USA NIAGARA DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

THURSDAY

DECEMBER 20, 2018
AGENDA

I. CORPORATE ACTION

A. Approval of Minutes of the August 15, 2018 Directors’ Meeting

B. Officers of the Corporation – Appointment of Officers – Acting President, Treasurer and Corporate Secretary

II. FOR CONSIDERATION

A. 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; Authorization to Make a Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

B. Procurement of Legal Services – Authorization to Enter into an Amended Agreement for Legal Services and to Take Related Actions

III. FOR INFORMATION

A. USA Niagara Update – Oral Report
Item I. A.
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

August 15, 2018

MINUTES

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

Present for USA Niagara: Christopher Schoepflin – President
London C. Cruz – Acting Corporate Secretary
(via videoconference)
Elaine A. Kloss – Chief Financial Officer
(via videoconference)

Present for ESD
(via videoconference): Bledar Brahimi – Financial Project Manager
Stephen Konopko – VP, Internal Audit
Kathleen Mize – Deputy Chief Financial Officer &
Controller
Sankar Singh – Financial Project Manager

Present for ESD Western
New York Regional Office: Amanda Mays – Senior Project Manager
John Risio – Project Manager
Rob Sozanski – Project Associate
Paul Tronolone – VP, Planning & Policy, WNY
Jocelyn Viola – Administrative & Office Manager
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 2:02 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 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 March 21, 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 MARCH 21, 2018 MEETING OF THE DIRECTORS OF THE USA NIAGARA DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on March 21, 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 Christopher Schoepflin, President of USAN, to present the first Agenda item, a request for, among other things, authorization to acquire real property.

Mr. Schoepflin greeted the Board, thanked Chair DelMonte for the introduction and commenced his presentation.

Mr. Schoepflin stated that Governor Cuomo, in January of 2017, announced his proposal for the expansion of the Buffalo Billion initiative which included the establishment of a program for strategic land acquisition in Niagara Falls to acquire key downtown properties to support tourism and community development growth.

Mr. Schoepflin further stated that in support of this initiative, USAN has identified a
portfolio of multiple downtown Niagara Falls properties under the primary ownership of local businessman Joseph Anderson.

Mr. Schoepflin explained that Mr. Anderson owns 32 individual properties assembled in 12 related parcel groups totaling 11.02 acres, which comprises 480,077 square feet of land and contains 248,212 square feet of gross building area.

Next, Mr. Schoepflin noted that the map of the properties were located in Figures 1 and 2 of the Board materials.

Furthermore, Mr. Schoepflin explained that the properties consist of the following: (i) 18 vacant commercial and former residential lots; (ii) four parking lots; (iii) four properties containing commercial and mixed-use buildings; (iv) two operating lodging properties, both Quality Inn, and Suites at the Falls at 240 First Street and the Rodeway Inn at 492 Main Street; and (v) four parcels containing buildings or structures related to now closed tourism attractions including Smokin’ Joes Native Center and the Niagara Falls Adventure Park.

Mr. Schoepflin stated that USAN proposes to acquire the property from the sellers for $25,755,000 to be paid under the conditions described in the materials.

Mr. Schoepflin further stated that the fair market value of the property was determined by two independent appraisals conducted by USAN.
Mr. Schoepflin explained that USAN and the sellers executed a purchase and sale agreement for the acquisition of the properties and certain associated personal property.

Mr. Schoepflin also explained that the agreement contains an express condition to sale approval of the transaction by the USAN Board of Directors.

Mr. Schoepflin stated that prior to the closing, USAN has a 120-day due diligence period that commences upon its receipt of documents from the seller. Examples of these documents, Mr. Schoepflin continued, are leases, contracts, warranties, permits, architectural and engineering drawings.

These documents are received, Mr. Schoepflin added, to conduct any investigative studies, including but not limited to, undertaking hotel operations analyses and transition planning, Phase I environmental site assessments as well as other physical inspections and engineering evaluations of the properties in order to determine whether the properties are suitable for their intended uses.

Next, Mr. Schoepflin stated that it is anticipated that the cost of these studies and investigations will not exceed $350,000.

Mr. Schoepflin reminded the Board that USAN has a procurement guideline limit on
contracts of $100,000, and requires that any contract amount over $100,000 obtain Board approval.

Furthermore, Mr. Schoepflin requested Board approval in the amount of $250,000 for investigative studies.

Mr. Schoepflin stated that if there are no significant issues discovered and the properties are deemed suitable for USAN’s intended purpose, USAN will acquire the properties within 60 days following the expiration of its due diligence period.

Subsequent to the closing, Mr. Schoepflin continued, USAN will hold, insure and progressively dispose of the properties competitively or as otherwise permitted by law.

Mr. Schoepflin stated that holding costs would mainly be limited to insurance, security, property management and maintenance.

