

**PLEASE NOTE - We welcome public comment on the items on the following agenda. To ensure maximum opportunity for participation, speakers representing themselves may speak for up to 2 minutes each, and those representing groups may speak for up to 4 minutes (1 speaker per group). Speakers' comments may address only items considered at today's meeting. Materials relating to matters that are scheduled for discussion in open session will be available at the meeting and will be posted on ESD's website prior to the meeting in accordance with the Public Officers Law**

## **USA NIAGARA DEVELOPMENT CORPORATION**

### **Meeting of the Directors**

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

Wednesday

July 25, 2012 - 2:00 p.m.

### **AGENDA**

#### **I. CORPORATE ACTIONS**

- A. Approval of Minutes of the March 28, 2012 Directors' Meeting
- B. Advisory Panel Services Consultant – Authorization to Enter into a Contract for Advisory Panel Services Regarding the Former Rainbow Centre Mall; and Authorization to Take Related Actions

#### **II. FOR CONSIDERATION**

- A. Aquarium of Niagara Facility Assessment Initiative – Funding Agreement with the Aquarium of Niagara – Authorization to Enter into a Funding Agreement; Authorization to Provide Funds to the Aquarium of Niagara to Undertake a Facility Assessment; and Take All Related Actions
- B. Proposed Land Use Improvement Project – 443 Main Street, Niagara Falls, New York – Land Use Improvement Project Findings Pursuant to Sections 10(c) and 10(g) of the UDC Act; Adoption of General Project Plan; Authorization to Hold a Public Hearing Under Section 16 of the UDC Act; Authorization to Enter into an Agreement for the Development of the Project and Authorization to Take Related Actions

**DRAFT – SUBJECT TO REVIEW AND REVISION**

**USA NIAGARA DEVELOPMENT CORPORATION  
d/b/a Empire State Development Corporation**

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

and

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

March 28, 2012

**MINUTES**

**In Attendance Directors:**

Joan Aul, Acting Chair  
Gary Smith  
Michael Williamson

**Present for USA Niagara:**

Chris Schoepflin, President  
Eileen McEvoy, Secretary  
Holloway Ortman, Project Manager  
John Risio, Project Manager  
Paul Tronolone, Project Manager  
Jocelyn Viola, Office Manager

**Present for ESD  
(Downstate):**

Julia Borukhov, Financial Project Manager  
Thomas Brennan, Senior Vice President - Internal Audit  
Carlos Otero, Vice President – Contract Administration  
Natasha Pallan, Director – Subsidiary Finance  
Sheila Robinson, Deputy to the Chief Financial Officer

**DRAFT – SUBJECT TO REVIEW AND REVISION**

**Present for ESD Buffalo  
Regional Office: (via telephone)**

Sam Hoyt, Regional President – Western New York  
Regional Office  
Stephen Gawlik, Senior Counsel  
Laura Magee, Deputy Director – Public Affairs

**Present for the City  
of Niagara Falls:**

Mayor Paul Dyster  
Tom Desantis, Planning Department

**Elected Officials:**

Assemblyman John Ceretto’s Office:  
Patrick Kelly – Chief of Staff

Senator Mazarzi’s Office:  
Katie Alexander – Chief of Staff

Senator Grisanti’s Office:  
Peter Ozzimo

**For the Quality Inn:**

Doug Williams  
Jason Meinhart  
Henry Wojtaszek

**Also Present:**

Mark Scheer – Niagara Gazette  
Charlie Spect – The Buffalo News  
The Press  
The Public

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

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Acting Chair Aul then noted for the record the guidelines by which the public is allowed to comment on items on the Agenda.

The Acting Chair then called for the approval of the Minutes of the July 9, 2011 and the August 30, 2011 Directors' meetings. Upon motion duly made and seconded, the following resolutions were unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE JULY 9, 2011 AND AUGUST 30, 2011 MEETINGS OF THE DIRECTORS OF THE USA NIAGARA DEVELOPMENT CORPORATION

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RESOLVED, that the Minutes of the meetings of the Corporation held on July 9, 2011 and August 30, 2011 as presented to this meeting, are hereby approved and all actions taken by the Directors present at such meetings as set forth in such Minutes, are hereby in all respect ratified and approved as actions of the Corporation.

\* \* \*

Acting Chair Aul then asked Mr. Schoepflin to present the remainder of the items on the Agenda beginning with the Annual Operating and Capital Budgets.

Mr. Schoepflin provided a detailed analysis of the budgets. Mr. Schoepflin explained that the USA Niagara Operating Budget proposes a total of \$518,544 in personnel services comprised of salaries and benefits for five employees and a total of \$132,200 in non-personnel services which is primarily office space and administrative expenses.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

The total amount of \$650,744 for Fiscal Year 2012-2013, Mr. Schoepflin continued, will continue to be advanced with ESD Corporate funds.

Mr. Schoepflin then went on to provide information on the Corporation's Capital Project Expenses Spending Plan. He explained that Capital Project Expenses are each individually approved by the Corporation's Board under separate actions.

Mr. Schoepflin further explained that USA Niagara's total Capital Project Expenses Spending Plan is \$16,433,115.

This amount, he added, includes design and other soft costs, legal fees, property management and maintenance costs, construction and other miscellaneous capital costs.

Mr. Schoepflin noted that funding for the Capital Spending Plan comes from several sources including the New York State Division of Budget, the 2003 through 2005 Seneca Niagara Casino Funds and the USA Niagara MOU with the City of Niagara Falls. He added that no corporate funds are allocated to the Capital Budget.

Following the full presentation, the Acting Chair called for questions and comments. Director Williamson asked if the budgets would be voted on separately and Mr. Schoepflin said that it would be one vote.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

USA Niagara Development Corporation -- Approval of the Corporation's Operating and Capital Budgets for Fiscal Year 2012-13 (April 1, 2012 – March 31, 2013)

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RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the "Materials"), the Corporation's proposed FY 2012-13 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 operating budget, subject to the availability of funds; and be it further

RESOLVED, that the Directors shall make individual approvals and authorizations for items under the capital portion of the budget; and be it further

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

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

\* \* \*

Next, Mr. Schoepflin asked the Directors to approve the Niagara Falls Civic Project and Old Falls Street 2012 Capital Budget and to authorize USA Niagara to disburse funds.

Mr. Schoepflin noted that USA Niagara Development Corporation is the owner and developer of the Conference Center of Niagara Falls.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Mr. Schoepflin went on to describe in detail the management services provided by Global Spectrum as well as the funding for same.

Mr. Schoepflin noted that the 2012 Capital Budget is \$482,600. He added that this amount includes \$359,400 in funding for the Conference Center and \$123,200 in funding for Old Falls Street.

Global Spectrum, he added, will make the proposed Capital Budget purchases on behalf of USA Niagara through State contracts where cost effective and through competitive bids and comparable pricing where State contracts are not available.

Following the full presentation, the Acting Chair called for questions and comments. Director Smith noted that he had spoken to Mr. Schoepflin regarding what he believes to be a lopsided amount for the replacement of tiles and that Mr. Schoepflin explained to him that it involves some structural work as well.

Mr. Schoepflin stated that staff agrees that it is a heavy amount and will have USA Niagara's design and construction group involved. Once the tile is pulled up, he continued, staff will report back to the Directors on what needs to be done and the actual costs involved.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

**DRAFT – SUBJECT TO REVIEW AND REVISION**

USA Niagara Development Corporation -- Approval of the 2012 Niagara Falls Convention and Conference Facility and Old Falls Street Capital Budget; Authorization to Disburse Funds

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RESOLVED, that based on the materials presented at this meeting and ordered filed with the Corporation (the "Materials"), the Corporation's proposed 2012 Niagara Falls Convention and Conference Facility and Old Falls Street Capital Budget in the amount not to exceed \$482,600 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 President or his designees be, and the same hereby are, authorized to disburse funds substantially in accordance with the 2012 Niagara Falls Convention and Conference Facility and Old Falls Street Capital Budget with such changes as the President or his designee deems necessary or appropriate; and be it further

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

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

\* \* \*

The Directors were then asked by Mr. Schoepflin to authorize USA Niagara to enter into a Funding Agreement with the City of Niagara Falls to provide funds to the City of Niagara Falls.

