



USA NIAGARA DEVELOPMENT CORPORATION

Meeting of the Directors

Monday

March 22, 2021 – 11:30 a.m.

AGENDA

I. CORPORATE ACTIONS

- A. Approval of Minutes of the December 14, 2020 Directors' Meeting
- B. Approval of the Corporation's Annual FY 2021-22 Operating and Capital Budgets (April 1, 2021 – March 31, 2022)
- C. Niagara Falls Convention and Conference Facility Civic Project and Old Falls Street – Calendar Year ("CY") 2021 Operating Budgets - Approval of the CY 2021 Niagara Falls Convention and Conference Facility and Old Falls Street Operating Budgets; Approval of First Quarter 2022 Funding; and Authorization to Disburse Funds

II. FOR CONSIDERATION

- A. 500 and 512 Third Street Restoration/Rehabilitation 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 Enter Into Necessary Agreements; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions
- B. 554 and 558 Third Street Land Use Improvement Project – General Project Plan - Determination of Responsibility with Respect to the Proposed Preferred Developer; 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 for the Sale of Real Property; Authorization to Enter Into Necessary Agreements; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

Item I. A.

DRAFT – SUBJECT TO REVIEW AND REVISION

USA NIAGARA DEVELOPMENT CORPORATION

Meeting of the Directors

Conducted Via Teleconference

December 14, 2020

MINUTES

In Attendance Directors: Francine DelMonte – Chair
Paul Nanula
Michael Williamson

Present for USA Niagara: Elaine A. Kloss, Chief Financial Officer
Ray Paul, Senior Project Manager
John Risio, Project Manager
Loul Rizek, Office Manager
Debbie Royce, Acting Corporate Secretary
Rob Sozanski, Project Associate
Anthony Vilardo, President

Present for ESD: Julia Borukhov, Financial Project Manager
Daniel DaSilva, Director - Subsidiary Finance
Stephen Gawlik, Senior Counsel - Strategic Initiatives
Felisa Hochheiser, Director of Compliance
Robert Jones, Vice President - Contractor Administration
Stephen Konopko, Vice President - Internal Audit
Eugene Kwiatkowski, Senior Director of Budgeting
Pamm Lent, Director of Communications - WNY
Kathleen Mize, Deputy Chief Financial Officer and Controller
Ray Paul, Senior Accountant
Laura Magee, Deputy Director - Public Affairs
Paul Tronolone, Vice President - Policy, Planning & Project
Management

Also Present: Honorable Robert Restaino - Mayor of Niagara Falls

Following the roll call and confirmation that a quorum was present, the meeting of the Directors of the USA Niagara Development Corporation was called to order at 11:10 a.m. by Chair DelMonte.

DRAFT- SUBJECT TO REVIEW AND REVISION

Next, the Chair asked everyone to please mute their phones until they were ready to speak and to state their name before speaking.

Chair DelMonte noted that due to public health concerns and as authorized by an Executive Order by the Governor, the meeting would be conducted by teleconference.

Chair DelMonte then noted that the public had been given the opportunity to comment on the Agenda items by submitting their written comments at or before 9:00 a.m. today, and noted that no comments were received.

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 no conflicts were noted at this time.

The Chair then called for the approval of the Minutes of the July 27, 2020 Directors' meeting. Upon motion duly made and seconded, the following resolution was unanimously adopted:

**APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE JULY 27, 2020
MEETING OF THE DIRECTORS OF THE USA NIAGARA DEVELOPMENT CORPORATION**

RESOLVED, that the Minutes of the meeting of the Corporation held on July 27, 2020 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.

* * *

DRAFT- SUBJECT TO REVIEW AND REVISION

Chair DelMonte then asked Anthony Vilaro to present an item relating to a request for an amendment to the 2020 calendar year Operating Budget for the Niagara Falls Convention and Conference Facility and Old Falls Street Project.

Mr. Vilaro explained that on March 25, 2020, the Directors approved an Operating Budget for the Conference Center in the amount of \$992,169. He noted that in July of this year, the Directors approved an additional \$222,954 which was the remaining balance from the 2019 Operating Budget.

Mr. Vilaro further explained that due to the historic performance of the Conference Center last year, Spectra had earned an incentive of \$181,697, but due to COVID, the Directors were now being requested to amend the 2020 Operating Budgets for the Conference Center and increase the amount by \$181,697 in order to pay the required 2019 incentive fee.

Mr. Vilaro noted that the Operating Budget for 2020 will now be \$1,173,866, and the payment of the incentive fee will be through New York State budget appropriations made available through the Buffalo Regional Innovation Cluster Fund otherwise known as the Buffalo Billion.

Following the full presentation, Chair DelMonte called for questions or comments. Hearing none and noting that no comments were received from the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

DRAFT- SUBJECT TO REVIEW AND REVISION

USA NIAGARA DEVELOPMENT CORPORATION – Niagara Falls Convention and Conference Facility Civic Project and Old Falls Street – 2019 Incentive Fees - Approval to Amend the CY 2020 Niagara Falls Convention and Conference Facility and Old Falls Street Operating Budgets; and Authorization to Disburse Funds and to Take Related Actions

RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the “Materials”), the Corporation’s proposed amendment to the CY 2020 Niagara Falls Convention and Conference Facility (“CCNF”) and Old Falls Street (“OFS”) Operating Budgets to increase the Operating Budgets in the amount of \$181,697 (\$172,066 for CCNF and \$9,631 for OFS); for a total cumulative amount not to exceed \$1,173,866 (\$504,707 for CCNF and \$669,159 for OFS); 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 actions of the President or his designees relating to the CY 2020 CCNF and OFS Operating Budgets be approved and ratified, and the same hereby are, authorized to disburse funds substantially in accordance with the CY 2020 CCNF and OFS Operating Budgets with such changes as the President or his designee deems necessary or appropriate; 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.

* * *

Chair DelMonte then called on Mr. Vilardo to present the last item on the Agenda that related to an amendment to the consulting contract with LiRo Engineers.

Mr. Vilardo explained that in 2018, the Directors authorized the Corporation to enter into a Purchase and Sale Agreement for a portfolio of properties in downtown Niagara Falls. Prior to the acquisition, a 120-day due diligence review was conducted of the properties.