Moreover, Mr. Schoepflin explained that the funding will be provided through the Buffalo Regional Innovation Cluster Fund AKA Buffalo Billion Phase II for the contemplated transaction cost, including $25,755,000 in acquisition and $1,250,000 in holding costs. Mr. Schoepflin then referenced the Board materials and stated that Table 1 provided an accounting of the total amount of the contemplated transaction cost.
Mr. Schoepflin stated that USAN, the city of Niagara Falls, ESD and the University at Buffalo Regional Institute, will develop a strategic land disposition plan for the acquired properties to advance USAN's mission, the policies of the city's adopted comprehensive plan and zoning ordinance.

Mr. Schoepflin explained that under the plan, smaller reuse-ready properties such as mixed-use properties on Third Street would likely be competitively solicited for reuse and sale in the near term, while vacant property and sites requiring razing of structures would be disposed of over a longer term period.

Mr. Schoepflin stated that in the immediate term, based upon the outcome of the hotel operations analyses, it is anticipated that the two operating lodging facilities would continue to be run through an interim operations contract pending any long-term decisions on the redevelopment or disposition of those properties.

Mr. Schoepflin explained that the proposed transaction has been worked on for approximately one year. He further explained that the project represents an enormous opportunity to remake a significant portion of the downtown landscape and take the future of downtown Niagara Falls to its next major phase of redevelopment.

Mr. Schoepflin then stated that the project cumulatively represents the most worthwhile and impactful acquisition.
Moreover, Mr. Schoepflin thanked the Board for their efforts.

Mr. Schoepflin recognized Governor Cuomo and his team for the vision and investment in Western New York as well as the strategic acquisition concept for downtown Niagara Falls.

Mr. Schoepflin also acknowledged Howard Zemsky, Commissioner of the New York State Department of Economic Development, and thanked him for his leadership, wisdom and guidance related to the project as well as all other projects undertaken in Western New York.

Mr. Schoepflin thanked Mayor Dyster and his team for their long-term partnership and shared philosophy.

Next, Mr. Schoepflin thanked the USAN team and their consultants for their hard work. He also thanked Mr. Anderson and his team for their availability, responsiveness and work with USAN on getting the project to its current status.

Mr. Schoepflin requested that the Directors approve the following: (i) authorize the Corporation to enter into necessary agreements to effectuate the transfer of the properties as stated in the materials; (ii) acquire the properties in accordance with the materials; (iii) authorize the commitment and expenditure of $25,755,000 from the Buffalo Billion II Fund to purchase the properties, plus $1,250,000 for related due diligence, acquisition and holding
costs; (iv) to authorize the payment of the balance of the deposit of $400,000; (v) to authorize
the President to enter into the corporate contracts for conducting due diligence studies as
necessary without further Board approval provided such contracts do not exceed $250,000; (vi)
make a determination of no significant effect on the environment; and (vii) to authorize the
Corporation to take all related actions.

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

Director Williamson referenced Mr. Schoepflin’s comments regarding the disposition of
the properties and asked what the anticipated annual cost to the State will be during the
interim period while attempting to dispose of the properties.

Mr. Schoepflin responded that he believes $300,000 is being budgeted annually,
including the cost of insurance. He then asked John Risio, Project Manager for USAN, if USAN
has a three-year carry of nine-hundred.

Mr. Risio stated that Mr. Schoepflin was correct and confirmed that the period is three
years.

Director Williamson asked how much of the budgeted amount can come from
properties that are already housed, such as the Rodeway Inn and the Quality Inn.
Mr. Schoepflin stated that USAN has some additional funds to help carry the properties. He further stated that the Quality Inn is yielding the most significant amount of that operating income and added that USAN envisions using this income to carry the properties.

Mr. Schoepflin stated that he believes the amount to be in the high six to low seven figure range. He further stated that USAN is now beginning the diligence phase and will get a better sense of the amount when they close; however, USAN will be dedicating that revenue stream to carrying the balance of the portfolio.

Director Williamson asked how the city of Niagara Falls feels about the acquisition.

Mayor Dyster responded that Niagara Falls recognizes that the lack of available sites for redevelopment, especially in close proximity to the park, has been one of the factors that have stunted progress. He added that all associated with USAN are aware that the city has had success over the last five to ten years in redeveloping properties in downtown Niagara Falls.

Mayor Dyster further stated that moving forward with this project will provide USAN’s partners a larger portfolio of properties to offer for redevelopment due to USAN’s notable successes in recent years.

Moreover, Mayor Dyster explained that developers and investors have expressed their
Mayor Dyster stated that he believes this project will lay the foundation for the next generation of redevelopment in downtown Niagara Falls due to the ability to build on some of the successes that Niagara Falls has had as well as the ability to leverage investments that have been made to expand and improve the park at the falls.

Mayor Dyster stated that the city of Niagara Falls is strongly in favor of the project.

Chair DelMonte asked Mr. Schoepflin to talk about how the project came about, the process that was undertaken and how USAN arrived at its current point.

Mr. Schoepflin explained that USAN commenced discussions with the seller over a year ago, and subsequently, those discussions evolved to USAN’s interest in the entire portfolio.

Mr. Schoepflin further explained that USAN previously agreed with the seller on process, which consisted of the identification of pre-approved appraisers and the sharing of the names of those firms.