Mr. Schoepflin explained that on October 26, 2010, the Directors approved several actions related to the Niagara Falls Culinary Institute Project including authorizing USA Niagara to enter into a Development Agreement with the City and Niagara Community College to facilitate and partially fund the design, construction, management and construction for two main components of the Culinary Institute Project which would be contracted by the City of

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Niagara Falls.

Mr. Schoepflin went on to note that those two elements included the interior razing for the Rainbow Centre Mall and the City Parking Ramp rehabilitation. Mr. Schoepflin explained that a third element is being added and that element is an elevator tower on the east corner of Falls and First Streets.

Mr. Schoepflin explained the reasoning behind this additional element as well as the proposed sources of funding and transactions for same.

Following the full presentation, the Acting Chair called for questions and comments. Director Williamson asked for an estimate of the costs involved and Mr. Schoepflin stated that construction costs would be in a range between \$500,000 and \$1.5 million. A brief discussion followed with regard to the costs as well as to plans going forward.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

USA Niagara Development Corporation – Authorization to Enter into a Funding Agreement; to Provide Funds to the City of Niagara Falls; and Take All Related Actions

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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 City Parking Ramp II – Rainbow Boulevard Elevator Tower Initiative (the “Initiative”), 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 a Funding Agreement with the City of Niagara Falls, for the purposes of

**DRAFT – SUBJECT TO REVIEW AND REVISION**

advancing activities under the Initiative, 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 funding of an amount not to exceed \$100,000 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 in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she in his or her discretion consider to be necessary to effectuate the foregoing resolutions.

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An update on the Quality Inn-Old Falls Street Retail Expansion project was provided by Jason Meinhart, Doug Williams and Henry Wojtaszek.

There being no further business, the meeting was adjourned at 3:30 p.m.

Respectfully submitted,

Eileen McEvoy  
Corporate Secretary



**FOR CONSIDERATION**

**July 25, 2012**

**TO:** The Directors

**FROM:** Christopher Schoepflin

**SUBJECT:** Advisory Panel Services Consultant

**REQUEST FOR:** Authorization to Enter Into a Contract for Advisory Panel Services regarding the former Rainbow Centre Mall; and Authorization to Take Related Actions

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**I. Contract Summary**

**Contractor:** Urban Land Institute (“ULI”)

**Scope of Services:** Advisory panel services related to planning and evaluating potential reuse/redevelopment scenarios for remaining space in the former Rainbow Centre Mall in downtown Niagara Falls, NY.

**Contract Term:** The contract will cover non-salary direct expenses over an approximate one-month period.

**Contract Amount:** \$125,000

**USAN Funding Amount:** Not to exceed \$65,000

**Funding Source:** Funding source for the Initiative will be USAN/City MOU funds, pursuant to the 2009 Memorandum of Understanding (“MOU”) between USAN and the City of Niagara Falls.

**Other Funding Sources:** National Grid Strategic Economic Development Outreach Program Grant - \$40,000

Urban Land Institute Foundation Grant - \$20,000

**II. Background**

On October 26, 2010, the USA Niagara Development Corporation (“USAN”) Board of Directors approved the General Project Plan for the Niagara Falls Culinary Institute Project – a \$34 million transformational project that will renovate the former, vacant, and blighted Rainbow Centre Mall along Old Falls Street in downtown Niagara Falls.

The Project initially involved interior demolition of all features/finishes of the former 287,000-square-foot, two-level shopping mall. Roughly 85,000 square feet of this space is now being renovated to house the Culinary Institute’s classrooms, cooking labs, administrative office space, common areas, and street-level restaurant/bookstore uses along Old Falls Street. The Project also includes a recently-completed program of rehabilitation and upgrades to an attached 1,500-space public parking garage (the “City Parking Ramp”), which is owned by the City of Niagara Falls (“City”). The Culinary Institute Project was awarded \$13.3 million from ESD/USAN and \$2 million from the WNY Regional Economic Development Council.

After the completion of the Culinary Institute, over 200,000 square feet of unused interior space in City of Niagara Falls ownership will remain in the building, cleared of essentially all environmental issues<sup>1</sup>. The objective is to re-purpose this space for new uses, but it is critical to first assess and conceptualize what the best, most productive uses for the property could be.

However, existing conditions at the property significantly complicate potential future reuses of this space. For example, the design of the structure is somewhat unconventional; the former shopping mall space was incorporated into the structural design of the City Parking Ramp, with the retail space occupying the majority of the Ramp’s first two levels with a large light well and skylight passing through the upper three levels to provide natural light into the space. Also, in any locations along its street faces, the ground floor elevations of the building do not match the adjoining sidewalk elevations. Additionally, the former Mall had been designed as a traditional inwardly-oriented shopping mall, and most suggestions for reuse have been limited to simply re-occupying it as is, which had been extremely challenging even by its former owner, a nationally-recognized development company.

Through a Development Agreement with the City, USAN is exclusively charged with planning and soliciting the reuse/redevelopment of the remaining City-owned space in the building. Toward that end, USAN wishes to obtain advisory services from the Urban Land Institute (“ULI”), a 501(c) (3) not-for-profit research and education organization specializing in urban real estate development issues. Founded in 1936, ULI is composed of more than 38,000 members, representing the entire spectrum of the land use and development disciplines, including architects, planners, real estate brokers, builders, attorneys, and engineers. It has long been recognized as one of the world’s most respected and most reliable sources of objective information on urban

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<sup>1</sup> All hazardous materials have been remediated and all interior asbestos has been abated. There remains a limited amount of non-friable asbestos in exterior curtain walls enclosing the space.

planning, growth, and real estate development. As part of its mission, the Institute maintains an Advisory Services Department for the purpose of benefiting the general public through improved planning and utilization of urban land.

USAN has received a scope of work and cost estimate from ULI (attached). The effort will be lead by a ULI-assembled advisory panel, composed of eight to nine highly-qualified professionals who volunteer their time to ULI. ULI will arrange for a panel of members to visit the property for a period of not less than four days in September 2012, will study the designated area, consult with public and private officials and present USAN with a written summary of its conclusions and recommendations within 30 days of the panel completion.

Similar ULI efforts to assist with challenging development questions have included those at the Richardson-Olmsted Complex in Buffalo (an ESD-funded project), the Midtown Plaza Block in Rochester (an ESD-funded project), and the reuse of the former Milliard Fillmore Gates Hospital in Buffalo.

The ULI standard fee for such efforts is \$125,000. This fee is used to cover a portion of the ULI costs of the panel assignment and to support and encourage ULI's overall research and educational programs.

In accordance with its public benefit goals, ULI, through its ULI Foundation, is committing \$20,000 toward the \$125,000 fee. An additional \$40,000 has been secured through a grant under National Grid's Strategic Economic Development Outreach Program, which is predicated on a USAN partnership with ULI. The balance of the effort (\$65,000) would be financed by USAN.

Because ULI is a not-for-profit entity and the Advisory Panel will be staffed by professionals that volunteer their time, the costs of such services would be significantly lower (and broader in expertise) than through the use of a typical consulting firm. The expenditures associated with this effort would cover only direct costs of the effort and no portion would go toward profits or mark-ups. In turn, engaging the services of ULI will open the property to a wider spectrum of national exposure, which would assist in subsequently soliciting it for redevelopment in a competitive procurement process.

### **III. Contractor Selection**

ULI received an exemption from the Contract Reporter requirements and was approved by ESD as sole source provider on July 20, 2012. It was determined that engaging ULI would be the timeliest, most efficient and cost-effective approach in this particular instance, given that ULI is a not-for-profit organization that provides services through a volunteer network of urban development professionals<sup>2</sup>, and as such, is uniquely qualified to provide the

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<sup>2</sup> Professionals that participate on the ULI Advisory Panel would forever be restricted from being involved in any actual development program occurring there.

type of services requested. It would also avoid costly time and effort in soliciting other organizations or a private consultant firm(s) for this work. Finally, due to preferences and/or requirements of the funding partners involved in the work, ULI is the only entity that can complete the study.