DRAFT- SUBJECT TO REVIEW AND REVISION

Mr. Vilaro further explained that the Corporation entered into a contract with LiRo Engineers to perform Phase 1 site assessments and building structural evaluations as well as a Phase 2 environmental subsurface investigation as part of the due diligence review.

Mr. Vilaro noted that during the review, it was discovered that the site formerly used as a gas station had petroleum contamination evident in the soil. Because of this discovery, USA Niagara declined to pursue this property further until a plan for redevelopment emerged.

Mr. Vilaro further noted that at its January 30, 2020 Meeting, the Directors designated TM Montante the preferred developer of this site along with three other USA Niagara owned properties located in the 500 block of Third Street.

Mr. Vilaro noted that with the advancement of the Project, USA Niagara re-engaged with the New York State Department of Environmental Conservation who advised the Corporation to move forward with LiRo to identify the extent of the contamination and develop a potential plan for remediation.

Lastly, Mr. Vilaro noted that as the new contract term would exceed one year, the Directors were being asked to approve the extension of the proposed contract amendment for the additional one year period.

DRAFT- SUBJECT TO REVIEW AND REVISION

Following the full presentation, Chair DelMonte called for questions or comments.

Hearing none and noting that no comments were received from the public, upon motion duly made and seconded, the following resolution was unanimously adopted:

USA NIAGARA DEVELOPMENT CORPORATION – Procurement of Consultant Services -
Authorization to Amend a Contract with LiRo Engineers to Provide Consultant 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 LiRo Engineers (“LiRo”) to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to amend a contract with LiRo for an additional 12 month term from the award of the amendment, 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 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.

* * *

There being no further business, the meeting was adjourned at 11:19 a.m.

Respectfully submitted,

Debbie Royce
Acting Corporate Secretary

Item I. B.



FOR CONSIDERATION

March 22, 2021

TO: The Directors

FROM: Anthony Vilaro

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

REQUEST FOR: Approval of the Corporation’s Fiscal Year (“FY”) 2021-22 Annual Operating and Capital Budgets (April 1, 2021 – March 31, 2022)

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 2021-22 Annual Operating Budget (“Operating Budget”) and FY 2021-22 Annual Capital Budget (“Capital Budget”) for USAN.

The FY 2021-22 Operating Budget of \$703,655 proposes a total of \$580,105 in personal services (salaries and benefits for 5 employees) and a total of \$123,550 in non-personal services (primarily office occupancy, insurance and other administrative expenses). The total budget represents a 6.6% decrease from the FY 2020-21 operating budget, primarily due to reductions in Personal Services and Insurance expenses. Consistent with previous years’ operating budgets, the FY 2021-22 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 2021-22 Capital Budget is \$24,114,760 and includes design and other soft costs of \$3,732,245 legal costs of \$55,920; property management/maintenance costs of \$1,000,000; insurance costs of \$384,000; demolition and site clearance costs of \$5,500,000; construction costs of \$4,589,302; and other miscellaneous costs of \$8,853,293. It is anticipated that the proposed funding will cover costs related to the Hotel Niagara restoration; the close-out of the Wyndham Garden Inn Hotel Project; the completion of the Cataract Commons Project; maintenance and site preparation expenses associated with properties secured through USAN’s Downtown Land Acquisition Program; as well as the costs of design support services for the Rainbow Mall Civic Improvement Project.

Funding for the Corporation’s Capital Budget includes, in part, unexpended funds from the USAN/City of Niagara Falls Memorandum of Understanding (“MOU”). These MOU funds were made available to the Corporation under the 2014-2018 Agreement 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. Under the terms of the MOU, payments to USAN stopped in 2016 pending the resumption of the City receiving annual Casino revenues under the New York State-Seneca Nation Compact. Funding for costs related to the Hotel Niagara, Wyndham Garden Inn, Cataract Commons and Rainbow Mall projects, will be through NYS Budget Appropriations made available through the Buffalo Regional Innovation Cluster a/k/a “Buffalo Billion” (Phases I & II). 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 2021-22 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 2021-22 Annual Operating Budget in the amount of \$703,655 and Annual Capital Budget in the amount of \$24,114,760 (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 2021-22 Operating Budget

The Corporation’s Proposed FY 2021-22 Capital Budget

USA NIAGARA DEVELOPMENT CORPORATION – Approval of the Corporation’s Annual FY 2021-22 Operating and Capital Budgets (April 1, 2021 – March 31, 2022)

RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the “Materials”), the Corporation’s proposed FY 2021-22 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 Corporation
Operating Budget Plan FY 2021-22**

	Board Approved Budget FY 2020-21	Proposed Budget Plan FY 2021-22
<u>PERSONAL SERVICES (PS)</u>		
Salaries	\$ 452,373	\$ 420,366
Fringe Benefits	171,902	159,739
TOTAL PERSONAL SERVICES	\$ 624,275	\$ 580,105
HEADCOUNT	5.0	5.0
<u>NON-PERSONAL SERVICE (NPS)</u>		
Professional Fees		
Legal / Accounting Fees	\$ 250	\$ 250
Consultant Fees	0	0
Total Professional Fees	\$ 250	\$ 250
Other Non-Personal Services		
Employee Travel & Meals	\$ 500	\$ 500
Online Services/Training/Conferences/Subscriptions	1,500	1,500
Office Occupancy Expenses	63,300	69,300
Insurance	45,108	40,000
Outside Services and Expenses	2,500	2,500
Telephone/Fax/Internet	5,000	5,000
Office Supplies and Expenses	500	500
Computers/Software/Equipment	4,000	4,000
Total Other Non-Personal Services	\$ 128,408	\$ 123,300
TOTAL NON-PERSONAL SERVICES	\$ 128,658	\$ 123,550
TOTAL PS & NPS	\$ 752,933	\$ 703,655

**Empire State Development
USA Niagara Development Corporation
Capital Budget Plan FY 2021-22**

	Board Approved Budget FY 2020-21	Proposed Budget Plan FY 2021-22
Acquisition Costs	\$ 0	\$ 0
Design & Other Soft Costs	4,048,069	3,732,245
Legal Costs	55,920	55,920
Property Management/Maintenance Costs	1,400,000	1,000,000
Insurance	523,991	384,000
Demolition & Site Preparation	6,000,000	5,500,000
Construction Costs	6,869,286	4,589,302
Other Misc. Costs	9,003,337	8,853,293
TOTAL CAPITAL BUDGET	<u>\$ 27,900,603</u>	<u>\$ 24,114,760</u>

Item I. C.



