

## ***AGREEMENT FOR CONTROL AND MANAGEMENT OF OLD FALLS STREET, NIAGARA FALLS, NY***

This Agreement, made by and between **USA Niagara Development Corporation** (“**USAN**”), a New York corporation and a subsidiary of New York State Urban Development Corporation, d/b/a Empire State Development (“**ESD**”), a corporate governmental agency of the State of New York (the “**State**”) constituting a political subdivision and a public benefit corporation and the **CITY of Niagara Falls, New York** (“**CITY**”), a municipal corporation of the State.

**WHEREAS**, USAN has developed a Convention and Conference Center located at 101 Old Falls Street in Niagara Falls, NY (the “**Conference Center**”) which has been operating since June, 2004; and

**WHEREAS**, many Conference Center activities take place on Old Falls Street; and

**WHEREAS**, since January of 2014, USAN has entered into management agreements with various entities to manage the Conference Center, which have also included the ability to control and manage Old Falls Street; and

**WHEREAS**, the control and management of Old Falls Street by these various entities has benefited both the Conference Center and the **CITY**; and

**WHEREAS**, USAN presently has in place a management agreement with Comcast Spectacore for the management of the Conference Center which, for the last six (6) years, has also included the ability to control and manage Old Falls Street; and

**WHEREAS**, the **CITY** and USAN desire to have USAN, through Comcast Spectacore, to continue to control and manage Old Falls Street during calendar year 2020, at no cost to the **CITY**.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants set forth herein, USAN and the **CITY** agree as follows:

1. Commencing on the effective date of this Agreement and at all times during the term of this Agreement, the **CITY** hereby authorizes and delegates exclusively to USAN or its designee, the responsibility and duty to control and maintain, manage and program Old Falls Street between Prospect Street and Third Street and to coordinate and manage all activities on Old Falls Street and manage and operate Old Falls Street for the purpose of hosting events and for other purposes as determined by USAN or its designee; however, the **CITY** shall reserve the right to initiate up to five (5) activities or programs on Old Falls Street, at its own expense, during the calendar year 2020, provided that such activities or programs do not conflict or interfere with the rights and responsibilities of USAN or its designee pursuant to the terms of this Agreement. It is understood and agreed that USAN’s designee for this purpose is Comcast Spectacore, pursuant to an agreement with USAN dated April 14, 2014 and effective January 1, 2014. In the event that this designee is

proposed by USAN to be changed or amended in any way, the CITY must first approve any such change or amendment in writing.

2. The term of this Agreement shall commence on the effective date hereof and expire on December 31, 2020.
3. This Agreement may be amended or modified only by a written document executed by each of the parties hereto.
4. This Agreement supersedes all prior agreements.
5. At any time during the term of this Agreement, in the event that USAN fails to cause Comcast Spectacore or its successors to control, maintain, manage and program Old Falls Street as described herein or fails to perform any material duty, covenant or agreement contained in this Agreement and such failure remains unremedied for thirty (30) days after the CITY gives written notice thereof to USAN, USAN will be in default of this Agreement. Notwithstanding the foregoing, provided USAN is diligently attempting to cure the underlying reason for the CITY providing with such notice and for good cause shown, USAN may have an additional thirty (30) day period of time to remedy the underlying reason for the CITY providing USAN such notice. The CITY remedies for such default are as follows: In addition to any other action permitted to be taken under the terms of this Agreement, upon the occurrence of an event of default, the CITY shall have the right to pursue any one or more of the following courses of action (1) terminate this Agreement by written notice to USAN, which termination shall be effective as of the effective date which is set forth in said notice; and/or (2) institute forthwith any and all proceedings permitted by law or equity including, without limitation, actions for specific performance and/or damages.

**IN WITNESS WHEREOF**, the parties have set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

USA NIAGARA DEVELOPMENT  
CORPORATION

CITY OF NIAGARA FALLS, NEW YORK

BY \_\_\_\_\_

BY \_\_\_\_\_

Robert M. Restaino, Mayor

ATTEST:

BY \_\_\_\_\_

Kathleen M. Ligammari, City Clerk