Staff has determined that ULI, in accordance with Section 163 of the State Finance Law, has (i) financial and operational capacity; (ii) legal authority to do business in New York State; (iii) demonstrated integrity of owners and principals; and (iv) acceptable past performance on prior governmental contracts.

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

#### **IV. Scope of Work**

ULI will provide an Advisory Panel composed of ULI members who collectively have a varied and broad experience and knowledge applicable to the particular problems to be considered.

ULI will arrange for the Advisory Panel members to visit the location upon which its recommendations are sought for a period of not less than four days, tentatively scheduled to begin on or about September 17, 2012. During that time the panel, directly and through its staff, the Advisory Panel will study the designated area; consult with public and private officials, representatives of other relevant organizations, and other individuals familiar with the problems involved; and prepare its conclusions and recommendations which will be presented to USAN and its invited guests in oral form at the close of the on-site assignment.

In addition, ULI will provide USAN with 200 copies of a full-color written summary of its conclusions and recommendations illustrated with photographs and drawings, as appropriate. USAN will be provided a draft copy of the report within 30 days of the panel completion.

ULI will absorb the travel and living expenses of its panel and staff while on site.

#### **V. Contract Term, Price and Funding**

The contract will cover work for an approximate one-month period.

A first installation payment of \$60,000 would be paid upon USAN entering an agreement with ULI. A second installment of \$60,000 would be paid upon presentation of the panel's recommendations (payment made by the ULI Foundation and National Grid). The third and final payment of \$5,000 would be paid by USAN when USAN receives the final report. In the event USAN cancels the panel assignment, the initial payment would be non-refundable and USAN would be responsible for any additional costs incurred by ULI up to the date of cancellation.

Funding source for the Initiative will be USAN/City MOU funds, pursuant to the 2009 Memorandum of Understanding ("MOU") between USAN and the City of Niagara Falls.

#### **VI. Non-Discrimination and Contractor & Supplier Diversity**

Pursuant Article 15-A of the New York State Executive Law, USAN's Non-Discrimination and Contractor & Supplier Diversity policy will apply. The Grantee shall use their Good Faith Efforts to achieve a Minority and Women Business Enterprise ("MWBE") Participation Goal of 5% related to the total value of USAN's funding and to solicit and utilize Minority and Women Business Enterprise for any contractual opportunities generated in connection with the Project. Specific Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") goals will not be assigned to this project.

#### **VII. Environmental Review**

ESD staff has determined that the action, which involves undertaking a planning study that does not in any way commit USAN to a particular project, constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required.

#### **VIII. Requested Action**

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; (2) authorize USAN to enter into a contract with Urban Land Institute for Advisory Panel Services related to a planning and evaluating potential reuse/redevelopment scenarios for remaining space in the former Rainbow Centre Mall; (3) provide funding in an amount not to exceed \$65,000 toward the effort; and (4) take any related actions

#### **IX. Recommendation**

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

**X. Attachments**

Resolution

July 25, 2012

USA NAGARA DEVELOPMENT CORPORATION – Authorization to Enter Into a Contract for Advisory Panel Services regarding the former Rainbow Centre Mall; and Authorization to Take Related Actions

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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 Urban Land Institute (“ULI”), a not-for-profit research and education organization, to be responsible in accordance with the State Finance Law; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with ULI for a fee of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) and provide USAN/City MOU funds controlled by the Corporation toward this fee in an amount not to exceed SIXTY-FIVE THOUSAND DOLLARS (\$65,000) 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.

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**FOR CONSIDERATION**

**July 25, 2012**

**TO:** The Directors

**FROM:** Christopher Schoepflin

**SUBJECT:** Aquarium of Niagara Facility Assessment Initiative –  
Funding Agreement with the Aquarium of Niagara

**REQUEST FOR:** Authorization to Enter into a Funding Agreement;  
Authorization to Provide Funds to the Aquarium of  
Niagara to Undertake a Facility Assessment;  
and Take All Related Actions

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**I. Background:**

USA Niagara Development Corporation (“USAN”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), was incorporated in February of 2001 to further economic development and economic revitalization in Niagara Falls.

On August 30, 2011, the USAN Board of Directors approved an expansion of the territorial limits of the USAN Development District to an area north of Main Street, including the area containing the Aquarium of Niagara (“Aquarium”). This expansion was seen as a natural extension of USAN’s development efforts and also as a way that helps facilitate the implementation of a “cultural district” as described by the City of Niagara Falls (the “City”) in their adopted Comprehensive Plan. The cultural district includes the area surrounding the Aquarium, the Niagara Gorge Discovery Center and would include at least one other enclosed or outdoor cultural and/or performance attraction, along with an integrated system of pedestrian access linking this portion of downtown with the gorge.

First opened in 1965, the Aquarium is the only such facility in the Buffalo-Niagara region. With \$90,000 in ESD assistance, the Aquarium has completed a master plan for a multi-year upgrade and expansion program of the facility. Toward the goal of advancing the initial steps of their master plan, the Niagara Aquarium Foundation (the not-for-profit entity that owns and operates the facility) recently conducted a competitive procurement process to select a consultant to undertake professional services in connection with the Facility Assessment Initiative (the “Initiative”). The Aquarium received four consultant proposals and selected Cannon Design (“Cannon”) as the consultant for the Initiative.

The Initiative would produce a detailed building and systems conditions assessment involving a due diligence survey to determine the current conditions of the Aquarium's existing 30,000 sq ft facility. The assessment will enable the Aquarium to make informed decisions related to future reconstruction or building replacement.

Cannon's scope of work (see attached) includes:

- Conducting a Project Kickoff Meeting, an Information Gathering Work Session and a Pre-Survey Walk-Through.
- Field Survey & Data Collection to document all actual deficiencies related to Exterior Envelope & Building Structure; Architectural Interior Elements & Finishers; Site Components; Mechanical, Plumbing, Electrical, Telecommunications, Fire Protection and Security Systems and Components; as well as documentation of handicapped accessibility and life safety code compliance conditions.
- Preparation of a Final Report of Findings, which will include a presentation to Aquarium Stakeholders.

Initiative field work and report preparation is expected to be completed on a one month timeline.

## **II. Funding Source:**

Funding source for the Initiative will be USAN/City MOU funds, pursuant to the 2009 Memorandum of Understanding ("MOU") between USAN and the City of Niagara Falls.

No USAN Corporate funds will be used to fund the Initiative.

## **III. Initiative Budget:**

The budget for the Initiative is as follows:

### Sources of Funds:

USAN (USAN/City MOU Funds)	\$66,100
Total Sources of Funds	<u>\$66,100</u>

Use of Funds:

Facility Assessment Project Fee	\$64,100
Reimbursable Expenses (not to exceed)	\$2,000
Total Use of Funds	<u>\$66,100</u>

**TOTAL BUDGET:** **\$66,100**

**IV. Funding Agreement:**

In support of the Initiative, USAN and the Aquarium will enter into a funding agreement (the "Agreement") which will provide a total of \$66,100 to the Aquarium.

Under the Agreement, the Aquarium will submit to USAN requisitions for payment for services performed by Cannon. The requisitions (there will be no more than two) will include all supporting documentation required to be submitted by Cannon for invoicing under its contract with the Aquarium. Prior to the submission of the first requisition, the Aquarium will coordinate with USAN on the required form and content of such requisitions and invoices. The Aquarium will be primarily responsible for leading the administration of the contract with Cannon; however USAN staff will participate in all meetings between Cannon and the Aquarium.

USAN may terminate the Agreement by providing written notice to the Aquarium. Upon such termination, the Aquarium will immediately notify Cannon of the same. Notwithstanding such termination, USAN shall remain obligated to the Aquarium for all payments due to Cannon under the contract for services performed through the date of termination.

