

USA NIAGARA DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

WEDNESDAY

JUNE 26, 2019

USA NIAGARA DEVELOPMENT CORPORATION

Meeting of the Directors

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

Wednesday

June 26, 2019 – 2:00 p.m.

AGENDA

I. CORPORATE ACTIONS

- A. Approval of the Minutes of the March 21, 2019 and May 8, 2019 Directors' Meetings

II. FOR CONSIDERATION

- A. 443 Main Street Wyndham Garden Inn Hotel Renovation Project – Buffalo Regional Innovation Cluster Funds Phase I – Capital Grant – Findings and Determinations Pursuant to Section 10(g) of the Urban Development Corporation Act (the "Act"); Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant; to Make a Determination of No Significant Effect on the Environment; and to Take Related Actions

III. FOR INFORMATION

- A. President's Report – Oral Report

Item I. A.

DRAFT – SUBJECT TO REVIEW AND REVISION

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

March 21, 2019

MINUTES

In Attendance Directors:

Francine DelMonte – Chair
Paul Nanula
Michael Williamson

Present for USA Niagara:

Paul Tronolone – Acting President
London C. Cruz – Corporate Secretary
(via videoconference)
Elaine A. Kloss – Chief Financial Officer
(via videoconference)

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

Julia Borukhov – Financial Project Manager
Agnes Klosek – Staff Accountant
Eugene Kwiatkowski – Senior Director of Budgeting
Holly Leicht – Executive Vice President, Real Estate
Development & Planning
Kathleen Mize – Deputy Chief Financial Officer &
Controller

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

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

DRAFT – SUBJECT TO REVIEW AND REVISION

**Present for ESD Buffalo
Regional Office:**

Chanel Maddigan – Senior Legal Counsel

Also Present:

Honorable Paul Dyster – Mayor of Niagara Falls
Jason Murgia – General Manager of the Conference Center
Niagara Falls & Old Falls Street
Anthony Vilardo – Director of Business Development, City
of Niagara Falls
The Public
The Press

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

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

The Chair then asked the Directors if they had any potential conflicts of interest with regard to any of the items on the Agenda and if so, to make that information known at this time. If any potential conflicts exist, the Chair continued, the Directors would be reminded at the appropriate time to recuse themselves from the vote on any such item. It was noted that no conflicts exist.

DRAFT – SUBJECT TO REVIEW AND REVISION

The Chair then called for the approval of the Minutes of the December 20, 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 DECEMBER 20, 2018 MEETING OF THE DIRECTORS OF THE USA NIAGARA DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on December 20, 2018 as presented to this meeting, are hereby approved and all actions taken by the Directors present at such meeting as set forth in such Minutes, are hereby in all respect ratified and approved as actions of the Corporation.

* * *

Chair DelMonte then asked Paul Tronolone, Acting President of USAN, to present the first Agenda item, a request for approval of the Corporation's fiscal year 2019-2020 Annual Operating and Capital Budgets.

Mr. Tronolone stated that New York State Financial Law requires the Board of USAN to adopt an Annual Operating Budget and, if applicable, a Capital Budget prior to the start of each fiscal year. He further stated that the current year's proposed Operating Budget is \$727,897, which includes: (i) \$622,617 in personal services comprised of salary and benefits for five employees; and (ii) \$105,280 for nonpersonal services such as office occupancy, insurance and other administrative costs.

Mr. Tronolone explained that this year's budget represents an approximate ten percent increase from last year's budget, primarily due to the allowance of a salary and benefits for a

DRAFT – SUBJECT TO REVIEW AND REVISION

full-time President. He further explained that the balance of the increase is comprised of some additional insurance expenses.

Mr. Tronolone stated that this year's Operating Budget will be advanced by the parent agency, ESD, with the expectation of reimbursement at a later date.

Next, Mr. Tronolone stated that the proposed Capital Budget is \$40,939,692 and advised that a full breakdown was available in the Board materials. Mr. Tronolone explained that this total includes: (i) acquisition costs over \$14 million; (ii) demolition and site prep costs of \$6 million; (iii) construction costs of over \$7 million; (iv) design costs of over \$2 million; (v) and other miscellaneous costs of just under \$9 million.

Mr. Tronolone stated that it is anticipated that the proposed funding for the Capital Budget will come from three sources: (i) the Governor's Buffalo Billion Initiative; (ii) funds received under agreements with the New York Power Authority ("NYPA"); and (iii) remaining funds under the 2009 and 2014 Memoranda of Understanding with the City of Niagara Falls ("the City") to provide funds for the Conference Center, Old Falls Street and economic development projects in the USA Niagara Development District.

Mr. Tronolone explained that the budget items cover costs related to projects including, but not limited to, the Strategic Acquisition Program, the Hotel Niagara restoration, closeout of the Hyatt Place project, the upcoming Cataract Commons project and design support services

DRAFT – SUBJECT TO REVIEW AND REVISION

for the Parkway Removal Project.

Mr. Tronolone explained that despite the request for the Board’s approval of the annual budget, the Board of Directors will be requested to approve actual expenditures and individual items, along with requirements such as environmental review and assignment of Minority and Women-Owned Business contracting goals.

Mr. Tronolone concluded his presentation by reiterating his request for the following: (i) request to ratify and approve the Corporation’s Annual Operating Budget in the amount of \$727,897 and the Annual Capital Budget in the amount of \$40,939,692; (ii) request for authorization for the Corporation to undertake tasks and incur expenses consistent with advancing the scope of work contemplated under the budgets.

Chair DelMonte called for questions or comments.

Director Williamson asked how much of the \$14 million acquisition expense has been paid out quarterly this year.

Mr. Tronolone answered that \$14 million of the approved budget was closed on Monday with the Anderson properties.

Chair DelMonte asked if the \$14 million is solely for Anderson properties.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Tronolone said that the \$14 million is solely for Anderson properties this year. He added that there are no additional acquisitions in the pipeline.

