

**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**

Monday  
July 8, 2013 – 3:00 p.m.

**AGENDA**

**I. CORPORATE ACTION**

- A. Approval of Minutes of the March 28, 2013 Directors' Meeting

**II. ADMINISTRATIVE ACTIONS**

- A. Officers of the Corporation – Appointment of Officer – General Counsel and Appointment of the Title of ESD General Counsel as the Corporation's Ex-Officio General Counsel
- B. Establishment of Pre-Qualified Counsel List – Approval of Pre-Qualified Counsel

**III. FOR CONSIDERATION**

- A. Proposed Industrial/Small and Medium-Sized Business Assistance Project – 310 Rainbow Boulevard, Niagara Falls, NY - Proposed Industrial/Small and Medium-Sized Business Assistance Project Findings Pursuant to Sections 10 (b), 10 (f) 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 Make a Determination of No Significant Effect on the Environment; Authorization to Waive the Requirement of a Labor Peace Agreement; Authorization to Enter into an Agreement with the Hamister Group ("Hamister") 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, 2013

**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  
Paul Tronolone, Senior Project Manager  
John Risio, Project Manager  
Jocelyn Viola, Office Manager

**Present for ESD  
(Downstate):**

Ingrid Barbosa,  
Julia Borukhov, Financial Project Manager  
Carlos Otero, Vice President – Contracts Administration  
Kathleen Mize, Controller

**Present for ESD Buffalo  
Regional Office:**

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

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

Mayor Paul Dyster

**Elected Officials:**

Senator George Maziarz

Assemblyman John Ceretto's Office:

Patrick Kelly – Chief of Staff

Congressman Higgins' Office:

Chris Fahey

**Also Present:**

The Press – Justin Sondel – Niagara Gazette

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 3:00 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.

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 25, 2012 Directors’ meeting. Upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE JULY 25, 2012

**DRAFT – SUBJECT TO REVIEW AND REVISION**

MEETING OF THE DIRECTORS OF THE USA NIAGARA DEVELOPMENT CORPORATION

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RESOLVED, that the Minutes of the meeting of the Corporation held on July 25, 2012 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.

\* \* \*

Acting Chair Aul then asked Mr. Tronolone to present USA Niagara's Annual Operating and Capital Budgets for Fiscal Year 2013-2014 for approval by the Directors.

Mr. Tronolone explained that the operating budget proposes a total of \$522,414 personal services to cover salaries and benefits for five employees and a total of \$128,323 in non-personal services to cover office rates and administrative expenses.

Mr. Tronolone further explained that as has been done in previous years, the operating budget will continue to be advanced with ESD corporate funds with the expectation of reimbursement at a later date.

Mr. Tronolone then explained that separate from the Corporation's operating budget is USA Niagara's capital projects expenses plan for 2013-2014 which totals \$10,632,529.

Among other things, Mr. Tronolone noted that any actual capital expense must first be approved by the Corporation's Board of Directors as a discrete and separate action.

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Mr. Tronolone went on to provide a breakdown of the proposed costs for which these funds will be used.

Mr. Tronolone added that funding for USA Niagara’s capital spending plan is from appropriations from the New York State Division of Budget and unexpended State funds from prior years made available to the Corporation under the 2009 Memorandum of Understanding with the City of Niagara Falls in support of the Conference Center, Old Falls Street and other economic development projects within the Corporation’s development district. Mr. Tronolone noted that no corporate funds are allocated to the capital budget.

Following the full presentation, the Acting Chair called for questions and comments. Hearing none, 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 2013-14 (April 1, 2013 – March 31, 2014)

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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 2013-14 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

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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. Tronolone asked the Directors to approve the Niagara Falls Convention and Conference Facility and Old Falls Street 2013 Capital Budget. Mr. Tronolone further requested authorization to disburse funds.

Mr. Tronolone noted that USA Niagara contracted with Global Spectrum in January 2009 for a five-year term to operate the conference and events center.

In October of 2009, he continued, the Corporation also approved an agreement with Global Spectrum to provide maintenance and management services for Old Falls Street as well.

Mr. Tronolone explained, among other things, that the source of funds for the capital budget is unexpended monies from prior years under the 2009 Memorandum of Understanding with the City of Niagara Falls in support of the Conference Center, Old Falls Street and economic development projects within the Corporation's development district. He added that no corporate funds are allocated to the proposed capital budget.

Mr. Tronolone went on to note that the proposed 2013 capital budget totals \$449,300

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comprising \$428,000 in funding for the Conference and Events Center and \$21,300 in funding for Old Falls Street.

Following the full presentation, the Acting Chair called for questions or comments. Director Williamson noted that one of the largest items was the back-up generator, stating that it must be substantial. He asked why the Corporation would have diesel rather than natural gas.

Mr. Schoepflin stated that the size needs are currently being analyzed as well as the question of whether to use diesel or natural gas. He further noted that the amount represents a ceiling as opposed to a floor from a pricing perspective.

Director Smith then asked if the Spectrum contract term expires in 2013 and Mr. Tronolone stated that it expires on December 31, 2013.

Director Smith then asked if there were any predictions in that regard and Mr. Tronolone stated that the procurement is out to bid for the selection of an operator. Once the selection process is complete, Mr. Schoepflin added, it will be presented to the Directors for approval.

It was noted that Spectrum is interested in continuing these services and will be a bidder in this selection process.

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Mr. Hoyt then mentioned that there were issues in connection with the New York State Budget that may affect USA Niagara. Mr. Schoepflin stated that the Corporation has plans in place to meet any of the contingencies contained in the New York State Budget.

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

USA Niagara Development Corporation -- Approval of the 2013 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 \$449,300 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. Risio to authorize the Corporation to approve a

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Grant and to Make a Determination of No Significant Effect on the Environment with regard to the 421 Third Street Façade Restoration and Retail Renovation Project.

Mr. Risio provided the relevant background information with regard to this request noting that this project involves a Development District grant to assist in upgrading the locally owned and operated Zaika Indian Restaurant from a seasonally operated establishment to a full-time, full service operation.