The Agreement will also require the Aquarium to maintain accurate books and records concerning the Initiative. USAN will each have the right to audit such books and records of the other with respect to any aspect of the Initiative, for a period extending three (3) years from the time of completion or termination of the Initiative.

**V. Environmental Review:**

ESD staff has determined that the action, which would involve entering into a funding agreement to undertake a conditions assessment that would not commit USAN to any particular project in the future, constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required.

**VI. Non-Discrimination and Contractor & Supplier Diversity**

USAN's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Aquarium shall be required to: (i) include minorities and women in any job opportunities created, (ii) solicit and utilize Minority and Women Business Enterprise ("MWBE") for any contractual opportunities generated in connection with the Project and (iii) use Good Faith Efforts to achieve an overall MWBE Participation Goal of 25% related to the total value of USAN's funding. Specific Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") goals will not be assigned to this project. The Aquarium may utilize any combination of MBE and/or WBE firms to satisfy the overall goal specified herein.

**VII. Recommendation:**

Based on the foregoing, the Directors are requested to authorize the Corporation to enter into a Funding Agreement with the Aquarium for the Facility Assessment Initiative and to provide funds to the Aquarium, on the terms and conditions set forth in these materials.

**Attachments:**

Resolution

Draft Funding Agreement

Cannon Design Project Proposal

July 25, 2012

USA Niagara Development Corporation – Authorization to Enter into a Funding Agreement; Authorization to Provide Funds to the Aquarium of Niagara; and Take All Related Actions

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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 a Funding Agreement with the Aquarium of Niagara, for the purposes of advancing activities under the Facility Assessment Initiative, 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 funding of an amount not to exceed \$66,100 and be it further

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

**FUNDING AGREEMENT**

**By and Between**

**NIAGARA AQUARIUM FOUNDATION**

**And**

**USA NIAGARA DEVELOPMENT CORPORATION**

**To**

**UNDERTAKE A FACILITY ASSESSMENT  
OF THE AQUARIUM OF NIAGARA**

This **Funding Agreement**, made as of \_\_\_\_\_, 2012 by and between **USA Niagara Development Corporation (“USAN”)**, a subsidiary of the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (“ESDC”), a public benefit corporation of the State of New York, with offices at 222 First Street, 7<sup>th</sup> Floor, Niagara Falls, New York 14303 and the **Niagara Aquarium Foundation (“Foundation”)**, a not-for-profit educational foundation that owns and operates the Aquarium of Niagara (“Aquarium”), incorporated by charter from the Board of Regents of the State University of New York, on February 18, 1994 with offices at 701 Whirlpool Street, Niagara Falls, NY 14301.

**Recitals**

- I. WHEREAS, first opened in 1965, the Aquarium of Niagara is the only such facility in the Buffalo-Niagara region.. and
- II. WHEREAS, with \$90,000 in ESDC assistance, the Aquarium has completed a programmatic master plan for a multi-year upgrade and potential expansion of the facility;
- III. WHEREAS, toward the goal of advancing the initial steps of their master plan, the Foundation wishes to undertake a full physical assessment of its existing facility in order

to enable the Foundation to make informed decisions related to future reconstruction or building replacement; and

IV. WHEREAS, in order to undertake the analyses required, the Foundation would need to contract with a professional consulting firm of Cannon Design (“Cannon”), which was secured after the Foundation undertook a competitive procurement process; and

V. WHEREAS, pursuant to authorization by the USAN Board of Directors on July 25, 2012, this Funding Agreement (the “Agreement”) would provide the Foundation with up to **sixty-six thousand one hundred dollars (\$66,100.00)** to fund Cannon’s efforts to undertake the Detailed Facility Assessment; and

VI. WHEREAS, upon completion of the Detailed Facility Assessment, while no commitments are established by this agreement, it is expected that the Foundation and USAN will establish an overall framework for decision-making and carrying forward on any necessary capital rehabilitation and/or potential future improvements/upgrades to the Aquarium facility; and

**NOW, THEREFORE,** USAN and the Foundation, in consideration of the foregoing and the mutual covenants set forth herein, hereby agree to the following:

**1. Consultant Procurement and Scope of Work**

The Foundation affirms that it has undertaken a competitive procurement process through a request for proposal to select Cannon to undertake professional services in connection with the Detailed Facility Assessment of the Aquarium. The scope of services (see **Exhibit 1**) includes tasks to:

- Kick off the Project – including undertaking an information gathering work session and a pre-survey walk-through;
- Conduct field survey & data collection – documenting all actual deficiencies related to exterior envelope & building structure; architectural interior elements & finishes; site

components; mechanical, plumbing, electrical, telecommunications, fire protection/security systems; as well as documentation of handicapped accessibility and life safety code compliance conditions.

- Preparation of a Final Report of Findings, which will include a presentation to Aquarium stakeholders.

## **2. Consultant Contract Budget**

Compensation to the Foundation for costs associated with Cannon completing the scope of services shall not exceed **\$66,100.00** without written consent of USAN and shall be funded by USAN.

## **3. Disbursements**

The Foundation shall submit to USAN no more than two (2) requisitions, at a frequency of not more than one (1) per month, for payment for services performed by Cannon. The requisition shall include all supporting documentation required to be submitted by Cannon for invoicing under its contract with the Foundation. Prior to the submission of the first requisition, the Foundation shall coordinate with USAN on the required form and content of such requisitions and Consultant invoices.

Within 30 days of receipt of a completed requisition, USAN shall remit payment to NTCC. In no event shall USAN disburse more than **\$66,100.00** under this Agreement. Payments shall be made by wire transfer pursuant to directions provided by the Foundation.

## **4. Contract Administration**

The Foundation shall be primarily responsible for leading the administration of the Cannon contract. Notwithstanding the foregoing, USAN shall actively participate on the Project Management Group that will oversee the technical analyses associated with Cannon's work and

the Foundation shall fully cooperate and consult with USAN with respect to all contractual matters.

**5. Non-Discrimination and Contractor & Supplier Diversity**

USAN's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Aquarium shall be required to: (i) include minorities and women in any job opportunities created, (ii) solicit and utilize Minority and Women Business Enterprise ("MWBE") for any contractual opportunities generated in connection with the Project and (iii) use Good Faith Efforts to achieve an overall **MWBE Participation Goal of 25% related to the total value of USAN's funding**. Specific Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") goals will not be assigned to this project. The Aquarium may utilize any combination of MBE and/or WBE firms to satisfy the overall goal specified herein.

USAN will provide the foundation and Cannon all necessary forms and materials to document Cannon's Good Faith Efforts to achieve this participation goal.

**6. Termination of Agreement**

USAN may terminate this agreement by providing written notice to the Foundation as provided herein. Upon such termination, the Foundation shall immediately notify Cannon of the same. Notwithstanding such termination, USAN shall remain obligated to the Foundation for all payments due to Cannon under the contract for services performed through the date of termination.

**7. Audit**

The Foundation shall maintain accurate books and records concerning its contract with Cannon. USAN, at its own expense, shall have the right to audit the books and records of the Foundation, with respect to any aspect of the Cannon contract, for a period extending three years from the time of completion or termination of the Cannon contract.

**8. Amendment**

This Agreement may be amended only by written instrument executed by the parties hereto.

**9. Notices**

Each notice required hereunder shall be in writing and shall be deemed given upon receipt by the other parties, if personally delivered or transmitted via facsimile, or three days after dispatch by certified mail, return receipt requested to the following addresses:

(a) to USAN:

USA Niagara Development Corporation  
222 First Street, 7<sup>th</sup> Floor  
Niagara Falls, New York 14303  
Attn: President

With a copy to:

Empire State Development Corporation  
Western New York Office  
95 Perry Street  
Buffalo, New York 14203  
Attn: Upstate Senior Counsel

(b) to the Foundation:

Niagara Aquarium Foundation  
701 Whirlpool Street  
Niagara Falls, NY 14301

**10. No Assignment**

This Agreement and the rights hereunder may not be assigned by any of the parties hereto.

