

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

This Agreement is made and effective as of the 1st day of January 2021, by and between the undersigned parties, **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 of the State, and the **City of Niagara Falls, New York ("CITY")**, a municipal corporation of the State.

WHEREAS, USAN has developed a Conference and Events 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, which is one of the CITY's public streets located directly to the north of the Conference Center, consisting of, *inter alia*, a roadway and adjacent public sidewalks that includes areas with seating, garden beds, planter boxes, hanging plants, public art, statues, trees, street lights, bioswales, street vendor locations, and other public amenities; and

WHEREAS, since January 1, 2014, USAN has had in place management agreements with **GLOBAL SPECTRUM, LP, a Delaware Limited Partnership, ("MANAGER")**, making MANAGER responsible for controlling and managing the Convention Center and that part of Old Falls Street that runs in an east-west direction from its intersection with Third Street to its intersection with Prospect Street; and

WHEREAS, the CITY is a third-party beneficiary of the aforesaid management agreements between USAN and MANAGER; e.g., both agreements require the MANAGER to procure and maintain in place certain types of insurance policies that name the CITY as an additional insured; and

WHEREAS, the control and management of Old Falls Street by the MANAGER during prior years has benefited USAN and the CITY; and

WHEREAS, the CITY and USAN desire to have MANAGER continue, at no cost to the CITY, to insure, control and manage Old Falls Street during the term of this Agreement in accordance with all the MANAGER's duties that are set forth in MANAGER's separate Agreement with USAN, entitled 'Agreement for the Management of Old Falls Street', effective January 1, 2014, (hereinafter, the "USAN-MANAGER AGREEMENT"), the terms of which, including Exhibits A-C attached thereto, together with written amendments, if any, are deemed fully incorporated herein by reference;

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

1. The term of this Agreement shall commence on the effective date hereof and expire on December 31, 2021.
2. 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 the MANAGER, 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 the MANAGER; 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 each twelve month period covered by the term of this Agreement, provided that such activities or programs do not conflict or interfere with the rights and responsibilities of USAN or the MANAGER pursuant to the terms of this Agreement.

3. In the event that the MANAGER named above is proposed by USAN to be replaced by a different entity during the term of this Agreement, the City must first approve any such substitution in a written amendment to this Agreement, executed by each of the parties hereto.
4. If, during the term of this Agreement, USAN fails to cause MANAGER to: (i) control, maintain, manage, and program Old Falls Street as required in the USAN-MANAGER AGREEMENT, (ii) procure the insurance required by the USAN-MANAGER AGREEMENT, including all insurance policies that are required to name the CITY as an additional insured, or (iii) perform any material duty, covenant or agreement contained in this Agreement or the USAN-MANAGER 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 it 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's 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.
5. This Agreement supersedes all prior agreements. Furthermore, this Agreement may be amended or modified only by a written document executed by each of the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands this _____ day of _____, 2021.

USA NIAGARA DEVELOPMENT
CORPORATION

BY

Anthony Vilardo, President

CITY OF NIAGARA FALLS, NEW YORK

BY

Robert M. Restaino, Mayor

ATTEST:

BY

Niagara Falls City Clerk