Chair DelMonte asked if the \$14 million includes the removal of the hotel.

Mr. Tronolone said yes.

Director Williamson asked if the \$14 million includes the acquisition of all Anderson properties.

Mr. Tronolone said no and explained that the Quality Inn was excluded from the acquisition; and therefore, the acquisition previously approved was lowered to \$14 million from \$25 million. He explained that during due diligence, USAN realized that the complications of transferring ownership of items such as liquor licenses and the franchise agreement to a state agency was burdensome and required the closing of the hotel.

Director Nanula asked if the acquisition of the Quality Inn can be considered in the future.

Mr. Tronolone said that USAN has the funds available under Buffalo Billion to appropriate for the acquisition; however, some of the funds will be used to prepare some of the sites. He added that he would return to the Board for items such as the demolition of snow

DRAFT – SUBJECT TO REVIEW AND REVISION

park structures.

Director Nanula asked if the acquisition of the Quality Inn is not being considered.

Mr. Tronolone said that the acquisition is not being considered currently.

Chair DelMonte asked if the acquired property has been transferred.

Mr. Tronolone said that the closing occurred yesterday.

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

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

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

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

RESOLVED, that the President or his designees be, and the same hereby are authorized to execute

DRAFT – SUBJECT TO REVIEW AND REVISION

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.

* * *

Next, Chair DelMonte stated that Mr. Tronolone would present the following Agenda item, a request for, among other things, the approval of the Niagara Falls Convention and Conference Facility and Old Falls Street calendar year 2019 Operating and Capital Budgets.

Mr. Tronolone stated that the Niagara Falls Convention and Conference Facility and Old Falls Street calendar year 2019 Operating and Capital Budgets were attached to the Board materials for the Directors' consideration.

Mr. Tronolone further stated that USAN last contracted with Global Spectrum, LP which is now doing business as Spectra Venue Management ("Spectra"). He advised the Board that the General Manager of Spectra, Jason Murgia, would conduct a presentation a while later.

Mr. Tronolone stated that in December of 2013, the USAN Board approved Spectra's contract for a five year-term ending in December of 2018. He explained the contract was for the operation of the Conference and Event Center and the oversight of maintenance and programming on Old Falls Street. He further explained that the contract provided for up to two one-year extensions and after the exercise of one extension, the contract was extended to December 31, 2019.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Tronolone stated that the funding source of these budgets will be the Buffalo Billion Initiative and added that there will be no USAN corporate funds issued to fund these budgets. He further stated that in prior years, the source of the budgets was the 2014 Memorandum of Understanding (“MOU”) between USAN and the City; however, the City’s obligation to make payments was contingent upon it receiving its annual share of casino revenues under the Gaming Compact with the Seneca Nation.

Mr. Tronolone stated that the City has not received any casino payments since the State formally declared the Nation in breach of that contract and which recently went through a binding arbitration process in the State’s favor; however, the actual payments have not yet resumed.

Next, Mr. Tronolone stated that the proposed Operating Budget for 2019 for the Conference Center, inclusive of incentive fees, is \$320,900. He further stated that the Operating Budget for Old Falls Street, inclusive of incentive fees, is \$627,663.

Moreover, Mr. Tronolone stated that the proposed Capital Budget for the Conference Center totals \$332,050 for items such as furniture, plantings, room darkening blinds and LED lighting. He further stated that the Old Falls Street Capital Budget of \$67,811 includes items such as annual street maintenance and street furniture components.

Mr. Tronolone explained that Spectra will make the Capital Budget purchases on behalf

DRAFT – SUBJECT TO REVIEW AND REVISION

of USAN through State contracts where cost effective and through competitive bids.

Mr. Tronolone stated that the total proposed Operating Capital Budget is \$1,348,424.

Additionally, Mr. Tronolone stated that the USAN Directors approved an advance of \$250,000 to Spectra to fund the first quarter of operations in 2019. He explained that this advance was made during the prior year to address the gap between USAN's fiscal year, which runs from April 1st to March 31st, and Spectra's contract year, which runs from January to December.

Mr. Tronolone stated that the Board was being asked to authorize a similar advance for the first quarter of calendar year 2020 in an amount not to exceed \$250,000. He explained that the Conference Center and Old Falls Street budgets for 2020 will remain subject to approval by the Directors before the start of USAN's fiscal year.

Mr. Tronolone stated that as part of the one-year extension of Spectra's contract, USAN and Spectra negotiated an amendment to the contract raising the threshold of food and beverage sales necessary for Spectra to receive an annual incentive payment from 25% of any sales over \$1.7 million to 20% of any sales over \$1.9 million.

Mr. Tronolone reiterated that the USAN Directors were asked to approve the following:
(i) approve the proposed calendar year 2019 Operating and Capital Budgets for the Conference

DRAFT – SUBJECT TO REVIEW AND REVISION

Center and Old Falls Street in an amount not to exceed \$1,348,424; (ii) authorize the advance of Spectra’s funding for the first quarter of calendar year 2020 in an amount not to exceed \$250,000; (iii) authorize the disbursement of funds in accordance with the percentage of Operating and Capital Budgets; and (iv) authorize the amendment of the management agreement with Spectra regarding its incentives.

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

Director Williamson asked why USAN does short-term renewals, such as a one-year extension.

Mr. Tronolone said that two one-year extensions were done to ensure that Spectra was able to complete all items requested by USAN. He explained that USAN’s Procurement Guidelines will not allow the Corporation to go beyond approximately seven or eight years.

Director Williamson asked if the contract with Spectra is in its sixth year.

Mr. Tronolone said yes and explained that the contract has lasted for five years with two one-year extensions totaling seven years.

Chair DelMonte asked if a request for proposal (“RFP”) process would be completed.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Tronolone said yes and explained that this would be the third RFP completed for operations. He advised that Spectra won the last two RFPs.