**11. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of New York State.

**12. Conflict of Interest**

No member director, official or employee of any party hereto has or shall have any personal interest, direct or indirect, in the Consultant contract, nor shall any such member, director, official or employee participate in any decision relating to any of the foregoing which effects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

**13. Severability**

If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**14. Third Party Beneficiary**

This Agreement shall not be deemed to grant any rights to any person, firm or corporation except the parties hereto and each of their respective successors and permitted assigns and the terms hereof shall be enforceable only by the parties or their respective successors and permitted assigns.

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the date set forth above.

**USA NIAGARA DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Christopher Schoepflin, President

**NIAGARA AQUARIUM FOUNDATION**

By: \_\_\_\_\_  
Nancy Chapin, Executive Director

DRAFT

July 16, 2012

Ms. Gay Molnar  
Director of Development  
Aquarium of Niagara  
701 Whirlpool Street  
Niagara Falls, NY 14301

**RE: Facility Assessment – Aquarium of Niagara**  
Niagara Falls, New York

Buffalo  
Baltimore  
Boston  
Calgary  
Chicago  
Houston  
Los Angeles  
Mumbai  
New York  
Phoenix  
St. Louis  
San Francisco  
Shanghai  
Toronto  
Vancouver  
Victoria  
Washington DC

Dear Ms. Molnar:

We are pleased to provide you with this professional services proposal to conduct a detailed Facility Assessment of approximately 30,000 square feet for the Aquarium of Niagara. It is the understanding of our Facility Optimization Services Group that you are requesting a due diligence survey to determine the Facility Condition Index for this facility and make informed decisions for future reconstruction or building replacement.

Project scope will include the assessment of the following buildings:

1. Aquarium – Approx. 30,000 SF

*Note: Existing building information is to be provided by the owner and used as the order of magnitude for this project. Please verify and advise if the above information is accurate and appropriate to base this proposal on.*

**Project Understanding:**

Please accept the following task list and scope of work descriptions that we understand to be the services that you requested us to perform on the facilities listed above.

**Task 1 – Project Kickoff Meeting**

One (1) project kickoff meeting between the Facility Optimization Services Group by Cannon Design and owner representatives to review the following:

- Team introductions
- Building access
- Project understanding and scope of services
- Facility assessment process
- Pre-Assessment survey questionnaire
- Project Schedule as outlined in this proposal
- Deliverables as outlined in this proposal

## **Task 2 – Information Gathering Work Session**

One (1) meeting between the Facility Optimization Services Group by Cannon Design and owner project representatives to collect the following information:

- Existing building drawings (CAD preferred)
- Existing site plans (if available)
- Existing maintenance records (if available)
- Utility bills for a 12 to 18 month period

## **Task 3 – Pre-Survey walk-thru**

One (1) meeting between the Facility Optimization Services Group by Cannon Design and owner project representatives to discuss the facility and collect the following information at the time of the kick off meeting:

- Interview the building facilities individual to understand new and ongoing issues with systems and components.
- Gain an understanding of the building layout, function and utilization of the facility.
- Identify general information about the facility to build the required biography. This will include construction dates, history square footage etc.

## **Task 4 – Field Survey and Data Collection**

As the base scope for this assessment our team of engineers and architects will perform a detailed analysis of the defined facility as listed prior in this proposal. As part of this survey we will be fully documenting the visual deficiencies of the items below:

- Exterior Envelope and Building Structure
  1. Define existing roof, exterior skin, windows, doors etc. and document deficiencies.
  2. Define existing structural systems and general overview of visual structural deficiencies to determine the health of the overall system. Focus specifically on tank requiring special attention.
  3. Part of this process has already begun and we will continue those efforts with an immediate focus on the existing shark tank.
- Architectural Interior Elements and Finishes
  1. Define ceilings, floors, walls, interior doors etc. and document visual deficiencies in substrates and finishes.
- Site Components
  1. Define walks, curbs, drainage structures and pavements, lighting etc. that is owned by the property and document deficiencies.
- Mechanical, Plumbing, Electrical Systems and Components
  1. Define existing system types and document deficiencies in the system and its components.

- Telecommunications Systems
  1. Define existing system types and document deficiencies in the system and its components.
- Fire Protection and Security Systems
  1. Define existing system types and document deficiencies in the system and its components.
- Handicapped accessibility compliance
  1. Define interior ADA non-compliant elements to include toilet rooms, public areas, door hardware etc.
  2. Define ADA non-compliant M,E,P accessories such as thermostats, switches etc.
  3. Define ADA non compliant site elements to include accessible routes, curb cuts, parking etc.
- Life safety code compliance
  1. Define and document conditions that are in non-compliance with current building codes.

## **Project Assessment Team**

The Cannon Design assessment team will consist of (1) Architect, (1) Structural Engineer, (1) Mechanical / Plumbing and (1) Electrical Engineer that are experienced in conducting facility assessments, understand your objectives and are licensed professionals. I feel that per our conversation regarding the challenging mechanical system and need for seismic structural evaluation in this facility it was important to add our most experienced mechanical and structural engineer to the team. Normally we would assign one architect and one engineer to the project that would review all building systems.

In addition to the team stated above, we have engaged the services of the following M/WBE sub-consultants:

- Fisher Associates – WBE – Site / Civil
- Singleton Construction Consultants – MBE – Cost Consultant
- Watts Architecture and Engineering – MBE – Hazardous Testing

Please note that our team will need access to most spaces in the facility. Also, the facility assessment process is a visual observation of deficiencies. Our assessment team will not provide any destructive actions to obtain data or perform any material sampling as part of our scope of work. We will offer our recommendations and testing methods if there are areas suspect that may require destructive sampling to determine the source of the problem.

## **Task 5 – Data Analysis and Recommendations**

At the completion of the field survey and data collection phase our team will organize and analyze the data collected and begin to formulate recommendations and identification of critical items that need to be addressed as high priority. This will

become the basis of the final report which will set the path for immediate needs, deferred maintenance and long term planning.

## **Task 6 – Estimates of Cost**

Singleton Construction Consultants cost estimators will review the recommendations and established scope of work and model conceptual level total project cost estimates that represent the work to be completed for all systems assessed in the field. These estimates will be based on regional labor and material costs plus assumed soft costs and include a contingency to cover unforeseen conditions.

## **Task 7 – Preliminary Report Preparation**

Our team will be generating a preliminary report of findings that includes the following outline structure on a building by building basis:

- Presentation to Aquarium Administration and Board
- Draft summary of findings and recommendations.
- Associated cost estimates
- Executive summary
- Photo documentation of deficient items.
- Five (5) copies of printed draft report/ (1) electronic PDF version
- Incorporate comments / recommendations from Aquarium Administration and Board

## **Task 8 – Preparation of Final Report of Findings**

Following review and comments provided by your team we will prepare the final report of findings

- Presentation to Aquarium Administration and Board
- Narrative Report
- Associated cost estimates
- Executive summary
- Photo documentation of deficient items.
- Five (5) Copies of hard copy report and (1) electronic PDF version.

### **Project Schedule:**

- Final schedule will be determined with the Owner
- Field work – 1 week
- Report Preparation – 3 weeks
- Final Report TBD based on review client review and proposal

### **Project Fee:**

Based on the defined scope of work in this proposal compensation will be as follows:

Lump Sum Fee: \$64,100.00

Includes 25% for M/WBE participation.

**Reimbursable Expenses:**

The following expenses will be reimbursable directly to Owner:

- Reproducible – printing, plotting, scanning etc.
- Miscellaneous job expenses requested by the owner above and beyond what is stated in this proposal.
- Not to exceed \$2,000.00

Thank you again for the opportunity to submit this proposal for the Facility Assessment at the Aquarium of Niagara. We believe that we must work together as partners in every aspect of this process to ensure that our collaborative efforts culminate in a successful and comprehensive report.