Among other things, Mr. Risio noted that no USA Niagara corporate funds will be used to fund the project. He further stated that USA Niagara's role in the grant program is limited to recommending specific projects for approval to be funded by the Niagara Count Development Corporation as trustees of the Niagara Economic Development Fund.

Following the full presentation, the Acting Chair called for questions or comments. Senator Maziarz asked how much the owners are putting into the project. Mr. Risio stated that the owner was putting in approximately 67%.

The Senator then stated that it was his belief that the practice of the Corporation was that it did not provide incentives to restaurants. Mr. Risio explained that the grant program includes hard costs, capital renovations costs as well as façade and exterior improvements as eligible uses.

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The funds, Mr. Schoepflin stated, are used for improvements to the building and therefore, the Corporation is not incentivizing the restaurant per se.

Senator Maziarz asked if the owner was receiving funds for the building from other government sources and Mr. Risio said that they have applied to the City for a façade grant.

Mr. Schoepflin then stated that the project is approximately two-thirds private and one-third public.

A discussion was then had regarding the need to have restaurants available in this area because there is an unmet demand in this location. In that regard, Mr. Tronolone stated that studies have shown that that situation has the potential for causing residents to leave their communities.

Senator Maziarz then asked if the owner has a PILOT on the building and he was informed that the owner does not have a PILOT on the building.

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 Approve a Grant; Make a Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

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RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, the Directors hereby approve and recommend for funding by the Niagara County Development Corporation a grant in an amount not to exceed \$20,000 to Cheema Enterprises Corporation, d/b/a “Zaika”, 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 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 Directors authorize the President, or his designee to take all actions that he deems necessary or appropriate in connection with the foregoing resolution.

\* \* \*

Mr. Tronolone then provided an informational report on the USA Niagara Illustrative Plan for Downtown Niagara Falls.

Mr. Tronolone stated that USA Niagara is not presenting a new Master plan. The Illustrative Plan, he continued, merely reflects the ongoing activities and policies of USA Niagara together with those of the City and other agencies and then shows them in a single context and one single illustration. Mr. Tronolone then provided an outline of those ongoing and proposed projects as contained in the illustration.

Acting Chair Aul asked how this document will be used and Mr. Tronolone stated, as an example, it is provided to investors to provide them with a sense of what the Corporation’s mission is and illustrates how that mission will work out in the field.

Mr. Schoepflin added that it provides those interested with a vision of the project’s

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direction by providing a basis of history and investment.

There being no further business, the meeting was adjourned at 3:31 p.m.

Respectfully submitted,

Eileen McEvoy  
Corporate Secretary



**FOR CONSIDERATION**

**July 8, 2013**

**TO:** The Directors

**FROM:** Christopher Schoepflin

**SUBJECT:** Officers of the Corporation

**REQUEST FOR:** Appointment of Officer – General Counsel and  
Appointment of the Title of ESD General Counsel as the  
Corporation’s Ex-Officio General Counsel

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**I. Background:**

The office of General Counsel to the USA Niagara Development Corporation (the “Corporation”) has been vacant as a result of the promotion of Leecia Eve who was also Executive Vice President – Legal and General Counsel to the New York State Urban Development Corporation, doing business as Empire State Development (“ESD”). Historically, ESD’s General Counsel is also appointed General Counsel to its subsidiaries.

Lawrence A. Jacobs was appointed to the position of Executive Vice President – Legal and General Counsel to ESD at a meeting of the directors of ESD on April 26, 2013. It is proposed that Mr. Jacobs be appointed General Counsel of the Corporation.

Mr. Jacobs graduated with honors from Temple University and Brooklyn Law School, where he was a member of the Law Review. After graduating from law school, Mr. Jacobs was an associate at the law firm of Squadron, Ellenoff, where he was made partner in 1991. After serving as partner for five years, Mr. Jacobs joined the News Corporation as Executive Vice President and Deputy General Counsel in 1996. Mr. Jacobs was named Senior Executive Vice President and General Counsel in 2005 and served in that capacity until June 2011. Mr. Jacobs is an Adjunct Professor of Mass Media Law at Brooklyn Law School, where he also sits on the President’s Council.

In addition, at this time it is recommended that the Corporation appoint the title of ESD General Counsel, as its ex-officio General Counsel. In this way, future staff changes will not result in the need for additional board actions simply to substitute individuals and ensuring that these officer positions will not need to be revisited in the future.

**II. Requested Action:**

The Directors are requested to approve the appointment of Lawrence A. Jacobs to the office of General Counsel, ex-officio, to the Corporation and to confirm that he is an officer of the Corporation within the meaning of the New York State Urban Development Corporation Act and the provisions of the Corporation's bylaws, including the indemnification provisions thereof.

**III. Recommendation:**

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

**IV. Attachment:**

Resolutions

July 8, 2013

USA Niagara Development Corporation – Officers of the Corporation - Appointment of  
Officer - General Counsel

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BE IT RESOLVED, that Lawrence A. Jacobs be, and he hereby is, appointed to the office of General Counsel to the USA Niagara Development Corporation (the “Corporation”) until his earlier resignation or removal, his appointment being effective as of the date indicated in the attached materials, a copy of which is hereby 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 is an “officer” of the Corporation; and be it further

RESOLVED, that the title of ESD General Counsel is an ex-officio appointment as General Counsel to the Corporation and confirms that this position is an “officer” of the Corporation within the meaning of the provisions of the Corporation’s bylaws, including the indemnification provisions thereof.

\* \* \*



**FOR CONSIDERATION**

**July 8, 2013**

**TO:** The Directors

**FROM:** Christopher Schoepflin

**SUBJECT:** Establishment of Pre-Qualified Counsel List

**RE:** Approval of Pre-Qualified Counsel

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**I. Background:**

The New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), and its subsidiaries, including the USA Niagara Development Corporation (“USAN”), continue to implement or facilitate a number of large and complex economic development projects. The size, nature, complexity and timing of these projects typically require ESD and its subsidiaries to call on the assistance of outside counsel in various areas of expertise. To permit USAN to respond to the needs of these projects expeditiously, while having available the benefits of a broad solicitation of qualified outside law firms, ESD Legal Department staff recommended the creation of a list of pre-qualified counsel. At its meeting in September 2012, the ESD Directors approved such a list, to remain in effect for three years, with an option for the General Counsel or Deputy General Counsel to extend the list for a fourth year.

