

Request for Qualifications

Adaptive Reuse and Redevelopment of the Former Rainbow Centre Mall

Niagara Falls, New York



Solicitation Issue Date: April 1, 2013

Statements of Qualifications Due: May 20, 2013

Issued by:

USA Niagara Development Corporation

A subsidiary of

New York State Urban Development Corporation d/b/a Empire State Development

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THE OPPORTUNITY

The former Rainbow Centre Mall – a 290,000 square foot retail and 1600-car parking facility a few minutes’ walk from the brink of the American Falls, two blocks from the Seneca Niagara Casino, and at the heart of the restructuring tourism district in Niagara Falls, NY – has perhaps the greatest untapped economic value of any real estate in America.

Eight million people visit every year. The core attraction – Niagara Falls – is unique in the world and universally known. An array of projects are complete, ongoing, or planned that are healing the injuries inflicted by urban renewal and transforming downtown Niagara Falls into an attractive and vibrant mixed-use visitor destination.

USA Niagara Development Corporation (USA Niagara), which was created to lead that transformation, and the City of Niagara Falls, NY (City) are seeking partners for the redevelopment and adaptive reuse of 200,000 square feet in the former mall. The resulting project would complement recent investment in the Niagara Falls Culinary Institute which occupies 90,000 square feet on the southern end of the building, and

reinforce other ongoing investments in nearby hotels, restaurants, residences, and entertainment venues.

USA Niagara and the City invites statements of qualifications (SOQs) from development teams interested in forming a partnership to seize this opportunity. The winning team must demonstrate extensive experience in design, finance, development, construction, and operations of large-scale urban mixed-use complexes incorporating retail, office, institutional, and entertainment components.

The selection of a “Preferred Developer” to undertake this project will involve a two-step selection process with a Request for Qualifications (RFQ) followed by a Request for Proposals (RFP). This document addresses the RFQ step only. Teams selected based on their SOQ will be asked to submit detailed responses to an RFP. Review of those responses will lead to selection of a designated development partner or partners.

USA Niagara Development Corporation

Under an agreement with the City, USA Niagara is acting as the exclusive marketer for the former Rainbow Centre Mall and is leading all developer solicitation processes. USA Niagara is a New York State-chartered public benefit corporation and subsidiary of the State’s primary economic development agency, Empire State Development (ESD).

USA Niagara was formed in 2001 to focus on reversing the process of decline in downtown Niagara Falls. It’s mission is “solely dedicated to the support and promotion of economic development initiatives in Niagara Falls by leveraging private investment and encouraging growth and renewal of the tourism industry.”

Noteworthy projects already funded and completed by USA Niagara include the state-owned Conference and Events Center Niagara Falls; the Sheraton Hotel at the Falls; the Giacomo Hotel



Figure 1 - Aerial View looking west (top) and east (bottom) towards the former Rainbow Centre Mall In downtown Niagara Falls.

and Residences; the restoration, programming, and operation of Old Falls Street; streetscape improvement projects on Third Street, First Street, and Rainbow Boulevard; and most recently, the Culinary Institute and an upcoming mixed-use redevelopment at 310 Rainbow Boulevard, adjacent to the former mall.

History of the Project Site

1982

The Rainbow Centre Mall opened in 1982 with 290,000 square feet of retail space, mostly in two levels, integrated with and connected to a 1,600-space City-owned parking garage. The project was based on a 75-year leasehold agreement between the City of Niagara Falls and its urban renewal agency and the developer, the Cordish Company of Baltimore, Maryland.

The agreement gave Cordish exclusive rights to develop and operate the mall as part of the City's parking garage project on an urban renewal parcel north of the *Wintergarden*, a public arboretum built in 1977 as part of the same urban renewal program. The *Wintergarden* spanned a full block of Old Falls Street, which had been converted to a pedestrian-only way.

Initially, Rainbow Centre Mall was a successful venture. Its location, connected to the north side of the *Wintergarden* a few short blocks from the Falls, made it a popular stop for tourists and its proximity to the Canadian border meant the mall was an easy destination for Canadian day-trippers and regional shoppers.

By the late 1980s, however, mall operators began to respond to emerging trends toward "factory outlet" centers. It changed its name to the Rainbow Centre Factory Outlet Mall and reshaped its tenant mix accordingly. In 1990, after the opening of a larger, suburban-style Niagara Factory Outlet Mall (now "Fashion Outlets") on the eastern edge of the City, retail traffic at the downtown mall began to wane.

1999

The Rainbow Centre's primary anchor tenant closed and most of the remaining tenants joined the exodus. By 2000, the Mall was largely vacant with the exception of one or two uses.

2004

With maintenance costs rising, the City sold the *Wintergarden* to private interests to be reused as a family amusement facility, which failed in turn and closed by 2007. Together, the mall, the parking ramp, and the *Wintergarden* occupied nearly five acres – the equivalent of three city blocks – choking off pedestrian and vehicular circulation along what had once been a primary axis of commerce in downtown Niagara Falls and creating a dead zone in the heart of the city.

2009

USA Niagara purchased the former *Wintergarden*, demolished it, and reestablished the block of Old Falls Street that was previously covered by the structure. With the street open again, the front of the former Rainbow Centre Mall building, once fully blocked from view, seemingly reappeared.

2010

Shortly after the Old Falls Street project was completed, Niagara County Community College ("NCCC") officials announced that a space in the former mall was its preferred location for a stand-alone Niagara Falls Culinary Institute. The Institute would house the College's culinary and tourism programs.

The Cordish Company made this possible by donating its leasehold ownership rights to the mall (as well as the adjacent vacant parcel at 310 Rainbow Boulevard) to the NCCC Foundation as a charitable contribution. The NCCC foundation subsequently turned over to the City that portion of the mall not used for the Institute, along with the site at 310 Rainbow Boulevard.

As final design and construction for the Culinary Institute moved forward, USA Niagara solicited redevelopment proposals for the property at 310 Rainbow Boulevard. This largely vacant site at the corner of Old Falls Street – the former location of the *Flight of Angels* hot air balloon ride – was suitable for a significant urban infill development.

2012

In consultation with USA Niagara, the City selected the Hamister Group as the preferred developer to undertake a \$25 million, mixed-use hotel, apartment, and retail project on the site.

The Culinary Institute opened in September 2012 for an inaugural class of 350 students. It is designed to accommodate up to 1,000. It features an 80-seat full-service restaurant, a deli, a pastry shop, and a culinary-oriented Barnes and Noble® College Bookstore, all of which are accessible along the Old Falls Street frontage, contributing to the emergence of a place that is active, interesting, and exciting.

