & Subscriptions	3,000	3,000
Office Occupancy Expenses	63,300	63,300
Insurance	15,278	21,480
Repairs/ Maint /Prop Mgmt/ Outside Serv.	2,500	2,500
Telephone/Fax/Internet	10,000	10,000
Office Supplies / Printing / Advertising	3,500	500
Computers/Software/Equipment	4,000	4,000
Total Other Non-Personal Services	\$ 102,078	\$ 105,030
TOTAL NON-PERSONAL SERVICES	\$ 102,578	\$ 105,280
TOTAL OPERATING BUDGET	\$ 661,170	\$ 727,897

**Empire State Development
USA Niagara Development Corp
Capital Spending Plan FY 2019-20**

	Board Approved Budget FY 2018-19	Budget Plan FY 2019-20
Acquisition Costs	\$ 0	\$ 14,605,000
Design & Other Soft Costs	3,456,848	2,125,657
Legal Costs	80,000	108,464
Property Management/Maintenance Costs	800,000	1,400,000
Insurance	0	600,000
Demolition & Site Clearance	0	6,000,000
Construction Costs	2,781,000	7,244,302
Other Misc. Costs	2,900,000	8,856,269
TOTAL CAPITAL BUDGET	<u>\$ 10,017,848</u>	<u>\$ 40,939,692</u>

Item I. C.



FOR CONSIDERATION

March 21, 2019

TO: The Directors

FROM: Paul Tronolone

SUBJECT: Niagara Falls Convention and Conference Facility Civic Project and Old Falls Street – Calendar Year (“CY”) 2019 Operating and Capital Budgets and Amendment to Management Agreement

REQUEST FOR: Approval of the Niagara Falls Convention and Conference Facility and Old Falls Street CY 2019 Operating and Capital Budgets; Approval of First Quarter 2020 Funding; Authorization to Disburse Funds; and Authorization to Amend the Management Agreement with Spectra Venue Management

I. Background

Attached for your review and approval are the proposed operating and capital budget requests (the “Budgets”) for the Niagara Falls Convention and Conference Facility, known as The Conference & Event Center Niagara Falls (“CCNF”) and Old Falls Street (“OFS”) for 2019.

USA Niagara Development Corporation (“USAN” or the “Corporation”) is the owner and developer of CCNF. USAN first contracted with Global Spectrum, LP, now d/b/a Spectra Venue Management (“Spectra”) in January 2009 to operate CCNF for a five-year term. USAN also approved an agreement with Spectra to provide management services for OFS in October 2009. After a competitive procurement process was conducted, the USAN Board of Directors on December 16, 2013, authorized USAN to enter into a five-year agreement (the “Agreement”) with a term ending December 31, 2018, with Spectra to operate and manage both CCNF and OFS. The Agreement has two (2) one-year extension options. USAN notified Spectra on September 12, 2018, of USAN’s election to exercise its rights to extend the Initial Term of the Agreement for an additional one (1) year period beginning January 1, 2019 and expiring on December 31, 2019.

For CY 2019, the funding source will be through NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster a/k/a “Buffalo Billion” (Phase II). Prior years were funded through the 2014 Memorandum of Understanding (“MOU”) between USAN and the City of Niagara Falls (the “City”). Under the terms of the MOU, the City’s obligation to make payments to USAN is expressly contingent upon the City receiving its annual local share of casino

revenues pursuant to the 2002 Gaming Compact between the Seneca Nation of Indians and the State of New York. The City has not received any casino revenues since the State formally declared the Seneca Nation in breach of the terms of the compact, triggering a binding arbitration process which recently concluded in the State's favor. Accordingly, USAN did not receive any MOU funds for CY 2017 and CY 2018, but is expected to receive these funds once the City receives its share of casino revenues. No USAN Corporate funds will be used to fund the Budgets.

The proposed CY 2019 Operating Budget for CCNF is \$274,091 (with incentive fees, the total is \$320,900). The Operating Budget for OFS is \$617,726 (with incentive fees, the total is \$627,663). The total Operating Budget for CCNF and OFS is \$891,817 (with incentive fees, the total Operating Budget is \$948,563).

The proposed CY 2019 Capital Budget is \$399,861. The Capital Budget includes a total of \$332,050 in funding for CCNF and a total of \$67,811 in funding for OFS. Spectra will make the proposed Capital Budget purchases on behalf of USAN through state contracts where cost effective and through competitive bids and comparable pricing where state contracts are not available.

The Capital Budget for CCNF includes Outdoor Main Entrance/Public Space: \$75,000 for furniture and planting and \$13,800 for coping. For the Event Center: \$28,400 for blinds, \$179,850 for LED lighting improvements and \$35,000 for emergency repairs. Included in the OFS Capital Budget is: \$25,000 for street repair, \$10,000 for interactive mural installation, \$18,811 for equipment and furniture, \$9,000 for interactive activities and \$5,000 for holiday decor.

