

REQUEST FOR EXPRESSIONS OF INTEREST



Redevelopment of the Third & Niagara Site

Niagara Falls, New York



USA Niagara Development Corp.



City of Niagara Falls, New York

April 7, 2006

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ATTACHMENTS:

- Exhibit A Information Form Regarding Qualifications and Financial Capabilities
Exhibit B Hold Harmless Form Regarding Site Visits

1. *THE OPPORTUNITY*

The City of Niagara Falls, New York (the "City") and the USA Niagara Development Corporation ("USAN")¹ seek expressions of interest from private sector entities and development teams to redevelop a key city-owned development parcel in downtown Niagara Falls.

With a natural phenomenon attracting millions each year; the nation's first and most-renowned state park; an international gateway to the Niagara Region; an emerging entertainment district featuring the Seneca Niagara Casino and more intimate venues in the Third Street District—like the water cascading over the Falls itself, the face of Niagara Falls is changing every time you look at it.

And the momentum is gaining as each new project comes on line.

The goal of this solicitation is to further expand tourist- and community-related economic activities in downtown Niagara Falls through investment in new entertainment, retail, hospitality, and/or residential projects and related amenities.

1.1 Niagara Falls – An International Icon

Niagara Falls, New York, located on the eastern banks of the Niagara River on the Niagara escarpment, is one of the State's first and best-known destinations. Almost 10 million visitors visit the city annually to get the best, up-close experience of the Falls in the historic Niagara Reservation Park (now Niagara Falls State Park).

With over 55,000 in population in a region of roughly a million residents, Niagara Falls is within one day's driving distance of all major eastern and midwestern United States and southern Canada markets. The aggregate population of this market area exceeds 100 million.

¹ USAN is a subsidiary of the New York State Urban Development Corporation, doing business as Empire State Development Corporation (ESDC).

All necessary development infrastructure is in place, including water, sewer, electricity, and major communications facility. The City and the region enjoy a number of benefits, including:

- Location within the “Golden Horseshoe” international region extending from metropolitan Toronto, through the Southern Ontario and Buffalo-Niagara regions, to Rochester, New York;
- An efficient road network that supports regional, international, and local access, including convenient access to the interstate system (1-190 & 1-90 via the Robert Moses Parkway); to Canada (via the Rainbow, Whirlpool, and Queenston-Lewiston bridges), and to various in-City and nearby destinations (e.g., the Falls, Goat Island, Lewiston, Fort Niagara, Fort George, Niagara-on-the-Lake, etc.).
- Two major airports, Niagara Falls International Airport (IAG) and Buffalo-Niagara International Airport (BUF), that together serve a full range of regular service by all major and low-cost carriers and charter companies, and facilities at IAG for wide-body aircraft;
- A well-developed regional mass transit system including intra-City bus service, tourist-oriented trolley service, as well as access to intercity coach carrier and passenger rail;
- Proximity to one of the world's largest hydroelectric power production facilities at the New York Power Authority's Niagara Power Project;
- Nationally-acclaimed colleges and universities, such as Niagara University, the University of Buffalo, Niagara County Community College, Buffalo State College, Canisius College, Erie Community College, among many others;
- Proximity to a host of local and regional natural, historic, and cultural amenities contributing to a exceptional quality of life, including but not limited to Niagara Falls, Whirlpool, and Devils Hole State Parks and other local/regional recreational



facilities, world-class architecture, art galleries, great music & entertainment venues, championship golf facilities, and award-winning wineries in New York and Ontario; and

- An unmatched pride and sense of community embodied in our people—some of the friendliest and most accommodating in the world.

1.2 The Site – Poised for Success

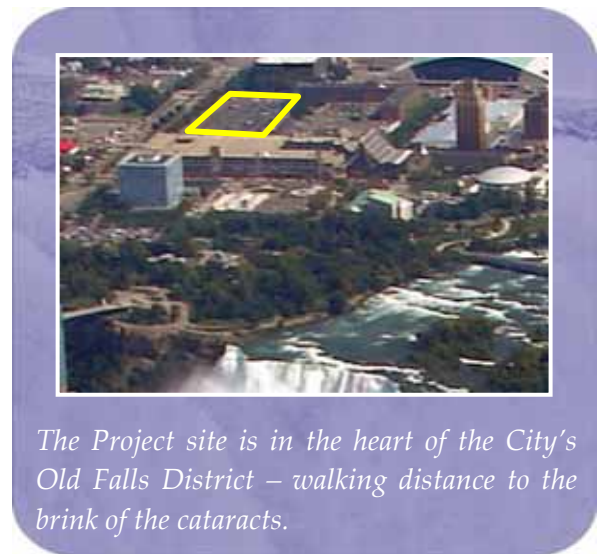
In the heart of tourist and commercial facilities in the City's downtown "Old Falls" District, the Project site is just a few minutes' walk from the brink of the cataracts and other major attractions, as well as many hotel/entertainment venues and travel routes.

1.2.1 Site Specifics and Ownership

Spanning the equivalent of two city blocks along Niagara Street between Third Street and Rainbow Boulevard North (soon to be returned to its historic name of First Street), the Project site is particularly well-positioned in a visible and strategic location (see **Figure 1**). Totaling about 3.3 acres in area, the City's 2006 assessed value (with current improvements) of the property is \$1.96 million.

The Project site was previously occupied by a city-owned, 1,500-space parking structure (i.e., "Ramp I"). In late 2004, the City bonded to demolish the structure and replace it with a 420-space surface parking lot as an interim use, with the intent of soliciting the site for new development.

The outstanding debt on the Project site, including original construction expenditures for the former parking structure, its demolition, and site work for the current surface lot, is approximately \$2.05 million. In 2005, revenues for the surface lot totaled over \$302,500; these funds were used for operational expenditures and debt service. Revenues in 2006 are projected to exceed \$321,000.