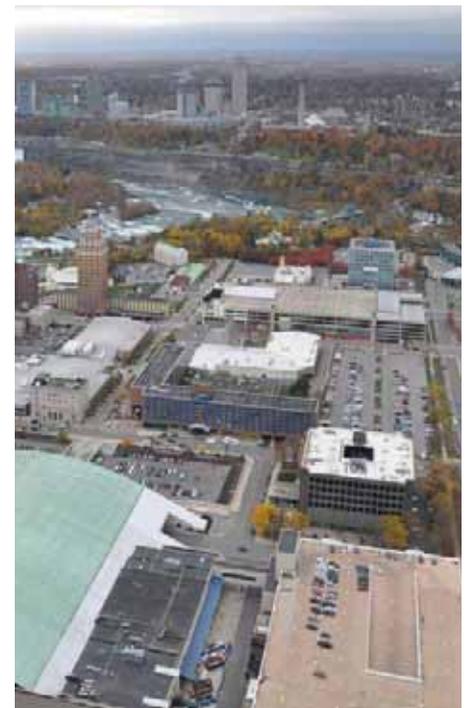


Figure 2 - Aerial view looking west towards the former Rainbow Centre Mall in downtown Niagara Falls.

A Concept for Reuse/Redevelopment

With these pieces in place, USA Niagara turned its attention in late 2012 to finding a reuse for the balance of space in the former mall. An Advisory Services Panel from the Urban Land Institute (ULI) was engaged to help define the range of possible adaptive reuse options for the space. The panel, composed of architects, urban designers, market analysts, financial experts, former public officials, and developers from across the U.S., spent a week in Niagara Falls in late September talking with local stakeholders and assessing the condition, context, and potential of the former mall.

a public investment to accomplish, it would also facilitate a phased approach to the redevelopment.

- **A robust street-oriented and interior mixed-use program.** The panel suggested a space program that would combine active ground-level uses such as a major food market (complementing the Culinary Institute uses), a draft-house theater, and other supporting retail uses with upper-level uses including institutional and office space, and entertainment and retail uses that are not as dependent on street frontage locations. These might include entertainment facilities (e.g. nightclub, bowling alley establishment, etc.) or retail service establishment (like a health club or spa facilities).



Figure 3 - A ULI rendering shows that a west-east outdoor corridor helps break up the “superblock” scale of the mall (top). While facade improvements and streetscaping improve the pedestrian experience along the western elevation (bottom).



At the end of its week of data collection and deliberations, the Panel presented a series of concepts for reuse/redevelopment of the 200,000 SF of former mall space. Some of the Panel’s key recommendations included (see **Figures 3 and 4**):

- **Creation of a new east-west outdoor corridor or “street” through the mall and parking structure.**

The idea was to break up the daunting “superblock” scale of the building by taking advantage of its modular configuration and selectively removing a series of bays to create a passage through. This would divide the structure into two functional segments, create additional retail frontages along this new “street” (as well as along First Street and Rainbow Boulevard), and improve pedestrian circulation in the district. Although this would likely require

- **Exterior architectural features to screen parking levels.** The panel recommended that architectural features should be applied to the exterior of the structure to add visual interest to floor levels devoted to parking and to accentuate key gateway features such as prominent elements of the building facing the Rainbow Bridge plaza, the main international gateway to downtown from Canada.

Copies of the ULI Panel’s final presentation of their redevelopment concepts and their full report on the former Rainbow Centre Mall may be downloaded at www.usaniagara.com.



Figure 4 - An aerial of the rendering shows the urban design improvements in the context of the site.

CONTEXT FOR REDEVELOPMENT

Downtown Niagara Falls, New York

Niagara Falls attracts up to eight million visitors per year. The former Rainbow Centre Mall is located the equivalent of a few city blocks from the brink of the American Falls in Niagara Falls State Park and within an easy walk to all hotels, restaurants, retail, and entertainment facilities (see **Figure 5**).

Among the State Park's offerings is the world-famous Maid of the Mist® boat tour, the Cave of the Winds, and Goat Island, where visitors are provided with close-up views of both the American and Horseshoe Falls. It is also located a few blocks from trailheads leading to the base of the Niagara Gorge, offering activities such as fishing, hiking, bicycling and bird watching.

The project site is also located two blocks from the Seneca Niagara Casino which contains a 100,000-square foot Las Vegas style casino, a 600-room hotel, spa facilities, and live entertainment venues. The casino is located in an area dedicated as sovereign Indian land created as part of a compact agreement with the State of New York. Activities in the "compact area" are expected to expand over the next five years to include additional lodging and entertainment venues.

A number of other lodging facilities are located nearby. Many of these have recently completed or are in the process of upgrading and/or expanding their operations. Among these are the Sheraton Hotel, a 400-room facility; several other national hotel flags; as well as some emerging boutique hotel products.

The project site also benefits from a number of recently completed economic development initiatives fostered by USA Niagara and the City, including the adaptive reuse of the United Office Building as the Giacomo Hotel & Residences; the addition of a new Starbucks® Café and TGI Fridays® Restaurant at the Sheraton Hotel on Old Falls Street; and as previously

discussed, the opening of the Niagara Falls Culinary Institute.

There is more to come; the planned mixed use development at 310 Rainbow Boulevard is expected to break ground in 2013, anchored by a 100-room upscale hotel, together with ballroom, apartment, and street-level retail and restaurant uses. Also, a project to fully renovate and upgrade the current Days Inn on First Street to an upscale brand is expected to start this year. Plans are also in the works for a full restoration of the historic Hotel Niagara to rejoin the ranks of the

City's best lodging choices; and a gut renovation and redevelopment of the former Fallside Hotel along the Upper Niagara River. Two additional hotels are also in the early stages of planning: one through an adaptive re-use of the former Moore Business Forms building on John Daly Boulevard, and a new-build facility along Rainbow Boulevard near Fourth Street.

All told, nearly 1,000 new or upgraded hotel rooms could be available by 2016, together with new restaurant, retail, and residential offerings.