The combined Operating and Capital Budgets (with incentive fees) total \$1,348,424. The proposed Operating and Capital Budgets are attached.

To address the gap in the Corporation's fiscal year (April 1st to March 31st) and Spectra's fiscal year (January 1st to December 31st), the Directors approved on March 21, 2018, an advance of \$250,000 to Spectra in order to fund first quarter operations in 2019. With the possibility that USAN may exercise its second one-year extension option of the Agreement, USAN proposes that the Directors approve at this time CCNF and OFS funding for the first quarter of 2020 (calendar quarter) in the amount not to exceed \$250,000. The CCNF and OFS budgets for 2020 will remain subject to approval by the Directors before the start of the Corporation's fiscal year.

II. Amendment to Management Agreement

Recognizing Spectra's continuing record of improvement in their performance, USAN staff recommends amending the terms of the Agreement to raise the level for Spectra to reach their Food and Beverage ("F&B") Incentive Fee for operating year six (January 1, 2019 to December 31, 2019) and for each subsequent operating year (if any). The proposed CCNF F&B Incentive Fee is 20% of all F&B revenue in excess of \$1.9 million (as opposed to 25% of such revenue in excess of \$1.7 million in the current Agreement). Spectra's annual Fixed Management Fee would also remain flat at \$170,539 (the current Agreement had annual increases). Spectra's incentive fee

based on the Net Operating Loss Benchmark would remain the same and the incentive fee for OFS would also remain consistent with the current Agreement (7.5% of all F&B revenue up to \$175,000 plus 12.5% of all F&B revenue in excess of \$175,000).

III. Environmental Review

USAN/ESD staff has determined that the action, which involves the adoption of an annual budget consisting of capital expenditure items all involving regular maintenance and operational items with no expansion of the CCNF or OFS, would constitute a Type II action as defined by the New York State Environmental Quality Review Act and implementing regulations of the New York State Department of Environmental Conservation. No further review is required.

IV. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority- and Women-owned Business Enterprises (MWBES) and Service-Disabled Veteran-owned Businesses (SDVOBs) in the performance of USA Niagara Development Corporation's projects. The Office of Contractor and Supplier Diversity will review each new project to determine goals on a case-by-case basis.

V. Requested Action

The Directors are requested to approve USAN's proposed CY 2019 CCNF and OFS Operating and Capital Budgets in an amount not to exceed \$1,348,424; to approve CCNF and OFS funding for the first quarter of 2020 (calendar quarter) in an amount not to exceed \$250,000; to disburse funds in accordance with the CY 2019 CCNF and OFS Operating and Capital Budgets attached hereto; and to amend the Management Agreement with Spectra.

VI. Attachments

Resolution
Proposed CY 2019 CCNF Operating Budget
Proposed CY 2019 OFS Operating Budget
Proposed CY 2019 CCNF & OFS Capital Budgets

March 21, 2019

USA NIAGARA DEVELOPMENT CORPORATION – Approval of the CY 2019 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets; Approval of First Quarter 2020 Funding; Authorization to Disburse Funds; and Authorization to Amend the Management Agreement with Spectra Venue Management

RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the “Materials”), the Corporation’s proposed CY 2019 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets in a cumulative amount not to exceed \$1,348,424 are hereby approved, and adopted in all respects, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, the Corporation’s proposal for first quarter 2020 (calendar quarter) funding for the Niagara Falls Convention and Conference Facility and Old Falls Street in an amount not to exceed \$250,000 is hereby approved, and adopted in all respects, substantially in the form set forth in the Materials and subject to the availability of funds; and be it further

RESOLVED, that the actions of the President or his designees relating to the CY 2019 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets be approved and ratified, and the same hereby are, authorized to disburse funds substantially in accordance with the CY 2019 Niagara Falls Convention and Conference Facility and Old Falls Street Operating and Capital Budgets with such changes as the President or his designee deems necessary or appropriate; and be it further

RESOLVED, that the Directors approve the recommendation of the Corporation’s President that the Corporation amend the Management Agreement with Global Spectrum, LP, d/b/a Spectra Venue Management for Management Services of the Niagara Falls Convention and Conference Facility and Old Falls Street, in accordance with the terms and conditions set forth in the Materials; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to execute and deliver on behalf of the Corporation all documents, instruments and agreements that the President shall deem necessary and appropriate to carry out these resolutions; and be it further

RESOLVED, that the President or his designees be, and the same hereby are authorized to take any action necessary and appropriate to carry out the foregoing.