Mr. Schoepflin stated that USAN had two independent appraisers.

Next, Mr. Schoepflin explained that USAN’s procurement guidelines make this process
easy from a negotiation standpoint.

Mr. Schoepflin stated that USAN’s offer was within the range of the appraised value.

Mr. Schoepflin further stated that there was a significant amount of discussion regarding how to make the acquisition the most effective while also making comparisons to other available properties.

Mr. Schoepflin explained that this property was weighed against other opportunities.

Mr. Schoepflin reiterated that it was difficult to imagine a more impactful transaction that could be brought to the Board that would free the same amount of real estate.

Mr. Schoepflin explained that USAN would not have the same opportunity to build what can be built on the proposed property.

Mr. Schoepflin stated that this process was arduous from a staffing perspective and explained that the appraisals went on for several months; however, the process ultimately led to a successful contract negotiation.

Chair DelMonte asked if the RFP process will commence and how the starting point of that process will be determined.
Mr. Schoepflin explained that there is a 120-day due diligence period and noted that the closing must occur within 60 days after that period.

Mr. Schoepflin further explained that at the earliest, the closing can occur at the end of the calendar year in 2018.

Mr. Schoepflin stated that USAN is determining what the Corporation will do going forward and are working on the necessary documentation.

Mr. Schoepflin further stated that there are five vacant buildings on Third Street that are visibly in good condition.

Mr. Schoepflin explained that USAN will start with the issuance of a single RFP for all properties to allow bidding.

Mr. Schoepflin stated that there is a considerable amount of vacant land and some parcels that require partial or full demolition and disposition.

Mr. Schoepflin stated that USAN would like to stage the project.

Director Williamson asked if the demolition is a part of the process.
Mr. Schoepflin responded that the demolition is not out of the realm of what USAN would consider and added that USAN would like to perform its due diligence. He then provided the Snow Park as an example and explained that it is a four acre property in the center of downtown on the international border crossing.

Next, Mr. Schoepflin stated that Niagara Street is probably a candidate for a project that he characterized as needing to be scraped and prepared.

Director Williamson stated that he hopes the project will be USAN's top priority.

Chair DelMonte stated that she shares Director Williamson's sentiment.

Next, Director Williamson stated that the project provides a unique opportunity to secure 32 properties for a small municipality like Niagara Falls. He then stated that Mr. Anderson was acquiring these properties, his proposals subsequently failed and characterized the project as rewarding him for not being a good landlord.

Director Williamson then stated the project is a valuable opportunity for the city.

While referencing a map in the materials, Mr. Schoepflin explained that Mr. Anderson's holdings run north to south in the center of the downtown development district as well as the
tourism district.

Mr. Schoepflin further explained that the project can have a profound impact on that entire geography.

While discussing the area’s geography, Mr. Schoepflin explained that the center of Falls Street is three acres and is located on the main street outside of the State Park. He added that Snow Park is an additional four acres.

Mr. Schoepflin reiterated that this acquisition can have a major impact on the area.

Mr. Schoepflin explained that the property was acquired in a north to south rectangle from just north of Main Street to Falls Street.

Next, Director Nanula commented that it appears that the property was strategically purchased. He further stated that the sale is imminent and the acquisition is appropriate for the city of Niagara Falls and New York State.

Chair DelMonte thanked Mr. Schoepflin, the USAN Staff, Mayor Dyster, the city of Niagara Falls and Governor Cuomo for creating this initiative.

Chair DelMonte stated that USAN will obtain funds to aid the city of Niagara Falls in
order to benefit the downtown area as well as attract new funds, interest and people to the area.

Chair DelMonte also thanked the Board of Directors for being part of the project, which she characterized as a historic moment and a change for the city of Niagara Falls.

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 – Proposed Acquisition of the Downtown Niagara Falls Properties by the USA Niagara Development Corporation – Authorization to Acquire Real Property; Authorization for Payment of the Balance of the Deposit; Authorization to Enter into Contracts for Due Diligence Studies without Further Board Approval; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

RESOLVED, that based on the materials presented to this meeting and ordered filed with the records of the USA Niagara Development Corporation (the “Corporation”) relating to the Sellers’ thirty-two properties in downtown Niagara Falls (the “Properties”), the Corporation is hereby authorized to enter the necessary agreements to effectuate the transfer of the Properties and to acquire the Properties, as stated in these Board materials; to authorize the commitment and expenditure of $25,755,000 from the Buffalo Billion II Fund to purchase the Properties, plus up to $1,250,000 in related due diligence, acquisition and three-year holding costs; to authorize the payment of the balance of the Deposit of $400,000; and to take all related actions; and be it further

RESOLVED, that the President of the Corporation is hereby authorized to enter the necessary contracts to conduct due diligence studies on the Properties as stated in these materials provided such contracts do not exceed $250,000; and be it further

RESOLVED, that on the basis of the materials submitted to the Directors, the Corporation hereby determines that the proposed action will not have a significant adverse effect on the environment; and be it further
RESOLVED, that on the basis of the materials submitted to the Directors, the Corporation hereby finds that because there are no specific future plans for the subject properties, the environmental review of the proposed disposition is not being “segmented” from the review of any such plan and that to the extent the requested authorization may be deemed to be “segmented”, that such “segmentation” is permissible pursuant to 6 NYCRR Part 617.3(g) due to the relevant circumstances of the project, specifically: (i) that it is not possible to consider future plans for project site in the absence of a future development plan; (ii) that any such future plan(s) will be subject to review under SEQRA; and (iii) that the review of the requested authorization to acquire the site is no less protective of the environment than any present review of any future plan, and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designees 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 resolutions.