This action seeks adoption of the ESD approved pre-qualified list which would make these firms available for future recommendation to the USAN Directors and/or officers for retention as the need may arise, without the need to conduct a further solicitation. No individual law firm is being recommended at this time for retention in connection with any particular matter and no funding is being authorized. Rather, only a pre-qualified list is being approved.

**II. The Solicitation:**

On April 23, 2012, ESD staff placed an advertisement in the New York State Contract Reporter requesting proposals from law firms in the following areas of law: real estate and land use; environmental; construction; condemnation; bankruptcy; labor; taxation; bond financing; foreclosure and, in each case, related litigation. Proposals were due by May 17, 2012 and all submissions were opened on May 23, 2012.

In addition, ESD staff contacted by letter and/or email all firms that had responded to the 2008 and 2010 solicitations, all New York State certified minority- and women-owned business enterprise firms ("M/WBE"), as well as other firms referred to us by ESD staff and others. All such communications advised the firms of the Contract Reporter procurement opportunity.

Sixty-six firms responded to the solicitation. The responses were evaluated by a Review Committee consisting of the Deputy General Counsel and five Senior Counsels, including the Senior Counsel primarily responsible for bond financings and the Senior Counsel for environmental and litigation matters. The submissions were evaluated on the basis of, among other things: number and experience of attorneys practicing in each area of expertise; demonstrated experience in development projects similar to those in which the Corporation engages; experience in government and public/private initiatives generally; presence and size of office(s) in New York State; the firm's current arrangements and/or willingness to engage in future M/WBE partnering or mentoring arrangements; and willingness to work within the Corporation's limitation on hourly fees. In some cases, additional information was requested in clarification of an initial submission and nine firms were selected for interviews.

Based on the review, ESD staff recommended approval, as pre-qualified counsel to the Corporation, in the indicated areas of expertise, the 50 firms listed on Attachment A to these materials. The ESD Board approved the pre-qualified list at its September 2012 meeting. This will permit staff to respond to project needs efficiently.

### **III. Financial Commitment and Selection from the List:**

The USAN Directors are not now being asked to authorize the retention of any firm in connection with any matter. Instead, the requested approval would serve to make available to USAN a selection of candidate firms that have been through a broad solicitation process. This would allow staff to select from among the candidate firms to recommend to the USAN Directors, when required, in the future for retention in connection with particular projects without the need for conducting individual solicitations in each instance. This will save for each project the two or more months that is normally needed to conduct a solicitation, perform the necessary review and formulate a recommendation.

In addition, staff recommends that the General Counsel of ESD or, in the General Counsel's absence, the Deputy General Counsel, be given the authority to refer to any such counsel matters in related areas of expertise as he/she may deem appropriate and advisable in connection with any project. For example, in the event that a tax issue arises in connection with a real estate transaction, the General Counsel or, in the General Counsel's absence, the Deputy General Counsel, in his/her discretion could call on the expertise of tax attorneys with the pre-qualified firm that was selected to handle the real estate aspects of the transaction.

### **IV. Duration of List:**

Staff recommends that the pre-qualified list remain in effect for three years, with the option to extend the duration of the list for an additional year at the discretion of the General Counsel or, in the General Counsel's absence, the Deputy General Counsel.

**V. Environmental Review:**

ESD staff has determined that this determination does not constitute an action as defined by the New York State Environmental Quality Review Act and its implementing regulations. No further environmental review is required in connection with the requested approval.

**VI. Recommendation and Requested Action:**

Staff recommends and the Directors are requested to approve the firms on Attachment A to these materials as pre-qualified counsel in the areas of expertise indentified in such Attachment (and in each case related litigation) and, in the discretion of ESD's General Counsel or, in the General Counsel's absence, the Deputy General Counsel, such related areas of expertise as he/she may deem appropriate and advisable in connection with any project, for a term of three years plus an additional year at the option of the General Counsel or, in the General Counsel's absence, the Deputy General Counsel.

**Attachments:**

Resolution

Attachment A

July 8, 2013

USA NIAGARA DEVELOPMENT CORPORATION – Establishment of Pre-Qualified Counsel List -  
Approval of Pre-Qualified Counsel

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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 law firms listed in Attachment A be and each hereby is, approved as pre-qualified counsel in the various areas of expertise (and, in each case, related litigation), and in such other areas as the ESD General Counsel or, in the General Counsel's absence, the Deputy General Counsel, may in his or her sole discretion deem appropriate or advisable in connection with any particular project or matter, such approval to remain in effect until the meeting of the Directors first occurring after September 20, 2015 or, in the discretion of the General Counsel or, in the General Counsel's absence, the Deputy General Counsel, until the meeting of the Directors first occurring after September 20, 2016.

\* \* \*

**Attachment A:**  
**Pre-Qualified Legal Counsel**  
**Adopted by ESD Board on September 20, 2012**  
**Adopted by USAN Board July 8, 2013**

Real Estate and Land Use

Bond Schoeneck & King PLLC  
\* Brown & Hutchinson  
Bryan Cave LLP  
\*\* Bryant Rabbino LLP  
Carter Ledyard & Milburn LLP  
Damon & Morey LLP  
Day Pitney LLP  
Law Offices of Donald J. Tobias  
\* Gonzalez Saggio & Harlan LLP  
Harris Beach PLLC  
Hawkins Delafield & Wood LLP  
Herrick Feinstein LLP  
Hiscock & Barclay LLP  
Hodgson Russ LLP  
Holland & Knight  
Ingram Yuzek Carroll & Bertolotti LLP  
Jaeckle Fleischmann & Mugal LLP  
Knauf & Shaw LLP  
Kramer Levin Naftalis & Frankel LLP  
Mentor Rudin & Trivelpiece PC  
McNamee Lochner Titus & Williams, P.C.  
Nixon Peabody LLP  
Phillips Lytle & \* The Gibson Law Firm  
Saunders Kahler LLP  
Schiff Hardin LLP  
\* Schoeman Updike & Kaufman LLP  
Shearman & Sterling LLP  
Sidley Austin LLP  
Skadden Arps Slate Meagher & Flom LLP  
Venable LLP  
Whiteman Osterman & Hanna LLP