* * *

**CONFERENCE CENTER NIAGARA FALLS
SPECTRA VENUE MANAGEMENT
FISCAL YEAR 2019 (January 1- December 31)**

OPERATING BUDGET PROPOSAL

		BUDGET 2019
# OF EVENTS		181
ATTENDANCE		73,151
REVENUE		
DIRECT EVENT REVENUE		575,495
ANCILLARY REVENUE		2,189,240
OTHER REVENUE		16,075
TOTAL ESTIMATED GROSS REVENUE		2,780,810
EXPENSE		
EVENT EXPENSE		912,200
INDIRECT EXPENSE (SALARIES & OVERHEAD)		2,142,701
TOTAL ESTIMATED EXPENSE		3,054,901
NET INCOME / (REQUIRED SUPPORT)		(274,091)
FEES		
F&B INCENTIVE FEE - 20%		37,741
MANAGEMENT INCENTIVE FEE		9,068
TOTAL ESTIMATED FEES		46,809
Net Income/Loss		(320,900)

**OLD FALLS STREET
SPECTRA VENUE MANAGEMENT
FISCAL YEAR 2019 (January 1- December 31)**

OPERATING BUDGET PROPOSAL

**BUDGET
2019**

# OF EVENTS	213
ATTENDANCE	43,425
REVENUE	
DIRECT EVENT REVENUE	40,375
ANCILLARY REVENUE	135,000
OTHER REVENUE	15,000
TOTAL ESTIMATED GROSS REVENUE	190,375
EXPENSE	
EVENT EXPENSE	347,006
INDIRECT EXPENSE (SALARIES & OVERHEAD)	461,094
TOTAL ESTIMATED EXPENSE	808,100
NET INCOME / (REQUIRED SUPPORT)	(617,725)
FEES	
F&B INCENTIVE FEE - 7.5%	9,938
TOTAL ESTIMATED FEES	9,938
Net Income/Loss	(627,663)

**CONFERENCE CENTER NIAGARA FALLS
 OLD FALLS STREET
 FISCAL YEAR 2019 (January 1- December 31)**

CAPITAL BUDGET PROPOSAL

2019 Conference & Event Center Items	Capital Price
Outdoor Main Entrance / Public Space	
Furniture & Planting	\$75,000
Coping	\$13,800
Event Center	
Blinds	\$28,400
LED Lighting	\$179,850
Emergency Repairs	\$35,000
2019 CCNF Total	<u>\$332,050</u>
2019 Old Falls Street Items	Capital Price
Street Repair (grouting)	\$25,000
Interactive Mural Installation	\$10,000
Equipment & Furniture	\$18,811
Interactive Activities	\$9,000
Holiday Decor	\$5,000
2019 OFS Total	<u>\$67,811</u>
GRAND TOTAL FOR 2019	<u>\$399,861</u>

Item II. A.



FOR CONSIDERATION

March 21, 2019

TO: The Directors

FROM: Paul Tronolone

SUBJECT: Cataract Commons Civic Project – General Project Plan

REQUEST FOR: Findings and Determinations Pursuant to Sections 10(d) and 10(g) of the New York State Urban Development Corporation Act (the “Act”); Adoption of the Proposed General Project Plan; Authorization to Hold a Public Hearing; Authorization to Provide USAN Funds for the Project; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

GENERAL PROJECT PLAN

Project Location: 304 First Street, Niagara Falls, New York

Proposed Project: Planning, design and construction of a proposed public open space on a land parcel located on Old Falls Street.

Funding Source: NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster a/k/a “Buffalo Billion” Funds

I. INTRODUCTION

The USA Niagara Development Corporation (“USAN”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), proposes the undertaking of the **Cataract Commons Civic Project** (the “Project”) in the City of Niagara Falls, Niagara County, New York.

The Project involves an expenditure of up to \$1.5 million for the planning, design and construction of proposed public open space facility or “commons” space located on Old Falls Street.

As previously authorized by the USAN Board of Directors in March 2017, USAN entered into a \$195,848 contract with Trowbridge Wolf Michaels Landscape Architects, LLP (“TWMLA”) for planning, design and construction administration services associated with the Project. To date, TWMLA has provided USAN with conceptual planning and final design services to permit public competitive bidding for construction of the Project; and will continue to provide construction oversight services to facilitate completion of the Project.

As the ESD subsidiary with a mission to facilitate revitalization of the tourism industry in downtown Niagara Falls, NY, USAN is adopting this General Project Plan (“GPP”) in accordance with the New York State Urban Development Corporation (“UDC”) Act, which permits ESD and its subsidiaries to undertake activities in furtherance of Civic Projects.

The Project, which is consistent with the 2009 City of Niagara Falls Comprehensive Plan, City Zoning requirements, and USAN policies for new development to support its tourism base, would include actions in furtherance of tourist industry goals. Support for these findings is discussed herein.