If there are any questions and /or comments regarding this proposal please feel free to contact me at any time. If you agree with the contents of this proposal please sign and return one (1) copy to our office.

Sincerely,



Michael A. Mistriner, AIA  
Principal

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**AUTHORIZATION TO PROCEED**

By \_\_\_\_\_ Date \_\_\_\_\_  
Gay Molnar  
Director of Development



## General Project Plan

443 Main Street  
Niagara Falls, New York

### Land Use Improvement Project

Adopted July 25, 2012

#### I. Introduction

The USA Niagara Development Corporation (“USAN”), a subsidiary of the New York State Urban Development Corporation d/b/a the Empire State Development Corporation (“ESDC”) proposes the undertaking of the **443 Main Street Land Use Improvement Project** (the “Project”) in the City of Niagara Falls, Niagara County, New York. The Project involves the rehabilitation and redevelopment of a highly-visible land parcel along a main gateway area to the City near the Rainbow Bridge. The parcel contains a 1960s-era, 135,000-square-foot, ten-story, 168-room Days Inn® Hotel structure and associated site features. Under the Project, it would undergo a \$10.9 million renovation to be converted to an “upscale”-grade<sup>1</sup> *Courtyard by Marriott*®. The applicant for the Project is NFNH Hotel Management LLC (“NFNH”), the New York State subsidiary of Canadian Niagara Hotels. In addition to the Days Inn, the company currently owns/operates several hotel properties in the Niagara Falls, NY and Niagara Falls, ON.

As the ESDC 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 ESDC 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 and USAN policies for upgrading the City’s inventory of lodging products to support its tourism base, would include actions in furtherance of Land Use Improvement goals. Support for these findings is discussed herein.

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<sup>1</sup> The hotel industry classifies various lodging brands (or “flags”) in grades ranging from the highest level of “luxury” (e.g., iconic brands such as Ritz Carlton®), then progressively lower to “upper-upscale” (e.g., full-service Sheraton®, Hyatt Regency®, or Hilton®); “upscale” (e.g., Crowne Plaza®, Courtyard by Marriott®, Doubletree®, Hilton Garden Inn®, etc.); “upper-midscale” (Fairfield Inn®, Hampton Inn®, Holiday Inn®, etc.); “midscale” (Howard Johnson®, Quality Inn®, etc.); and finally, “economy” (e.g., Days Inn®, EconoLodge®, Rodeway Inn®). Independent hotels may be of any grade.

## **II. Project Location**

The Project is located on an approximately one-acre parcel in downtown Niagara Falls (see **Figure 1**). The Project site in the largest and most prominent use on the downtown city block bounded:

- On the north by Main Street;
- On the west by Rainbow Boulevard;
- On the south by Niagara Street; and
- On the east by First Street.

The Project site is within a block from Niagara Falls State Park and the Rainbow Bridge leading to Canada. It is within two blocks from Old Falls Street and the Conference Center Niagara Falls.

## **III. Background**

Completed in 1962, the property was originally developed as a *Schrafft's Restaurant and Motor Inn*<sup>®</sup>, a late-19<sup>th</sup>-century, Boston-based chocolate/candy company that branched out in the 1920s (largely in New York City) to develop a chain of restaurant establishments. In the 1960s, the company developed several lodging/restaurant facilities in the states of New York and Florida. Schrafft's largely went out of the hotel business in the mid-1970s, and the property changed ownership several times. The hotel was first converted to a midscale-grade Quality Inn Hotel and later was further downgraded to an economy-grade Days Inn.

The property is located in a highly visible gateway position near the Rainbow Bridge (see **Figure 2**) that influences "first impressions" of visitors entering the downtown district from Canada. While the hotel has undergone some external changes over the last 50 years (e.g., new signage, painting, etc.), it has never undergone any substantial exterior improvements and thus exhibits a significantly outdated appearance. Together with a series of smaller uses on the block, the overall appearance of this section of downtown detracts from positive visitor perceptions.

NFNY acquired the property in 2000 has since continued to operate the property as a Days Inn. Since undertaking a successful conversion in 2011 of its other downtown hotel at 300 Third Street, from an upscale-grade Crowne Plaza to an upper-upscale-grade Sheraton Hotel, NFNY has now turn its attention to a major upgrade of 443 Main Street.

Since its inception, USAN has been advancing a policy direction to facilitate investment in improving the hotel inventory in downtown Niagara Falls, with notable projects including the Giacomo Hotel and Residence, Crowne Plaza, and Red Coach Inn, as well as ongoing efforts at the Hotel Niagara and other downtown properties. The Corporation recently commissioned HVS Consulting and Valuation Services ("HVS") to undertake an updated assessment of various sectors of the local real estate market, including detailed analysis of

the lodging industry. HVS found that Niagara Falls still has an inordinate proportion of its hotel inventory in the economy and independent<sup>2</sup> categories. HVS stated that this glut of low-cost properties tends to impose intense price competition to the market. Moreover, the lesser overall quality of such establishments also contributes to less-than-positive perceptions of the entire downtown district, which has the potential to spiral to declines in overall downtown patronage and investment. In turn, the lack of a large block of quality hotel rooms has limited growth and served as an impediment for the USAN-owned Conference Center Niagara Falls from attracting larger meetings and conventions.

HVS's analysis recognizes a series of obstacles here, similar to other like-sized cities, in realizing an upgrading of its lodging inventory. The most significant of these is access to financing; HVS stated that the typical limits on debt financing by private lenders for substantial rehabilitation or new development of upscale or upper-upscale hotels often exceeds risk levels that developers are willing to assume with their own equity investments. To bridge these risks, HVS recommend a series of development incentives that allow for increased leverage in financing hotel developments and upgrades. HVS stated that this is a particularly feasible public investment method in Niagara Falls, NY, since unlike many other American cities, converting a greater percentage of city's 8 million annual visitors to overnight stays would progressively contribute to a number of positive economic impacts.

HVS's analysis also indicated a particular opportunity in attracting a hotel in the Marriott chain, given that the company has robust reservation and customer loyalty programs, but that downtown Niagara Falls, NY lacked a Marriott property to capture this customer base.

#### **IV. Project Objective**

The Project aims to achieve a substantial upgrade to the property at 443 Main Street to stabilize and stem perceptions of decline along one of the City's main international gateways. In achieving this objective, the Project would serve a strong public need and result in economic benefits to the local community, by expanding the downtown Niagara Falls inventory of quality lodging products; complement the operations and marketing potential of the Conference Center Niagara Falls; and contribute to the City capturing a greater percentage of overnight patrons with relatively-higher disposable income, thus increasing the potential for expanded economic activity downtown.

#### **V. Project Description**

##### **A. Overview**

This GPP envisions that the NFNy will be directly responsible for the redevelopment activities under the Project. The State funds allocated to the Project, which would reimburse portions of capital cost items under the Project upon completion, will supplement private funds in the Project to rehabilitate the hotel facility and grounds on the Project site.

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<sup>2</sup> The city's independent hotels are also largely in the economy category, with properties like the *Giacomo* and *Red Coach Inn* as key exceptions.

Specifically, the Project would involve a major rehabilitation to realize a modern, state-of-the-art Courtyard by Marriott hotel complex, inclusive of ground-level food-and-beverage operations open to the general public, as well as top-level banquet/meetings facilities. The improvement program would involve a full redesign of the exterior facades of the building (see Figure 3), as well as renovation of the hotels' 168 rooms, public areas, meeting and banquet facilities, and restaurant facilities.

The Project would be developed in accordance with USAN's Urban Design Standards, which involve a series of guidelines involving incorporation of active, publicly-accessible ground level uses (e.g., retail, food-and-beverage facilities, etc.), and architectural components that facilitate visual interest (e.g., quality materials, articulation of façade elements, signage, etc.), while still permitting a wide range of architectural expressions/styles.