Condemnation

Berger & Webb  
Bond Schoeneck & King PLLC  
Carter Ledyard & Milburn LLP  
Damon & Morey LLP  
Day Pitney LLP  
Harris Beach PLLC  
Hiscock & Barclay LLP  
Kramer Levin Naftalis & Frankel LLP  
McNamee Lochner Titus & Williams, P.C.  
Nixon Peabody LLP  
Sidley Austin LLP

Construction

Bond Schoeneck & King PLLC  
Carter Ledyard & Milburn LLP  
Damon & Morey LLP  
Day Pitney LLP  
\* Gonzalez Saggio & Harlan LLP  
Greenberg Trauig LLP  
Harris Beach PLLC  
Herrick Feinstein LLP  
Hodgson Russ LLP  
\* Hogue Newman Regal & Kenney LLP  
Holland & Knight  
Ingram Yuzek Carroll & Bertolotti LLP  
Kilpatrick Townsend & Stockton LLP  
Kramer Levin Naftalis & Frankel LLP  
Mentor Rudin & Trivelpiece PC  
McNamee Lochner Titus & Williams, P.C.  
Nixon Peabody LLP  
Saunders Kahler LLP  
Schiff Hardin LLP  
Shearman & Sterling LLP  
Sidley Austin LLP  
Venable LLP

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- \* M/WBE Firm
  - \*\* Certification Pending

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### Bankruptcy

Bond Schoeneck & King PLLC  
Bryan Cave LLP  
Damon & Morey LLP  
Day Pitney LLP  
Law Offices of Donald J. Tobias  
Harris Beach PLLC  
Herrick Feinstein LLP  
Hodgson Russ LLP  
Jaeckle Fleischmann & Mugal LLP  
Mentor Rudin & Trivelpiece PC  
McNamee Lochner Titus & Williams, P.C.  
Nixon Peabody LLP  
Saunders Kahler LLP  
Schiff Hardin LLP  
Shearman & Sterling LLP  
Sidley Austin LLP  
Venable LLP  
Whiteman Osterman & Hanna LLP

### Labor

- Bond Schoeneck & King PLLC
- \* Brown & Hutchinson
- Clifton Budd & DiMaria LLP
- Damon & Morey LLP
- Day Pitney LLP
- \* Gonzalez Saggio & Harlan LLP
- Harris Beach PLLC
- Hiscock & Barclay LLP
- Hodgson Russ LLP
- \* Hogue Newman Regal & Kenney LLP
- Jaeckle Fleischmann & Mugal LLP
- Schroder Joseph & Associates LLP
- McNamee Lochner Titus & Williams, P.C.
- Putney Twombly Hall & Hirson LLP

- Wasserman Grubin & Rogers LLP
- Whiteman Osterman & Hanna LLP
- \* Wilson & Chan LLP

### Environmental

- Bond Schoeneck & King PLLC
- Bryan Cave LLP
- Carter Ledyard & Milburn LLP
- Damon & Morey LLP
- Day Pitney LLP
- \* Gonzalez Saggio & Harlan LLP
- Harris Beach PLLC
- Herrick Feinstein LLP
- Hodgson Russ LLP
- Jaeckle Fleischmann & Mugal LLP
- Knauf & Shaw LLP
- Kramer Levin Naftalis & Frankel LLP
- Mentor Rudin & Trivelpiece PC
- McNamee Lochner Titus & Williams, P.C.
- Nixon Peabody LLP
- Phillips Lytle & \* The Gibson Law Firm
- Shearman & Sterling LLP
- Sidley Austin LLP
- Sive Paget & Riesel PC
- Venable LLP
- Whiteman Osterman & Hanna LLP

### Taxation

- Bond Schoeneck & King PLLC
- Carter Ledyard & Milburn LLP
- Damon & Morey LLP
- Day Pitney LLP
- Harris Beach PLLC
- Herrick Feinstein LLP
- Hodgson Russ LLP
- Holland & Knight
- Ingram Yuzek Carroll & Bertolotti LLP
- Jaeckle Fleischmann & Mugal LLP
- McNamee Lochner Titus & Williams, P.C.
- Nixon Peabody LLP

- \* Schoeman Updike & Kaufman LLP
- Shearman & Sterling LLP
- Sidley Austin LLP
- Venable LLP
- Whiteman Osterman & Hanna LLP

- Saunders Kahler LLP
- Schiff Hardin LLP
- Shearman & Sterling LLP
- Sidley Austin LLP
- Whiteman Osterman & Hanna LLP

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- \* M/WBE Firm
  - \*\* Certification Pending

### Foreclosure

- Bond Schoeneck & King PLLC
- Carter Ledyard & Milburn LLP
- Damon & Morey LLP
- Law Offices of Donald J. Tobias
- \* Gonzalez Saggio & Harlan LLP
  
- Harris Beach PLLC
- Herrick Feinstein LLP
- Mentor Rudin & Trivelpiece PC
- McNamee Lochner Titus & Williams, P.C.
- Nixon Peabody LLP
- Sidley Austin LLP

- \* M/WBE Firm
- \*\* Certification Pending

### Bond

#### Senior Tier:

- Harris Beach PLLC
- Hawkins Delafield & Wood LLP
- Holland & Knight
- Mintz Levin Cohn Ferris Glovsky and Popeo
- Nixon Peabody LLP
- Orrick Herrington & Sutcliffe LLP
- Squire Sanders LLP & \* KnoxSeaton
- Winston & Strawn LLP