II. BACKGROUND

The official address of the Project is 304 First Street in downtown Niagara Falls, although the property fronts on Old Falls Street and Rainbow Boulevard (see **Figure 1: Site Location Map**). The property is owned in fee by USAN and has an area of approximately 10,000 square feet.

Falls Street was historically the center of life in Niagara Falls. The street was once lined by department stores, small shops and theaters. By the late 1960s, properties along the street had fallen into disrepair and the City of Niagara Falls (the “City”) sought to remedy the situation with an ambitious urban renewal plan, funded by New York State and the federal government. Large superblocks replaced the formerly urbane, fine-grain streetscape. Monumental-scale buildings were constructed, including the Philip Johnson-designed convention center (now part of the Seneca Niagara Casino complex) and the Rainbow Centre Mall and associated parking ramp. At that time, a Cesar Pelli-designed urban arboretum, called the “Wintergarden”, was also constructed on top of the right-of-way of Falls Street and some adjoining land, spanning a full city block of the former street between Rainbow Boulevard and First Street, which after falling into disrepair was sold by the City to private interests in 2004.

As part of a 2009-10 project to fully restore Falls Street (i.e., now renamed by the City as “Old Falls Street”), the former Wintergarden was acquired by USAN and demolished in late 2009. The structure was replaced with a cobblestone street that extended three blocks from Prospect to Third Street, along with new lighting, seating, landscaping and “green infrastructure features”, including an innovative storm water system. The restored street was conceived to once again be a center for entertainment in Niagara Falls, a suitable gateway to Niagara Falls State Park, the oldest state park in the nation, and a link between the Seneca Niagara Casino and Niagara Falls State Park.

Along with the property that is now part of the restored public right-of-way of Old Falls Street, there was an additional parcel comprising the former footprint of the Wintergarden, which stayed in the possession of USAN. This is the Commons site. It has evolved over the last five years as an important civic space to visitors and residents. Although relatively small and largely unimproved, it is a place where people can find a respite from the activity of vacation and take a break with their family. Additionally, it is frequently staged (e.g., with or without tents, and other equipment) to host outdoor activities on the street such as an annual Oktoberfest celebration, “Flicks at the Falls” (a family outdoor movie presentations), cooking demonstrations, lecture series and other events. To date, a “lighter, quicker, cheaper” approach has largely been employed to use the space to facilitate outdoor programming. This has included the staging seating, portable shade structures, public art installations, and outdoor gaming such as ping-pong tables.

But as the space continues to become a more important piece of the visitor experience to downtown Niagara Falls, investment in a program of more permanent capital improvements is necessary.

III. PROJECT DESCRIPTION

A. Objectives

The overall objectives of the Project are as follows:

- To create an outstanding public space along Old Falls Street that utilizes elements of placemaking to transform an empty parcel into more usable and inviting outdoor facility.
- To provide for a system of permanent structural seating and shading.
- To create a built, identifiable feature at the corner of Old Falls Street and Rainbow Boulevard to contribute to the area’s overall urban setting.
- Integrate public art with elements of play, shading or buffering into the design.
- Ensure flexibility in the design of the open space to allow various types of events to occur there.
- Include appropriate lighting to make the space safe and comfortable year-round and throughout the day.
- Facilitate the public perception of making Cataract Commons a “focal point” for downtown Niagara Falls as well as for Old Falls Street that and contains elements/features evoking the area’s history.
- Ensure compliance with Americans with Disabilities Act (ADA) requirements and other

applicable regulations and codes.

B. Project Scope and Budget

The Project consists of the development of an urban Commons space that include site and landscape improvements located at the southeast corner of Rainbow Boulevard and Old Falls Street, in downtown Niagara Falls. The scope includes earthwork, installation of metal shade structures, planters, fabricated wood and metal marquee signage, concrete flatwork, concrete amphitheater, landscaping, and lighting (see **Figure 2: Project Rendering**).

The budget for the Project, including a list of sources and uses, follows below.

**Cataract Commons
Sources & Uses of Funds**

Anticipated Funding Sources	
USAN Funding (USAN/City MOU Funds)	\$200,000
USAN Funding (Buffalo Billion Funds)	\$1,300,000
TOTAL	\$1,500,000
Funding Uses	
Planning & Design (previously committed)	\$200,000
Hard Construction (maximum, including any “add alternatives”, if exercised)	\$1,100,000
Contingency & Soft Costs	\$200,000
TOTAL	\$1,500,000

C. Tentative Project Timeline

- USAN Board Approval of GPP March 21, 2019
- Public Hearing on GPP April 2019
- Review by Public Authorities Control Board April 2019
- Start of Construction May 2019
- Substantial Completion December 31, 2019
- Final Completion May 15, 2020

V. STATUTORY BASIS

Based on the information set forth in this GPP and other due investigation conducted by USAN/ESD, USAN hereby makes the following UDC Act Findings:

A. Civic Project Findings – UDC Act Section 10 (d)

1. *There exists in the area in which the Project is to be located, a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the Project.*

The Project would satisfy this direct need in such a manner by providing a new recreational opportunity/tourism-oriented programming space in downtown Niagara Falls. The Project would also enhance the overall setting for residents and visitors by providing a public benefit to the local community, the City of Niagara Falls, and Niagara County.

