

# **Request for Proposals**

## **To Operate a New Convention Facility in Niagara Falls, New York**

Solicitation Issue Date: October 15, 2002

Proposal Due Date: November 14, 2002

### **I. THE PROJECT**

#### **A. Introduction**

Pursuant to this Request for Proposals (this “RFP” or “Request”), USA Niagara Development Corporation (“USA Niagara”) solicits proposals from qualified convention and conference center management firms to enter into an agreement (the “Operating Agreement”) to operate a new Niagara Falls convention facility.

USA Niagara, a subsidiary of Empire State Development Corporation (“ESDC”), is 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 in the City of Niagara Falls (the “City”). USA Niagara’s development strategy will be implemented through a process that coordinates the commitments of the State of New York (the “State”), ESDC, the City, and other public and private sector development potential. The approach meets redevelopment challenges one-by-one based on market and financial analysis to effect realistic, tangible, and meaningful results. These results will include the reactivation of high-profile empty buildings, development of important cultural and heritage attractions, physical improvements to downtown, establishment of a mix of new commercial, residential, entertainment, and lodging opportunities designed to re-establish Niagara Falls as a hub of regional tourism.

The current Niagara Falls Convention Center is considered obsolete by today’s standards for conventions, conferences, and meetings. As a result of the introduction of casino gaming to downtown Niagara Falls, the existing facility will no longer be available to host events as it has been selected as the site for the initial casino (the “Casino”). As part of our overall redevelopment efforts, USA Niagara recognized an opportunity to replace and enhance Niagara Falls’ convention and conference offering. A higher quality offering will increase penetration of the high-impact meeting-related demand to effect greater overall economic impact on the hospitality industry, downtown private sector businesses and the Niagara area economy.

#### **B. Project Plan**

USA Niagara’s Board of Director’s have approved a General Project Plan for the acquisition and reconstruction of the site known as The Falls Street Faire (the “Site”) into a new state-of-the-art convention and conference center. The Site is

within a half-block of the current convention headquarters hotel and numerous other hotels, providing almost 2,000 hotel rooms. The Site is proximate to existing and underutilized parking facilities, and adjacent to the pedestrian mall. Utilization of the pedestrian mall provides an attractive pre-function and social space, enhancing the operation and appeal of the redeveloped Site as a convention center (the “Center”). The Center’s location provides access to hotels, restaurants, retail, tourism attractions, and entertainment all within a 10-minute walk (Exhibit A).

The Site’s original structure and footprint lends itself to a convention/conference center hall with 113,000 square feet of space. Preliminary conceptual design includes a 17,000 square foot ballroom, 31,000 square foot exhibit hall that can be combined with the ballroom for larger events, 32,000 square feet of dedicated meeting space, 5,000 square feet of pre-function space, a full service kitchen, and 10,600 square feet of restaurant space facing the pedestrian mall (Exhibit B).

The configuration of the existing building allows for the creation of food and beverage establishments in the exterior portion of the building opening on to the pedestrian mall. It is expected that as part of the redevelopment, a high-quality restaurant(s) be created with outdoor dining within the 10,600 square feet of space referenced earlier. The restaurant development within the convention complex would create active first floor uses in a key pedestrian corridor, providing additional entertainment for all visitors to downtown Niagara Falls, and create opportunities for operating efficiencies for the Center. The interior conceptual layout is preliminary and will be refined over the next two months.

Currently, the hotel industry is the dominant private sector industry and employer in downtown Niagara Falls, providing approximately 2,000 rooms. Surveys conducted by the Niagara Falls Convention and Visitors Bureau (“CVB”) indicate that the downtown hotel supply is considered an attractive attribute to the Niagara Falls convention offering for state association conventions and meetings, regional conventions and meetings, and SMERF (Social, Military, Educational, Religious, and Fraternal) events.

The lack of dining and entertainment attractions in downtown is currently considered to be a major weakness of Niagara Falls, New York’s, convention offering. However, there are a number of such entertainment options in Niagara Falls, Ontario, which contribute to the overall attractiveness of Niagara Falls, New York, as a convention destination. In addition, USA Niagara is actively inducing redevelopment of downtown Niagara Falls into a more pedestrian-friendly environment with an array of new attractions, entertainment, and residential developments that will complement the casino development on the former convention center site. Hunter Interests Inc. (“HII”), as consultants to USA Niagara and the CVB has developed a coordinated program for the implementation for over 20 such projects. It is envisioned that the facility will be integrated into the existing and planned fabric of downtown.

The new Center's operations will likely be overseen by the Niagara Tourism and Convention Corporation ("NTCC"), which is a not-for-profit organization consisting of a board of directors with representatives from the current CVB, hotel owners/operators, the City, Niagara County, and area attractions. Initially, however, the operation and construction/renovation of the facility will be the responsibility of USA Niagara and/or ESDC, until NTCC's funding mechanisms are in place and the oversight organization is fully operational. USA Niagara and NTCC will be directly involved in the final Operator selection process.

The primary mission of the Center is to generate lodging demand by attracting conventions, conferences, and meetings.

## **II. THE INVITATION**

### **A. Requirements**

The selected Operator will be expected to participate in certain pre-development and pre-opening activities as well as operate the Center commencing when facility opens Summer 2003, ending at midnight on July 31, 2009, unless terminated pursuant to the provisions of the Operating Agreement.

USA Niagara, along with representatives of NTCC, plan to evaluate initial submissions and to select qualified operators to be included in a "short list" of respondents invited to submit and present more detailed proposals. Initial proposals will be evaluated based on the proposer's ability to help facilitate the mission of the Center by creating a premier convention facility. The short list of respondents will have the opportunity to make presentations and modify proposals at later stages of the selection process, based on additional information to be provided by USA Niagara at that time. Final proposals will be expected to include substantial detailed information, including the Operator's proposed management fees and operating budgets.