* * *

There being no further business, the meeting was adjourned at 2:23 p.m.

Respectfully submitted,

London C. Cruz
Acting Corporate Secretary
Item I. B.
FOR CONSIDERATION
December 20, 2018

TO: The Directors
FROM: Paul Tronolone
SUBJECT: Officers of the Corporation
REQUEST FOR: Appointment of Officers – Acting President, Treasurer and Corporate Secretary

I. BACKGROUND

It is proposed that the individuals named and described below be appointed to the offices indicated.

Paul Tronolone  Acting President

The office of President to the USA Niagara Development Corporation (the “Corporation”) is currently vacant due to the departure of Christopher Schoepflin in October of 2018. As such, it is proposed that Paul Tronolone be appointed as Acting President to fulfill the duties and responsibilities of the President as contained in the Corporation’s by-laws until such time as a permanent President is appointed by the Board.

Mr. Tronolone is currently Empire State Development’s (“ESD”) Vice-President of Policy and Planning for WNY and is a professional City Planner with over 30 years’ experience. He joined the Corporation as a Senior Project Manager in 2005 and prior to that was one its first professional consultants for strategic planning and design of several downtown infrastructure projects. He has directly led multiple efforts in Niagara Falls including the restoration of Old Falls Street, the Niagara Falls Culinary Institute, and most recently the reconfiguration/removal of segments of the former Robert Moses Parkway to open up waterfront access.

Douglas Bressette  Treasurer

It is proposed that Douglas Bressette be appointed to the Office of Treasurer. As Treasurer, Mr. Bressette will have overall responsibility for managing the Corporation’s treasury operations including cash, investment and debt management. In addition, it is recommended that the position be appointed ex-officio with the corresponding position at ESD. In this way, future staff changes will not result in the need for additional board actions to the fill the position of Treasurer.
Mr. Bressette joined ESD this past year following a 30-year career in treasury and finance in the private sector. Prior to joining ESD, Mr. Bressette was the Assistant Treasurer at Celgene Corporation, where he led global corporate finance, capital markets, cash investments, banking and credit rating agency relationships, and domestic treasury operations. His career also includes various treasury and finance positions at ADP, Pharmacia & Upjohn, Lucent Technologies, and AT&T. Mr. Bressette received his M.B.A. from Syracuse University and B.S. in Economics from Rutgers University.

London Cruz Corporate Secretary

It is proposed that London Cruz be appointed as Corporate Secretary to the Corporation. Mr. Cruz joined ESD in 2017 and currently serves as a Paralegal. In this position, he assists ESD’s lawyers in matters including litigation support, the conduct of public hearings, real estate transaction activities, and maintenance of the in-house legal library. He is also responsible for the conduct of meetings and recordkeeping for several of ESD’s subsidiaries, including for the last several meetings serving as the Corporation’s Acting Secretary. The Corporation would now like to formalize his appointment. Prior to joining ESD, Mr. Cruz held increasingly responsible positions as a Paralegal with the New York Legal Assistance Group and Legal Services of Greater Miami, Inc. and Legal Services NYC. Mr. Cruz’s appointment is requested to be effective as of your vote today.

II. REQUESTED ACTION

The Directors are requested to approve the appointment of Paul Tronolone as Acting President, Doug Bressette as Treasurer and for the position of Treasurer to be made ex-officio to the corresponding position at ESD and London Cruz as Corporate Secretary, effective immediately, and to confirm that they are officers of the Corporation within the meaning of the New York State Urban Development Corporation Act and the provisions of the Corporation’s by-laws, including the indemnification provisions thereof.

III. RECOMMENDATION

Based on the foregoing, I recommend approval of the above-requested action.

ATTACHMENT

Resolution
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.

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Item II. A.
FOR CONSIDERATION
December 20, 2018

TO: The Directors
FROM: Paul Tronolone
SUBJECT: 201 Rainbow Boulevard Hotel Restoration 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 Provide Financial Assistance for the Project; 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: Brine Wells Development LLC

Contact: Mr. Edward M. Riley, Managing Member

Project Location: 201 Rainbow Boulevard, Niagara Falls, New York (“Hotel Niagara”)

Proposed Project: Historic restoration/rehabilitation of property

Employment Goals: 150 direct FTE construction jobs; 67 direct FTE permanent jobs

Financing Sources: USAN financial assistance; National Grid grant; M&T Bank financing

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 Hotel Niagara Restoration Project (the “Project”) in the City of Niagara Falls, Niagara County, New York.
The Project involves the sale/transfer of the historic Hotel Niagara property to a private company to facilitate a $42 million (when including $4.4 million or acquisition costs) restoration and reuse of the hotel on a highly-visible site on Centennial Circle in downtown Niagara Falls. The proposed restoration would be conducted in accordance with federal/state historic preservation standards and result in a full-service, 160-room “upper-upscale” hotel with restaurants, lounges and banquet facilities, all open to the general public.