#### Junior Tier:

- Bond Schoeneck & King PLLC
- \* Brown & Hutchinson
- Chapman & Cutler LLP
- Day Pitney LLP
- Edwards Wildman Palmer LLP and \*
- The Hardwick Law Firm LLC
- \* Gonzalez Saggio & Harlan LLP
- Hiscock & Barclay LLP
- \* Law Office of Joseph C. Reid, P.A.
- \* Lewis & Munday PC
- Sidley Austin LLP



**FOR CONSIDERATION**

**July 8, 2013**

**TO:** The Directors

**FROM:** Christopher Schoepflin

**SUBJECT:** Proposed Industrial/Small and Medium-Sized Business Assistance Project - 310 Rainbow Boulevard, Niagara Falls, NY

**REQUEST FOR:** Proposed Industrial/Small and Medium-Sized Business Assistance Project Findings Pursuant to Sections 10 (b), 10 (f) 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 make a Determination of No Significant Effect on the Environment; Authorization to waive the requirement of a Labor Peace Agreement; Authorization to Enter into an Agreement with the Hamister Group (“Hamister”) 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 site is located on an approximately 0.88-acre parcel at 310 Rainbow Boulevard in Niagara Falls, New York. The Project site is bounded by: Michael J. O’Laughlin Way on the north; Rainbow Boulevard on the east; Old Falls Street on the south; and a private parking lot for the Hard Rock Café on the west.

The Project site is a major parcel in the heart of the city’s downtown tourist district and is located in proximity to Niagara Falls State Park, the Conference & Event Center Niagara Falls, the Seneca Niagara Casino complex, and a number of other downtown hospitality establishments.

**B. Project Description:**

The Project involves providing \$2.75 million in assistance toward a \$25 million mixed-use development project. It would result in the development of a ±119,000-square-foot (“SF”), mixed-use infill building. The building would contain a 114-room, “upscale”-grade hotel (preliminarily anticipated to be a Hilton Garden Inn®) with a 10,000 SF ballroom facility; 24 market-rate apartments; and 5,000 SF street-level retail/food-and-beverage uses fronting on Old Falls Street, with opportunities for additional retail along the Rainbow Boulevard frontage in the future.

The Hamister Group, Inc. (“Hamister” or “the developer”), is a New York State-based hotel and health care management company. The developer is currently undertaking a mixed-use hotel / office / apartment project (i.e., a major rehab of an existing downtown office tower) in Buffalo, NY and has other hotel holdings in Pittsburgh, Louisville, Knoxville, and Nashville. The GPP envisions that Hamister will be directly responsible for the development 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

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 \$2.75 million in USAN assistance toward the \$25 million investment would result in Hamister achieving an operating performance producing an acceptable Internal Rate of Return (“IRR”) necessary for Hamister to undertake the Project and ensure its continued success.

A benefit to the community, the Project would create new jobs and increase bed tax revenues. The Project would also serve the public as a recreational support amenity by expanding the City of Niagara Falls’ (the “City”) inventory of quality hotel rooms; the breadth of choices for food-and-beverage and banquet facilities; and new residential units to continue to grow the number of year-round downtown residents. In addition, these goals would be accomplished by contributing to a dense cluster of activities along Old Falls Street, which would complement the existing tourism setting in the City by concentrating a mix of uses and facilities within a definable, pedestrian-oriented “place.” Like other USAN initiatives to expand the lodging, restaurant, and meeting facilities downtown, the Project would directly compliment the State’s investment in the Conference Center Niagara Falls.

### C. Funding Uses and Sources

The table below 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 cost/pro-forma estimates submitted by Hamister as part of the Project negotiations. The sources of funds include \$2.75 million in USAN/City MOU funds pursuant to the 2009 Memorandum of Understanding (“MOU”) between USAN and the City to support economic development projects in the USAN Development District. No USAN corporate funds would be used to fund the Project.

**Table 1 – Uses & Sources of Funds**

<b>Funding Uses</b>	
Land Costs	\$100,000
Legal Fees	\$60,000
Architectural/Engineering Services (including Contingencies)	\$863,777
Other Soft Costs	\$3,165,428
Hard Construction Costs (including Contingencies)	\$20,292,089
Financing Costs	\$837,083
<b>GRAND TOTAL</b>	<b>\$25,318,377</b>
<b>Anticipated Funding Sources</b>	
Owner’s Private Financing and Equity (Hamister)	\$22,568,377
USAN Funds	\$2,750,000
<b>GRAND TOTAL</b>	<b>\$25,318,377</b>

D. Tentative Project Timeline:

- Public Hearing on GPP July 2013
- Review by Public Authorities Control Board August. 2013
- Execute Development Agreement August 2013
- Final Design/Approvals for Project April-October 2013
- Start of Construction November 2013
- Completion of Construction September 2015
- Certificate of Occupancy October 2015
- Final Transfer of Land to Hamister Group Oct./Nov. 2015

E. Development Agreement:

Hamister, together with USAN and the City, would enter into a development agreement which would govern all aspects of the proposed Project’s implementation. The primary terms of the development agreement would require the developer to finance, design, construct and operate a mixed use facility in accordance with Section V(A) of the GPP. The developer would be required to pay the City \$100,000 to purchase the land. As part of the agreement, USAN would provide funding for the project in an amount not to exceed \$2.75 million. In the event that the City’s existing license on this site cannot be effectively terminated by the City, such that the City cannot deliver title to the developer sufficient to allow the project to be constructed in accordance with the terms of the development agreement, USAN will be required to reimburse the developer’s actual, documented design costs up to an amount not to exceed \$780,000.

F. Developer Selection Process:

Selection of the developer for the Project was conducted through a competitive procurement process. USAN and the City launched a request for proposals (“RFP”) on October 5, 2011 for redevelopment of the site. Seven proposals were received on December 9, 2011. A Selection Committee was formed consisting of USAN, ESD and City staff. Upon review of the proposals, the Selection Committee selected or “shortlisted” five developer teams and conducted interviews on January 18, 2012. Teams that were determined to best achieve the objectives as stated in the RFP were ranked order as follows:

<b>Rank</b>	<b>Developer Team</b>	<b>Max Score 600</b>
1.	Hamister Group	529
2.	Uniland Development	470
3.	DHD Ventures	448
4.	Eastern Hospitality Advisors	410
5.	LMK Realty Associates	233

Hamister was recommended by the Selection Committee and approved as the preferred developer by the Niagara Falls City Council on February 22, 2012.