FOR CONSIDERATION

March 22, 2021

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: Niagara Falls Convention and Conference Facility Civic Project and Old Falls Street – Calendar Year (“CY”) 2021 Operating Budgets

REQUEST FOR: Approval of the Niagara Falls Convention and Conference Facility and Old Falls Street CY 2021 Operating Budgets; Approval of First Quarter 2022 Funding; and Authorization to Disburse Funds

I. Background

Attached for your review and approval are the proposed operating 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 2021.

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 an Initial Term ending December 31, 2018, with Spectra to operate and manage both CCNF and OFS. USAN subsequently elected to exercise its rights to extend the Initial Term of the Agreement for two additional one-year periods. On July 27, 2020, USAN approved an amendment to the Agreement further extending the term by one-year, beginning January 1, 2021 and expiring on December 31, 2021.

With CCNF and OFS currently closed due to the ongoing COVID-19 pandemic, Spectra has experienced an unprecedented loss of business resulting in a negative cashflow. It is imperative that USAN provide funding to allow for basic operations, maintenance and employee retention.

For CY 2021, 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 concluded in the State’s favor in 2019. 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. USAN continues to work with ESD senior management in identifying additional funding sources to ensure that future Budgets are fully funded. No USAN Corporate funds will be used to fund the Budgets.

The proposed CY 2021 Operating Budget for CCNF is \$406,696. No incentive fees for CCNF are expected for CY 2021. The Operating Budget for OFS is \$584,839 (with incentive fees, the total is \$593,256). The total Operating Budget for CCNF and OFS is \$991,535 (with OFS incentive fees, the total Operating Budget is \$999,952).

Unlike previous years, there are no proposed CY 2021 Capital Budgets for CCNF and OFS.

The proposed 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 25, 2020, an advance of \$250,000 to Spectra in order to fund first quarter operations in 2021. USAN proposes that the Directors approve at this time CCNF and OFS funding for the first quarter of 2022 (calendar quarter) in the amount not to exceed \$250,000. The CCNF and OFS budgets for 2022 will remain subject to approval by the Directors before the start of the Corporation’s fiscal year.

II. 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.

III. 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 Enterprises (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 the goals assessed for the CCNF and OFS contracts, individually.

IV. Requested Action

The Directors are requested to approve USAN's proposed CY 2021 CCNF and OFS Operating Budgets in an amount not to exceed \$999,952; to approve CCNF and OFS funding for the first quarter of 2022 (calendar quarter) in an amount not to exceed \$250,000; and to disburse funds in accordance with the CY 2021 CCNF and OFS Operating Budgets attached hereto.

V. Attachments

Resolution

Proposed CY 2021 CCNF Operating Budget

Proposed CY 2021 OFS Operating Budget

March 22, 2021

USA NIAGARA DEVELOPMENT CORPORATION – Approval of the CY 2021 Niagara Falls Convention and Conference Facility and Old Falls Street Operating Budgets; Approval of First Quarter 2022 Funding; and Authorization to Disburse Funds

RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the “Materials”), the Corporation’s proposed CY 2021 Niagara Falls Convention and Conference Facility and Old Falls Street Operating Budgets in a cumulative amount not to exceed \$999,952 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 2022 (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 2021 Niagara Falls Convention and Conference Facility and Old Falls Street Operating Budgets be approved and ratified, and the same hereby are, authorized to disburse funds substantially in accordance with the CY 2021 Niagara Falls Convention and Conference Facility and Old Falls Street Operating Budgets with such changes as the President or his designee deems necessary or appropriate; 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
CALENDAR YEAR 2021 (January 1 - December 31)**

OPERATING BUDGET PROPOSAL

		BUDGET 2021
# OF EVENTS		70
ATTENDANCE		26,311
<hr/>		
REVENUE		
<hr/>		
DIRECT EVENT REVENUE		305,601
ANCILLARY REVENUE		1,732,452
OTHER REVENUE		0
TOTAL ESTIMATED GROSS REVENUE		2,038,053
<hr/>		
EXPENSE		
<hr/>		
EVENT EXPENSE		607,577
INDIRECT EXPENSE (SALARIES & OVERHEAD)		1,837,172
TOTAL ESTIMATED EXPENSE		2,444,749
<hr/>		
NET INCOME / (REQUIRED SUPPORT)		(406,696)
<hr/>		
FEES		
<hr/>		
F&B INCENTIVE FEE - 20%		0
MANAGEMENT INCENTIVE FEE		0
TOTAL ESTIMATED FEES		0
<hr/>		
Net Income/Loss		(406,696)

**OLD FALLS STREET
SPECTRA VENUE MANAGEMENT
CALENDAR YEAR 2021 (January 1 - December31)**

OPERATING BUDGET PROPOSAL

BUDGET 2021	
# OF EVENTS	128
ATTENDANCE	25,247
REVENUE	
DIRECT EVENT REVENUE	54,750
ANCILLARY REVENUE	112,225
OTHER REVENUE	15,000
TOTAL ESTIMATED GROSS REVENUE	181,975
EXPENSE	
EVENT EXPENSE	328,229
INDIRECT EXPENSE (SALARIES & OVERHEAD)	438,585
TOTAL ESTIMATED EXPENSE	766,814
NET INCOME / (REQUIRED SUPPORT)	(584,839)
FEES	
F&B INCENTIVE FEE - 7.5%	8,417
TOTAL ESTIMATED FEES	8,417
Net Income/Loss	(593,256)

Item II. A.



FOR CONSIDERATION

March 22, 2021

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: 500 and 512 Third Street Restoration/Rehabilitation Land Use Improvement Project – General Project Plan

REQUEST FOR: 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 Enter Into Necessary Agreements; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

GENERAL PROJECT PLAN

Developer: Montante Group, LLC

Contact: Christian Campos, Member

Project Location: 500, 512, & 518 Third Street and 503 Main Street, Niagara Falls, New York

Proposed Project: Restoration/rehabilitation of two commercial buildings and adjoining vacant and surface parking areas.