As previously authorized by the USAN Board of Directors in July 2017, the Preferred Developer for the Project is Brine Wells Development, LLC (“Brine Wells” or “the developer”), a New York State-based land development company. In August 2016, the company completed a historic restoration of the Hotel Syracuse in Syracuse, NY. Now the Marriott Syracuse, the hotel underwent a $75 million restoration and now contains 261 guestrooms, two historic ballrooms, an IACC certified conference space, six food and beverage venues and a completely restored lobby.

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, 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

Constructed between 1923 and 1925, the 12-story, originally 193-room Hotel Niagara (the “Property”) is the oldest standing hotel in the City of Niagara Falls, located at 201 Rainbow Boulevard (see Figures 1 and 2). It is especially notable in that the hotel was not the vision of one investor or hotelier that financed and constructed the Hotel Niagara, but instead the local community and its leaders. Upon completion in 1925, the local Niagara Falls Gazette boasted that the Hotel Niagara was an example of civic cooperation and achievement of which the city and its citizenry may well be proud. The Hotel Niagara is one of many beautiful buildings designed by the famed Buffalo architect duo of August Esenwein and James Johnson, also the designers of the adjoining United Office Building (See Figure 3), now the Giacomo Hotel & Residence.

By 2007, after the Property had changed hands multiple times—and its branding progressively moved to cheaper and more economy-based hotel flags—the hotel was closed for the first of two efforts to fully restore it to its former glory. After two failed attempts, by 2016 the Property remained closed with primary interior demolition/asbestos abatement in partial states of completion.
In consideration of the lack of progress on restoring this iconic building, on March 23, 2016, the USAN Board of Directors authorized the acquisition of the Property from then owner JSK International Corporation for $4.4 million with funds under the Governor’s “Buffalo Billion” Economic Development Initiative.

In July 2016, USAN closed on its acquisition of the Property and in August launched a competitive procurement process for the selection of a preferred developer by issuing a Request for Proposals (“RFP”) for the Property’s sale/restoration. In October 2016, a USAN/ESD Selection Committee reviewed four responses received to the RFP. The USAN Board of Directors would ultimately designate Brine Wells as the preferred developer on July 18, 2017.

Brine Wells proposes a ~$42 million (when including $4.4 million for acquisition costs) historic restoration/rehabilitation of the Property into a full-service, 160-room hotel, classified by industry standards as “upper-upscale” (i.e., on a quality level equivalent to a full-service Hyatt, Hilton or Marriott). Brine Wells will pay USAN $1 to purchase the Property and will request an economic development incentive of $3.5 million. Brine Wells would seek state/federal historic tax credits and will be required to be 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 Brine Wells, the consideration paid by the developer will be $1 in exchange for Brine Wells’ historic restoration of the Hotel Niagara. 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 is a 0.53 acre lot in Niagara Falls, New York, containing the 113,200 square foot building, the historic “Hotel Niagara”.

(ii) An appraisal of the fair market value of the asset: Pursuant to an independent appraisal of the property, the appraised value range is $3,900,000 to $4,500,000.

(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 the historic Hotel Niagara and returning it to a productive and self-sustaining use. The public benefit expected includes the creation
of new jobs, increasing the tax base, and supporting investment in Niagara Falls. Job
creation includes 150 full-time equivalent (FTE) direct construction jobs and 67 direct
FTE positions as follows: Executives (13 FTE, Avg. Salary $81,231); Mid-level Managers
(10 FTE, Avg. Salary $43,200); Service Staff (16 FTE, Avg. Salary $38,750);
Housekeeping (22 FTE, Avg. Salary $33,090); Parking & Front Desk (6 FTE, Avg. Salary
$27,333).

(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 in Niagara Falls.

(v) The names of the private parties participating in the transfer: Brine Wells
Development LLC. M&T Bank and National Grid are also 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:

Pursuant to the RFP issued by USAN in August 2016, responses, each proposing
historic restoration of Hotel Niagara, were received by:

- **Brine Wells** (ESD/USAN economic development incentive of $3.5 million. When $1
purchase price is considered together with USAN’s purchase price of $4.4 million for
the property in 2016, the Project direct and indirect financial assistance totals $7.9
million);
- **Merani Hotel Group** ($2MM, with ESD holding $1.9MM as a secured
convertible/forgivable loan to be released upon obtainment of Certificate of
Occupancy, the balance of $100,000 and closing costs to be funded by MHG at
closing);
- **McGuire Development Company** ($1MM);
- **HLM Holding, LLC** ($4.4MM plus 20% at a maximum value of $5.28MM based on 50%
of profit realized on an annual basis after all expenses are paid on an annual basis of
not to exceed $264,000 per annual).