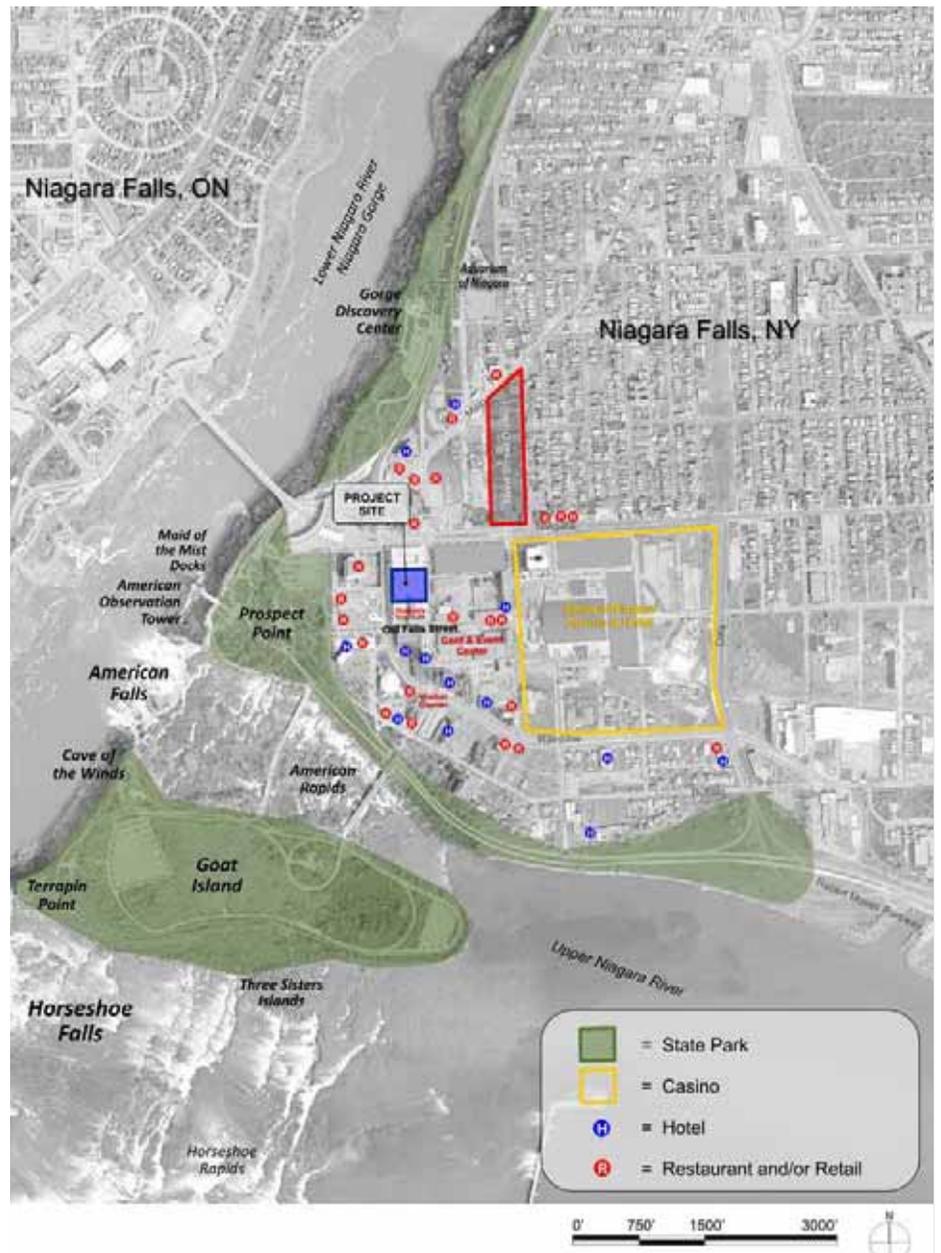


Figure 5 - The project area in the context of downtown Niagara Falls

The Broader Market Context

In late 2010, USA Niagara embarked on a research effort to assemble up-to-date assessments of the best market opportunities in the city – and particularly in the downtown tourist district. We looked to a horizon across the next five to ten years and considered factors such as shifts in visitation, currency values, Canadian shopping patterns, and changes in the national economy. USA Niagara contracted with a multi-specialty team led by HVS Consulting and Valuation Services to develop current real estate market assessments for hotel, retail, restaurant/ entertainment, and downtown “niche” housing.

Initial assessments by HVS indicate that considerable opportunity exists for certain types of uses in downtown Niagara Falls, particularly if they are located together in a dense cluster to form an identifiable “place.” Summaries of the demand estimates for each sector include the following:

- **Hotel.** The assessment indicated that considering current visitor profiles and levels, the local market is heavily dominated by independent and economy hotels. Accordingly, the local market has demand available to accommodate at least one new-build hotel in the “upper-upscale”¹ category (along with upgrades of several existing properties). Demand for such a hotel could support between 200 and 400 rooms, along with meeting space and other amenities, particularly if clustered with other dining, conference, and entertainment facilities downtown. (Note: it is anticipated that the development of 310 Rainbow Boulevard will satisfy a portion of this projected demand).

¹ 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.); “mid-scale” (Howard Johnson®, Quality Inn®, etc.); and finally, “economy” (e.g., Days Inn®, EconoLodge®, Rodeway Inn®). Independent hotels may be of any grade.

- **Retail.** Assuming penetration rates and average visitor expenditures documented as part of the HVS assessment, potential retail sales demand is in the \$86 million +/- range per year, which would equate to roughly 200,000 SF of demand in the downtown area (using a \$400 annual sales per SF estimate based upon various retail types). Like other land uses assessed, success is predicated on a “cluster” approach, assembling a density of activity around a particular theme and associated with related anchor tenants.

- **Restaurant/Live Entertainment.** As a subset of the retail assessment, HVS recognized a very limited supply of restaurant establishments in the local market, even considering that visitation tends to be highly seasonal. The assessment suggested opportunity for roughly \$25 million in food/beverage sales annually, with greatest promise in mixed-use developments involving hotel, restaurant, retail and residential uses. In addition, the assessment suggests that at least one new mid-scale live entertainment venue could be supported.

- **Residential.** Given population losses and competition with lower-cost/lower-rent offerings across the city, it would be especially challenging to locate a substantial amount of conventional market-rate residential units in the downtown area. Nevertheless, if financing is structured right, there is opportunity for roughly 100 rental-units targeted at a workforce market (casino, hospital, and/or hotel workforce housing) and student housing market (associated with the Culinary Institute). Such developments, in turn, could help to jump-start other private investments. A majority of such units would need to be affordable to households making roughly 60 percent of the area median income, or rents between \$700 and \$850 per month.

Each complete market sector memorandum may be downloaded from the USA Niagara website at www.usaniagara.com.

Other Potential Market Demand Sources

While limited, there are also future opportunities for some office and institutional uses downtown over the next five years, as follows:

- **NCCC Expansion Programs.** While only recently opening, NCCC officials have expressed a tentative desire to expand their educational offerings in the near future at the Niagara Falls Culinary Institute. This would involve classroom and lab space for their beer-making and spa management curricula and could account for 10,000-20,000 square feet of space.
- **Possible Government Office Uses.** Certain key government users may be searching for office and administrative space to support their operations in downtown Niagara Falls. This may include as much as 15,000-30,000 square feet for office space for certain Class A office functions.

While prospective responders are free to consider such users in their concepts for reuse, they are advised that no final decisions have been made regarding such uses. It is anticipated that more definitive information regarding such uses would be available by the second stage RFP process.

SITE SPECIFICS:

Project Site Location

The remaining space in the former Rainbow Centre Mall is located on an approximately two acre parcel at 360 Rainbow Mall² (Section, Block and Lot No. 158.12-1-2.1) in downtown Niagara Falls, New York (see **Figures 6, 7, & 8**). The Project site covers the block bounded by:

- Niagara Street on the north;
- First Street on the east;
- The Niagara Falls Culinary Institute on the south (i.e., within the same building separated by a fire-rated partition wall); and
- Rainbow Boulevard on the west.