Financing Sources: Bank Financing, National Grid, Niagara County, Community Development 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 500 and 512 Third Street Restoration/Rehabilitation Project (the “Project”) in the City of Niagara Falls, Niagara County, New York.

The Project involves the restoration/rehabilitation of the USAN-owned commercial buildings located at 500 and 512 Third Street, as well as a vacant lot adjacent to 512 Third Street (518 Third Street), (“Property I”) and an adjacent parking lot at 503 Main Street (“Property II”), collectively the “Property”. The Project will result in two vibrant, mixed-use commercial developments and are critical for the continued development of the Third Street Business District. 500 Third Street would contain ground floor space suitable for retail/restaurant use as well as commercial space above. 512 Third Street would contain retail/restaurant space and use of adjacent outdoor areas. The two properties would be connected through a finished outdoor seating area, which could be utilized by onsite tenants or for special events.

As previously authorized by the USAN Board of Directors in January 2020, the Preferred Developer for the Project is TM Montante Development (“TMMD” or “the developer”). TMMD is an affiliate company of the Montante Group and was formed in 2008. It is a full-service real estate development company based in Buffalo, New York. The company develops distinct properties with a passion for enduring design, character and authenticity. In the brief period since its inception, TMMD has established itself as a leader in urban mixed-use development and high-quality new construction.

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 Land Use Improvement projects in areas in need of redevelopment, particularly those in danger of becoming substandard or blighted.

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

II. BACKGROUND

On August 18, 2018, the USAN Board of Directors approved acquisition of the Property, along with several other properties, as part of the strategic land acquisition program funded through the second phase of Governor Andrew M. Cuomo’s “Buffalo Billion” Economic Development Initiative. The program is intended to assemble long-dormant properties located near Niagara Falls State Park to remove blight from the downtown area and expand the density of uses there toward the establishment of a year-round, sustainable neighborhood. In March 2019, USAN closed on the Property and in July 2019 issued a Request for Proposals (“RFP”) for the redevelopment of the Property.

On October 11, 2019, USAN received several RFP responses but only one with respect to the Property. The RFP gave respondents the option to submit proposals on one or more of the six properties offered through the RFP. USAN is currently negotiating with other respondents who submitted proposals on the other properties which are not included in this General Project Plan (“GPP”).

A Selection Committee consisting of four (4) USAN staff members and a staff member from the City of Niagara Falls reviewed the responses to the RFP against evaluation criteria measuring various aspects of each proposal, including but not limited to: the proposed purchase price for the Property; the team's experience in undertaking historic restoration projects; the quality of the Development Plan and the ability to complete the Project in the most expeditious manner; the quality/reasonableness of the financial plan; and the extent to which each team proactively undertakes diversity practices in its work. TMMD was the only proposal received with respect to the Property. The USAN Board of Directors would ultimately designate TMMD as the preferred developer on January 30, 2020.

TMMD intends to complete the estimated \$4.25 million Project in two separate stages, the first being construction of either 500 Third Street or 512 Third Street (the "Phase 1 Development") and second being construction the other portion of the Property not chosen as Phase 1 (the "Phase 2 Development").

The Montante Group will pay USAN \$1 to purchase both parcels and reimburse USAN for the costs or a portion of the costs if any remediation costs are incurred by USAN to make Property II shovel ready. The Montante Group will also seek state/federal historic tax credits as appropriate, and will be required to design/implement the restoration in a manner that is consistent with the U.S. Secretary of Interior Standards for the Treatment of Historic Properties, determined in consultation with the New York State Historic Preservation Officer ("SHPO"), and where applicable, the U.S. National Park Service.

III. COMPLIANCE WITH THE PUBLIC AUTHORITIES LAW

Pursuant to the provisions of the Public Authorities Law ("PAL"), ESD and its subsidiaries are required to dispose of property through a competitive bid process and for fair market value unless a specific statutory exception applies.

With respect to the property to be transferred to the Montante Group, the consideration paid by the developer will be \$1 in exchange for the developer's restoration/rehabilitation of the Property. As the purchase price is for less than fair market value, the PAL requires the following information to be provided to support the below market transfer:

- (i) A full description of the asset: The Project Area encompasses four parcels with a total land area of 41,432 square feet or 0.96 acres in Niagara Falls, New York, containing two commercial buildings located at 500 and 512 Third Street, as well as a vacant lot adjacent to 512 Third Street (518 Third Street) and an adjacent parking lot at 503 Main Street.
- (ii) An appraisal of the fair market value of the asset: Pursuant to an independent appraisal of the property, the appraised value range is \$920,000 to \$965,000.

- (iii) A description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any to the communities in which the asset is situated as are required by the transfer: As more fully described in these materials, the project involves restoring two commercial buildings and returning them to productive and self-sustaining uses. The public benefit expected includes the creation of new jobs, increasing the tax base, and supporting investment in Niagara Falls. Job creation includes an estimated 30 full-time equivalent (FTE) direct construction jobs and a number of direct FTE positions are expected to be created depending on the future tenants.
- (iv) A statement of the value to be received compared to the fair market value: While the purchase price of the Property will be \$1.00, the Project will represent a major new development to continue efforts to grow tourism-related economic and recreational activity and increase investment in sustainable neighborhoods in downtown Niagara Falls.
- (v) The names of the private parties participating in the transfer: Montante Group LLC and its related entities/affiliates. Bank financing will also be involved in project financing.
- (vi) The names of the private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used: USAN conducted a competitive procurement process in July 2019. TMMMD submitted the only proposal for the Property, offered \$1 for the Property and proposed a mixed use development as described in these materials. No other offers have been made for the Property.

The goal of the transfer of the Property is the restoration/rehabilitation of the USAN-owned commercial property. The Project that will be completed by TMMMD and will contribute to the development of Niagara Falls which will help to entice further development. Please see Section V. A “Land Use Improvement Project Findings” for more detailed information on anticipated project benefits. As described in these materials and as TMMMD was the only proposal received by USAN for development of the Property, there is no reasonable alternative to the below market property transfer that would achieve the same purpose of such transfer.