The Project site is in the heart of the City's Old Falls District – walking distance to the brink of the cataracts.



Niagara & Third Site RFEI
Niagara Falls, New York

Figure 1
Project Site

1.2.2 Site Advantages

A Gateway Location. The Project site is located one block from the Rainbow Bridge Plaza connecting Niagara Falls, NY to our Canadian sister city of Niagara Falls, Ontario. Niagara Street serves as the main thoroughfare for visitors to and from the Bridge, placing the Project site in an important position to shape “first impressions” of the City.

Ample Size, Shape, Zoning and Infrastructure to Support Development. The Project site’s size, location and access make it very suitable to support various types of urban development. The site is comprised of a rectangular parcel encompassing ~144,000 square feet of land fronting upon Third Street (~230 feet), Niagara Street (~627 feet), and Rainbow Boulevard North (First Street) (~230 feet). The site has potential for street access along all frontages (via curb-cut permits from the NYS Dept. of Transportation on Niagara Street and First Street and from the City on Third Street). It is also serviced by all major infrastructure facilities, including water, sewer, electric, and telecommunications.

The site is classified under the City of Niagara Falls Zoning Ordinance as DCD: Downtown Commercial District, which permits a wide range of high-density urban uses (e.g., maximum of twenty-story height), including commercial, retail, office, hotel, and residential uses. The City is in the process of refining and updating its Zoning Ordinance in accordance with a Comprehensive Plan Update, although it is not anticipated that the Project site will be the subject of major changes to permitted uses and density of development.



The Project site is currently utilized as a surface parking lot on one of the City’s main thoroughfares.

A “Shovel-Ready” Site. The Project site does not exhibit any obvious indications of past uses that would impede future development (although responders will ultimately be responsible for any due diligence activities to confirm this, such as environmental site assessments). Historically, the Project site was comprised of small residential parcels, separated by the Second Street and two public alley rights-of-way.

By the 1950s, conventional mixed commercial/residential buildings occupied parcels between First and Second streets, while passenger railroad sidings and a former police station house occupied parcels between Second and Third streets.

In the late 1960s and early 1970s, the land was acquired and cleared via the City's urban renewal activities. Second Street and the alleys were abandoned by the City, the parcels were consolidated, and the Project site was used for a five-level parking structure with 100 percent coverage to support the Rainbow Center Urban Renewal Project, which also included a new Convention and Civic Center (now the Seneca-Niagara Casino), Wintergarden, pedestrian mall, and parcels for private development.

When this parking structure was demolished in late 2004, the City contracted the construction of the current surface parking lot (opened Summer 2005) as an interim use, pending redevelopment of the site.

Clear Title & Ownership. The Project site is not impeded by any unusual rights or ownership constraints. The City maintains clear title and ownership of the parcel. In conjunction with site's former parking garage, the City maintained a lease agreement with the owners of Holiday Inn Select Hotel for use of parking spaces for hotel operations; this agreement was carried forward to reserve spaces in the current surface parking lot (~200 spaces in off-peak months and 400 spaces in peak summer months). The City and USAN desire to preserve this hotel's access to parking resources as part of the redevelopment project – either through set-aside or joint use of parking facilities constructed as part of the Project.

Access to Community Facilities. The Project site is located on major urban thoroughfares and along intra-city transit routes, as well as express routes to Buffalo. It is within short walking distance of a variety of restaurant/entertainment amenities (e.g., Casino complex, Third Street, Niagara Street, etc.) and parks/recreational facilities (i.e., State Park, Upper and Lower River Multi-use Trails, Niagara Aquarium, Gorge Discovery Center, etc.). Community shopping resources (supermarkets, consumable goods, etc.) are available within a half mile in the Portage Road/Pine Avenue area and "Little Italy" districts. Major regional shopping centers are within a ten-minute drive or transit trip to the Niagara Falls Boulevard/Military Road corridor east of downtown in the LaSalle district of the City.

Availability of Development Incentives. The Project site is within the City of Niagara Falls Empire Zone, making the Project eligible for a host of tax and other incentives. It is also within USAN designated Downtown Development District, making it potentially eligible for site-specific development grants—although the scale of any direct public investments will largely be a function of the scale and economic impact of the proposal.

1.2.3 Assets & Projects Surrounding the Site

Given the site's location amidst several well-traveled corridors, the successful Proponent's redevelopment has the potential to be a benchmark for which other downtown projects are measured against. Further, development of the site can help build upon several existing features and soon-to-be-completed projects downtown, including the following (See **Figure 2**):