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

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

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

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

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

RESOLVED, that the President or his designees be, and the same hereby are authorized to execute

DRAFT – SUBJECT TO REVIEW AND REVISION

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 asked Mr. Tronolone to present the next Agenda item, a request for, among other things, the authorization to adopt the Proposed General Project Plan for the Cataract Commons Civic Project.

Mr. Tronolone stated that in accordance with the requirements of the Urban Development Corporation Act, all USAN's capital projects are subject to public review and hearing of a General Project Plan ("GPP") as well as approval of the Public Authorities Control Board ("PACB").

Mr. Tronolone further stated that the Directors were being asked to consider the adoption of the GPP for the proposed Cataract Common Civic Project located at 304 1st Street in the downtown Niagara Falls area.

Mr. Tronolone explained that the GPP calls for a plan to undertake improvements to a 10,000 square foot plot of land which fronts the south side of Old Falls Street between Rainbow Boulevard and First Street, is located adjacent to the Quality Inn Hotel and is across the street from the Niagara Falls Culinary Institute.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Tronolone stated that historically, the city block contained buildings such as the Cataract and Strand Theaters in the Hancock building; however, all were demolished through the City's 1970's Urban Renewal Program.

Moreover, Mr. Tronolone stated that USAN acquired the former Winter Garden and razed it to allow for the re-establishment of the street. He explained that, since that time, this subject parcel has been used to help stage street activities using a pop-up approach. To illustrate this approach, Mr. Tronolone provided the hosting of tents for the annual Octoberfest celebration, the facilitation of seasonal activities and an outdoor movie series as examples. Mr. Tronolone stated that the parcel needs more permanent facilities to become a clear focal point on Old Falls Street.

Next, Mr. Tronolone stated that the Directors previously approved a contract with Trowbridge Wolf Michaels Landscape Architects, LLP to work with local stakeholders to develop a plan for Cataract Commons. He further stated that the plan includes two step structures that will double both as daily seating and will help stage periodic small events such as concerts, along with shade structures, landscaping and lighting. Mr. Tronolone explained that a key focal point of the design includes a wood and metal sign feature emulating the former marquis sign of the Cataract Theater.

Additionally, Mr. Tronolone stated that the GPP includes a list of funding sources totaling \$1.5 million; however, the Board materials erroneously list the sole sources of the

DRAFT – SUBJECT TO REVIEW AND REVISION

funds coming from the Buffalo Billion Initiative. Mr. Tronolone noted that \$200,000 of the amount previously approved came from MOU funds with the City and \$1.3 million of the funds came from the Buffalo Billion Initiative. He requested that the correction be noted for the record.

Mr. Tronolone explained that the uses of the funds will include design, hard construction costs, contingencies and soft costs. He further explained that the board materials outline a series of required findings necessary for a proposed civic project such as: (i) a need for a recreational and cultural facility; and (ii) measures for construction operation and maintenance.

Mr. Tronolone stated that the Directors are required to make a formal finding that no residential or business relocation will result from the project.

Mr. Tronolone further stated that USAN completed an environmental review of the project pursuant to the State Environmental Quality Review Act and found it would not result in any significant impacts on the environment. He then requested that the Directors do the following: (i) make the requisite findings and determinations pursuant to the New York State Urban Development Corporation Act; (ii) adopt the proposed GPP; (iii) authorize the holding of a public hearing; (iv) authorize the use of funds for the project; (v) make a determination of no significant impact on the environment; and (vi) authorize USAN to take any related actions.

DRAFT – SUBJECT TO REVIEW AND REVISION

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

Mr. Tronolone referred to a PowerPoint presentation being shown about the project and asked that a rendering be displayed. He stated that the Cataract side was being shown on the PowerPoint presentation.

Chair DelMonte asked if there will be programming on the site.

Mr. Tronolone said that there currently is programming on the site.

Chair DelMonte asked who will be responsible for the programming.

Mr. Tronolone said that Mr. Murgia oversees the maintenance of the programming.

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

DRAFT – SUBJECT TO REVIEW AND REVISION

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

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

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

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

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

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

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

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

DRAFT – SUBJECT TO REVIEW AND REVISION

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

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

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

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

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

* * *

Chair DelMonte asked Mr. Tronolone to present the next Agenda item, a request for the authorization to enter into a contract for construction services.

Mr. Tronolone stated that the Agenda item was directly related to the Cataract Commons GPP that was approved and explained that it was the request to approve the construction contract for the implementation of the project.

Next, Mr. Tronolone stated that the Directors previously authorized a contract with Trowbridge Wolf Michaels Landscape Architects, LLP to plan the project with community

DRAFT – SUBJECT TO REVIEW AND REVISION

stakeholders and to develop final design and documents for Cataract Common.

Moreover, Mr. Tronolone stated that a competitive procurement process was undertaken. He explained that following ESD's bidding procedures, USAN advertised a request for bids in the New York State Contract Reporter on February 13, 2019. He further explained that the bid documents set forth a base contract as well as a series of four additional alternate project features, which USAN could elect to do if the cost of such features fell within the project.

Mr. Tronolone stated that the basis of the contract award was set forth in the process at the lowest responsible bid on the base contract components only. He advised that three sealed bids were received before the deadline of 2:00 PM on March 12th, 2019 and were read publicly at that time at USAN.

Mr. Tronolone stated that the lowest responsive bid came from Scott Lawn Yard, a New York State Certified Women-Owned Business based in Niagara Falls, New York which submitted a bid for the base contract of \$840,569.

Mr. Tronolone stated that USAN staff conducted an assessment, in accordance with State Finance Law, that considered the contractor's ability to perform the work under the proposed contract and consulted the State's database of non-responsible bidders and debarred offerors. Mr. Tronolone concluded that staff considered Scott Lawn Yard to be a responsible

DRAFT – SUBJECT TO REVIEW AND REVISION

bidder based on their assessment.