IV. PROJECT DESCRIPTION

A. Objectives and Purpose of Transfer

The overall objectives of the Project and the purposes of the transfer to the Montante Group are as follows:

- Restoring/rehabilitation of two mixed-use buildings that further contribute to a lively, urbane

setting and a substantial increase in street-level interaction;

- Revitalizing additional property in a targeted business district that would be in danger of becoming further substandard and a blighting influence if actions are not taken to facilitate new investment;
- Realization of historic rehabilitation/reuse of the 500 Third Street property that employs techniques, materials, and design features that are fully consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (the "Secretary's Standards");
- Realizing a development that best complements or achieves synergies related to, but not limited to: the Project's proximity to Niagara Falls State Park; expanding the operating performance of other established uses in the downtown area by expanding the overall level of activity downtown; and creating or enticing further redevelopment and/or desired land use types on surrounding sites/areas of downtown;
- Expanding the availability of goods, services, and entertainment venues available to visitors, residents, and the public in general;
- Public benefits such as creating new jobs (the Project is expected to create an estimated 30 direct FTE construction jobs and a number of direct FTE positions are expected to be created depending on the future tenants), increasing the tax base, and supporting investment in Niagara Falls;
- Stabilizing and preserving the value of the Property; and
- Reaching a mutually beneficial public/private partnership with the goal of restoring the Property and returning them to a productive and self-sustaining use.
- Completing the restoration/rehabilitation and reuse of the Property in the most expeditious manner that is feasible.

B. Scope of the Restoration/Reuse

The Project shall involve an estimated \$4.25 million restoration/rehabilitation of the Property into vibrant, mixed-use commercial developments and are critical for the continued development of the Third Street Business District.

- 500 Third Street would contain 7,500 square feet ("SF") of ground floor space suitable for retail/restaurant use and 5,000 SF of commercial office space above.
- 512 Third Street would contain 9,000 SF of retail/restaurant space.
- 500 & 512 Third Street (and vacant adjacent lot at 518 Third Street) will be connected through a finished outdoor seating area, which could be utilized by onsite tenants or for special events.

- 503 Main Street will be used for surface parking of approximately 40 spots.

C. Purchase Price/Transfer of the Property

The Montante Group will pay USAN \$1 to purchase the Property. The developer will also seek state/federal historic tax credits, where appropriate for the Project. Other potential financial assistance may include a National Grid Grant; bank financing; historic tax credits; a Niagara County Industrial Development Agency (“IDA”) standard payment in lieu of taxes (“PILOT”) agreement, along with abatement of sale tax for construction materials, and abatement of mortgage recording tax; a 485-a tax abatement through the City of Niagara Falls; a Niagara County Cataract Fund grant; and community development block grant funds. However, the other potential financing is not in any way guaranteed by USAN or ESD as part of the Project.

The entity which USAN/ESD will be contracting with and selling the Property to, will be the Montante Group or a related entity controlled by the Montante Group.

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

**Montante Group LLC
Sources & Uses of Funds**

Anticipated Funding Sources	
Bank Financing	\$2,000,000
Historic Tax Credits	\$800,000
Grants / Incentives	\$600,000
Sponsor Equity	\$850,000
GRAND TOTAL	\$4,250,000
Funding Uses	
Development and Construction Costs	\$4,250,000
GRAND TOTAL	\$4,250,000

D. Land Disposition and Development Agreement

Upon adoption of this GPP, USAN and the Montante Group and/or its affiliate will enter into a Land Disposition and Development Agreement (“LDA”) which provides the detailed conditions, covenants, warranties and other terms and provisions for the Project. The LDA has been negotiated between USAN and TMMD and involves a series of business terms, which include:

- Requiring construction to commence (tentatively) within twelve (12) months of execution of the LDA, subject to the right to extend that deadline provided Developer has continued in good faith using commercially reasonable efforts to continue advancing the Project. Developer will thereafter be required to complete the construction of either 500 Third Street

or 512 Third Street (Phase I) within eighteen (18) months (tentatively), subject to extensions for customary force majeure events. Developer will be then (tentatively) required to complete the construction of the Project (i.e. complete Phase II) within forty-two (42) months of the execution of the LDA, subject to extensions for customary force majeure events;

- Requiring the developer to seek historic tax credits, and regardless of their use, undertake the historic rehabilitation work in accordance with SHPO and Secretary of Interior Standards for the Treatment of Historic Properties;
- Requiring the developer to enter into a formal agreement/process to identify goals/initiatives to reasonably maximize the Project’s positive community impact on the Niagara Falls/Niagara County community; and

E. Tentative Project Timeline

- Public Hearing on GPP.....April 2021
- Review by Public Authorities Control Board.....May 2021
- Execute LDAMay 2021
- Transfer of Property to Montante Group.....June 2021
- Start of Construction.....By May 2022
- Completion of Phase IBy November 2023
- Completion of Phase IIBy November 2024

V. STATUTORY BASIS

A. Land Use Improvement Project Findings – UDC Act Section 10(c)

USAN, pursuant to Section 10 of the UDC Act, has made the findings set forth below:

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.*

The Property is formerly commercial buildings with active uses. Last operating as a printing and embroidery business, 500 Third St has been vacant for several years; in turn 512 Third, while undertaking some renovation and operation as a nightclub, also ceased regular operations prior to acquisition by USA Niagara.

The vacant Property currently detract value from surrounding uses and has the potential of becoming further substandard if actions are not taken to facilitate new investment there.

Restoring the Property to active uses has the potential—together with other recent downtown projects—would further establish a cluster of uses to create a “place” of commercial activities along Third Street, which would also directly and indirectly create new employment opportunities. Full restoration of the Property has the potential to shift the trajectory of surrounding properties as well, (e.g., the Verrazzano Apartments, Wine on Third, Power City Eatery, etc.), which would all directly benefit through proximity to restored, active mixed-use buildings.

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.*

This project was a result of USAN’s strategic land acquisition program to actively seek out and acquire vacant and underutilized properties in downtown Niagara Falls for infill development. Plans for reuse of such properties must adhere USAN’s already-established urban design guidelines, as well as be consistent with policies of the City of Niagara Falls 2009 Comprehensive Plan and development regulations.