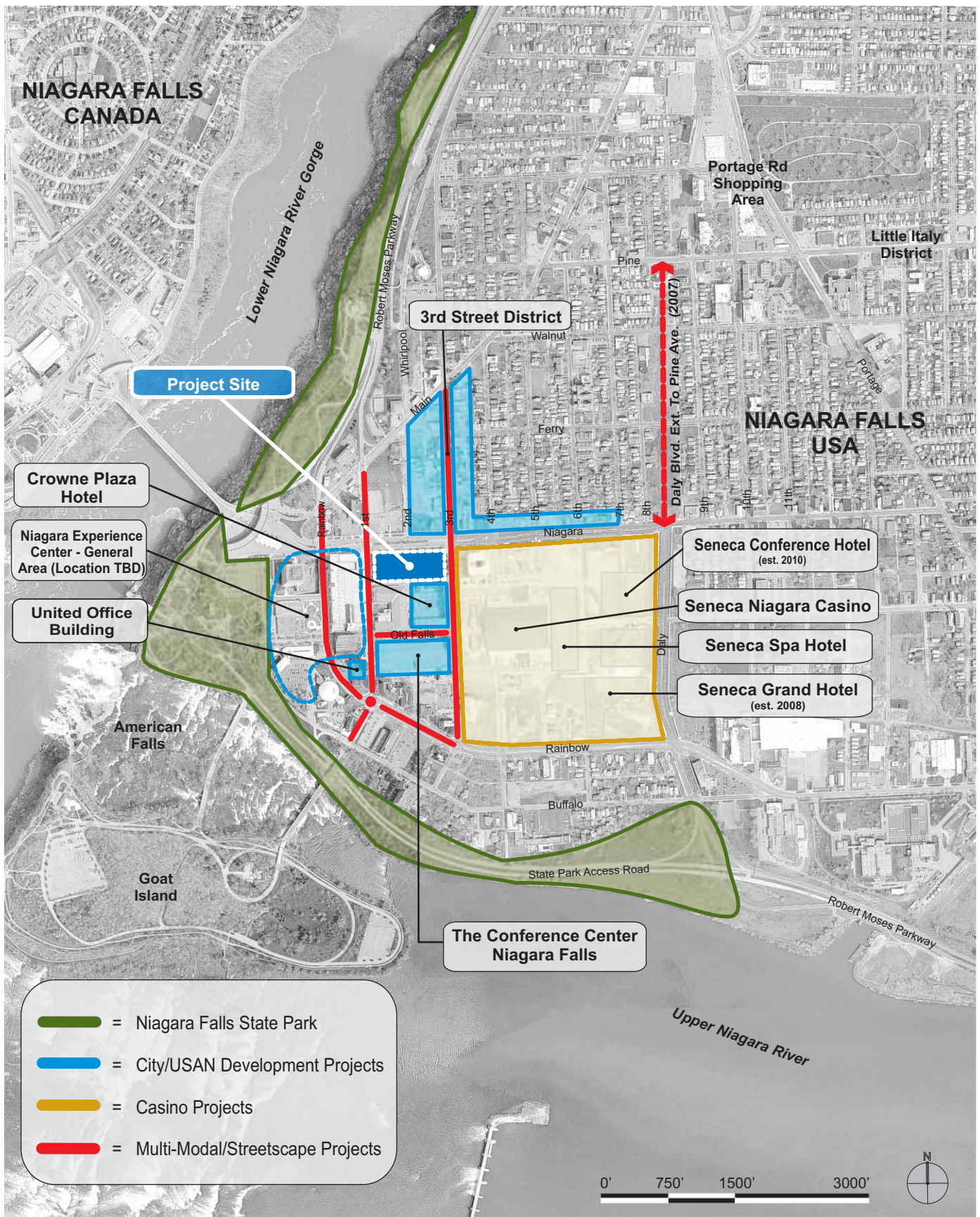
Niagara Falls State Park. Designed by renowned landscape architect Frederick Law Olmsted and on the National Register of Historic Places, Niagara Falls State Park recently underwent \$44 million in rehabilitation projects including upgrades of the park's observation tower, addition of new multi-purpose trails, and restoration of natural areas. This work continues to position the park as the defining feature of the City and its greatest resource.

Seneca Niagara Casino Complex. Opened on New Year's Eve 2002 in the Phillip Johnson-designed structure formerly housing of the Niagara Falls Convention and Civic Center, this full-range facility is a mere two blocks from the Project site. It now includes almost 150,000 square feet of Las Vegas-style gaming and associated dining/retail space. In December 2005, the complex's first of three planned hotels—the Spa Hotel—was opened, containing 600 four-diamond rooms, day-spa facilities, international cuisine, and meeting facilities.

Two additional hotels—the Grand Hotel and the Conference Hotel—as well as family entertainment facilities are planned to be completed in the next five years.

While the expanding number of Casino patrons present obvious prospects for additional hospitality and entertainment facilities, opportunities associated with the complex's place as the City's largest and the County's second-largest employer should not be overlooked. Opening with a staff of 2,000, Casino employment has already expanded to over 3,000 and is projected to grow to nearly 4,000 by 2007 and upwards of 6,000 by 2010. With few high-quality housing resources nearby (and Seneca policies prohibiting patronage of casino facilities by employees after their shifts), this new well-paid employee base presents excellent opportunities to capture a portion of this market for new housing and associated retail uses.





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Figure 2
Project Site - Surrounding Context & Related Projects

The Conference Center Niagara Falls. Completed in 2004, this \$18 million facility replaced the conference and meeting functions of the former Convention and Civic Center. The 116,000 square-foot facility, located a block from the Project site on Old Falls Street, contains exhibit/concert hall facilities; ballroom and pre-function space; state-of-the-art, wireless-equipped meeting space and includes plans for an array of first-class diverse food and beverage establishments.



The Project site fronts on Third Street; a \$3.7 million streetscape program created a more pedestrian-friendly setting for new uses.

Third Street Entertainment District. The Project site is located within the Third Street Entertainment District; in 2005 USAN and the City completed a \$3.7 million comprehensive streetscape project. The project created an attractive setting to support a vibrant, pedestrian-friendly district with mixed use development. In addition, USAN and the City offer grant incentives for façade, rehabilitation, and infill development to bolster small business in the district. To date, three nightclub rehabilitation projects have been completed or are nearing completion on Third and several more are in various stages of the grant application process.

Crowne Plaza Hotel. A development team is currently investing \$22 million to transform Holiday Inn Select Hotel (immediately south of the Project site) into a three-plus diamond Crowne Plaza. The project will revitalize the 400-room property including substantial upgrades to guestrooms, renovated lobby and arrival space, a lifestyle and retail center, spa, and new restaurant and retail space along the building's frontages on Old Falls and Third streets. A grand opening is planned for late 2006.



The United Office Building (left) is currently being restored for high-end apartments and office/commercial uses.