Pursuant to State Finance Law Section 139-j and 139-k and ESD’s policy related thereto, staff has (a) considered the ability of Hamister to perform the services as set forth in these materials, and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff finds Hamister to be responsible.

**II. Statutory Basis:**

In accordance with the UDC Act, the Corporation is making Industrial/Small and Medium-Sized Business Assistance 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:**

Empire State Development (“ESD”)/USAN, as lead agency, has completed an environmental review of the proposed Project, pursuant to the requirements of the State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation.

This review, which was coordinated with the involved agencies due to the Project's Type I classification, found that the proposed project would not result in significant adverse impacts on the environment. Therefore, the Directors are recommended to make a Determination of No Significant Effect on the Environment.

#### **IV. Labor Peace Agreement**

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.

Hamister has requested a waiver from the LPA requirement because the increased costs associated with an LPA would make the project infeasible. Review of the developer's operations and financial statements indicates that the effect of an LPA on the project would be an increase in wage labor and benefits by more than 40%. Hamister has advised USAN that absent a waiver, the project will not proceed. Staff has reviewed the developer's financial analyses and operating pro forma and agrees that the project would be rendered infeasible if an LPA were to be required due to the increased costs associated with its implementation. Staff therefore recommends that USAN waive the LPA requirement for this project.

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

ESD/USAN's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. Hamister shall be required to: (i) include minorities and women in any job opportunities created, (ii) solicit and utilize Minority and Women Business Enterprises ("MWBEs") 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 30% related to the total value of USAN's funding. The aforementioned goal includes a Minority Business Enterprise ("MBE") Participation Goal of 18% and a Women Business Enterprise ("WBE") Participation Goal of 12%, related to the total value of USA Niagara's funding.

**VI. Requested Actions:**

The Directors are requested to: a) adopt Industrial/Small and Medium-Sized Business Assistance Project findings pursuant to Sections 10 (b), 10 (f) and 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 make a Determination of No Significant Effect on the Environment; e) waive the requirement of a Labor Peace Agreement; f) authorize USAN to enter into an agreement with Hamister for the development of the Project; g) authorize the commitment of funds in the total amount of \$2,750,000 for the Project; and h) authorize the taking of all actions related to the foregoing.

**Attachments:**

Resolution

General Project Plan

310 Rainbow Boulevard Proposed Industrial/Small and Medium-Sized Business Assistance Project – Land Use Improvement Project Findings Pursuant to Sections 10 (b), 10(f) 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 make a Determination of No Significant Effect on the Environment; Authorization to waive the requirement of a Labor Peace Agreement; Authorization to Enter into an Agreement with the Hamister Group; 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 310 Rainbow Boulevard Proposed Industrial/Small and Medium-Sized Business Assistance Project (the “Project”), the Corporation hereby makes the requisite findings pursuant to Sections 10 (b) and 10 (f) of the New York State Urban Development Corporation Act, as amended (the “Act”); and be it further

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 \$2,750,000 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 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 based on the materials presented at this meeting, the Corporation hereby finds, pursuant to New York State Public Authorities Law Section 2879-b, that the project would not be able to go forward if a labor peace agreement were required and hereby waives such requirement in connection with the project; 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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## General Project Plan

**310 Rainbow Boulevard  
Niagara Falls, New York**

### **Industrial/Small and Medium-Sized Business Assistance Project**

**Adopted: July 8, 2013**

#### **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 (“ESD”), proposes the undertaking of the **310 Rainbow Boulevard Industrial/Small and Medium-Sized Business Assistance Project** (the “Project”) in the City of Niagara Falls, Niagara County, New York.

The Project involves providing \$2.75 million in assistance to a private company to facilitate a \$25 million mixed-use development on a highly-visible, 0.88-acre land parcel along Old Falls Street. It would result in the development of a ±119,000-square-foot (“SF”), building containing hotel, ballroom, residential, and ground-level food-and-beverage and or retail operations open to the general public.

The parcel comprising the Project site is currently largely vacant except for accessory features from the former “Flight of Angels” balloon ride, which ceased operations in 2009. In the summer of 2010-2011, a temporary use consisting of rides/amusements, tour operations, and surface parking occupied the parcel. The lot continued to be used for commercial parking absent the amusement rides in the summer of 2012.

The applicant for the Project is the Hamister Group (“Hamister” or “the developer”), a New York State-based hotel and health care management company. The company is currently undertaking a mixed-use hotel/office/apartment project (i.e., a major rehab of an existing downtown office tower) in Buffalo, NY and has other hotel holdings in Pittsburgh, Louisville, Knoxville, and Nashville.

As the ESD subsidiary with a mission to facilitate revitalization of the tourism industry in downtown Niagara Falls, NY, USAN is adopting this General Project Plan (“GPP”) in accordance with the New York State Urban Development Corporation (“UDC”) Act, which permits ESD and its subsidiaries to undertake activities in furtherance of “Industrial” and “Small-/Medium-Sized Business Assistance” projects in areas in need of redevelopment, particularly those in danger of becoming substandard or blighted.

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

## **II. Project Location**

The Project site is located on an approximately 0.88-acre parcel at 310 Rainbow Boulevard (Section, Block and Lot No. 158.12-1-4.11) in Niagara Falls, New York (see **Figure 1**). The Project site is bounded by:

- Michael J. O’Laughlin Way on the north;
- Rainbow Boulevard on the east;
- Old Falls Street on the south; and
- A private parking lot for the Hard Rock Café on the west.

The Project site is a major parcel in the heart of the city’s downtown tourist district and is located in proximity to Niagara Falls State Park, the Conference & Event Center Niagara Falls, the Seneca Niagara Casino complex, and a number of other downtown hospitality establishments.