Mr. Tronolone then noted that the award and execution of a contract for this project will be subject to the results of the public hearing on the GPP and subsequent approval by the PACB.

Mr. Tronolone stated that the construction documents purposely accommodate for these items by requiring the contractor to hold their bid prices for 90 days. He further stated that the contract will be subject to ESD's nondiscrimination and contractor and supplier diversity policies. He then explained that the contractor would be subject to use good faith efforts to achieve an overall Minority and Women-Owned Business Enterprise contracting goal of 30%.

Mr. Tronolone stated that the term of the contract would be approximately 410 calendar days after an estimated award date in May of 2019. He further stated that a substantial completion date is estimated to be December 31st of this year with a final completion date expected by May 15, 2020.

Additionally, Mr. Tronolone stated that periodic lump sum payments would be made over the term of the contract upon verification of work completed. He then reiterated the following: (i) the funding source for the construction project would be the Buffalo Billion Initiative; (ii) no USAN corporate funds would be used to fund the project; and (iii) the base

DRAFT – SUBJECT TO REVIEW AND REVISION

contract amount shall not exceed \$840,569.

Furthermore, Mr. Tronolone stated that the Directors were being requested to exercise Scott Lawn's bids for Add Alts 1, 2, 3 and 4, totaling, \$226,900 for a total bid amount of \$1,067,469. Mr. Tronolone advised that a 10% contingency amount was recommended.

Next, Mr. Tronolone requested that the Directors authorize a not-to-exceed amount for this project at \$1,175,000, which he explained is well within the project budget set forth in the adopted GPP.

Mr. Tronolone summarized that the Directors were being requested to: (i) make a determination of responsibility with respect to Scott Lawn Yard; (ii) authorize USAN to enter into a contract with Scott Lawn Yard for an amount not to exceed \$1,175,000, inclusive of the 10% contingency amount; and (iii) authorize the taking of all related actions.

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

Director Williamson asked if Scott Lawn Yard has completed other projects.

Mr. Tronolone said that Scott Lawn Yard is working on the State Parks Project and the first phase of the Niagara Walkway. He also commented that the company is well-established.

DRAFT – SUBJECT TO REVIEW AND REVISION

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

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

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

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

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

* * *

Next, Chair DelMonte stated that Mr. Tronolone would present the following Agenda item, a request for, among other things, the approval to enter into an amended agreement with the Power Authority of the State of New York for the Niagara Gorge Corridor Project.

Mr. Tronolone stated that the Agenda item involved an amendment to USAN’s agreement with the New York Power Authority (“NYPA”) regarding funding for final design and design, support and monitoring of the Parkway Removal Project stretching from Main Street to Findlay Drive in Niagara Falls.

DRAFT – SUBJECT TO REVIEW AND REVISION

Furthermore, Mr. Tronolone stated that in 2017, USAN entered into an agreement with NYPA in which the Authority provided USAN \$3.5 million to pay for consultant costs and to oversee final design on behalf of the New York State Office of Parks, Recreation, and Historic Preservation for the Parkway Removal Project.

Mr. Tronolone explained that the contract also covered design, support and monitoring by the consultant during the construction phase. He advised that over the course of investigations during the construction phase, it was determined that part of the services required during construction of the project would involve monitoring for materials known as technologically enhanced, naturally occurring radioactive material, referred to as TENORM. He described TENORM as a low-level radioactive material that was once used as a road subbase material in the 1950s and 1960s in various Western New York locations.

Mr. Tronolone stated that the closest example of encountering TENORM included the City's reconstruction of Lewiston Road a few years prior and most recently, at selected State Park construction projects.

Mr. Tronolone further stated that USAN, New York State Office of Parks, the New York State Department of Transportation ("NYSDOT"), NYPA and the City determined that the project's final design consultant team, which led the initial investigations for TENORM in the project area, are the best suited third-party monitor as opposed to the construction contractor to avoid any conflicts of interest.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Tronolone stated that the consultant costs for such efforts were not included in the original contracts. He added that the project was initially bid out as a single construction contract, but this yielded only one bid and that bid was more than 50% higher than the construction budget.

Mr. Tronolone stated that the agency determined it would be best to break the job up into three contracts to increase competition and receive better prices. He further stated that additional costs to do this were borne by the final design consultants that were not included in the scope of work.

Next, Mr. Tronolone stated that the project design consultant's estimate for design, support and monitoring during construction turned out to be \$530,000 higher than the balance of available funds under USAN's agreement with NYPA; however, NYPA is willing to amend its agreement to provide these additional funds and USAN would amend its agreement with the New York State Office of Parks to cover their additional consultant fees.

Mr. Tronolone pointed out that this amendment to the agreement also included programming of an additional \$4.2 million in construction funds to NYSDOT based upon their current estimates of anticipated costs for the final or the last of the three contracts comprising the project; however, the last contract, has not yet been offered for public bidding.

Mr. Tronolone stated that ESD's established 30% goal for Minority and Women -Owned

DRAFT – SUBJECT TO REVIEW AND REVISION

Business Enterprise contracting will apply to the additional \$530,000 in funding.

Mr. Tronolone advised that due to these efforts involving monitoring during construction of the project, the Directors were being asked to make a formal determination of no significant impact to the environment pursuant to the State Environmental Quality Review Act.

Moreover, Mr. Tronolone stated that the New York State Office of Parks, Recreation and Historic Preservation, as the lead agency, issued a similar finding in January of 2017. He further stated that USAN, NYSDOT, NYPA, and the City were involved agencies in that review.

Mr. Tronolone summarized that the Board of Directors were being asked to do the following: (i) authorize USAN to enter into an amended agreement with NYPA to receive the additional \$530,000 in funding; (ii) authorize USAN to enter into an amended grant disbursement agreement with the Office of State Parks, Recreation and Historic Preservation to cover the additional consultant costs; and (iii) make a determination of no significant effect on the environment as to the related actions.