United Office Building. In October, work began on a Buffalo-based development company's renovation of the United Office Building (two blocks from the Project site), to restore this Art Deco landmark to take its place once

again as the jewel of the City's skyline. The 20-story building was constructed in 1929 and its upper floors offer commanding panoramic views of Niagara Falls and the Niagara River Gorge. The building will hold 27 high-end residential rental units and 10,000 square feet of commercial/office space and will be available to the public in Fall 2006.

Multi-Modal/Streetscape Improvements. In addition to the Third Street Project, the City and State are in the midst of undertaking a number of projects to improve access and further build-upon the Third Street project to create an attractive setting for new development in the downtown area. Projects to be undertaken this year include:

- The revitalization of Old Falls Street's "East Mall", including re-introducing vehicular traffic;
- Streetscaping of Rainbow Boulevard North & South, restoring these roads to two-way traffic and creating a landscaped roundabout feature at First Street; and
- Installation of a coordinated Wayfinding Sign System to replace the clutter of existing signs in the downtown landscape with an attractive, user-friendly system.

In addition, final design is underway for an extension of John Daly Boulevard to provide more direct connections between downtown and Little Italy districts. Further, initiatives are underway to advance design for the reconfiguration of the Robert Moses Parkway South and North segments to better connect the City to the Niagara River and Gorge.

Niagara Experience Center. While in the feasibility study and site selection phases, the Niagara Experience Center (NEC) promises to be a major, market-changing feature downtown. Planned as a 75,000 square-foot interpretative museum and attraction, the Center will use state-of-the-art technology to tell the story of the Falls in shaping the region's natural, urban, technological and social history. It will also serve as the portal for our millions of annual visitors to discover the wonder and attractions of the entire region. The NEC will provide Niagara Falls with a world-class attraction intended to further draw visitors to the region and extend their length of stay.



The Niagara Experience Center will be a major new attraction and a portal to the entire region.

2. THE CALL FOR EXPRESSIONS OF INTEREST

So what are we looking for...?

While we'll leave the exact details to the creativity and imagination of the responders—the context of the Project site suggests an opportunity to partner on a development that will significantly add to the traditional setting of the downtown area as a place “to play”, but also to “live and work”.

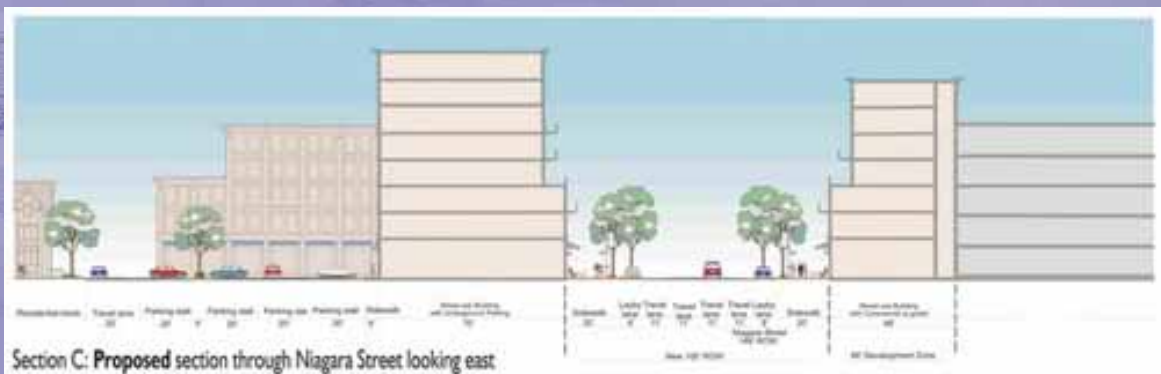
Ideally, the 2004 *Niagara Falls Strategic Master Plan* envisions mixed infill development along the Niagara Street corridor to re-invigorate it as a “great commercial street,” with active ground-level uses and considerable density.

The possibilities are extensive—including but not limited to mixed hotel and retail; “lifestyle centers” with residential, health facility and entertainment experiences; and/or urban-scaled shopping/office centers.

In turn, the Project must include a parking component that accommodates future on-site needs and joint use by the future Crowne Plaza Hotel. However, creative



The Project site is suitable for a wide range of uses—the objective is to best contribute to a vibrant urban setting.