### **B. Incentive Amount**

A financial return analysis of the developer's Pro Forma indicates that the Project would not be financially feasible without assistance from USAN. Based on this analysis, the \$1.5 million in USAN assistance on their \$10.9 million investment would result in NFNy achieving an operating performance producing an acceptable Internal Rate of Return ("IRR") necessary for NFNy to undertake the Project and ensure its continued success. A benefit to the community, the Project would stabilize a key gateway to downtown; help raise the quality of lodging in downtown Niagara Falls; create new jobs; increase bed tax revenue; complement meeting/convention facilities; and support the overall tourism base.

### **C. Tentative Project Timeline**

- Public Hearing on GPP Aug 2012
- Review by Public Authorities  
Control Board Sept 2012
- Formal Agreement  
with NFNy Hotel, Inc. Oct 2012
- Final Design/Approvals for Project Nov/Dec 2012
- Start of Construction Jan 2013
- Completion of Construction Jun 2014
- Assume Courtyard by Marriott® Flag Jun 2014

## VI. Project Funding

**Table 1** outlines the proposed uses of funds programmed for the project and the sources of these funds. The budget for the uses of funds was derived from preliminary plans/cost estimates in the Project Improvement Plan (“PIP”) prepared by NFNy.

The sources of funds include \$1.4 million in USAN/City MOU funds pursuant to the 2009 Memorandum of Understanding (“MOU”) between USAN and the City of Niagara Falls to support economic development project in the USAN Development District and \$100,000 in assistance from the USAN Grant Program, which is funded through the Niagara Economic Development Fund (“NEDF”). No USAN corporate funds would be used to fund the Project.

**Table 1 – Uses & Sources of Funds**

<b>Funding Uses<sup>1</sup></b>	
<b>Building Façade/Exterior Improvements</b>	
▪ Architectural Changes	
▪ Porte-Cochere	\$ 3,386,800
▪ Exterior Services/Parking/Landscaping	
<b>Public Interior Spaces</b>	
▪ Lobby/Vestibule Improvements	
▪ Restrooms	
▪ Luggage/Reception Areas	\$ 1,284,300
▪ Indoor Pool Upgrades	
▪ Fitness Center	
▪ Guest Laundry	
<b>Banquet/Meeting Facilities</b>	
▪ Pre-Function Space/Ballroom	\$ 450,000
▪ Main Public Meeting Corridors	
<b>Elevator Upgrades</b>	\$ 241,000
<b>Renovation of Guestrooms and Associated Areas</b>	\$ 3,723,169
<b>Service, Back-of-House, Mechanical/Electrical, and Life Safety Upgrades</b>	\$ 848,000
Project Improvement Program Subtotal	\$ 9,933,269
Contingencies (10%)	\$ 993,326
<b>GRAND TOTAL</b>	<b>\$ 10,926,595</b>

<b>Anticipated Funding Sources</b>	
Owner’s Private Financing and Equity (NFNy)	\$ 9,426,595
USA Niagara Allocation of MOU Funds	\$ 1,400,000
USA Niagara Grant Program Niagara Economic Development Fund (NEDF)	\$ 100,000
<b>GRAND TOTAL</b>	<b>\$ 10,926,595</b>

<sup>1</sup> Proposed uses of funds derived from Applicant’s Project Improvement Plan, although some funding categories were consolidated for purposes of length.

## **VII. Economic Impact**

The Project would serve the public as a recreational support amenity by expanding the City's inventory of quality hotel rooms and the breath of choices for food-and-beverage and banquet facilities. Economically, this would complement the existing tourism setting in the City by realizing lodging facilities with a greater ability to grow shoulder-, off-season, and meeting-related visitation. Like other USAN initiatives to improve/expand the quality of lodging resources downtown, the Project would directly compliment the State's investment in the Conference Center Niagara Falls.

In terms of visitor perceptions, together with on-going rehabilitation activities at the former Rainbow Centre Mall/City Parking Ramp, the Project will significantly improve the visual quality along a major gateway to downtown from Canada and result in positive impacts to a prominent feature in the City's skyline view from Canada and the Rainbow Bridge. While not quantifiable, such improvements often shape initial impressions of an urban area and decisions on whether it is viewed as a safe and desirable place to visit.

ESDC performed an economic analysis of the Project and has projected that it is estimated that it would have the following beneficial economic impacts over a seven-year period:

- Construction activity will generate an estimated total of 165 jobs (direct, indirect, and induced).
- Permanent operations will generate 20 net new on-site jobs, and retain 90 permanent on-site jobs, both with an average salary of \$22,000/year.
- Based upon ESDC's regional economic impact model, economic activity by the 110 employees will also generate an additional 74 jobs in the region during the seven-year evaluation period.
- Direct and indirect fiscal benefits during the seven-year evaluation period (i.e., taxes on personal incomes from project direct/indirect employment, corporate and business incomes, excise and user taxes, property taxes, and other taxes) is estimated to total \$3.6 million.
- Total economic impact related to the Project in the region is estimated to be \$17.4 million (direct, indirect and induced) during the seven-year evaluation period.

## **VIII. Statutory Basis**

Based on the information set forth in this GPP and other due investigation conducted by ESDC, ESDC hereby affirms the UDC Act, Land Use Improvement Project Findings as follows:

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

1. *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 sound growth and development of the municipality.*

The Project is located in an underutilized area that would be in danger of becoming further substandard if actions are not taken to facilitate new investment. Significant improvements to the one-acre Project site—the largest and most visible property on this City block—have the potential to shift the trajectory from one of slow but progressive decline to one with an upward momentum. Other smaller adjoining properties would directly benefit through proximity to a new upscale hotel complex.

2. *The Project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto.*

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 natural and recreational resource, Niagara Falls State Park and the Falls themselves. The Project (i.e., the “undertaking”) fully adheres to and advances these City’s Comprehensive Plan policies, as noted on P. 52:

*The Falls Precinct between Niagara and Main Streets is strategically located at the center of many significant redevelopment initiatives outlined in this Plan. For instance, the Days Inn site is within immediate proximity of important municipally-led projects... including ...Falls Street, the ... redevelopment of the Rainbow Centre, [and] the creation of the new Cultural District [.] Due to its size, adjacency to many proposed initiatives and its visual prominence upon arriving in Niagara Falls via the Rainbow Bridge, this site should be considered a premier redevelopment opportunity.*

[...]

*The City should undertake discussions with the current owner of the Days Inn site... aimed at securing the redevelopment of their site... [.] The City should consider... potential partnership agreements, [...] and other strategies to encourage redevelopment. In addition, the City and the current owners may wish to approach high-quality hotel operators within North America to assess various partnership opportunities covering the site.*

The Project also advances USAN’s ongoing policies to improve the quality of downtown lodging offerings and the overall setting of the downtown landscape to enhance visitor experience and to facilitated extended stays. In fact, in policies developed as early as the USAN’s 2002 *USA Niagara Development Strategy*, this particular area of downtown (referred to in the 2002 report as the “International Entry Corridor”) was targeted for upgrades and improvements to the land use patterns, given its importance in shaping “initial impressions when entering Niagara Falls, New York, from Canada.” 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. *The plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole.*

Private development interests, specifically NFNY, would be an integral part of the Project. The allocation of State funding would be used to leverage private funds to realize a full program of renovation and upgrade of the building and grounds. As previously indicated, this would contribute to municipal needs by further supporting revitalization and growth of the City's tourism base.

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

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

#### **IX. Labor Peace Agreements**

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 statute also provides that LPA requirement can be waived if the authority determines that the project would not be able to go forward with an LPA or the costs of the project to the authority would be substantially increased by such a requirement. NFNY will be required to comply with the LPA requirement as a condition to receiving financial assistance from USAN.

#### **X. Environmental Review**

ESD staff has determined that the Project, which involves a substantial rehabilitation of an existing facility in kind and on the same site, constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the Project.