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

Mayor Dyster stated that the Niagara Falls City Council acted on the amendment the

DRAFT – SUBJECT TO REVIEW AND REVISION

previous night and approved it unanimously. He further stated that he had seven signed attested notarized copies in his possession that he could provide if the Board approved the action.

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

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

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

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

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

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to

DRAFT – SUBJECT TO REVIEW AND REVISION

execute and deliver any and all documents and to take all actions as he or she in his or her discretion consider to be necessary to effectuate the foregoing resolutions.

* * *

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

Mr. Tronolone then introduced Jason Murgia, General Manager of the Conference and Event Center in Niagara Falls, and explained that Mr. Murgia would discuss his annual report for 2018.

Mr. Murgia stated that 2018 was the best year in the history of the Conference Center and explained that relative to the Convention Center and Old Falls Street, historic revenue numbers were achieved.

Mr. Murgia explained that the Conference and Event Center's primary mission is to provide economic impact to drive overnight guest stays, which was accomplished in 2018.

Furthermore, Mr. Murgia referenced overall accomplishments in 2018 and stated that he and his colleagues identified key factors in short and long-term growth. Mr. Murgia explained that these key factors were identified in 2015 and are currently being executed in

DRAFT – SUBJECT TO REVIEW AND REVISION

2019. He advised that because of these key factors, tremendous growth has occurred in the market segments that provide the greatest economic impact.

Next, Mr. Murgia stated the following statistics pertaining to the period of 2012 to 2018:

(i) 80% increase in room nights; (ii) 118% increase in room night revenue; (iii) 20% increase in average room rental rate; and (iv) 99% increase in economic impact to the tune of almost \$6 million.

Mr. Murgia noted that the Conference and Event Center has been successful because staff are reevaluating all key markets. He added that some market segments are being given to local hoteliers.

Mr. Murgia stated that the Conference and Event Center are deploying their sales staff to utilize exceptional state-of-the-art lead generation tools. He further stated that third-party agencies are being solicited.

Moreover, Mr. Murgia stated that the Conference and Event Center participates in the Convention Developmental Committee initiated by Destination Niagara. He added that due to USAN's Board, there is a stronger room inventory in the downtown corridor, with better brands available, which is key to some of their larger conventions.

Next, Mr. Murgia stated that the Conference and Event Center still has a strong, visible

DRAFT – SUBJECT TO REVIEW AND REVISION

footprint in Erie County. He explained that this success has been achieved by participating in many special and high-profile VIP off-premises jobs.

Mr. Murgia then described March as the Conference and Event Center's most historic convention market segment due to two national conventions that generated over 1700 room nights for the month.

Mr. Murgia stated that September is historically one of their best months for the convention center market. He explained that they have identified a segment and a convention center market, which has been tapped into, in the downtown area for the last 15 to 20 years.

Furthermore, Mr. Murgia stated that the Conference and Event Center was the recipient of the Empower 2018 Exceptional Employee Award.

To summarize, Mr. Murgia stated that the Convention Center had its best year in the history of its existence and advised that they have great partners in the downtown corridor. He further stated that the building produced the highest revenue and over 25,000 room nights, the highest revenue and room nights in its history. He explained that the room nights were produced exclusively by the Conference Center.

In addition, Mr. Murgia stated that there was a 48% increase in revenue, which is generated from kiosk sales, sponsorships and daily vendor permits. He then noted that six or

DRAFT – SUBJECT TO REVIEW AND REVISION

seven years prior, there was only one daily vendor on Old Falls Street compared to the 26 vendors that are located there today.

Mr. Murgia then stated that there has been place making, daily activities and a new public art installation added to Old Falls Street. Furthermore, he stated that beer and wine sales were introduced on their kiosk, were well received, and resulted in sales being expanded during mid-season of 2018. He added that these offerings are also being expanded in 2019.

Next, Mr. Murgia described Old Falls Street as the number one pedestrian walkway entrance to the State Park. He stated that Mayor Dyster commented regarding the progression of Old Falls Street.

Mr. Murgia stated that two additional themed large special events for 2019 will be included in the programming.

Mr. Murgia further stated that the team on Old Falls Street has worked with all downtown stakeholders to promote Jingle Falls, a local celebration in December. He explained that the event benefits the local community.

Mr. Murgia expressed his belief that the Conference and Event Center as well as Old Falls Street are great economic engines that play a vital role in the success of downtown Niagara Falls.

Lastly, Mr. Murgia thanked Mayor Dyster and his administration on behalf of Spectra and the Conference and Event Center for their advocacy of Old Falls Street and the Conference and Event Center.

Chair DelMonte thanked Mr. Murgia for his presentation and stated that Mayor Dyster would provide a statement to the Board.

Mayor Dyster stated that he has always provided glowing reports about the work of Mr. Murgia and his staff to Spectra at the U.S. Conference of Mayors.

Next, Mayor Dyster provided the Board with an update regarding the Seneca revenues. He explained that there was an impasse with the Seneca nation for six of the twelve years he had served as Mayor.

Mayor Dyster advised that the arbitration panel ruled in the State's favor earlier in the year. He explained that the arbitration panel is in the process of drafting an award letter which will stipulate the specific dollar amounts of the payment to be made from the Seneca's to the State of New York and the date on which that payment is to be made.

Mayor Dyster stated that he did not believe a reconciliation was required between the City and USAN. He added that the City owes USAN for 2017 and 2018 payments of \$1.5 million

DRAFT – SUBJECT TO REVIEW AND REVISION

per year, totaling \$3 million, and the City will deliver the funds once their payment is received from the State of New York. He then thanked the USAN Board for their patience.