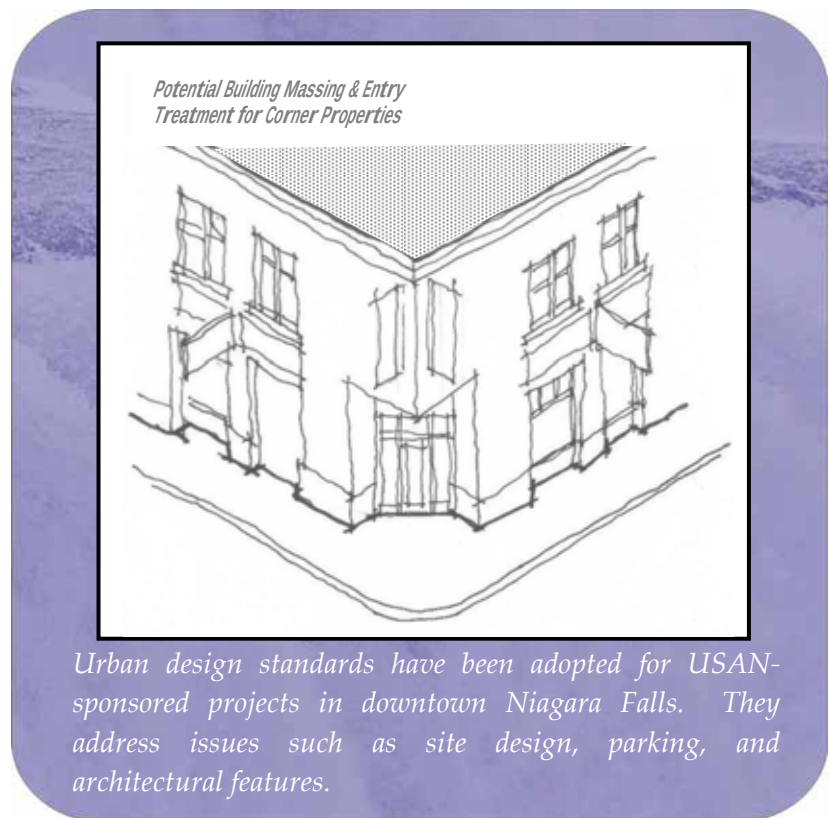


The 2004 Niagara Falls Strategic Master Plan calls for a dense pattern of mixed-use development along the Niagara Street corridor, with active ground-floor uses to strengthen it as one of the City's great streets.

incorporation of parking facilities into the overall Project is highly encouraged, so as not to detract from desired pedestrian-oriented activity along major street faces.

Whatever the proposal, responders are encouraged to review the policies in both the City's Strategic Master Plan and USAN's Urban Design Standards for the Third and Old Falls Street Grant Program².

The Strategic Master Plan outlines the overall vision for the downtown area to achieve a dense, urbane pattern of mixed-use development; while the USAN design standards outline specific urban and architectural design principals intended to realize this vision—for which compliance is required on USAN-sponsored projects.



² Urban Design Standards for USAN's grant program are available on the website: www.usaniagara.com; A copy of the City of Niagara Falls 2004 *Strategic Master Plan* is available on the website: www.niagarafallssusa.org.

3. THE SELECTION PROCESS

The selection of a Preferred Developer for the Third and Niagara site will involve a three-stage process:

- (1) Pre-Qualification (i.e., This RFEI process);
- (2) A Request for Proposal (RFP) Process; and
- (3) Developer Interviews.

3.1 Stage I – Pre-Qualification

Stage I is a Pre-Qualification Stage to select a maximum of five (5)³ development teams who can demonstrate creativity in achieving a successful development on the Project site and evidence of capacity/experience necessary to undertake a viable project.

Information Required

In addition with a general description of possible development on the Project site and examples of similar development projects (see Section 4), Stage I of the selection process will require each prospective developer to submit with its response the *Information Regarding Qualifications and Financial Capability* form included in Exhibit A completed and signed by the prospective developer with the attestation of a notary public.

Each prospective developer **must respond to this RFEI** to be eligible to participate in the RFP and Interview stages (i.e., no late comers).

Pre-Response Conference

A pre-response conference will be held on:

May 1, 2006, 2:00 PM

The Conference Center Niagara Falls

101 Old Falls Street

Niagara Falls, NY

[Note: Entrances to the Conference Center are available on both Old Falls Street and Third Street]

³ Although if necessary based upon the number of responses, the City/USAN reserve the right to designate a greater number of qualified development teams to advance to subsequent stages of the process.

Attendance at the pre-response conference is not mandatory, but is strongly recommended. Interested submitters may conduct independent site visits.

Identification of Qualified Teams

Each of the responses will be reviewed by a committee made up of an equal number of representatives from USAN and the City.

Selection Criteria for Stage II Responses

- **Capability and experience.** A major consideration during the evaluation will be in the prospective developer's demonstrated ability, capacity, and expertise in executing urban development projects with a scope and size equal to or larger than the proposed development.
- **The use of innovative approaches.** The prospective developers will be assessed by providing examples of innovative approaches used during major development projects. Respondents who can also articulate and translate the *Niagara Falls Strategic Master Plan* objectives into "bricks and mortar" may receive a higher weighting in the evaluation process. Respondents that propose potential tenants of the Project and the proven ability to attract such users may also be provided with a higher consideration during the selection process.
- **Demonstrated ability to work with a broad stakeholder group.** Prospective developers who can demonstrate their ability to work with a broad stakeholder group will receive a higher weighting in the evaluation process. Examples should include the ability to negotiate and structure financing relationships with government, financial institutions, and other private sector entities.
- **Financial Capability.** The prospective developer's financial strength will be assessed, and evidence required as to its financial capability to undertake a project of the type and scale envisioned.

3.2 Stage II – Request for Proposal

The objective of the RFEI is to ensure that the City and USAN identify a range of creative development teams that are capable and have a clear record of constructing an economically viable and transformational project. Qualified teams to be invited to proceed to Stage II will be those firms who, in the opinion of the City and USAN, are most qualified to develop detailed proposals for the Project site that embody City objectives for redevelopment set forth in the Strategic Master Plan.

Selection Criteria for Stage II Responses

- The final Project must be consistent with *Niagara Falls Strategic Master Plan*, other City plans/policies, and USAN urban design standards.
- The final Project must yield the most private taxable investment with the least amount of public subsidy.
- The final Project must be aligned and complement adjacent development – i.e., Crowne Plaza, Third Street, Old Falls Street, etc).
- The quality of the development plan, proposed timetables and its integration within the context of local community development/tourism objectives and existing/planned development projects.
- The overall financial plan and impact of the proposal, including:
 - rental projections;
 - capital investment;
 - anticipated property tax and/or PILOT payments;
 - addressing the City's outstanding debt on the site; and
 - job creation.
- The Project's ability and creativity in techniques to adequately addressing parking needs, including preserving the amount of parking spaces necessary for the Holiday Inn Select/Crowne Plaza as the City has previously agreed to.

3.3 Stage III – Developer Interviews

Ranking of prospective developer teams will commence immediately following the closing of the Stage II proposal call. Up to three (3) developer teams will be asked to present their proposals to the City/USAN selection committee.