2. *The Project consists of a building or buildings or other facilities which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purpose.*

The Project site has been determined to be suitable to accommodate the Project. The proposed improvements would increase the visibility of Old Falls Street programming and events, and in doing so; further facilitate the economic revitalization of downtown Niagara Falls.

3. *The Project will be leased to or owned by the state or an agency or instrumentality thereof, a municipality or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and adequate provision has been, or will be, made for the payment of the cost of the acquisition, construction, operation, maintenance and upkeep of the Project.*

Upon the completion of the Project, USAN would retain ownership of the Project site and continue to maintain it accordingly, via USAN's contract for the maintenance and programming of Old Falls Street with Spectra Venue Management, which also operates the adjacent USAN-owned Conference & Event Center Niagara Falls. USAN also has adequate funding available to enter into a Construction Services Contract for construction of the Project.

4. *The plans and specifications assure or will assure adequate light, air, sanitation and fire protection.*

The construction of the Project will conform to all applicable laws, codes, and standards.

B. Displacement Findings – UDC Act Section 10(g)

Pursuant to Section 10(g) of the UDC Act, USAN makes the finding that no residential or business relocation is required because no families, individuals, or businesses would be displaced because of the Project.

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Recipient shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise (MWBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% related to the total value of USAN funding.

IX. ENVIRONMENTAL REVIEW

USAN, as lead agency, has completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. This review found that the proposed project is an Unlisted Action that would not result in significant adverse impacts on the environment. Therefore, USAN staff recommend that the Directors make a Determination of No Significant Effect on the Environment.

X. CONCLUSION

The proposed Project will create a dynamic public Commons space along Old Falls Street. The Project will contribute to activities in the core of the downtown district, will create a positive community focal point, and would further support revitalization of the downtown district.

XI. RECOMMENDATION

Based on the foregoing, USAN staff recommends the making of the requisite findings and determinations pursuant to Sections 10(d), and 10(g) of the New York State Urban Development Corporation Act (the "Act"); Adoption of the Proposed General Project Plan; Authorization to Hold a Public Hearing; Authorization to Provide USAN Funds for the Project; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions.

XII. ADDITIONAL SUBMISSION TO DIRECTORS

Resolution

Figure 1: Site Location Map

Figure 2: Project Rendering

March 21, 2019

USA NIAGARA DEVELOPMENT CORPORATION – Cataract Commons Civic Project – General Project Plan – Findings and Determinations Pursuant to Sections 10(d) and 10(g) of the New York State Urban Development Corporation Act (the “Act”); Adoption of the Proposed General Project Plan; Authorization to Hold a Public Hearing; Authorization to Provide USAN Funds for the Project Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the “Materials”), relating to the Cataract Commons Civic Project (the “Project”), the Corporation hereby finds, pursuant to Sections 10 (d) of the New York State Urban Development Corporation Act, as amended (the “Act”), that:

(1) there exists in the area in which the Project is to be located, a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the Project.

(2) the Project consists of a building or buildings or other facilities which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purpose.

(3) the Project will be leased to or owned by the state or an agency or instrumentality thereof, a municipality or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and adequate provision has been, or will be, made for the payment of the cost of the acquisition, construction, operation, maintenance and upkeep of the Project.

(4) the plans and specifications assure or will assure adequate light, air, sanitation and fire protection.

RESOLVED, that on the basis of the Materials which indicate that no residential or business relocation is required, as no families, individuals, or businesses reside in nor are they to be displaced from the Project area; the Corporation hereby finds that the requirements of Section 10(g) of the Act are satisfied; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or in the event such office is vacant, the Chief Financial Officer, General Counsel or

their designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation, or in the event such office is vacant, the Chief Financial Officer, General Counsel or their designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take such actions as may be considered necessary or appropriate in connection with the holding of the public hearing required pursuant to Sections 6 and 16 of the Act, including, without limitation, the providing, filing or making available of copies of the Plan or a digest thereof and the finding required by Section 10 of the Act relating to the Project, the fixing of a date for such hearing, the publication of a notice relating to the Plan and such hearing in accordance with the Act; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer of the Corporation or in the event such office is vacant, the Chief Financial Officer, General Counsel or their designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing; and be it further

RESOLVED, that the Corporation hereby authorizes the commitment of Corporation funding up to the amount of \$1,500,000 for the Project, with such changes as the President and Chief Operating Officer or other proper officers of the Corporation may deem appropriate, and be it further

RESOLVED, that the provision of USAN funding is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that based on the Materials submitted to the Directors with respect to the Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment; and be it further

RESOLVED, that the President and Chief Executive Officer or in the event such office is vacant, the Chief Financial Officer, General Counsel or their his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.