The project site is a major parcel in the heart of Niagara Falls’ “Old Falls” tourist district downtown centered around Old Falls Street and is located in proximity to Niagara Falls State Park, the Seneca Niagara Casino complex, and a number of downtown hospitality establishments.

Ownership

Title/ownership of the property rests with the City of Niagara Falls and is not impeded by any unusual constraints. It is anticipated that the ultimate preferred developer will enter into a long-term lease arrangement for use of the space, although other ownership structures would be considered.

Environmental Constraints

As part of the first phase of the Culinary Institute project, USA Niagara and the City engaged in a full environmental screening of the property and undertook an interior demolition of the former Rainbow Centre Mall. This program:

- Razed all interior finishes and any combustible materials;

² “Rainbow Mall” is the former name of Old Falls Street when it was converted to a pedestrian-only right-of-way as part of the City’s urban renewal program. Not all tax records have been officially updated to reflect the name “Old Falls Street”.

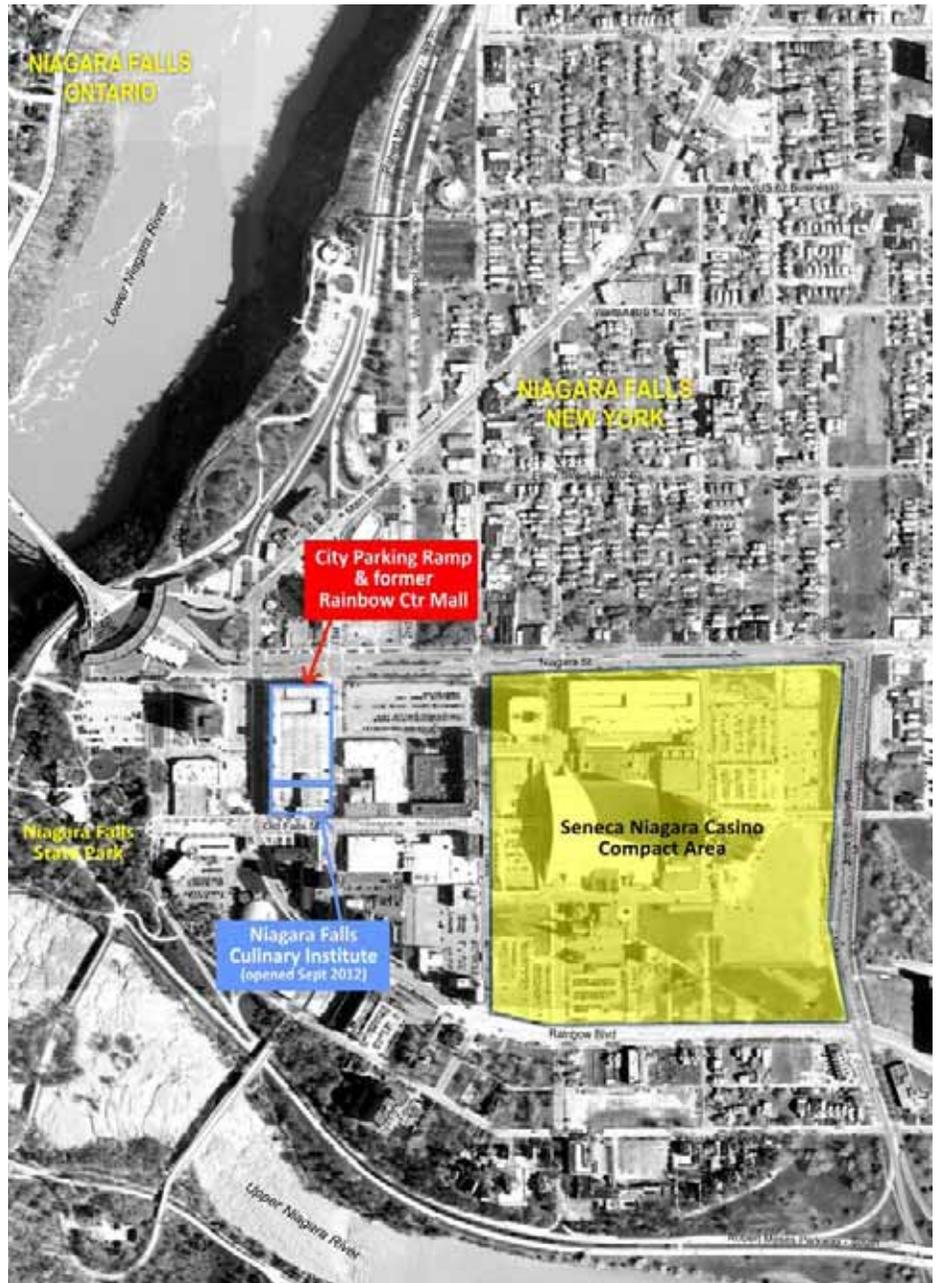


Figure 6 - Site Location

- Removed most interior HVAC, fire protection, and electrical systems (which were largely non-functional) and installed temporary electrical service to facilitate rehabilitation/reuse activities;
- Abated all³ interior friable and non-friable asbestos containing materials (“ACMs”); and

³ It should be noted that a de-minimus amount of non-friable asbestos still exists in the window caulk of glass curtain walls that were left in-place to secure the structure and make it weather-tight. This is not considered to be a significant impediment given that it could be easily abated as part of initial demolition activities for any reuse project.

- Removed all interior mold and disposed of all hazardous waste and materials in the building.

Thus, the Project site is considered raw, “re-use ready” space and does not have any significant environmental impediments that would hinder future redevelopment.

Figure 7 - From top to bottom: North elevation, east elevation, west elevation, and south elevation of the former Rainbow Centre Mall in downtown Niagara Falls.