After the interview process, the developers will receive a final ranking. The City and USAN will negotiate exclusively with the first ranked developer (i.e., the "Preferred Developer". If during the negotiation, the City/USAN concludes that it is unlikely an agreement will be finalized with the Preferred Developer, they will be at liberty to enter into negotiations with the second-ranked respondent and so forth until it enters into an acceptable agreement to undertake the Project.

4. SUBMISSION REQUIREMENTS FOR STAGE I RESPONSES

Ten (10) bound copies and one (1) unbound copy of responses, including all attachments, should be received by USAN by **3:00 PM local time on May 26, 2006**, at the address set forth in Section 5. At the discretion of the City and USAN, requests for deadline extensions will be considered and, if granted, announced on our website. Stage I Responses should not exceed 40 pages (excluding attachments).

All submissions must contain the "Required Information" described below in this section and, to the extent possible, address the "Substantive Elements" also described below in this section.



View of the project site to the southwest, showing Holiday Inn (Crowne Plaza) and United Office Building sites.

4.1 Required Information

1. Information Form. To enable the City and USAN to assess a respondent's qualifications and financial capability, the respondent must complete and submit with its response the *Information Regarding Qualifications and Financial Capability* form included in **Exhibit A** (the "Information Form") completed and signed by the respondent with the attestation of a notary public. The Information Form requires, among other information:
 - Description of the respondent and the respondent team, including architecture/engineering professionals.
 - Disclosure of financial information regarding the respondent team, including relevant financial statements and leasehold ownership entity (i.e. partnership, sole owner, corporation, etc.) and proof of financial capability and credit worthiness.
 - The names, addresses, telephone numbers, and e-mail addresses of those individuals on respondent team who may be contacted during the period of evaluation.

2. Completed “hold harmless” form regarding site visits (**Exhibit B**).
3. Brief description of relevant real estate and/or major capital initiatives completed by the firm/team which are comparable in scope and size to this Project. Provide information with respect to location, size, uses, approximate value and date of construction, start and completion of real estate initiatives. Also provide graphic material/photographs illustrating such projects. Similarly, describe all relevant projects and initiatives currently under way or under consideration.
4. Identify personnel who will be actively involved in the Project and their experience as developer, operator, manager, designer, and/or builder of residential, entertainment, retail, hospitality and/or mixed-use projects. (noted individually, including any licenses or professional designations attained).
5. Experience in working with federal, state, and local governments, regulatory bodies, including the controlling authorities for transportation, environment, zoning, parks and recreation.
6. Published and publicly available financial data for firm, and its partners and participants where applicable, including assets in the United States (e.g., annual report, including latest quarterly report).

4.2 Substantive Elements

Responses should also discuss/present:

1. The general structure, size and scope of one or more potential private or public/private projects for the redevelopment of the Third & Niagara Street Site;
2. Those aspects of the Site that deserve particular attention (including the type and nature of a Project favored by your firm/team), major challenges you might foresee in implementing the Project, and your approach to dealing with those problems.
3. How such project(s) might be financed;
4. A general site plan/vision/rendering for the projected redevelopment project (although this may be refined in subsequent RFP process); and
5. Any additional information and/or issues that should be addressed by the City and USAN prior to issuing a RFP.

5. *CONTACTS & ADDITIONAL INFORMATION*

5.1 Contact for Submissions

RFEI responses should be mailed or delivered by **3:00 PM local time on May 26, 2006** to:

Joseph Collura
RE: Statement of Interest: Third & Niagara Street Site
City of Niagara Falls
Department of Planning & Economic Development
City Hall, Room 106
Niagara Falls, NY 14302

All questions regarding this RFEI should be directed in writing to:

Paul J. Tronolone, AICP, Senior Project Manager
USA Niagara Development Corporation
(ptronolone@empire.state.ny.us)

5.2 Additional Information/General Conditions

Neither the City, State, USAN nor ESDC make any representations or warranties whatsoever with respect to this RFEI and subsequent stages including, without limiting the foregoing, representations or warranties as to: the accuracy or completeness of any information or assumptions contained in or provided in connection with this RFEI or otherwise furnished to respondents; the use or development, or potential use or development, of the Project or any portion thereof; the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities for all land and improvements constituting the Project and for the adjacent properties; the absence or presence of hazardous substances or toxic materials in, under or upon the Project and the adjacent properties; compliance with environmental laws; tax assessments that may be made by the City, tax rates that may be established by the City and/or the amount of PILOT payable; and the suitability of the Project for any specific uses or development.

Each respondent shall make its own analysis and evaluation of the Project site, including, without limiting the foregoing: the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities

for all land and improvements constituting the Project and for all adjacent lands; the absence or presence of hazardous substances or toxic materials in, under, or upon the Project site and adjacent lands; compliance with environmental laws; and the suitability of the Project site for any use or development. Each respondent shall obtain its own independent legal, accounting, engineering and technical advice on all matters relating to the Project, including, without limiting the foregoing: examination, review and verification of any information provided by or on behalf of the City, State, ESDC, or USAN and its advisors; land and improvements constituting the Project site and adjacent to the Project site; all local laws, regulations and conditions that may affect the use and development of the Project; and all other matters that may be material.

Respondents shall not rely upon any statement or information given to respondents by the City, State, ESDC, or USAN including, without limiting the foregoing, any information contained in this RFEI or made available pursuant to this RFEI, or otherwise.

In the event that the selected respondent does not execute a Development Agreement for the Project, the City and/or USAN may, in their sole discretion, invite any of the other respondents to participate in a further competitive process to determine a new selected respondent.