## **III. Background**

In November 2011, under the terms of agreements to fund/develop Niagara County Community College’s (“NCCC’s”) Niagara Falls Culinary Institute, the property at 310 Rainbow Boulevard was turned over to the City of Niagara Falls for new development and USAN was given the exclusive rights to solicit developers/projects at that property on behalf of the City.

In December 2011, USAN and the City issued a competitive Request for Proposals (“RFP”) for the property at 310 Rainbow Boulevard. After reviewing seven responses to the RFP, Hamister was selected as the preferred Project developer. It was determined that the Hamister proposal would best meet the RFP objectives by creating a high-density mix of quality hotel, residential, and retail uses with a focus on active ground-level development that would contribute to visitor and resident offerings along Old Falls 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 Residences, Crowne Plaza, and Red Coach Inn, as well as ongoing efforts at upgrading six (6) other downtown properties. A USAN-commissioned assessment by HVS Consulting and Valuation Services (“HVS”) found that Niagara Falls still has an inordinate proportion of its hotel inventory in the economy and independent<sup>1</sup> categories, which tended to impose intense price competition to the market. In turn, the lack of a large

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<sup>1</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.

block of quality hotel rooms has 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 being access to financing.

To bridge these risks, HVS recommend a series of development incentives that allow for increased leverage in financing new hotel developments—particularly those as part of mixed-use developments that would contribute to a dense cluster of activity on Old Falls Street. 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 eight million annual visitors to overnight stays would progressively contribute to a number of positive economic impacts.

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

The Project aims to realize a new mixed-use infill development on the property at 310 Rainbow Boulevard, which would significantly reverse the current substandard condition of this important land parcel along one of the City's most visible streets. 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;
- Adding new street-level food-and-beverage offerings along Old Falls Street;
- Realizing new ballroom facilities that would complement/supplement the operations and capture potential of the Conference Center Niagara Falls;
- 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; and
- Generate important new market-rate residential units, which will continue to advance a permanent resident base downtown to progressively help stem seasonality of its activity levels.

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

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

This GPP envisions that Hamister will be directly responsible for the development 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.

Specifically, the Project would involve the construction and operation of a ±119,000- SF, mixed-use infill building at the property (See **Figures 2 and 3**). The building would contain a

114-room, “upscale”-grade<sup>2</sup> hotel (preliminarily anticipated to be a Hilton Garden Inn®) with a 10,000-SF ballroom facility; 24 market-rate apartments; and 5,000 SF street-level retail/food-and-beverage uses fronting on Old Falls Street, with opportunities for additional retail along the Rainbow Boulevard frontage in the future.

Parking for the development would be secured by Hamister in the City Parking Ramp. In addition, Hamister proposes the option of constructing—as part of the Project and at its own cost—a pedestrian bridge over Rainbow Boulevard connecting to the third level of the City Parking Ramp. This would be subject to approval by the Niagara Falls City Council.

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 \$2.75 million in USAN assistance toward the \$25 million investment would result in Hamister achieving an operating performance producing an acceptable Internal Rate of Return (“IRR”) necessary for Hamister to undertake the Project and ensure its continued success.

## **C. Development Agreement**

Hamister, together with USAN and the City of Niagara Falls, would enter into a development agreement which would govern all aspects of the proposed Project’s implementation. The primary terms of the development agreement would require the developer to finance, design, construct and operate a mixed use facility in accordance with Section V(A) referenced above. The developer would be required to pay the City \$100,000 to purchase the land. As part of the agreement, USAN would provide funding for the project in an amount not to exceed \$2.75 million. In the event that the City cannot deliver title to the developer sufficient to allow the project to be constructed in accordance with the terms of the development agreement, USAN will be required to reimburse the developer’s actual, documented design costs up to an amount not to exceed \$780,000.

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<sup>2</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.

**D. Tentative Project Timeline**

- Public Hearing on GPP July 2013
- Review by Public Authorities  
Control Board August 2013
- Execute Development Agreement August 2013
- Final Design/Approvals for Project April-October 2013
- Start of Construction November 2013
- Completion of Construction September 2015
- Certificate of Occupancy October 2015
- Final Transfer of Land to Hamister Group Oct./Nov. 2015

**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 cost/pro-forma estimates submitted by Hamister as part of the Project negotiations.

The source of funds is USAN/City MOU funds pursuant to the 2009 Memorandum of Understanding (“MOU”) between USAN and the City of Niagara Falls to support economic development projects in the USAN Development District. No USAN corporate funds would be used to fund the Project.

**Table 1 – Uses & Sources of Funds**

<b>Funding Uses</b>	
Land Costs	\$ 100,000
Legal Fees	\$ 60,000
Architectural/Engineering Services (including Contingencies)	\$ 863,777
Other Soft Costs	\$3,165,428
Hard Construction Costs (including Contingencies)	\$ 20,292,089
Financing Costs	\$ 837,083
<b>GRAND TOTAL</b>	<b>\$25,318,377</b>

<b>Anticipated Funding Sources</b>	
Owner’s Private Financing and Equity (Hamister)	\$ 22,568,377
USAN Funds	\$ 2,750,000
<b>GRAND TOTAL</b>	<b>\$25,318,377</b>

## **VII. Economic Impact**

The Project would serve the public as a recreational support amenity by expanding the City's inventory of quality hotel rooms; the breadth of choices for food-and-beverage and banquet facilities; and new residential units to continue to grow the number of year-round downtown residents. In addition, these goals would be accomplished by contributing to a dense cluster of activities along Old Falls Street, which would complement the existing tourism setting in the City by concentrating a mix of uses and facilities within a definable, pedestrian-oriented "place." Like other USAN initiatives to expand the lodging, restaurant, and meeting facilities downtown, the Project would also directly compliment the State's investment in the Conference Center Niagara Falls.

In terms of visitor perceptions, together with the State's investment in the first phase of work to transform the former Rainbow Centre Mall/City Parking Ramp, involving the recent opening of the Niagara Falls Culinary Institute, the Project will significantly improve the visual quality along a major downtown corridor and would result in a prominent new feature in the City's skyline view. 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.