Each response proposed historic restoration of Hotel Niagara. The goal of the transfer of the
property is historically appropriate restoration and reuse of the Hotel Niagara with mixed uses
that will contribute to visitor and resident offerings in Niagara Falls. Due to the Project that will
be completed by Brine Wells and its expected contribution to the development of Niagara Falls
which will help to entice further development, a below market transfer of the property is
required. Please see Section VI. A “Land Use Improvement Project Findings” for more detailed
information on anticipated project benefits. As described in these materials, 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 Brine Wells are as follows:

- Restoring the original grandeur and splendor of the Hotel Niagara Property while finding uses that contribute to a lively, urbane setting and a substantial increase in street-level interaction;
- Revitalizing 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 Hotel Niagara 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 Hotel Niagara’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 (this Project has employment goals of creation of 150 direct FTE construction jobs and 67 direct FTE permanent jobs), increasing the tax base, and supporting investment in Niagara Falls;
- Stabilizing and preserving the Hotel Niagara Property’s value; and
- Reaching a mutually-beneficial public/private partnership with the goal of restoring the Hotel Niagara and returning it 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 a ~$42 million (when including $4.4 million for acquisition costs) historic restoration/rehabilitation of the Property into a full-service, 160-room hotel, classified by industry standards as “upper-upscale” (i.e., on a quality level equivalent to a full-service Hyatt,
Hilton or Marriott). The Project also calls for:

- A full-service restaurant within the hotel at ground level of hotel;
- A roof-top bar and terrace lounge on the thirteenth floor;
- A cocktail lounge/bar at ground level of hotel;
- Two major ballrooms and stage area on the second floor;
- Three meeting/banquet rooms on second floor; and
- Bride, groom, and common suites, plus exercise facilities on third floor.

All food/beverage and meeting/banquet facilities shall be available to both hotel patrons and the general public. Selected renderings of exterior and interior restorations are presented in Figures 4 and 5.

C. Purchase Price/Transfer of the Property

Brine Wells will pay USAN $1 to purchase the Property and receive an ESD/USAN economic development incentive of $3.5 million. Thus, when considered together with USAN’s purchase price of $4.4 million in 2016, the Project will receive direct and indirect financial assistance totaling $7.9 million, subject to availability of funding.

Brine Wells will also seek state/federal historic tax credits for the Project. Other potential financial assistance would include a National Grid Grant; M&T 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. 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 Brine Wells or a related entity controlled by Brine Wells. The team has not made a final decision whether the Property will be self-operated or a “soft branded” hotel flag (i.e., various boutique lines of the major national/international hotel companies that permit design flexibility for unique historic properties); nevertheless it will be primarily branded as the “Hotel Niagara”.

6
The budget for the Project, including a list of sources and uses, follows below.

Brine Wells Development, LLC
Sources & Uses of Funds

<table>
<thead>
<tr>
<th>Anticipated Funding Sources</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner’s Equity/Bank Financing/Historic Tax Credits</td>
<td>$34,100,000</td>
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<tr>
<td>USAN Incentives</td>
<td>$3,500,000</td>
</tr>
<tr>
<td><strong>GRAND TOTAL</strong></td>
<td><strong>$37,600,000</strong></td>
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<table>
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<tr>
<th>Funding Uses</th>
<th>Amount</th>
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<tr>
<td>FF&amp;E and OS&amp;E</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Soft Costs</td>
<td>$5,000,000</td>
</tr>
<tr>
<td><strong>GRAND TOTAL</strong></td>
<td><strong>$37,600,000</strong></td>
</tr>
</tbody>
</table>

D. Land Disposition and Development Agreement

Upon adoption of this GPP, USAN and Brine Wells 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 Brine Wells and involves a series of business terms, which include:

- Requiring construction to commence within thirty (30) business days after the Closing Date and completed by no later than twenty-four (24) months after the Date of Commencement of Construction;
- Requiring the developer to hire and pay all construction personnel working at the Property at NYS prevailing wage rates to make a good faith effort to negotiate a written agreement with the Niagara County Building Trades on the construction of the Project;
- Requiring the developer to take such steps necessary to ensure that the Project directly creates 150 full-time equivalent (FTE) construction jobs and for a period of five (5) years after completion of the Project, take such steps necessary to create 67 FTE permanent jobs; failure to satisfy such job creation requirements shall constitute an event of default under the LDA;
- Requiring the developer to seek historic tax credits, and regardless of their use, 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 Project’s positive community impact on the Niagara Falls/Niagara
County community, including efforts to maximize local hiring and ethical/local food system practices.

E. Acceptance of Development Deposit

The LDA stipulates that Brine Wells must deliver a deposit ("Deposit") of $50,000 to USAN, within 10 business days after execution of the LDA for the Project. The Deposit may be in the form of a cashier’s check or an irrevocable and unconditional standby letter of credit, satisfactory in all respects to USAN and ESD in their sole discretion.