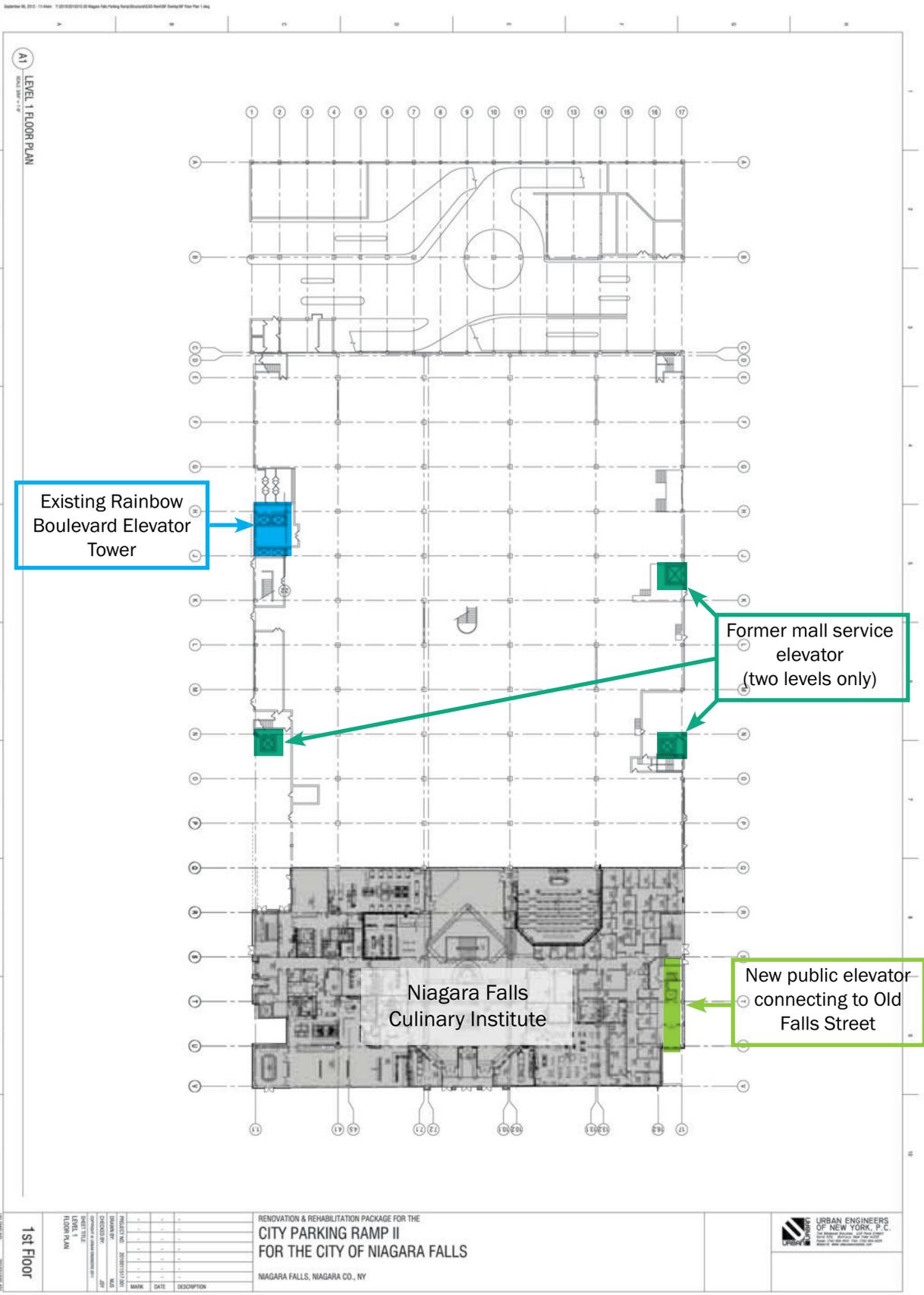


Figure 8 - First floor plan of the former Rainbow Centre Mall.

Note: Scalable drawings can be downloaded at www.usaniagara.com

Utilities/Building Services

The former mall is currently served and has direct connection access by all major utilities and infrastructure facilities, including water, sewer, natural gas, electric, and telecommunications. However, as previously noted, in-building services have largely been razed and would likely need to be re-established, relocated or redesigned to accommodate a reuse scheme.

The building is served by two elevator facilities. The first is a new, single car facility at the southeast corner of the building, which provides access to all of the parking levels from Old Falls Street (built as part of parking ramp rehabilitation done for the Culinary Institute). The second is a four-car tower that fronts on Rainbow Boulevard. This tower provides access to all parking levels and both former mall levels and was the main vertical circulation feature when the mall was open. USAN has initiated design for a rehabilitation program for this elevator tower; this is on hold pending the completion of this procurement.

In addition, the structure has three service elevators associated with the former mall. Since the mall ceased operations, the condition of these facilities is unknown, but they would likely require rehabilitation to become fully operational.

City of Niagara Falls Zoning

The project site is zoned D1: Downtown Zoning District, and specifically within D1-B sub-district, under the 2009 Niagara Falls Zoning Ordinance. This district provides for a diverse array of commercial, residential, and mixed-use building types within the core tourist area of the city. It also protects the world-class views to and from the Falls, graduating building height and massing district-wide and by encouraging design flexibility in creating, maintaining, and optimizing resulting view-sheds. Development is intended to be very intense with high lot coverage. It promotes pedestrian-oriented development with a strong emphasis on creating safe, active, and inviting

streetscapes.

Under the ordinance, off-street parking is required in the D1 District only for hotel and lodging uses at a rate of 0.5 spaces per room; however, any parking demand for a reuse could be readily accommodated in the attached 1,600-space City Parking Ramp.

The full set of zoning requirements applicable to the project site may be downloaded from the City's website using the following link:

http://www.egovlink.com/public_documents300/niagarafalls/published_documents/City%20Council/Official%20Zoning%20Ordinance%202009%20Amended%2012%2013%202010.pdf

Requirements for the D1 District begin on Page 45 of the Zoning Ordinance.

USA Niagara Urban Design Standards

Development projects receiving USA Niagara or ESD assistance must also comply with USA Niagara Urban Design Guidelines. They expand the more general standards in the City of Niagara Falls Zoning Ordinance and provide more detail regarding desired activities and visual attributes of proposed buildings in downtown Niagara Falls. Whereas these guidelines are not specific regulations, their purpose is to give strong direction and help provide for an expeditious review and response to proposed development proposals.

Overall, the guidelines are intended to foster an urbane, traditional city setting that is evidenced in building uses and orientation, materials and finishes, scale, and other design features. These involve, but are not limited to, the following:

- Defining a varied "street wall" along major public streets (e.g., Old Falls Street, Rainbow Boulevard, etc.).
- Incorporation of design elements that give a strong visual demarcation of the "base", "middle", and "top" of buildings.

- Incorporation of street level uses that promotes and contributes to pedestrian activity and street life (e.g., retail, cultural, food and beverage, and/or entertainment) with activities that "spill over" into the sidewalk area.
- Use of traditional and natural building materials (brick, stone, steel, and wood) and natural finish systems, particularly on the ground-story level of a building.

The full set of USAN Design Guidelines may be downloaded from the USAN website using the following link:

<http://www.usaniagara.com/UploadedFiles/projectpdfs/Draft3rdStreet-OldFallsStreet-Final-093005.pdf>



Figure 9 - Interior pictures of the former Rainbow Centre Mall



The Challenge

With this RFQ, USA Niagara issues a challenge to the development community to unleash its imagination and creativity to conceive a reuse for the remaining space in the former Rainbow Centre Mall that will take full advantage of the unique attraction of Niagara Falls, draw the interest of millions of annual visitors, build on recent investments – and then some.

The recent ULI Advisory Services Panel was intended to “prime the pump” for a flow of ideas. The basic concepts presented made sense in general. But we are hoping for ideas that aren’t afraid to go beyond what the ULI experts have offered, ideas that will achieve the full potential of the site, both building on recent work and making further redevelopment efforts even more likely and more fruitful.