Chair DelMonte thanked Mayor Dyster for providing an update. She then asked Mr. Murgia if he has received feedback from convention planners after events are hosted at the Conference and Event Center.

Mr. Murgia stated that when top tier third-party convention planners are flown in by sales staff, the Conference and Event Center has a 98% closure rate after their facility and the amenities on Old Falls Street are shown. He explained that third-party planners have commented that the facilities, hotels, Old Falls Street and activities offered are great; however, they would like to see more year-round attractions in the area.

Chair DelMonte asked if the Conference and Event Center satisfies the conventions that are interested in coming to Niagara Falls. Additionally, she asked if the convention business is as robust as it once was.

Mr. Murgia responded that the convention business is viewed as a loss leader; however, they provide great economic stimulus by offering large city-wide appropriate convention centers. He stated that they provide jobs and produce room nights. Furthermore, he stated that there are options available to help maximize the space; however, any discussion regarding a new conference center would be premature.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Tronolone stated that every convention center in America, especially in second tier markets, are run on a subsidy. He further stated that the Conference and Event Center's subsidy started at \$1.5 million, has not experienced a loss and should be considered a success.

Mr. Murgia clarified that the Conference and Event Center has also made progress due to the impact of all parties involved with the development of the downtown Niagara Falls area.

Mr. Tronolone stated that prior to urban renewal, there were over 85 properties on Old Falls Street; therefore, they were unable to incentivize vendors to locate on Old Falls Street. He explained that due to Mr. Murgia's work, there are currently 21 vendors on Old Falls Street.

Mr. Murgia added that the greatest number of vendors were turned down this year due to space limitations and stated that the call to interest has never been greater to be a part of the happenings on Old Falls Street.

Chair DelMonte asked if there were any questions or comments from the Directors or any comments from the public. Hearing none and there being no further business, the meeting was adjourned at 3:53 p.m.

Respectfully submitted,

London C. Cruz
Corporate Secretary

DRAFT – SUBJECT TO REVIEW AND REVISION

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

May 8, 2019

MINUTES

In Attendance Directors:

Francine DelMonte – Chair
Paul Nanula
Michael Williamson

Present for USA Niagara:

Anthony Vilaro, President
London C. Cruz – Corporate Secretary
(via videoconference)
Elizabeth R. Fine – General Counsel
(via videoconference)
Elaine A. Kloss – Chief Financial Officer
(via videoconference)

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

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

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

John Risio – Project Manager
Rob Sozanski – Associate Planner/Project Manager
Paul Tronolone – VP Planning & Policy WNY Regional
Office
Jocelyn Viola – Administrative & Office Manager

DRAFT – SUBJECT TO REVIEW AND REVISION

**Present for ESD Buffalo
Regional Office:**

Chanel Maddigan – Senior Legal Counsel
Laura Magee – Deputy Director, Public Affairs
Bryon Price – Project Manager

Also Present:

Shawn Weber – Owner, Wine on Third
The Public
The Press

The meeting of the USA Niagara Development Corporation (“USAN”), a wholly-owned subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), was called to order at 2:00 PM 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.

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

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Tronolone stated that in December of 2018, the Directors appointed him as Acting President of USAN to fill the day-to-day roles of the Corporation after the departure of Chris Schoepflin and pending the selection of a permanent president that could be appointed by the Board of Directors.

Mr. Tronolone further stated that he led a search process to consider candidates for a new USAN President. He explained that the search was conducted in conjunction with ESD's Human Resources Department, ESD's Western New York Regional Director Amanda Mays, ESD's President and CEO, Howard Zemsky, and members of the Governor's office.

Mr. Tronolone stated that seven candidates were screened against the posted requirements for the position. Furthermore, Mr. Tronolone stated that of the seven candidates initially screened, three candidates were selected to be interviewed, leading to the selection of the recommended candidate that would be presented to the Board for consideration.

Mr. Tronolone recommended that Anthony Vilardo be appointed to the position of President of the Corporation. He explained that upon the Board's approval of Mr. Vilardo's appointment, Mr. Vilardo would join the Western New York Leadership Team.

By way of background, Mr. Tronolone advised that Mr. Vilardo served as Director of Business Development of the City of Niagara Falls since 2015 and, in that role, served as the Executive Director of the N.F.C. Development Corporation and the Niagara Falls Urban Renewal

DRAFT – SUBJECT TO REVIEW AND REVISION

Agency. Mr. Tronolone explained that Mr. Vilardo’s experience included working on a variety of projects for the City of Niagara Falls and managing a large portfolio of development grants and loans. Mr. Tronolone added that Mr. Vilardo previously served as Governor Cuomo’s representative for Central New York.

Next, Mr. Tronolone requested the following: (i) approval of the appointment of Mr. Vilardo as President of the USA Niagara Development Corporation; (ii) request for Mr. Vilardo’s confirmation as an Officer and President of the Corporation within the meaning of the New York State Urban Development Corporation Act and the Corporation’s bylaws; and (iii) request to take any necessary associated actions with the appointment.

Chair DelMonte called for questions or comments.

Chair DelMonte welcomed Mr. Vilardo to USAN and ESD. Additionally, she thanked Mr. Vilardo for assuming the position. She also thanked Mr. Tronolone for his efforts in selecting a qualified candidate.

Shawn Weber, a member of the public, provided a comment regarding a request for USAN to reassess their development strategy and determine if there are additional ways to prompt new development in the downtown area. He then expressed his support of Mr. Vilardo assuming the role of President of the Corporation.

DRAFT – SUBJECT TO REVIEW AND REVISION

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 – Officer of the Corporation – Appointment of President

BE IT RESOLVED, that Anthony Vilardo be, and he hereby is, appointed as an Officer of the USA Niagara Development Corporation (the “Corporation”), with the title of President, his appointment being effective immediately, and a copy of the attached materials is ordered to be filed with the records of 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 individual be hereby confirmed as an Officer of the Corporation.