Figure2: Project Rendering

Item II. B.



FOR CONSIDERATION

March 21, 2019

TO: The Directors

FROM: Paul Tronolone

SUBJECT: Procurement of Construction Services

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

CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor: Scott Lawn Yard

Scope of Services: Construction Services

Contract Term: 410 days from award (Anticipated start date May 2019; anticipated completion Date May 2020).

Contract Amount: Not to exceed \$1,175,000 (inclusive of 10% contingency)

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

II. Background

USA Niagara Development Corporation (“USAN”), a subsidiary of the New York State Urban Development Corporation d/b/a/ Empire State Development (“ESD”), requested bids from qualified construction firms and/or teams for construction services related to the development of the Cataract Commons Civic Project (“the Project”), a proposed open space or public “Commons” on Old Fall Street in Niagara Falls, New York.

The official address of the Project is 304 First Street in downtown Niagara Falls, although the property actually fronts on Old Falls Street and Rainbow Boulevard. The property is owned in fee by USAN and has an area of approximately 10,000 square feet.

In accordance with the General Project Plan, the subject USAN parcel was left from the 2009-10 demolition of the former Wintergarden and remained as a grassed public open space lot in conjunction with the restoration of Old Falls Street. It serves passive daily activities and hosts periodic in-season events. To date, a “lighter, quicker, cheaper” approach has largely been employed to use the space to facilitate outdoor programming. This has included the staging seating, portable shade structures, public art installations, and outdoor gaming such as ping-pong tables. But as the space continues to become a more important piece of the visitor experience to downtown Niagara Falls, investment in a program of more permanent capital improvements is necessary.

The Project involves the transformation of a vacant property into an attractive public plaza, complete with permanent seating and shading. The improvements to the space are intended to further facilitate programming on site, with a tiered concrete “stage” area, as well as the basic infrastructure for an outdoor marketplace. USAN contracted with Trowbridge Wolf Michaels Landscape Architects, LLP (“TWMLA”) to develop final design and bid documents for an urban Commons space that includes a program of earthwork, installation of metal shade structures, planters, fabricated wood and metal marquee signage, concrete flatwork, concrete amphitheater, landscaping, and lighting.

III. Contractor Selection Process

In order to procure a qualified general contractor for the Project, USAN advertised in the New York State Contract Reporter on February 13, 2019. USAN and their consultant TWMLA followed all standard ESD bidding procedures. Two mandatory pre-bid meetings were offered; the first one was held on February 22, 2019 and the second one was held on March 5, 2019. The construction documents set forth a base contract, along with a series of four (4) potential additional alternatives (“Add Alts”) for additional Project scope items. The basis for award of a contract was set forth as the lowest responsible bidder on the base contract. If they could be accomplished within the overall Project budget, in conjunction with awarding the base contract, USAN could elect to also award one or more of the Add Alts.

Three sealed bids were received by USAN on March 12, 2019 at 2 p.m. USAN is proposing to enter into a contract with the lowest responsive bidder, Scott Lawn Yard. Contractors and their base bid price are listed below, along with their proposed prices for any exercised Add Alts.

Contractor	Base Bid Price (Basis of Award)	Add Alts			
		Alt 1	Alt 2	Alt 3	Alt 4
4 th Generation Construction	\$1,069,000	\$33,500	\$110,000	\$17,000	\$152,000
Scrufari Construction	\$1,039,000	\$30,000	\$185,000	\$27,000	\$112,000
Scott Lawn Yard	\$840,569	\$31,050	\$67,200	\$12,650	\$116,000

Scott Lawn Yard of Niagara Falls, NY, was founded in 1984 and is a multi-faceted company offering a wide range of services including earthwork, water and sewer line installation, building foundation preparation, parking lot and roadway construction, landscaping, and FEMA disaster response. Their services are primarily aimed at municipalities, public agencies, developers, and general contractors. Past projects have included rehabilitation work at the Niagara Falls Water Treatment Plant; converting a section of the former Robert Moses Parkway to pedestrian pathways; and a region wide landscaping project for the NYSDOT. The contractor has performed work in Florida, Maryland, Michigan, Ohio, Pennsylvania and Washington D.C. They are a certified WBE/DBE company.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation’s policy related thereto, staff has; a) considered proposed contractor’s ability to perform the services provided for in the proposed contract; and b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

IV. Scope of Work

USAN is requesting construction services for a capital improvement project in downtown Niagara Falls. The scope of work includes earthwork, metal shade structures, planters, fabricated wood and metal marquee signage, concrete flatwork, concrete amphitheater, landscaping, and lighting.