In addition to those terms and conditions stated elsewhere, this RFEI is subject to the following:

- a. The preferred developer must comply with all applicable federal, state and local laws and regulations.
- b. The preferred developer must accept the Project site in its "as is, where is" condition on the date of disposition.
- c. Conveyance by the City/USAN shall be governed by a Development Agreement.
- d. Demolition, removal, alteration or conversion of any existing improvement or portions thereof at the Project site are to be performed at the sole cost and expense of preferred developer after closing under the Development Agreement.
- e. The City or USAN will not pay for or refund any costs and expenses incurred by any respondent in responding to this RFEI or subsequent selection stages or by any preferred developer following selection and/or designation.
- f. All determinations as to the completeness or compliance of any response/proposal or as to the eligibility, qualification or capability of any respondent will be within the sole and absolute discretion of the City and USAN.

- g. Selection or designation of any respondent pursuant to this RFEI or subsequent selection stages will not create any rights for the respondent including, without limitation, rights of enforcement, equity or reimbursement. The City and USAN shall have no obligation or liability whatsoever to any person or entity whose response/proposal is selected or designated as a result of this RFEI unless and until a Development Agreement shall have been fully executed and delivered by all parties thereto and all necessary consents and approvals necessary for the City's and USAN's entry into such agreement have been obtained, and then all such obligations and liabilities shall be solely in accordance with the terms and conditions of such Development Agreement.
- h. A respondent may be rejected if the City and USAN determine, in their exercise of sole and absolute discretion, that such respondent, any respondent partner, or member of a respondent team or any principal, partner, officer, director, affiliated person, or principal shareholder of the respondent, of any respondent partner, or of any member of a respondent team, has been convicted of, or pled guilty or nolo contendere to, a felony or crime of moral turpitude, is an "organized crime figure," under indictment or criminal investigation, or is in arrears or in default on any debt, contract, or obligation to or with the City, USAN, ESDC, the State, or any of their respective affiliates, subsidiaries, agencies, departments or instrumentalities. Each respondent, respondent partner, and member of a respondent team and any principal, partner officer director, affiliated person, or principal shareholder of the selected respondent, respondent partner, or member of the respondent team may be required to complete a background questionnaire with respect to the foregoing, or other matters, and may be subject to investigation by the City, USAN, ESDC and the State. The City or USAN is under no legal obligation to dispose of the Project through a competitive bid process. This Request does not constitute an offer of any nature and does not obligate the City or USAN to undertake any action or to proceed with the Project.
- i. The City and USAN will review all responses/proposals for completeness and compliance with the terms and conditions of this RFEI and subsequent RFP, and may request from any and all of the developers, at any time during the selection process, additional information, material, clarification, confirmation or modification of any submitted response and/or proposal. USAN may also, but is not obligated, to make requests for additional material or for clarification or modification of any submitted response and/or proposal which is incomplete or non-conforming as submitted. Submission of a response and/or proposal shall constitute the respondent's permission to the City and USAN to make such inquiries concerning the respondent and members of the respondent's team as

- the City/USAN, in their sole discretion, deem useful or appropriate including, without limitation, authorization to contact the respondent's bank(s) and credit references, and any other persons identified in the proposal and to obtain pertinent financial and other information. Except at the request or by the consent of City/USAN, in their sole discretion, no respondent will be entitled to change its proposal once submitted.
- j. The City and USAN may at any time exclude those proposals which, in their sole discretion, fail to demonstrate the necessary qualifications for development, or which fail to comply with the terms and conditions of this RFEI.
 - k. The City and USAN reserve the right, in their sole discretion, to reject at any time any or all proposals; to withdraw the request without notice; to negotiate with one or more developers submitting proposals and/or to negotiate with respect to, and dispose of the Project (including to parties other than those responding to this request) on terms other than those set forth herein. USAN reserves the right to waive compliance with and/or change any of the terms of this request and to waive any informalities or irregularities in the request process.
 - l. Under no circumstances will the City or USAN pay or be liable for any costs incurred by a firm/team in responding to this RFEI or subsequent stage or in connection with the transfer of the Project site.
 - m. Responses and/or proposals shall be accepted from principals only. No brokerage fees, finder's fees, commissions or other compensation will be payable by the City, State, ESDC, or USAN in connection with the selection of a respondent or the disposition of the Project site. Submission of a statement of interest and/or proposal in response to this RFEI or subsequent stage constitutes an undertaking by the respondent to hold harmless and indemnify and defend the City, State, ESDC and USAN from and against any and all expenses, damages or liability (including, without limiting the foregoing, attorneys' fees and disbursements) arising out of any claim for such fees, commissions or other compensation made in connection with such respondent's response to this RFEI or subsequent stage, selection or (non-selection) thereunder or execution (or non-execution) of a Development Agreement.
 - n. Public access to material submitted by respondents to this RFEI or subsequent stage shall be governed by the relevant provisions of the Freedom of Information Law, which constitutes Article 6 of the New York State Public Officers Law ("FOIL"), and regulations adopted pursuant thereto. If any respondent submits information which it believes to be a trade secret or otherwise exempt from disclosure under FOIL, it must specifically identify such information and state in writing the reasons why the information should be exempt from disclosure

- Notwithstanding the foregoing, The City and USAN shall not be liable if the City/USAN releases information pursuant to FOIL which the respondent believes to be a trade secret or detrimental to its business.
- o. In the event that the City and/or USAN becomes aware of any material misrepresentation in the information supplied by a developer, the City/USAN shall have the right to reject at any time the response and/or proposal of the respondent, to refuse to negotiate or continue negotiations with the respondent and to take any other action, including retaining any deposit made by the respondent, as shall be deemed appropriate by the City/USAN, in its sole discretion.
 - p. The ultimate selected preferred developer will be required to comply with the non-discrimination and affirmative action policies of ESDC (the "Non-Discrimination and Affirmative Action Program. The preferred developer will agree to use its best efforts to achieve: (i) not less than 20% certified Minority and Women-Owned Business Enterprise (M/WBE) contractor and/or subcontractor participation during the development of the project, which includes the pre-construction, construction and operation-maintenance phases; and (ii) an overall goal of 25% Minority and Female workforce participation during construction. All pre-construction activities, including legal, architectural and engineering services, as well as construction activities and post construction management and operations are subject to the requirements of the Non-Discrimination and Affirmative Action Program.
 - q. The selection of a preferred developer will create no legal or equitable rights in favor of the selected developer, including rights of enforcement or reimbursement. A developer's response and/or proposal for the Project site is not assignable and only the party identified as the developer/principal in the selected developer's submission will be permitted to execute the Development Agreement.
 - r. By submitting a response and/or proposal for the Project, the respondent agrees to be bound by all the terms and conditions of this RFEI.