* * *

Next, Chair DelMonte stated that Mr. Tronolone would present the last Agenda item, a request for the adoption of revised procurement guidelines.

Mr. Tronolone advised that in March of 2018, the Board adopted updated and revised guidelines for the use, awarding, monitoring and reporting of procurement contracts. He noted that the adoption of procurement guidelines is mandated by the Public Authorities Law.

Mr. Tronolone then explained the following regarding procurement guidelines: (i)

DRAFT – SUBJECT TO REVIEW AND REVISION

procurement guidelines are designed to govern procurements by ESD and its subsidiaries, including USAN; (ii) USAN's guidelines will mirror those of ESD, which were previously adopted by their Board of Directors; and (iii) procurement guidelines do not have the full force of law but are intended as a statement of best practices and procedures.

Mr. Tronolone advised that over the past year, Governor Cuomo issued an executive order requiring that all state contractors be determined and continued to be monitored to ensure that they are responsible throughout the term of their contracts with the State of New York entities.

Mr. Tronolone defined responsibility as a multi-part process ranging from the ability for a company to take on the work under a contract to the company having integrity in its operation and evidence of acceptable work on past contracts for the State of New York.

Next, Mr. Tronolone stated that the 2019 Procurement Guidelines were revised to incorporate these directives and other non-substantive changes for clarity and efficiency. He further stated that on March 28, 2019, the ESD Board of Directors adopted revisions to the Procurement Guidelines and required each ESD subsidiary to approve its own procurement guidelines with any departures from ESD's Guidelines fully explained by the subsidiary board.

Mr. Tronolone then noted one deviation from ESD's Guidelines. He explained that ESD's adopted guidelines require the Board of Directors' approval of any contract over \$250,000;

DRAFT – SUBJECT TO REVIEW AND REVISION

however, given the type and fees for contracts typically encountered in Western New York by USAN, staff believed that the appropriate contract amount requiring Board approval should be \$150,000 for USAN. He explained that this amount would permit the Corporation to efficiently approve and move contracts forward, but still provide appropriate oversight of contract review to be provided by the Board of Directors.

Next, Mr. Tronolone reiterated his request for the Directors to adopt the 2019 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts.

Director Williamson asked how the \$150,000 amount was determined.

Mr. Tronolone responded that based on USAN's experience with the types of contracts received from consultants, a \$250,000 threshold amount would have resulted in no contracts being presented to the USAN Board. He advised that staff believed this would have been inappropriate and subsequently, contracts were reviewed to determine an appropriate threshold of \$150,000.

Director Nanula asked if \$150,000 is above average.

Mr. Tronolone responded yes and explained that many contracts between \$50,000 and \$100,000 are received; however, USAN staff believes that Directors should review any contracts that reach \$150,000.

DRAFT – SUBJECT TO REVIEW AND REVISION

Director Nanula asked if this is within the guidelines of the budget.

Mr. Tronolone responded yes.

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 – USAN Procurement Guidelines – Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the proposed 2019 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, with the exception that any contracts entered into by the Corporation that exceed a contract amount of \$150,000 shall require approval by the Corporation's directors; and the President or his designee is authorized to promulgate the said Guidelines in electronic form and other media for the use of the staff of the Corporation, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

* * *

There being no further business, the meeting was adjourned at 2:17 PM.

Respectfully submitted,

London C. Cruz
Corporate Secretary

Item II. A.



FOR CONSIDERATION

June 26, 2019

TO: The Directors

FROM: Anthony Vilardo

SUBJECT: 443 Main Street Wyndham Garden Inn Hotel Renovation Project – Buffalo Regional Innovation Cluster Funds Phase I – Capital Grant

REQUEST FOR: Findings and Determinations Pursuant to Section 10(g) of the Urban Development Corporation Act (the “Act”); Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant; to Make a Determination of No Significant Effect on the Environment; and to Take Related Actions

General Project Plan

I. Project Summary

Grantee: NFNy Hotel Management LLC (“NFNy” or the “Company”)

USAN* Investment: A grant of up to \$1,000,000 to be used for the reimbursement of a portion of the cost of renovation, equipment, furniture and fixtures

*USA Niagara Development Corporation (“USAN” or the “Corporation”) is a subsidiary of the New York State Urban Development Corporation doing business as Empire State Development (“ESD”).

Project Location: 443 Main Street, Niagara Falls, New York

Proposed Project: A \$6.5 million renovation project, upgrading the former Days Inn hotel into a Wyndham Garden Inn hotel, adding new rooms and remodeling existing rooms and upgrading of hotel amenities.

Project Type: Business expansion involving job retention/creation

Employment: Initial employment at time of USAN Incentive Proposal: 65
 Projected: Employ 35 new full-time equivalent permanent employees at the Project Location by January 1, 2020 and retain 65 existing Full-time Permanent Employees, for a total of 100 Full-time Permanent Employees.

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Room Renovation	\$3,406,207
Lobby Renovation	1,144,184
Roof Renovation	234,791
Exterior Signage & Lighting	300,000
Elevator Renovation	100,000
Restaurant Renovation	900,000
Restaurant FF & E	450,000
Pool Renovation	<u>50,000</u>

Total Project Costs \$6,585,182

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
USAN – Capital Grant*	\$1,000,000	15%
Owner Equity/Financing	<u>5,585,182</u>	<u>85%</u>
Total Project Financing	<u>\$6,585,182</u>	<u>100%</u>

*The USAN Capital Grant funding source is \$1,000,000 in Buffalo Regional Innovation Cluster Funds Phase I. No USAN corporate funds will be used to fund the Project.

III. Project Description

A. Company

Industry: Hotel, Hospitality & Real Estate Development

History: An industry leader in Niagara Falls for several years, the Company, in addition to the Wyndham Garden Inn (formerly known as the Days Inn), currently operates the Sheraton Niagara Falls Hotel, Rainforest Café, TGI Fridays, Starbucks Café, At The Falls Arcade and Sweet Treats Shop.