The Deposit secures the developer’s obligation for timely submission of all documents and information deemed necessary by USAN in connection with development plans and construction documents, as well as proceeding with construction in a timely manner as set forth in the approved Project completion schedule.

F. Tentative Project Timeline

- Execute LDA ...................................................... December 2018
- Public Hearing on GPP .............................................. January 2019
- Review by Public Authorities Control Board ...... January 2019
- Approvals for Project.................................................. March 2019
- Transfer of Property to Brine Wells...............August 2019
- Start of Construction .............................................. August 2019
- Certificate of Occupancy .......................................August 2021

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 was formerly a full-service hotel in downtown Niagara Falls, but it has been vacant, gutted, unfinished, unusable, and unoccupied for several years. The Property, an underutilized parcel which has been closed since 2007, 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 relatively no economic activity derived
from the hotel site, notwithstanding that the Project Area is strategically located providing unparalleled views of Niagara Falls, and within yards of the entrance to Goat Island within the Niagara Falls State Park, which enjoys 9 million annual visitors. The City as a whole has experienced chronically high jobless rates. The Property is in 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. Restoring the property in accordance with federal/state preservation standards 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. Full restoration of the historic Hotel Niagara—the largest and most visible property on this City block—has the potential to shift the trajectory of the subject property and surrounding property, particularly given the visibility and iconic nature of the structure in the public consciousness. Other adjoining properties (e.g., Conference Center Niagara Falls, St. Peter’s Church, Giacomo Hotel and Residence, etc.) would directly benefit through proximity to a restored upper-upscale hotel.

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.

The Project would represent a major new development to continue efforts to grow tourism-related economic and recreational activity downtown. The Project consists of a major, iconic mixed-use hotel property that will be restored in kind to its previous grandeur that would further expand the tourism industry in downtown Niagara Falls. The enhanced uses generated by the Project will attract people to the Project Area and will, accordingly, help support local businesses. The Project will also generate substantial tax revenues for the City and the State. The Project will provide a significant contribution to establishing a dense cluster of tourism-related uses in downtown Niagara Falls, which is a primary public policy goal of USAN to aid in the rehabilitation of the area and the revitalization of the tourism industry here.

In 2009, the City of Niagara Falls adopted an update to its Comprehensive Plan, which outlined a number of policies to revitalize downtown Niagara Falls to best complement and derive economic benefit from downtown’s direct adjacency to its most valuable and recreational resource, Niagara Falls State Park and the Falls themselves. The Project advances the City’s Comprehensive Plan policies, such as historic preservation policies noted on page 61 of the City’s Plan: “The City of Niagara Falls should continue to protect its remaining historic structures and districts throughout the City by collaborating with building owners to designate heritage buildings for preservation under the appropriate State of New York legislation with approval of the City.”

The Project also advances USAN’s ongoing policies to improve the quality and historic character of downtown by facilitating lodging offerings and the overall setting of the
downtown landscape to enhance visitor experience and to facilitate extended stays. Most recently, market research commissioned by USAN specifically recommends public incentives to overcome obstacles to new private investments in upscale and upper-upscale hotel facilities in downtown Niagara Falls.

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.

Brine Wells 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. The allocation of State funding would be used to leverage private funds to realize the full program of restoration for the Hotel Niagara. Furthermore, the LDA will include terms requiring the developer to enter into a formal agreement/process to identify goals and initiatives to maximize the project’s long-term goals on the Niagara Falls and Niagara County community, including efforts to maximize local hiring and training, efforts on the use of ethical and local food systems, etc.

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. LABOR PEACE

Public Authorities Law Section 2879-b prohibits public authorities from providing financing for any project that includes, as a principal function, a hotel with more than fifteen employees unless a labor peace agreement (“LPA”) is entered into with a labor organization representing hotel employees in the state, for a period of at least five years. An LPA is an agreement between the Project developer (or its contractors) and a labor organization prohibiting the labor organization and its members from engaging in labor activities that disrupt the hotel’s operations. The LDA shall require that Brine Wells, as a material condition of said agreement, enter into an LPA satisfactory to ESD/USAN in compliance with Public Authorities Law Section 2879-b.

VII. RESPONSIBLE VENDOR DETERMINATION

As noted in the July 18, 2017, 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.

VIII. 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 15% MBE, a 15% WBE, and a 3% SDVOB contracting requirement, calculated as a percentage of the $7.9 million 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.

IX. 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 Hotel Niagara property to the designated Preferred Developer, and an in-kind restoration/rehabilitation by that Preferred Developer of the hotel and its ancillary banquet and other food/beverage uses in accordance with Federal Secretary of Interior Standards for the Treatment of Historic Properties, 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.

Due to the building’s inclusion on the National Register of Historic Places, USAN/ESD staff will continue to ensure that proper consultation is being conducted with the New York State Historic Preservation Office ("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.

X. CONCLUSION

The proposed Project will restore a major iconic feature of downtown Niagara Falls and result in the addition of lodging, banquet/meeting, and food/beverage uses. 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.