V. Contract Term, Price and Funding

The award and execution of this contract will be subject first to the approval of the Project’s General Project Plan by the USAN Board of Directors, the holding of a public hearing on the Project (upon receiving no negative comments), and the approval by the New York State Public Authorities Control Board.

The contract term will be approximately 410 calendar days from the award date, estimated to be in May 2019. The substantial completion date is estimated to be December 31, 2019, with a final completion date expected by May 15, 2020.

The method of payment shall be periodic lump sum payments upon verification of the work completed with a not-to-exceed amount.

The funding source will be NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster a/k/a "Buffalo Billion". No USAN Corporate funds will be used to fund the contract.

The final base bid amount will not exceed \$840,569. Taking into account Scott Lawn Yard's bids for Add Alts. 1, 2, 3, and 4, the bid amount totals \$1,067,469. Therefore, the total not to exceed contract amount, including approximately a 10% contingency, is \$1,175,000.

VI. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Recipient shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise (MWBES) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% related to the total value of USAN funding.

VII. Environmental Review

The Directors made a Determination of No Significant Effect on the Environment for the proposed project as part of the adoption of its General Project Plan on March 21, 2019. This determination addressed all aspects of the proposed Cataract Commons Project. Therefore, no further environmental review is required in connection with this action.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize the Corporation to enter into a contract with Scott Lawn Yard for an amount not to exceed \$1,175,000 (inclusive of 10% contingency); and to authorize the taking of all related actions

IX. Recommendation

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

XI. Attachments

Resolution

March 21, 2019

USA Niagara Development Corporation – Authorization to Enter into a Contract with Scott Lawn Yard to provide Construction Services and to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Scott Lawn Yard to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Scott Lawn Yard in an amount not to exceed ONE MILLION ONE HUNDRED SEVENTY-FIVE DOLLARS (\$1,175,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

* * *

Item II. C.



FOR CONSIDERATION

March 21, 2019

TO: The Directors

FROM: Paul J. Tronolone

SUBJECT: Niagara Gorge Corridor Project:
Parkway Removal – Main Street to Findlay Drive, Niagara Falls, NY
Amended Funding Agreement with the New York Power Authority
Design Support and Monitoring Services during Construction

RE: Authorization to Enter into an Amended Agreement with the Power Authority of the State of New York; Authorization to Enter into an Amended Grant Disbursement Agreement with the New York State Office of Parks, Recreation, and Historic Preservation; Make a Determination of No Significant Effect of the Environment; and Take All Related Actions

I. Background

In 2006, the USA Niagara Development Corporation (“USAN”) entered into a landmark Memorandum of Understanding (“MOU”) with the City of Niagara Falls (“the City”), the New York State Office of Parks, Recreation, and Historic Preservation (“OPRHP”), the New York State Department of Transportation (“NYSDOT”), and the Power Authority of the State of New York (“NYPA”) to jointly solicit state/federal funding and oversee planning, engineering, and environmental review efforts necessary to reconfigure two key segments of the former Robert Moses Parkway (“Parkway”), recently renamed the Niagara Scenic Parkway.

USAN helped secure state/federal/local funds in 2006 for OPRHP’s Public Scoping Process (i.e., initial planning process) for what was ultimately referred to as the “Niagara Gorge Corridor”, project to be advanced in the Corridor, extending from Main Street in downtown Niagara Falls to Findlay Drive near Whirlpool and DeVeaux Woods State Parks, involving removal of the Parkway and reconstruction of an adjoining segment of Whirlpool and Third Streets (the “Project”). NYPA subsequently provided up to \$1.5 million to undertake preliminary engineering and environmental review of this Project, which was completed in February 2017.

In January 2017, USAN entered into an agreement with NYPA in which NYPA provided up to \$3.5 million to USAN to oversee (on behalf of OPRHP) the Consultant Services for the final design/bid documents for the Project, as well as for Consultant Design Support Services during the Project’s construction. This \$3.5 million was part of NYPA programming of \$40 million and OPRHP programming of \$2 million announced by the Governor in March 2016. In addition to the \$3.5

million going to USAN, \$35 million would go to NYSDOT for construction, and \$3.5 million would go to NYSDOT for construction administration and inspection.

A supplemental design services contract was issued by OPRHP to Parsons Transportation Group (“Parsons”) for up to \$2.85 million, with up to \$650,000 in contingency to cover any approved design support services during the construction of the Project, which would better understood at the end of final design. Final design activities commenced in March 2017, with a Project oversight committee consisting of USAN, OPRHP, NYSDOT, NYPA, and City representatives meeting bi-weekly to coordinate final design activities.