Ownership: NFNY is a private, for-profit, limited liability company.

USAN Involvement: NFNY accepted an Incentive Proposal from USAN on May 24, 2018.

Past USAN Support: Past funding to the Grantee, totaling \$600,000, is summarized in the following chart:

Project	Amount	USAN Approval Date	Project Completion Date	Purpose
Rainforest Café Retail Renovation Project	\$525,000	January 15, 2016 (NEDF \$125,000) March 23, 2016 (MOU Funds \$400,000)	June 1, 2015	Capital Improvement Grant
TGI Fridays Retail Renovation Project	\$75,000	July 19, 2011	June 27, 2011	Capital Improvement Grant

B. The Project

Completion: May 2019

Activity: The Company’s investment includes \$6.5 million with the addition of 20 new luxury rooms, remodeling of the 168 existing rooms, exterior signage/lighting improvements, hotel elevator and pool renovations, and the renovation of a new 6,500 sq. ft. hotel restaurant/bar, known as Chill 443.

Results: The Project provides new quality lodging for visitors in the Niagara Falls marketplace, consistent with the tourism development objectives of USAN. The Project will create 35 new full-time equivalent employees and retain 65 existing Full-time Permanent Employees, for a total of 100 Full-time Permanent Employees.

Grantee Contact: Mr. Michael DiCienzo
Vice President, NFNy Hotel Management LLC
300 Third Street
Niagara Falls, NY 14303
Phone: (716) 278-2603
E-mail: michael@d@niagarafallshotels.com

ESD Project #: 131,942

Project Team:	Origination	Chris Schoepflin
	Project Management	John Risio
	Contractor & Supplier Diversity	Geraldine Ford
	Finance	Daniel DaSilva
	Legal	Stephen Gawlik
	Environmental	Paul Tronolone

C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Grantee shall reimburse USAN for all out-of-pocket expenses incurred in connection with the project.
2. The Grantee will demonstrate no materially adverse changes in its financial condition prior to disbursement.
3. The Grantee will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Company's acceptance of USAN's offer. Equity is defined as cash injected into the project by the Grantee or by investors, and should be auditable through Grantee financial statements or Grantee accounts, if so requested by USAN. Equity cannot be borrowed money secured by the assets in the project or grants from a government source.
4. Prior to disbursement, the Grantee must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.
5. Up to \$1,000,000 will be disbursed to Grantee upon documentation of capital renovation and FF& E project costs totaling approximately \$6,585,182, upon completion of the project substantially as described in these materials, as evidenced by a certificate of occupancy, compliance with the Design & Construction requirements, and documentation of the employment of at least 100 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available. Payment will be made upon presentation to USAN of an invoice and such other documentation as USAN may reasonably require. Expenditures must be incurred on or after January 1, 2015. Expenditures incurred prior to October 1, 2017 cannot be reimbursed by grant funds. All disbursements require compliance with program requirements and must be requested by no later than April 1, 2020.
6. USAN may reallocate the project funds to another form of assistance, at an amount no greater than \$1,000,000, for this project if USAN determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.

7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-five percent (85%) of the Employment Goal set forth in Column B (an "Employment Shortfall"), then upon demand by USAN, Grantee shall be obligated to repay to USAN a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;

The Grantee's number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12-month period computed by quarter.

Baseline Employment	65
A	B
Reporting Date	Employment Goals
February 1, 2020	100
February 1, 2021	100
February 1, 2022	100

8. Grant funds will be subject to *pro rata* recapture if property at the Project Location is sold within 5 years of disbursement of funds. The recapture rate will be 100% if the property is sold in the same calendar year as the disbursement of USAN funds or the next succeeding calendar year, followed by a 20% reduced rate for each successive year (80% recapture if sold in the second full calendar year after the disbursement of funds, etc.).

D. Labor Peace Agreement

Public Authorities Law Section 2879-b prohibits public authorities from providing financing for any project that includes, as one of the principal functions, a hotel with more than fifteen employees unless a labor peace agreement (“LPA”) is entered into with a labor organization representing hotel or convention center 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. An LPA meeting the statutory requirement and covering this project is in effect.

IV. Statutory Basis

The requirements of Section 10(g) of the Act are satisfied. No residential relocation is required because there are no families or individuals residing on the site.

V. Environmental Review

USAN staff has determined that the project, which involves an in-kind rehabilitation and upgrade of an existing hotel with no expansion, constitutes a Type II action as defined by the New York State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project.

VI. Non-Discrimination and Contractor & Supplier Diversity

USAN’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 10% related to the total value of USAN’s funding.

VII. USAN Financial Assistance Subject to Availability of Funds

The provision of USAN financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors Resolutions

June 26, 2019

443 Main Street Wyndham Garden Inn Hotel Renovation Project – Buffalo Regional Innovation Cluster Funds Phase I – Capital Grant – Findings and Determinations Pursuant to Section 10(g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant; to Make a Determination of No Significant Effect on the Environment; and to Take Related Actions

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the 443 Main Street Wyndham Garden Inn Hotel Renovation Project – Buffalo Regional Innovation Cluster Funds Phase I – Capital Grant (the “Project”), the Corporation hereby determines pursuant to Section 10(g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area; 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 of the Corporation or his 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 upon written finding of the President of the Corporation or his 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 that upon such written finding being made, the President of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to NFNY Hotel Management, LLC a grant for a total amount not to exceed One Million Dollars (\$1,000,000) from Buffalo Regional Innovation Cluster Funds Phase I for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds; and be it further

RESOLVED, that the President of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; 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 Directors make a Determination of No Significant Effect on the Environment, in accordance with the terms and conditions set forth in the materials presented to the Directors at this meeting; and be it further

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

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