The Project conforms to these requirements; it would represent a major new development to continue USAN’s efforts to grow tourism-related economic and recreational activity downtown; it would further enhance the Third Street District and help support local businesses; and it would generate substantial tax revenues for the City and the State.

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.*

The Property was subject to an open solicitation and request for proposals by private companies. TMMD is a private enterprise and an integral part of the Project. The Project will encourage tourism-related uses in downtown Niagara Falls, foster participation and further opportunities for private enterprises. Furthermore, the LDA will include terms requiring the developer to identify goals and initiatives to maximize the project’s long-term goals on the Niagara Falls and Niagara County community.

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

USAN, pursuant to Section 10(g) of the UDC Act, makes the following finding:

That there is a feasible method for the relocation of families and individuals displaced from the project area into decent, safe and sanitary dwellings, which are or will be provided in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places of employment.

No residential or business relocation is required because no families, individuals, or businesses would be displaced at the Project site.

VI. RESPONSIBLE VENDOR DETERMINATION

As noted in the January 30, 2020, Board Materials, staff has examined the proposed contractor's "responsibility" as defined in State Finance Law §163, and as provided in ESD's Procurement Guidelines. Based on this analysis of financial and organizational capacity, legal authority to do business in New York, integrity of principals, and past performance on contracts, staff concludes that the proposed contractor is a responsible vendor.

VII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, USAN and ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned businesses (MWBEs) and Service-Disabled Veteran-Owned Businesses ("SDVOBs") in the performance of ESD contracts. Accordingly, ESD's Non-discrimination and Contractor & Supplier Diversity policy will apply to the Project.

The Project shall be subject to a 30% combined MBE and WBE and a 3% SDVOB contracting requirement, calculated as a percentage of the \$965,000 in financial assistance provided the Project. The MBE/WBE and SDVOB contracting requirements shall apply to the Preferred Developer and may be achieved through all parties retained by the Developer for any design, pre-construction, and construction efforts, as well as for materials purchased on the Project.

VIII. ENVIRONMENTAL REVIEW

USAN, as lead agency, completed an environmental review of the action 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 review found that the Project, which involves authorizing the sale/transfer of the USAN-owned properties for in-kind reuse (512 Third Street) and historic rehabilitation in accordance with the Secretary of Interior Standards for the Treatment of Historic Properties (500 Third Street), to be an Unlisted Action that would not result in significant adverse impacts on the environment. Therefore, staff recommends that the Directors make a Determination of No Significant Effect on the Environment.

Because 500 Third Street is eligible for inclusion on the National Register of Historic Places, USAN/ESD staff will ensure that consultation is conducted with the SHPO pursuant to the requirements of Section 14.09 of the State Historic Preservation Act, as well as with the National Park Service as part of securing historic tax credits for the Project.

IX. CONCLUSION

The proposed Project will restore/rehabilitate two currently vacant mixed-used commercial buildings and activate two vacant lots in the Third Street Business District of downtown Niagara Falls. This would contribute to further building a dense cluster of activity in the core of the

downtown district and would contribute to municipal needs by further supporting revitalization of the downtown district and expanding economic activity in the City's tourism industry.

X. RECOMMENDATION

Based on the foregoing, USAN staff recommends the making of the requisite 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 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.

XI. ADDITIONAL SUBMISSION TO DIRECTORS

Resolution

Figure 1: Site Location Map

Figure 2: Property Map

Figure 3: Current Photos of Property

Figure 4: Selected Renderings of Planned Restoration

March 22, 2021

USA NIAGARA DEVELOPMENT CORPORATION – 500 and 512 Third Street Restoration/Rehabilitation 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 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 “Materials”), a copy of which is hereby ordered filed with the records of the USA Niagara Development Corporation (the “Corporation”), relating to the 500 and 512 Third Street Restoration/Rehabilitation Land Use Improvement 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 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 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.

* * *

Figure 1: Site Location Map

512-518 Third Street
503 Main Street



Figure 2: Property Map



Figure 3: Current Property Photos

(Top 500 Third St, Bottom 512 Third St)



Figure 4 Project Renderings

(Top 500 Third St, Bottom 512 Third St)



Item II. B.



FOR CONSIDERATION

March 22, 2021

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: 554 and 558 Third Street Land Use Improvement Project – General Project Plan

REQUEST FOR: Determination of Responsibility with Respect to the Proposed Preferred Developer; 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 for the Sale of Real Property; Authorization to Enter Into Necessary Agreements; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

GENERAL PROJECT PLAN

Developer: SJI Main, LLC

Contact: Divya Tandon, Managing Member

Project Location: 554 and 558 Third Street, Niagara Falls, New York

Proposed Project: USAN will transfer two USAN owned vacant lots in order to support the rehabilitation and renovation of three structures (two mixed-use and one commercial), for new retail and residential development.

Financing Sources: Bank and Equity Financed

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 554 and 558 Third Street Land Use Improvement Project (the “Project”) in the City of Niagara Falls, Niagara County, New York.

The Project involves SJI Main, LLC's ("SJI" or the "Developer") acquisition of two USAN-owned vacant lots located at 554 and 558 Third Street (the "Property") in support of the adjacent rehabilitation/renovation of three SJI owned structures (two mixed-use and one commercial) located at 530 Main Street, 524 Main Street and 552 Third Street, Niagara Falls, for new retail and residential development. SJI's acquisition of the Property will be a vital addition to the current development underway, will add value to the Third Street Business District, create new jobs and provide new residential opportunities.

The Project will support SJI's phased investment in a mixed-use development. Phase I will consist of the creation of thirty-six residential apartments and six commercial spaces. SJI's total investment for Phase I is expected to be approximately \$3.7 million. The inclusion of the adjacent USAN owned Property will enhance the viability of SJI's development by allowing for additional parking, while also serving as a buildable site for a potential Phase II of SJI's investment.

SJI of Buffalo, New York, recently acquired the three structures noted above with the goal of rehabilitating the once thriving, historically iconic buildings, and reviving them to their past glory and charm. SJI aims to enhance the surrounding neighborhood both aesthetically and functionally, while creating a valued, accessible, and successful residential and commercial community.

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 Land Use Improvement projects in areas in need of redevelopment, particularly those in danger of becoming substandard or blighted.