ESD 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 ten-year period:

- Construction activity will generate an estimated total of 324 person years of employment (direct, indirect, and induced).
- Permanent operations will generate 71 net new on-site jobs with an average salary of \$24,500.
- Based upon ESD's regional economic impact model, economic activity by the 71 employees will also generate an additional 21 jobs in the region over the ten-year evaluation period.
- Direct and indirect fiscal benefits during the ten-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 \$11.7 million.
- Total impact on economic activity related to the Project in the region is estimated to be \$39.528 million (direct, indirect and induced) over the ten-year evaluation period.

## **VIII. Statutory Basis**

### **A. Industrial Project Findings – UDC Act Section 10(b):**

Based on the information set forth in this GPP and other due investigation conducted by USAN, USAN hereby affirms the UDC Act Industrial Project findings as follows:

1. *That the area in which the project is to be located is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area, wherein there exists a condition of substantial and persistent unemployment or underemployment.*

The Project site is an underutilized parcel that detracts value from surrounding uses on Old Falls Street, and has the potential of becoming further substandard if actions are not taken to facilitate new investment there. In turn, the City as a whole has experienced chronically high jobless rates. Significant new infill development on the Project site has the potential—together with other recent projects—to begin to establish a cluster of uses that would re-establish Old Falls Street’s economic importance as a “place” of tourism-related activities, which would also directly and indirectly create new employment opportunities.

2. *That the acquisition or construction and operation of such project will prevent, eliminate or reduce unemployment or underemployment in such area.*

The Project would represent a major infill development to continue efforts to grow tourism-related economic activity downtown. It is projected to create 324 direct, indirect, and induced jobs as a result of its construction and 92 direct, indirect, and induced jobs as part of its operations over a ten-year period.

3. *That such project shall consist of a building or buildings, which are suitable for manufacturing, warehousing or research or other industrial, business or commercial purposes.*

The Project will consist of a major, mixed-use development consisting of a combination of commercial uses that would further expand the tourism industry in downtown Niagara Falls.

4. *That adequate provision has been, or will be made for the payment of the cost of the acquisition, construction, operation, maintenance and upkeep of such project.*

The Project developer has submitted a pro-forma and budget for the Project that has been confirmed by ESD/USAN to be sufficient in providing funds to acquire the site from the City, to construct the new development, and to operate/maintain it in a reasonable manner.

5. *That the acquisition and construction, proposed leasing, operation and use of such project will aid in the development, growth and prosperity of the state and the area in which such project is located.*

The Project will provide a significant contribution to establishing a dense cluster of tourism-related uses along the Old Falls Street corridor, which is a primary public policy goal of USAN to aid in the revitalization of the tourism industry in the City of Niagara Falls.

**B. Small and Medium-Sized Business Assistance Project Findings – UDC Act Section 10(f):**

Based on the information set forth in this GPP and other due investigation conducted by USAN, USAN hereby affirms the UDC Act Small and Medium-Sized Business Assistance Project findings as follows:

1. *That the area in which the project will be located is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area, wherein there exists a condition of substantial and persistent unemployment or underemployment.*

See Item A. 1 above.

2. *That the project demonstrates market, management and financial feasibility and has a clear likelihood of success;*

USAN's market research confirms sufficient demand in the local market to support the Project and the Hamister Group has submitted information demonstrating its financial capability to undertake the effort. Hamister's pro-forma uses reasonable assumptions confirmed by USAN/ESD to demonstrate a clear likelihood for the Project's success.

3. *That the firm provides at least a ten percent equity contribution and such contribution is not derived from other governmental sources.*

The Project budget includes a minimum of ten percent equity participation by the Hamister Group that is not derived from other governmental sources.

4. *That the requested financial assistance is not available from other public or private financing sources on terms compatible with the successful completion of the project.*

The requested amount of financial assistance is reasonable and necessary to support the completion of the Project and as documented in market analyses conducted by USAN, would not be readily available from other public or private financial sources.

5. *That the project will not result in the relocation of any industrial firm from one municipality within the state to another municipality, except under one of the following conditions: (i) when an industrial firm is relocating within a municipality with a population of at least one million where the governing body of such municipality approves such relocation; or (ii) the corporation notifies each municipality from which such industrial firm will be relocated and each municipality agrees to such relocation.*

Insofar as the project is a new—rather than relocated—development, it would not involve the relocation of any firm from another municipality in the state.

6. *That the project is not for the purpose of refinancing any portion of the total project cost or other existing loans or debts of the project sponsor or owner.*

The Project, and particularly USAN assistance for it, does not involve refinancing of any existing loans or debts for this or any other property or holding of the developer.

### **C. 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. Hamister will be required to comply with the LPA requirement as a condition to receiving financial assistance from USAN.

### **X. Environmental Review**

ESD/USAN, as lead agency, has completed an environmental review of the proposed Project, pursuant to the requirements of the State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. This review, which was coordinated with the involved agencies due to the Project’s Type I classification, found that the proposed project would not result in significant adverse impacts on the environment. Therefore, the Directors are recommended to make a Determination of No Significant Effect on the Environment.

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

USAN’s Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. Hamister shall be required to: (i) include minorities and women in any job opportunities created, (ii) solicit and utilize Minority and Women Business Enterprises (“MWBEs”) 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 30% related to the total value of USAN’s funding. The aforementioned goal includes a Minority Business Enterprise (“MBE”) Participation Goal of 18% and a Women Business Enterprise (“WBE”) Participation Goal of 12%, related to the total value of USA Niagara’s funding.

### **XII. Conclusion**

This proposed Industrial/Small and Medium Sized Business Assistance Project will result in major new infill development along Old Falls Street in downtown Niagara Falls. In doing so, it would contribute to creating a dense cluster of activity in the core of the downtown district and realize a significant expansion of the City’s inventory of quality lodging facilities, food and beverage and retail offerings, and downtown housing. This will contribute to

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

**Figures**

Figure 1: Site Location Map

Figure 2: Preliminary Site Plan

Figure 3: Selected Renderings of Proposed Project