#### **XI. Non-Discrimination and Contractor & Supplier Diversity**

USA Niagara's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. NFNY Hotels shall be required to: (i) include minorities and women in any job opportunities created, (ii) solicit and utilize Minority and Women Business Enterprise ("MWBE") for any contractual opportunities generated in connection with the Project and (iii) use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE

Participation Goal of 26% related to the total value of USA Niagara's funding. The aforementioned goal includes a Minority Business Enterprise Participation Goal of 13% and a Women Business Enterprise Participation Goal of 13%, related to the total value of USA Niagara's funding.

## **XII. Conclusion**

This proposed Land Use Improvement Project will stabilize, renovate and upgrade the buildings and grounds of a key gateway parcel to downtown Niagara Falls. In doing so, it would realize a significant expansion of the City's inventory of quality lodging facilities, contributing to municipal needs by further supporting revitalization and growth of the City's tourism base.

### **Figures**

Figure 1: Site Location Map

Figure 2: Site Context

Figure 3: Architectural Design Concept



**FOR CONSIDERATION**

**July 25, 2012**

**TO:** The Directors

**FROM:** Christopher Schoepflin

**SUBJECT:** Proposed Land Use Improvement Project  
443 Main Street  
Niagara Falls, NY

**REQUEST FOR:** Land Use Improvement Project Findings Pursuant to Sections 10 (c) and (g) of the UDC Act; Adoption of General Project Plan; Authorization to hold a Public Hearing Under Section 16 of the UDC Act; Authorization to Enter into a Agreement for the Development of the Project; and Authorization to Take Related Actions.

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**I. Project Summary:**

(Please see the attached General Project Plan (“GPP”) for a more detailed description of the Project.)

**A. Project Site:**

The Project is located on an approximately one-acre parcel at 443 Main Street in downtown Niagara Falls, New York. The Project site in the largest and most prominent property and use on the block bounded by Main Street on the north; First Street on the east; Niagara Street on the south; and Rainbow Boulevard on the west.

**B. Project Description:**

The Project involves providing \$1.5 million in public investments toward a \$10.9 million rehabilitation and redevelopment of a highly-visible land parcel along a main gateway area to the City near the Rainbow Bridge. The parcel contains a 1960s-era, 135,000-square-foot, 168-room Days Inn® Hotel and associated site features. Under the Project, the property would undergo a major renovation to be converted to an upscale-grade *Courtyard by Marriott*®. Funds allocated to the Project would be used toward a full redesign of the exterior facades of the building; renovation of the hotels’ 168 rooms; and upgrades of exterior/interior public areas, meeting/banquet facilities, and restaurant facilities.

A financial return analysis of the developer’s Pro Forma indicates that the Project would not be financially feasible without assistance from USAN. Based on this analysis, the \$1.5 million in USAN assistance on their \$10.9 million investment would result in NFNy achieving an operating performance producing an acceptable Internal Rate of Return (“IRR”) necessary for NFNy to undertake the Project and ensure its continued success. A benefit to the community, the Project would stabilize a key gateway to downtown; help raise the quality of lodging in downtown Niagara Falls; create new jobs; increase bed tax revenue;

complement meeting/convention facilities; and support the overall tourism base.

C. Funding Uses and Sources

The table below indicates anticipated categories for the uses of funds under the Project. The sources of funds include \$1.4 million in USAN/City MOU funds pursuant to the 2009 Memorandum of Understanding (“MOU”) between USAN and the City of Niagara Falls to support economic development project in the USAN Development District and \$100,000 in assistance from the USAN Grant Program (Niagara Economic Development Fund). No USAN corporate funds would be used to fund the Project.

<b>Funding Uses<sup>1</sup></b>	
Building Façade/Exterior Improvements	\$ 3,386,800
Public Interior Spaces	\$ 1,284,300
Banquet/Meeting Facilities	\$ 450,000
Elevator Upgrades	\$ 241,000
Renovation of Guestrooms and Associated Areas	\$ 3,723,169
Service, Back-of-House, Mechanical/Electrical, and Life Safety Upgrades	\$ 848,000
Project Improvement Program Subtotal	\$ 9,933,269
Contingencies (10%)	\$ 993,326
<b>GRAND TOTAL</b>	<b>\$ 10,926,595</b>

<b>Anticipated Funding Sources</b>	
Owner’s Private Financing and Equity (NFDNY)	\$ 9,426,595
USA Niagara Allocation of MOU Funds	\$ 1,400,000
USA Niagara Grant Program (Niagara Economic Development Fund)	\$ 100,000
<b>GRAND TOTAL</b>	<b>\$ 10,926,595</b>

<sup>1</sup> Proposed uses of funds derived from Applicant’s Project Improvement Plan, although some funding categories were consolidated for purposes of length.

D. Tentative Project Timeline:

- Public Hearing on GPP Aug 2012
- Review by Public Authorities  
Control Board Sept 2012
- Formal Agreement  
with NFDNY Hotel, Inc. Oct 2012
- Final Design/Approvals for Project Nov/Dec 2012
- Start of Construction Jan 2013
- Completion of Construction Jun 2014
- Assume *Courtyard by Marriott*® Flag Jun 2014

## **II. Statutory Basis:**

In accordance with the UDC Act, the Corporation is making Land Use Improvement Project Findings. Corporation staff has reviewed the required findings and determined that there is an adequate basis for the making of the findings. The specific findings, and the basis for such findings, are set forth in the General Project Plan.

## **III. Environmental Review:**

ESD staff has determined that the Project, which involves a substantial rehabilitation of an existing facility in kind and on the same site, constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the Project.

## **IV. Labor Peace Agreements**

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 statute also provides that LPA requirement can be waived if the authority determines that the project would not be able to go forward with an LPA or the costs of the project to the authority would be substantially increased by such a requirement. NFNH will be required to comply with the LPA requirement as a condition to receiving financial assistance from USAN.

## **V. Non-Discrimination and Contractor & Supplier Diversity:**

USA Niagara's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. NFNH Hotels shall be required to: (i) include minorities and women in any job opportunities created, (ii) solicit and utilize Minority and Women Business Enterprise ("MWBE") for any contractual opportunities generated in connection with the Project and (iii) use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 26% related to the total value of USA Niagara's funding. The aforementioned goal includes a Minority Business Enterprise Participation Goal of 13% and a Women Business Enterprise Participation Goal of 13%, related to the total value of USA Niagara's funding.

**VI. Requested Actions:**

The Directors are requested to: a) adopt Land Use Improvement Project findings pursuant to Section 10(c) 10(g) of the UDC Act; b) adopt the General Project Plan; c) authorize a public hearing as required under Section 16 of the UDC Act; d) authorize USAN to enter into a agreement with NFNY Hotels for the development of the Project; f) authorize the commitment of USAN and NEDF funds in the total amount of \$1,500,000 for the Project; and g) authorize the taking of all actions related to the foregoing.

**Attachments:**

Resolution

General Project Plan

July 25, 2012

443 Main Street Land Use Improvement Project – Land use Improvement Findings pursuant to Sections 10(c) of the UDC Act; Project Finding pursuant to Section 10 (g) of the UDC Act; Adoption of the General Project Plan; Authorization to Hold a Public Hearing pursuant to Section 16 of the UDC Act; Authorization to Enter into a Agreement for the Development of the Project; and Authorization to Take Related Actions.

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BE IT RESOLVED, that on 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 443 Main Street Land Use Improvement Project (the “Project”), the Corporation hereby finds, pursuant to Sections 10 (c) of the New York State Urban Development Corporation Act, as amended (the “Act”), that:

- (1) 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 sound growth and development of the municipality;
- (2) the Project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto; and
- (3) the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole.

RESOLVED, that on the basis of the Materials which indicate that no families or individuals reside in nor are 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 or other proper officers of the Corporation 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 or other proper officers of the Corporation 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 or other proper officers of the Corporation be, and each of them hereby is, authorized to enter into an agreement, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, including the commitment of Corporation funding in the total amount of

\$1,500,000 for the Project, with such changes as the President or other proper officers of the Corporation may deem appropriate, 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 of the Corporation or other proper officers 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 related actions as he may in his sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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