USA Niagara’s primary objectives for the reuse of the balance of the Rainbow Centre Mall are to:

- Achieve a distinctive, superior adaptive-use design that will be a significant positive addition to the downtown landscape;
- Create new jobs, increase the tax base, and support investment in Niagara Falls;
- Facilitate new uses of the space that contributes to a lively, urbane setting and a substantial increase in street-level interaction;
- Realize a reuse that best complements or achieves synergies related to, but not limited to the following:
 - Grow opportunities presented through the opening of the Niagara Falls Culinary Institute.
 - Expand the operating performance/potential of other established uses in the downtown area (e.g. Existing private businesses, State Park resources, Conference Center Niagara Falls, Casino) by expanding the overall level of activity downtown.

- Create or entice further redevelopment and/or desired land use types on surrounding sites/ areas of downtown.

- Expand the availability of goods, services, and entertainment venues available to visitors and residents;
- Stabilize and preserve the Site value; and
- Reach a mutually beneficial public/private partnership with the goal of returning the entire structure to a productive and self-sustaining use.

Looking for Development Partnerships?

Does your company have significant project experience, but is in need of a local partner? Do you represent an appropriate end user of some/all of the available space but are not interested in actually engaging in its development? Let us know – we’ll post your contact information on our website in order to help match you up with other respondents to the RFQ or the subsequent RFP.

Simply prepare a one-page letter of interest summarizing your firm’s background, your interest in the project, and contact information and email it to usaniagara@esd.ny.gov.

Note: This service is provided for information purposes only for possible development partners (excluding such as architecture or engineering firms) or potential end users/tenants. Posting of information in no way would represent an endorsement or recommendation by USA Niagara Development Corporation or the City of Niagara Falls on the quality, financial capability, and/or desirability of any prospective development partner or end user.

SELECTION PROCESS & REQUIREMENTS

Process Timetable

The following target dates are intended as a guide for this two-part procurement process:

April 1, 2013	RFQ Issue Date
April 18, 2013	Non-Mandatory Pre-Submittal Meeting
May 20, 2013	Due Date for Statements of Qualifications
June 3-7, 2013	If Necessary: Interviews on Short-listed SOQs
July 1, 2013	Tentative Date: Issue Full RFP to Pre-Qualified Teams
September 6, 2013	Tentative Date: Proposals Due
September 16-20, 2013	Tentative Date: Interviews on Short-listed Proposals
September 30, 2013	Tentative Date: Recommend Preferred Development Team to USA Niagara Board of Directors and City of Niagara Falls

Selection Process

The first phase SOQs will be evaluated based on the following factors:

- **Capability and experience.** A major consideration during the evaluation will be in the prospective developer’s demonstrated ability, capacity, and expertise in executing large, multi-purpose, mixed-use urban developments with a scope and size equal to or larger than the proposed development.
- **Knowledge in the use of innovative approaches.** Prospective developers will be assessed higher by providing examples of public-private partnerships and other innovative approaches used to successfully

realize major redevelopment projects.

- **Quality of the preliminary/concept design.** Respondents who can also articulate and translate the project objectives into a desired “bricks and mortar” vision will receive higher scoring. 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.** Respondents who can demonstrate their ability to work with a broad stakeholder group will receive higher scoring in the evaluation process. Examples should include the ability to negotiate and structure financing relationships with government, financial institutions, and other private sector entities.
- **Experience/Understanding of Local Conditions.** Prospective developers who can demonstrate experience on successful and comparable projects completed in New York State and particularly the Western New York region and/or can demonstrate knowledge of the local project conditions and development context will receive higher scoring in the evaluation process.
- **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.
- **Overall quality of the submittal.** Submittals should be clear, concise, illustrative, and complete in addressing the required component parts listed in this RFQ.

Organization of Statements of Qualifications

SOQs should demonstrate an understanding of the requirements and present the following information in the same format as presented below, clearly divided by the following four sections. All required completed

certifications, forms, affidavits, etc. should be attached as appendices to the proposal in the order presented in this RFQ.

Respondents should provide the following information:

Cover Letter and/or Executive Summary

- Summarize your organization’s or team’s ability to undertake the work being solicited for in this RFQ.
- Present the major themes of your proposed approach to the effort — how you will meet the challenge. Present the main strengths of your skill sets and experience to undertake complex mixed-use projects in urban areas.
- Present key abilities of your proposed team and discuss any critical “distinguishers”— why your organization should be selected over others.

Organization Information

- Provide an overall description of the proposed entity’s organization and team and its capabilities. Include an organization chart of key players, firms, and personnel that would be involved in the effort, including lead companies, design firms, construction management entities, etc.
- Include resumes of key personnel members (two page maximum for each resume) that are proposed for staffing this effort.
- Experience in working with public/private partnerships and with applicable federal, state, and local governments and/or public corporations or development authorities.
- Where applicable, include published and publicly-available financial data for respondent, and its partners and participants, including assets in the United States (e.g., annual report, including latest quarterly report, 10K reporting, and recent securities offerings).

Experience and References

Provide no more than ten, one-page experience sheets summarizing current/past projects undertaken by the company and/or members of the team that include:

- Large, multi-purpose mixed-use developments in the United States or Canada, and/or other projects of a similar scale as the former Rainbow Centre Mall.
- Information with respect to location, size, uses, approximate value and date of construction, start and completion of real estate initiatives.
- Graphic material/photographs illustrating such projects.
- Contact information for applicable reference for each representative project.

Overall Concept & Approach

Responses should discuss/present:

- The general structure, size and scope of one or more potential private or public/private projects for the reuse/redevelopment of the remaining space in the former Rainbow Centre Mall.
- Those aspects of the Project 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.
- How such project(s) might be financed.
- A concept-level floor plan, vision, rendering for the projected redevelopment project (although this may be refined in subsequent Stage 2 RFP process).
- Any additional information and/or issues that should be addressed by USAN prior to issuing an RFP.

Certifications & Requirements

Information Form

To enable 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 Attachment A (the "Information Form"), signed by the respondent with the attestation of a notary public.

Non-Discrimination and Contractor/Supplier Diversity Goals

Pursuant to New York State Executive Law Article 15-A, ESD/USAN recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises (M/WBEs) and the employment of minority group members and women in the performance of ESD contracts. It is the policy of the State of New York and ESD/USAN to comply with all federal, State and local laws, policy, orders, rules and regulations which prohibit unlawful discrimination based on race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that New York State Business Enterprises, M/WBEs, minority group members and women share in the economic opportunities generated by ESD's/USAN's participation in projects or initiatives, and/or the use of ESD/USAN funds. ESD's Non-Discrimination and Contractor & Supplier Diversity goals will apply to this initiative.