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

II. BACKGROUND

On August 18, 2018, the USAN Board of Directors approved acquisition of several properties, including 554 and 558 Third Street, as part of the strategic land acquisition program funded through the second phase of Governor Andrew M. Cuomo's "Buffalo Billion" Economic Development Initiative. The program is intended to assemble long-dormant properties located near Niagara Falls State Park to remove blight from the downtown area and expand the density of uses there toward the establishment of a year-round, sustainable neighborhood. In March 2019, USAN closed on the above properties.

The Property consists of vacant and underused parcels that is immediately adjacent to property owned by SJI. Due to the location of the two USAN-owned vacant lots, there is no appreciable development opportunities for the Property except to support SJI's adjoining development. As such, USAN negotiated the transfer of the Property to the adjoining landowner on the terms

contained herein.

SJI will pay USAN \$1 to purchase the Property. SJI will also seek state/federal historic tax credits as appropriate, and will be required to design/implement the restoration in a manner that is consistent with the U.S. Secretary of Interior Standards for the Treatment of Historic Properties, determined in consultation with the New York State Historic Preservation Officer (“SHPO”), and where applicable, the U.S. National Park Service.

III. PROJECT DESCRIPTION

A. Objectives and Purpose of Transfer

The overall objectives of the Project and the purposes of the transfer of the Property to SJI are as follows:

- Supporting the restoration/rehabilitation of three mixed-use commercial developments and uses that contribute to a lively, urbane setting and a substantial increase in street-level interaction;
- Supporting the revitalization of an underutilized area that would be in danger of becoming further substandard and a blighting influence on this section of downtown Niagara Falls if actions are not taken to facilitate new investment;
- Realization of restoration/reuse of the 530 Main Street, 524 Main Street and 552 Third Street properties that employs techniques, materials, and design features that are fully consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (the “Secretary’s Standards”);
- Realizing a development that best complements or achieves synergies related to, but not limited to: the Project’s proximity to Niagara Falls State Park; expanding the operating performance of other established uses in the downtown area by expanding the overall level of activity downtown; and creating or enticing further redevelopment and/or desired land use types on surrounding sites/areas of downtown;
- Expanding the availability of goods, services, and entertainment venues available to visitors, residents, and the public in general;
- Public benefits such as creating new jobs (SJI’s investment is expected to create an estimated 30 direct FTE construction jobs and a number of direct FTE positions are expected to be created depending on the future tenants), increasing the tax base, and supporting investment in Niagara Falls;
- Stabilizing and preserving the Project’s adjacent property values;
- Reaching a mutually beneficial public/private partnership with the goal of restoring the Project’s adjacent properties and returning them to a productive and self-sustaining use; and

- Completing the restoration/rehabilitation and reuse of the Project's adjacent properties in the most expeditious manner that is feasible.

B. Scope of the Restoration/Reuse

The Project will support the Developer's \$3.7 million restoration/rehabilitation of three buildings into vibrant, mixed-use commercial developments and are critical for the continued development of the Third Street Business District.

The Project will support the full restoration of the properties located at 530 Main Street, 524 Main Street and 552 Third Street, with thirty-six high quality market-rate residential units, and six commercial spaces for both retail and office tenants.

Restoration work will include the rehabilitation of three buildings on site: the locally significant "Betty Shop" building, the adjacent dental practice, and the commercial storefronts along Main Street. Design and construction will adhere to the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties.

The Property will support the redevelopment of three buildings, either as a parking facility or as the site for a Phase II new commercial building.

C. Purchase Price/Transfer of the Property

SJI will pay USAN \$1 to purchase the Property. As such, the Project will receive indirect financial assistance when USAN's 2019 purchase price of \$195,000 is considered.

The entity which USAN/ESD will be contracting with and selling the Property to, will be SJI or a related entity controlled by SJI.

D. Land Disposition and Development Agreement

Upon adoption of this GPP, USAN and SJI and/or its affiliate will enter into a Land Disposition and Development Agreement ("LDA") which provides the detailed conditions, covenants, warranties and other terms and provisions for the Project. The LDA has been negotiated between USAN and SJI and involves a series of business terms, which include:

- Requiring construction to commence within twelve (12) months of execution of the LDA, subject to the right to extend that deadline provided Developer has continued in good faith using commercially reasonable efforts to continue advancing the Project. Developer will thereafter be required to complete the construction 530 Main Street, 524 Main Street and 552 Third Street within thirty-six (36) months, subject to extensions for customary force majeure events.
- Undertake the restoration/rehabilitation work in accordance with SHPO and Secretary of Interior Standards for the Treatment of Historic Properties; and

- Requiring the Developer to enter into a formal agreement/process to identify goals/initiatives to reasonably maximize the Developer’s positive community impact on the Niagara Falls/Niagara County community.

E. Tentative Project Timeline

- Public Hearing on GPP.....April 2021
- Review by Public Authorities Control Board.....May 2021
- Execute LDAJune 2021
- Transfer of Properties to SJI Main LLC.....July 2021
- Start of Construction.....By June 2022
- Completion of ConstructionBy June 2024

IV. STATUTORY BASIS

A. Land Use Improvement Project Findings – UDC Act Section 10(c)

USAN, pursuant to Section 10 of the UDC Act, has made the findings set forth below:

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.*

The Property includes vacant lots surrounded by vacant and/or blighted buildings. With new investment, the Property has the potential to facilitate a catalytic project for the south Main Street neighborhood. The Property currently detracts value from surrounding uses and has the potential of becoming further substandard if actions are not taken to facilitate new investment there. There is no economic activity derived from the Property, notwithstanding that the Project Area is located within walking distance of the Niagara Falls State Park, which enjoys 9 million annual visitors. The City of Niagara Falls (the “City”) as a whole has experienced chronically high jobless rates. Restoring the Property to an active use has the potential—together with other recent downtown projects—to begin to establish a cluster of uses to re-establish the economic importance of downtown Niagara Falls as a “place” of tourism-related activities, which would also directly and indirectly create new employment opportunities. The Project has the potential to shift the trajectory of surrounding properties as well, (e.g., the Verrazzano Apartments, Wine on Third, Power City Eatery, several nearby hotels and the Conference & Event Center Niagara Falls would all directly benefit through proximity to restored active mixed-use developments).