XI. 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 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.

XII. ADDITIONAL SUBMISSION TO DIRECTORS

Resolution
Figure 1: Site Location Map
Figure 2: Property Map
Figure 3: Current Photo of Hotel Niagara
Figure 4: Selected Exterior Renderings of Planned Restoration
Figure 5: Selected Interior Renderings of Planned Restoration
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 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 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.
Hotel Niagara Property Map

**Figure 1**

**Figure 2**
Figure 3
Item II. B.
FOR CONSIDERATION
December 20, 2018

TO: The Directors
FROM: Paul Tronolone
SUBJECT: Procurement of Legal Services
REQUEST FOR: Authorization to Enter into an Amended Agreement for Legal Services and to Take Related Actions

Contract Need and Justification

I. Project Summary

Recipient: Hodgson Russ LLP (the “Firm”)

Scope of Services: Provide continued consulting services with respect to real estate matters for the USA Niagara Development Corporation (the “Corporation”)

Contract Term: One Year (January 2019- January 2020)

Current Contract Amount: $99,500

Proposed Contract Amendment Amount: $100,000

New Contract Amount: $199,500

Funding Source: Buffalo Regional Innovation Cluster (“Buffalo Billion II Fund”)

II. Background

In the first quarter of 2015, USAN entered into an agreement with the Firm to provide legal services regarding the various real estate projects the Corporation was engaged in including the Wonder Falls project and the acquisition of the Hotel Niagara. As the agreement did not exceed $50,000 nor did the original term extend beyond one year, no Board approval was required. However, as USAN continued to engage in various real estate transactions, the Firm’s services...
were needed to assist the Corporation, including but not limited to, drafting sale and development contracts, title review and other real estate related tasks.

Considering the wide range of projects USAN was and is engaged in, the services provided by the Firm continued to be needed. As such, the Board was previously requested to approve a contract extension through January 2018 with no additional funding requested at that time. Throughout 2018, Hodgson Russ has assisted USAN with real estate related legal services pertaining to USAN’s acquisition of 305 Buffalo Avenue in Niagara Falls and USAN’s agreement with entities owned by Joseph Anderson to acquire numerous parcels in Niagara Falls. In February 2018, USAN entered into an amendment to extend the contract through January 2019, again with no additional funding requested. In November 2018, USAN entered into an amendment to increase the contract amount by $50,000.

In light of USAN’s continued need for legal assistance on real estate matters and the fact that most of the aforementioned projects are ongoing, services provided by the Firm continue to be needed. As such, at this time, the Board is requested to approve a contract extension through January 2020 with an additional funding amount of $100,000.

III. Proposed Contractor and Contractor Selection Process

Pursuant to an advertisement for services in the Contract Reporter, published on April 23, 2012, ESD solicited qualifications for law firms regarding a variety of areas of expertise including real estate.

The responses were evaluated by staff of the legal department, in each case including the General Counsel, on the basis of, among other things: number and experience of attorneys practicing in each area of expertise; demonstrated experience in development projects similar to those in which the Corporation engages; experience in government and public/private initiatives generally; presence and size of office(s) in New York State; and willingness to work within the Corporation’s limitation on hourly fees. Staff considered the submissions of each firm, interviews with selected firms and in some cases additional information requested in clarification of an initial submission or interview.

As result of this review, a pre-qualified list of law firms and their area of expertise was formulated and approved by the ESD Board of Directors, which included Hodgson Russ in September of 2012. The ESD Directors approved a new Pre-Qualified Counsel List on February 16, 2017 and Hodgson Russ was once again prequalified in the areas of real estate and land use. The pre-qualified list allows ESD and its subsidiaries to secure outside counsel without further formal procurement requirements. Hodgson Russ was selected and approved on the pre-approved list for matters relating to the requested services. USAN adopted the pre-qualified list on March 29, 2017. Counsel has satisfactorily performed work on the Project since 2015 and
has gained substantial familiarity with the Project and related legal issues. Pursuant to StateFinance 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 proposedcontract; and b) consulted the list of offerors determined to be non-responsible bidders anddebarred offerors maintained by the New York State Office of General Services. Based on theforegoing, staff considers the proposed contractor to be responsible.

IV. Scope of Work

The Firm will provide legal advice and services to USAN as needed regarding real estate mattersinvolving the Corporation.

Funding source will be $100,000 from the Buffalo Regional Innovation Cluster (“Buffalo Billion II Fund”) as the Directors previously approved $350,000 in estimated due diligence costs related to the proposed $25,755,000 acquisition of the Downtown Niagara Falls Anderson Properties on August 15, 2018.

V. Terms and Conditions

The proposed term of the contract will continue through January 2020, unless extended by the President of the Corporation, or in the event such office is vacant, the Chief Financial Officer, General Counsel of the Corporation or their designee. The Firm has agreed to bill within ESD’s maximum rate structure.

VI. Non-Discrimination/Affirmative Action

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 ESD’s funding.

VII. Environmental Review

ESD staff has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.
VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed Firm; (2) authorize the Corporation to enter into an amended agreement with the Firm on the terms contained in these materials and (3) take all related actions.

IX. Recommendation

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

X. Attachment

Resolution
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.

* * *