Respondents are required to provide a written description of their anticipated approach to achieving meaningful participation of New York State certified Minority & Women Business Enterprises in the proposed Project. The approach should include anticipated skill areas where M/WBE participation will be sought. A copy of the respondent's completed M/WBE Participation/Equal Employment Opportunity Policy Statement (Form OCSD-1) shall be included as part of the response to this RFQ. The form OCSD-1 can be downloaded at the following link:

www.empire.state.ny.us/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf

The ultimate preferred developer shall be required to use its "Good Faith Efforts" (pursuant to 5 NYCRR §142.81) to achieve meaningful participation (i.e., contract value) of certified **MWBEs totaling no less than 23% of the total value of USAN/ESD assistance** associated with the ultimate Project. It is very possible that the MWBE participation requirement will exceed the minimum project goal stated above. Respondents are encouraged to maximize MWBE participation wherever deemed feasible. The final overall M/WBE participation goal percentage for this project shall be determined and informed in a future RFP and shall relate to the total USAN/ESD assistance.

State Tax Law Section 5-a.

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits USAN or ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes.

Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-

220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. For "team" submittals, only the prospective prime contractor must complete Form ST 220-CA, but Schedule A of Form ST 220-CA requires detailed information from the subconsultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the subconsultants.

To comply with STL 5-a, all respondents to this RFQ must include in their SOQ a properly completed Form ST-220-CA or, if they believe appropriate, a completed and sworn affidavit of the non-applicability of STL 5-a. Forms may be downloaded at the following links:

ST-220-CA Form:

www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

Affidavit of Non-Applicability of State Tax Law § 5-A:

www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf

State Finance Law Sections 139-j and 139-k

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFQ. These Procurement Requirements: (1) govern permissible communications between potential respondents and ESD or other involved governmental entities with respect to this RFQ; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFQ.

Compliance with the Procurement Requirements requires that (1) all communications regarding this RFQ, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed below; (2) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law; and (3) periodic updating of such forms during the term of any contract resulting from this RFQ.

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by prospective bidders during the restricted period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. For the purpose of compliance with State Finance Law Sections 139-j, contact with Paul Tronolone of USAN is considered permissible. Mr. Tronolone’s contact information is listed later in this RFQ under “Additional Information”

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of the ESD Policy Regarding Permissible Contacts under SFL 139 can be found at:

http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf

Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law as part of their proposal. Copies of these forms may be downloaded at the following link:

www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

New York State Comptroller Requirements for Responsible Vendors

Under New York State procurement policies, a “responsible vendor” is one that has the capacity to fully perform its contractual obligations, and the integrity to justify the award of public dollars. New York State Finance Law dictates that state agencies take reasonable steps to ensure that public contracts are awarded to bidders that are responsive and responsible, including the capability to meet bid requirements and fully perform contractual obligations, and possessing the integrity to justify the award of public dollars. In short, businesses must demonstrate their vendor responsibility prior to the award of the contract. Prior to entering into contracts, New York State agencies must formally make a “responsibility determination” that is based upon a financial, legal, integrity, and past performance (“FLIP”) review of a prospective vendor. The FLIP review involves assessments of a company’s:

- Financial and organizational capacity;
- Legal authority to do business with the State of New York;
- Integrity of the owners/officers/principals/members and contract managers; and
- Past performance of the bidder on prior government contracts.

The selected company under this RFQ must demonstrate its responsibility as a vendor and must maintain responsibility throughout the term of

the agreement. For more information, visit the New York State Office of the Comptroller’s Vendor Responsibility website at: www.osc.state.ny.us/vendrep/index.htm.

Proposals must be responsive to all the RFQ requirements included herein and include a completed and notarized copy of a “Responsibility Questionnaire”. The Questionnaire may be downloaded at the following Links:

For-Profit Entities:

www.esd.ny.gov/CorporateInformation/Data/RFPs/111511_VendorForprofit.pdf

Not-for-Profit Entities:

www.esd.ny.gov/CorporateInformation/Data/RFPs/111511_VendorNotforprofit.pdf

Insurance Requirements

Prospective respondents to this RFQ are advised that the selected preferred developer will be required to submit proof and maintain the following insurance with insurers licensed to provide insurance in the State of New York:

- Commercial General Liability insurance of \$1 million per occurrence and \$2 million in the aggregate;
- Commercial Automobile Liability with a limit of \$5 million;
- Excess/Umbrella Liability of \$19 million;
- Commercial Property Insurance for the full insurable value of the Premises;
- Employee Dishonesty coverage of \$1 million;
- Boiler and Machinery Insurance for damages up to the full insurable value of the Premises; and
- Evidence of Workers Compensation/ Employers’ Liability insurance.

Such policies of insurance shall be in a form acceptable to, and shall include any conditions reasonably required by

USAN, ESD and/or the City and shall name the State of New York, USAN and ESD and the City of Niagara Falls as additional insureds.

PRE-SUBMISSION MEETING AND FACILITY TOUR

A non-mandatory Pre-Submission meeting for prospective Proposers will be held at **2:00 p.m. on April 18, 2013** at the Conference and Event Center Niagara Falls, 101 Old Falls Street, Niagara Falls, NY.

To participate, please contact USAN at 716-284-2556 prior to the **close of business on April 15.**

At this meeting, respondents will have the opportunity to:

- Ask questions about submittal requirements of the RFQ and subsequent steps in the procurement process;
- Tour the former Rainbow Centre Mall; and
- Ask questions about the history and condition of the facility.

Prior to attending this meeting, prospective respondents are required to submit the “hold harmless” form regarding site visits (see Attachment B).

SUBMISSIONS, SHORTLIST, & INTERVIEWS

Time and Place for Submissions

Respondents will not receive compensation or reimbursement of any expenses associated with preparing and/or submitting their SOQs.

Respondents are required to submit one (1) original and ten (10) copies of their SOQ prior to **3:00 P.M. local time on May 20, 2013.** SOQ packages shall be firmly sealed in an envelope or box, and contain the Respondent’s name and return address. Any SOQ that arrives after the deadline date and time

will be time stamped and returned, unopened to the Respondent.

At the discretion of USAN, requests for deadline extensions will be considered prior to the deadline and, if granted, announced on our website: www.usaniagara.com.

SOQs shall be delivered to:

**Mr. Christopher Schoepflin, President
USA Niagara Development
Corporation
222 First Street, 7th Floor
Niagara Falls, NY 14303
716-284-2556**

USAN reserves the right to reject an SOQ if any document or item listed in this RFQ is incomplete, improperly executed, indefinite, ambiguous, and/or is missing. Additionally, factors such as, but not limited to the following may also disqualify a respondent without further consideration:

- Evidence of collusion among Respondents;
- Any attempt to improperly influence any member of the evaluation panel;
- Discovery that a Respondent purposely misled or knowingly provided false or inaccurate information in a proposal;
- A Respondent’s default under any type of agreement, which resulted in the termination of that agreement;
- Information leading to a determination that a Respondent would not be certified as a “Responsible Vendor” as defined by the State Comptroller.
- Existence of any unresolved litigation or legal dispute between the Respondents and the City of Niagara Falls, USAN, ESD, or the State of New York.