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.*

This Project was a result of USAN's strategic land acquisition program to actively seek out and acquire vacant and underutilized properties in downtown Niagara Falls for infill development. Plans for reuse of such properties must adhere USAN's already-established urban design guidelines, as well as be consistent with policies of the City of Niagara Falls 2009 Comprehensive Plan and development regulations.

The Project will support the Developer's restoration/rehabilitation of three mixed-use commercial buildings in the downtown Third Street/South Main Street Business District. The enhanced uses generated by the Developer's investment will attract people to the Project Area and will, accordingly, help support local businesses. The Developer's investment will also generate substantial tax revenues for the City and the State.

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.*

SJI is a private enterprise and an integral part of the Project. The Project as a whole will encourage tourism-related uses in downtown Niagara Falls, fostering participation and further opportunities for private enterprises. Furthermore, the LDA will include terms requiring the Developer to identify goals and initiatives to maximize their long-term goals on the Niagara Falls and Niagara County community.

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

USAN, pursuant to Section 10(g) of the UDC Act, makes the following finding:

That there is a feasible method for the relocation of families and individuals displaced from the project area into decent, safe and sanitary dwellings, which are or will be provided in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places of employment.

No residential or business relocation is required because no families, individuals, or businesses would be displaced at the Project site.

V. COMPLIANCE WITH THE PUBLIC AUTHORITIES LAW

Pursuant to the provisions of the Public Authorities Law ("PAL"), ESD and its subsidiaries are required to dispose of property through a competitive bid process and for fair market value unless a specific statutory exception applies.

With respect to the Property to be transferred to SJI, the consideration paid by the Developer will be \$1 in exchange for the restoration/rehabilitation of the adjoining properties owned by the

Developer. As the purchase price is for less than fair market value, the PAL requires the following information to be provided to support the below market transfer:

- (i) A full description of the asset: The Project Area encompasses two continuous vacant land parcels with a total land area of 10,839 square feet or 0.25 acre in Niagara Falls, New York, located at 554 and 558 Third Street.
- (ii) An appraisal of the fair market value of the asset: Pursuant to an independent appraisal of the property, the appraised value range is \$100,000 to \$195,000.
- (iii) A description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any to the communities in which the asset is situated as are required by the transfer: As more fully described in these materials, the Project will support the restoration/rehabilitation of three mixed-use buildings and returning them to productive and self-sustaining uses. The public benefit expected includes the creation of new jobs, increasing the tax base, support of investment in Niagara Falls and revitalization of an important downtown business district.
- (iv) A statement of the value to be received compared to the fair market value: While the purchase price of the Property will be \$1, the Project will represent a major new development to continue efforts to grow tourism-related economic and recreational activity and increase investment in sustainable neighborhoods in downtown Niagara Falls.
- (v) The names of the private parties participating in the transfer: SJI Main LLC or a related entity controlled by SJI Main LLC.
- (vi) The names of the private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used: USAN has received no other offers for the property.

The purpose of the transfer is to encourage development in Niagara Falls. Due to the scale of the investment that will be completed by SJI and its expected contribution to the development landscape of Niagara Falls, a below market transfer of the Property is required. Please see Section IV. A “Land Use Improvement Project Findings” for more detailed information on anticipated Project benefits. Due to the location and condition of the Property, the only viable development option is transfer to the adjoining landowner and as more fully described in these materials, there is no reasonable alternative to the below market property transfer that would achieve the same purpose of such transfer.

VI. RESPONSIBLE VENDOR DETERMINATION

USAN staff has examined the proposed contractor's "responsibility" as defined in State Finance Law §163, and as provided in ESD's Procurement Guidelines. Based on this analysis of financial and organizational capacity, legal authority to do business in New York, integrity of principals, and past performance on contracts, staff concludes that the proposed contractor is a responsible vendor.

VII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this project. The Grantee shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-owned Business Enterprise (MWBES) and Service-Disabled Veteran-owned businesses (SDVOBs) 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 and 9 NYCRR § 252.2(m)) to achieve MWBE and SDVOB Participation. Establishment of specific goals related to the total value of ESD's funding is still pending.

VIII. ENVIRONMENTAL REVIEW

USAN, as lead agency, completed an environmental review of the action 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 review found that the Project, transfer of the USAN owed property located at 554 and 558 Third Street, to be an Unlisted Action that would not result in significant adverse impacts on the environment. Therefore, staff recommends that the Directors make a Determination of No Significant Effect on the Environment.

IX. CONCLUSION

The proposed Project will support SJI's \$3.7 million investment to restore/rehabilitate three currently vacant mixed-used commercial buildings and activate two vacant lots in the Third Street Business District of downtown Niagara Falls. This would contribute to further building a dense cluster of activity in the core of the downtown district and would contribute to municipal needs by further supporting revitalization of the downtown district and expanding economic activity in the City's tourism industry.

X. RECOMMENDATION

Based on the foregoing, USAN staff recommends that the Directors Make a Determination of Responsibility with Respect to the Proposed Preferred Developer, Make the Requisite Findings and Determinations Pursuant to Sections 10(c), and 10(g) of the New York State Urban Development Corporation Act (the "Act"); Adopt the Proposed General Project Plan; Authorize the Holding of a Public Hearing; Authorize the Sale of Real Property; Authorize the Entering into

Necessary Agreements; Make a Determination of No Significant Effect on the Environment; and Take All Related Actions.

XI. ADDITIONAL SUBMISSION TO DIRECTORS

Resolution

Figure 1: Site Location Map

Figure 2: Current Site Conditions

March 22, 2021

USA NIAGARA DEVELOPMENT CORPORATION – 554 and 558 Third Street Land Use Improvement Project – General Project Plan – Determination of Responsibility with Respect to the Proposed Preferred Developer; 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 Enter Into Necessary Agreements; 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 “Materials”), a copy of which is hereby ordered filed with the records of the USA Niagara Development Corporation (the “Corporation”), relating to the 554 and 558 Third Street Land Use Improvement Project (the “Project”), the Corporation hereby finds SJI Main, LLC to be responsible; and be it further

RESOLVED, that the Corporation 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 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 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 resolution.

* * *

Figure 1: Site Location Map

554 -558 Third Street



Figure 2: Current Site Conditions