Over the course of final design activities, it was determined that part of the services during construction of the Project may involve required monitoring for Technologically Enhanced Naturally Occurring Radioactive Material (“TENORM”) that investigations suggested was present in various portion of the Project Corridor. The Project oversight committee determined that it would be more advantageous to address this need through the Parsons team as an objective third party, as opposed to having these services led by the construction contractor. In addition, after bidding the Project as a single contract yielded only one bidder with proposed costs that were more than 50% higher than the \$35 million construction budget, it was determined that it would be advantageous to break the Project into three construction contracts to facilitate more competition in the bidding. This required additional work by Parsons that was not covered in their scope of work.

Upon the close of the final design phase, Parsons estimate for design support services during the construction and administration of the three contracts (including TENORM monitoring and additional work expended in breaking up the Project documents into three contracts) totaled \$1,180,000, which is \$530,000 more than available under the current agreement with NYPA.

Upon discussions with NYPA, they are willing to amend the agreement to provide the additional funds for this projected overrun.

II. Funding Source

NYPA is in the process of internal authorizations to provide USAN with an additional \$530,000 to fully fund Parsons’ supplemental scope of work for design support and monitoring services during construction of the Project. No USAN Corporate funds will be used to fund the Project.

III. Project Budget

The anticipated Consultant budget for the Project is as follows:

Already-committed Contingency Funds from NYPA Agreement	\$650,000
Additional NYPA Funds from Amended Agreement	<u>\$530,000</u>
TOTAL CONSULTANT BUDGET (not to exceed)	\$1,180,000

The Project Budget expressly excludes any and all in-kind services that may be performed by USAN, OPRHP, NYSDOT and/or NYPA.

IV. Supplemental Agreement between OPRHP and the Design Consultant

In accordance with New York State procurement policies, OPRHP's current professional services agreement with Parsons has been amended to address these additional services, however, a notice to proceed was only issued for up to \$650,000 pending NYPA's approval of an additional \$530,000 in funding. It is anticipated that OPRHP will authorize Parsons to begin to expend the additional \$530,000 by January 2020.

USAN, with additional funding provided by NYPA, shall provide OPRHP with an amended Grant Disbursement Agreement and will directly reimburse OPRHP for their Consultant costs.

V. Funding Agreement with NYPA

Upon executing the Amended Agreement, in January 2020, NYPA will remit to USAN an additional \$530,000, as provided in the Project Budget. USAN shall hold such funds received from NYPA in escrow and periodically release, as needed, to directly reimburse OPRHP for its payments made to the Consultant.

NYPA will have no obligation under the Amended Agreement to provide USAN more than \$530,000 in additional funds.

VI. Environmental Review

OPRHP, as lead agency, completed an environmental review of the Project, pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. This involved a coordinated review with USAN/ESD as involved agencies, which found the Project to be a Type I Action, which would not have a significant effect on the environment. The agency issued a Negative Declaration on January 18, 2017. It is recommended that the Directors make a Determination of No Significant Effect on the Environment. No further environmental reviews for this action are required.

VII. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Recipient shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise ("MWBES") for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith

Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% related to the total value of USAN's funding to OPHRP.

VIII. Requested Action:

Based on the foregoing, the Directors are requested to authorize the Corporation to enter into a Amended Agreement with NYPA for the Niagara Gorge Corridor Project: Parkway Removal – Main Street to Findlay Drive, Niagara Falls, NY; to receive an additional \$530,000 in NYPA funds; to enter into an Amended Grant Disbursement Agreement to provide up to \$530,000 funds to OPRHP on the terms and conditions set forth in these materials; to Make a Determination of No Significant Effect of the Environment; and to take related actions.

Attachments:

Resolution

March 21, 2019

USA NIAGARA DEVELOPMENT CORPORATION – Authorization to Enter into an Amended Funding Agreement with the Power Authority of the State of New York; Authorization to Enter into an Amended Grant Disbursement Agreement with the New York State Office of Parks, Recreation, and Historic Preservation; Make a Determination of No Significant Effect of the Environment; and Take All Related Actions

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to enter into an Amended Funding Agreement with the Power Authority of the State of New York associated with the Niagara Gorge Corridor Project: Parkway Removal – Main Street to Findlay Drive, substantially on the terms and conditions set forth in the materials presented to this meeting, with such changes as the President and the Chief Executive Officer of the Corporation or his designee(s) may deem appropriate; including the acceptance of additional funding of an amount not to exceed \$530,000; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to enter into an amended Grant Disbursement Agreement with the New York State Office of Parks, Recreation, and Historic Preservation to provide funding of an amount not to exceed \$530,000 to cover Consultant costs for design and monitoring services during construction of the Niagara Gorge Corridor Project: Parkway Removal – Main Street to Findlay Drive; and be it further

RESOLVED, that based on the Materials submitted to the Directors with respect to the Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she in his or her discretion consider to be necessary to effectuate the foregoing resolutions.

* * *