EXHIBIT A – FORM

**INFORMATION REGARDING QUALIFICATIONS
AND FINANCIAL CAPABILITY**

This form may be reproduced.

Name of Respondent:

Address of Respondent:

Telephone Number of Respondent:

Name of Authorized Representative:

Address of Authorized Representative

Telephone Number of Authorized Representative:

1. If the Respondent is not an individual doing business in his or her own name, describe the Respondent's organization (whether a corporation, partnership or business association) and indicate the jurisdiction under whose laws the organization is organized and operated.

2. Attach an organizational chart for the Respondent's firm/team indicating the names and responsibilities of key personnel.

3. Provide the identification of, and current, and, if existing, certified public account-prepared or audited, financial statements for the Respondent and all relevant principals, shareholders, partners, or co-ventures of the Respondent, the nature and the extent of each participant's interest in the Respondent and the proposed proposal and any other information which will enable USAN to assess the Respondent's financial capability should also be provided.

4. Indicate the names, addresses and phone numbers of law firm(s) that will represent the Respondent in connection with the ultimate proposal and the Development Agreement.

Name of Law Firm: _____

Address: _____

Telephone: _____

5. Indicate the names, addresses, and telephone numbers of accounting firm(s) representing the Respondent in connection with the ultimate proposal and Development Agreement.

Name of Accounting Firm: _____

Address: _____

Telephone: _____

6. Indicate the names, addresses, and telephone numbers of at least three (3) commercial or institutional credit references.

Name of Reference 1:

Address:

Telephone:

Name of Reference 2:

Address:

Telephone:

Name of Reference 3:

Address:

Telephone:

7. Identify any affiliation or relationship between the Respondent and any other development company, parent company, lending institution, or other entity that the Respondent believes will enable the USAN to assess the Respondent's financial capability.

CERTIFICATION

The undersigned: recognizes that all information and material provided on or with this Information Regarding Qualifications and Financial Capability form and all other information and material submitted by the undersigned in connection with its Statement of Interest and/or Proposal are submitted for the express purpose of inducing the City of Niagara Falls ("the City"), USA Niagara Development Corporation ("USAN"), a subsidiary of New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC"), a corporate governmental agency of the State of New York (the "State"), constituting a political subdivision and public benefit corporation, to award a contract to the undersigned; acknowledges that each of the City, USAN, ESDC, the State and the State's agencies and instrumentalities may, each in its sole and absolute discretion, by any means which it may choose, determine the truth and accuracy of all statements made therein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law §210.40 or a misdemeanor under Penal Law §210.35 or §210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. §1001; and states that the information submitted is true, accurate and complete.

By submission of this statement of interest, the Respondent and each person signing on behalf of the Respondent certifies, and in the case of a joint proposal each party thereto certifies as to his or her own organization under penalty of perjury, that to the best of his or her knowledge and belief:

- (1) The prices, amounts and material in this proposal have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices, amounts and materials with any other Respondent or with any competitor;
- (2) Unless otherwise required by law, the prices, amounts and material that have been quoted in this statement of interest or subsequent proposal have not been/will not be knowingly disclosed by the Respondent and will not knowingly be disclosed by the Respondent prior to award, directly or indirectly, to any other Respondent or to any competitor, and
- (3) No attempt has been made or will be made by the Respondent to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The Respondent hereby authorizes the City, USAN, ESDC, the State and their agents and instrumentalities to contact the Respondent's bank(s) and credit references and any other persons identified in its submission, including without limiting the foregoing, all persons and entities identified in its Information Regarding Qualifications and Financial Capability form and any financial information, in connection with the proposal, and any and all other persons identified in any investigation conducted by or on behalf of the City, USAN, ESDC, or the State, and obtain release of pertinent financial and other information, as well as to obtain verification of information provided by or on behalf of the Respondent.

Name of Respondent

Signature of Officer

Title

Sworn to before me this

_____ day of _____, 2006.

Notary Public

EXHIBIT B - FORM**HOLD HARMLESS AGREEMENT**

This form may be reproduced.

IN CONSIDERATION OF the City of Niagara Falls ("the City") and USA Niagara Development Corporation ("USAN"), granting or obtaining permission for the undersigned (hereinafter called "Grantee") to visit the site described in the Request for Expressions of Interest (hereinafter referred to as the "Premises") for the purpose of inspecting the Premises, Grantee hereby agree to defend, indemnify and hold harmless the City, USAN, New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC"), the State of New York (the "State"), all agencies, departments and public authorities of the State and their respective officers, members, directors, employees and agents, from and against any and all claims, actions, suits, judgments, causes of action, demand, losses, damages, liabilities, costs, charges and expenses (including, without limitation, bodily harm, personal injury, death and damage), whenever asserted and by whomever, resulting from, arising out of, or in any way connected with any site visits, inspections, use of occupancy of the Premises by Grantee or its employees, officers, contractors, subcontractors, invitees and agents howsoever the same may be caused or occasioned.

GRANTEE:_____

BY:_____

Title:_____

Sworn to before me this

_____ day of _____, 2006.

Notary Public