USAN reserves the right to reject any and all SOQs and to waive any informalities or irregularities in procedure.

Shortlist and Interviews

The selection committee will review all submitted SOQs for completeness and their respective degrees of responsiveness to the RFQ requirements and goals/objectives of this procurement.

USAN reserves the right to establish a “Shortlist” of respondents to interview for consideration to move on to the second stage Request for Proposal process. If determined to be necessary, interviews for selected candidates are tentatively scheduled to be conducted during the **week of June 3-7, 2013.** Respondents should tentatively reserve time in this week to be interviewed in Niagara Falls, NY.

ADDITIONAL INFORMATION

Additional information may be made available from time to time on our website at www.usaniagara.com. Any questions or requests for additional information or documents will be accepted no later than **close of business on April 26, 2013** to:

**Mr. Paul J. Tronolone, AICP
USA Niagara Development
Corporation
222 First Street, 7th Floor
Niagara Falls, NY 14303
716-284-2556
Email: ptronolone@esd.ny.gov**

Except as otherwise noted in this RFQ, all questions shall be submitted in written form and answers will be posted on the USAN website at www.usaniagara.com on **May 3, 2013.** Additional information may become available and, along with the responses to all requests for deadline extensions, substantive questions and document requests may be made available on our website at any point during this process.

In accordance with NYS procurement law, no member of the staffs of USAN, ESD, or City of Niagara Falls, or any elected official, or any associated person other than the officially-designated representative for this procurement shall be contacted pertaining to this RFQ/RFP during the procurement process. Respondents failing to comply with this requirement risk disqualification by USAN.

GENERAL TERMS AND CONDITIONS

Neither the State, USAN, ESD nor the City make any representations or warranties whatsoever with respect to this RFQ 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 RFQ 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 State, ESD, USAN or the City 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 State, USAN, ESD or the City including, without limiting the foregoing, any information contained in this RFQ or made available pursuant to this RFQ, or otherwise.

In the event that the selected respondent does not execute a Development Agreement for the Project, USAN and/or the City 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 any other terms and conditions stated elsewhere, this RFQ is subject to the following:

- The preferred developer must comply with all applicable federal, state and local laws and regulations.
- The preferred developer must accept the Project site in its “as is, where is” condition on the date of disposition.
- Conveyance by the City/USAN shall be governed by a Development Agreement.
- 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.
- USAN or the City will not pay for or refund any costs and expenses incurred by any respondent in

responding to this RFQ or subsequent selection stages or by any preferred developer following selection and/or designation.

- 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 ESD and/or USAN.
- Selection or designation of any respondent pursuant to this RFQ or subsequent selection stages will not create any rights for the respondent including, without limitation, rights of enforcement, equity or reimbursement. USAN and the City shall have no obligation or liability whatsoever to any person or entity whose response/proposal is selected or designated as a result of this RFQ 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 USAN’s and the City’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.
- A respondent may be rejected if USAN and the City 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 State, USAN, ESD, the City, 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 State, USAN, ESD, or the City. Neither USAN nor the City is under any 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 USAN or the City to undertake any action or to proceed with the Project.

- USAN will review all responses/proposals for completeness and compliance with the terms and conditions of this RFQ 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 USAN to make such inquiries concerning the respondent and members of the respondent's team as the USAN, in its 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 USAN, in their sole discretion, no respondent will be entitled to change its proposal once submitted.
- USAN may at any time exclude those proposals which, in its sole discretion, fail to demonstrate the necessary qualifications for development, or which fail to comply with the terms and conditions of this RFQ.

- USAN reserves the right, in its 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.
- Under no circumstances will the State, ESD, USAN, and/or the City pay or be liable for any costs incurred by a firm/team in responding to this RFQ or subsequent stage or in connection with the transfer of the Project site.
- 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 State, ESD, USAN or the City 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 RFQ or subsequent stage constitutes an undertaking by the respondent to hold harmless and indemnify and defend the State, ESD, USAN and the City 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 RFQ or subsequent stage, selection or (non-selection) thereunder or execution (or non-execution) of a Development Agreement.
- Public access to material submitted by respondents to this RFQ 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, USAN, ESD, the State or the City shall not be liable if the USAN, ESD, the State or the City releases information, whether or not pursuant to FOIL which the respondent believes to be a trade secret or detrimental to its business.

- In the event that USAN and/or the City becomes aware of any material misrepresentation in the information supplied by a developer, USAN/the City 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 USAN/the City, in each entity's sole discretion.
- The ultimate selected preferred developer will be required to comply with ESD's/USAN's Non-Discrimination and Contractor & Supplier Diversity policies that will apply to this Project.
- 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.
- By submitting a response to this RFQ or subsequent RFP, the respondent agrees to be bound by all the terms and conditions of this RFQ and subsequent RFP.

CHECKLIST OF ITEMS TO BE INCLUDED IN STATEMENT OF QUALIFICATIONS

- Cover Letter and/or Executive Summary
- Organization Information
- Experience and References
- Overall Concept and Approach
- Appendices:

A. Information Form:

- Completed, signed and notarized certification (form included under Attachment A).

B. Non-Discrimination and Contractor/Supplier Diversity Goals:

- Overall Approach
- Completed Form OCSD-1: M/WBE Participation/Equal Employment Opportunity Policy Statement

C. Compliance with State Tax Law Section 5-a:

- EITHER completed Form ST-220-CA; OR
- Completed "Affidavit of Non-Applicability of State Tax Law § 5-A"

D. Compliance with State Finance Law Sections 139-j and 139-k

- Completed Form "Disclosure of Prior Non-Responsibility Determinations"
- Completed Form "Affirmation of Understanding and Agreement Pursuant to State Finance Law"

E. Compliance with New York State Comptroller Requirements for Responsible Vendors:

- Depending on Structure of the Respondents Organization, EITHER completed and notarized "Responsibility Questionnaire" – For-Profit Entities; OR
- Completed and notarized "Responsibility Questionnaire" – Not-For-Profit Entities.

ATTACHMENTS

Attachment A – Proposer Questionnaire & Certification

Attachment B – Hold Harmless Agreement

Attachment A – Proposer Questionnaire & Certification

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. 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.

3. 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:

4. 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:

5. 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:

6. 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 (“ESD”), 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 _____, 2013.

Notary Public

Attachment B – Hold Harmless Agreement

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 Rainbow Centre Mall site described in the Request for Qualifications (hereinafter referred to as the “Premises”) for the purpose of inspecting the Premises, Grantee hereby agree to release and to defend, indemnify and hold harmless the City, USAN, New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), 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 _____, 2013.

Notary Public