Responses should indicate an understanding of the before mentioned "Requirements" and present the following information in the same format as "Section II" is presented, clearly divided by the lettered sections, A- E.

### **B. Organization**

1. Provide the following information: full legal company name, organization structure (e.g., corporation, partnership, joint venture) of respondent, and complete contact information including mailing address, phone and fax numbers, and email address.

2. Briefly describe the offeror's organization and management team as it relates to the management operations and marketing of the Center. The respondent should indicate if the company has been a party in any legal suit or action in the last five years. If so, please explain.

3. Include published and publicly available financial data for respondent, and its partners and participants where applicable, including assets in the United States (e.g., annual report, including latest quarterly report, 10K reporting, and recent securities offerings).

### **C. Experience and References**

1. List all current management contracts in the United States and Canada for public assembly facilities, conference centers, and other attractions/entertainment venues. Include contact person information (title, phone and fax numbers, and email address) and narrative description of responsibilities and major accomplishments for each facility.

2. List management contracts that have been terminated or have not been renewed in the United States and Canada within the last three years, and include the name of a contact person. Contacts provided should be individuals who are capable of speaking to the management entity's performance on the contract cited.

3. Describe the two most similar facilities (i.e., size of facility, mission, size of market, and market orientation) that you currently manage or have managed in the past.

4. What strategies have you implemented at these facilities that have resulted in increased utilization, room night generation, and economic impact?

5. Indicate any experience in operating facilities in a city with casino gaming and describe the impact that casino gaming has had on the appeal of this city as a convention and meeting destination.

### **D. Preliminary Management Approach**

Describe in detail the respondent's proposed approach to be followed in undertaking the operation of the Center, including:

- 1) Proposed administrative and marketing staffing levels
- 2) Marketing and promotional ideas
- 3) Approach to food services and potential retail opportunities
- 4) Operations and maintenance
- 5) Any other recommendations and attributes of the proposer's approach that will strengthen the operations of the Center and fulfill the State's primary mission and objective of generating lodging demand.

### **E. Certification**

The respondent shall include with its submission a duly executed Certification in the form of Exhibit C annexed hereto, without modifications or supplement, sworn before a notary public.

### **III. Time and Place of Submission**

Respondents are required to submit one original and eight (8) copies of the response to this RFP. Responses must be received prior to 4:00 P.M. local time on November 14, 2002. At the discretion of USA Niagara, requests for deadline extensions will be considered prior to the deadline and, if granted, announced on our website [www.usaniagara.com](http://www.usaniagara.com). Interviews may be scheduled on or around November 26, 2002.

Direct all questions regarding the preparation of responses in writing to:

Mr. Geoff Graham, Vice President  
Hunter Interests Inc.  
121 Main Street  
Annapolis, MD 21401  
410-269-0033  
410-280-9163 (fax)  
Email: [hunter@toad.net](mailto:hunter@toad.net)

Deliver responses to:

Mr. Michael Wilton, President  
USA Niagara Development Corporation  
345 Third Avenue, Suite 505  
Niagara Falls, NY 14303  
716-284-2556

USA Niagara reserves the right to reject any and all proposals and to waive any informalities or irregularities in procedure. Interviews will be conducted for candidates selected for further consideration in this solicitation process as part of the “best and final” second stage evaluation process. USA Niagara reserves the right to exclude food and beverage operations from the management company.

### **IV. Additional Information**

Additional information may be made available from time to time on our website at [www.usaniagara.com](http://www.usaniagara.com). Any questions or requests for additional information or documents should be directed to USA Niagara. All substantive questions and document requests must be submitted to USA Niagara in writing; however, telephone inquiries are acceptable at the discretion of the president on non-substantive matters. 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.

## **V. General Terms and Conditions**

In addition to the terms and conditions stated elsewhere in this Request, it is subject to the terms and conditions set forth in Exhibit D hereto.

### ATTACHMENTS:

- Exhibit A – Falls Street Faire Site Study
- Exhibit B – Floor Plan & Renderings
- Exhibit C – Certification
- Exhibit D – General Terms and Conditions

**EXHIBIT C**  
**CERTIFICATION**

The undersigned: recognizes that all information and material provided all information and material submitted by the undersigned proposer in connection with its proposal and the Request for Proposals are submitted for the express purpose of inducing USA Niagara Development Corporation (“USA Niagara”), a subsidiary of New York State Urban Development Corporation d/b/a Empire State Development Corporation (“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 USA Niagara, 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 proposal, the proposer and each person signing on behalf of the proposer 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 proposer or with any competitor;

(2) Unless otherwise required by law, the prices, amounts and material that have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to award, directly or indirectly, to any other proposer or to any competitor, and

(3) No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The proposer hereby authorizes USA Niagara, ESD, the State and their agents and instrumentalities to contact the proposer'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 USA Niagara, ESD 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 proposer.

\_\_\_\_\_  
Name of Proposer

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Title

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Notary Public

**EXHIBIT D**  
**GENERAL TERMS AND CONDITIONS**

In addition to those terms and conditions stated elsewhere, this Request for Proposals (“RFP or Request”) is subject to the following:

Neither the State, ESD nor USA Niagara make any representations or warranties whatsoever with respect to this Request or the real property and improvements known as the Falls Street Faire (the “Facility”) 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 Request or otherwise furnished to respondents; the use or development, or potential use or development, of the Facility 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 Facility and for the adjacent properties; and the suitability of the Facility for any specific uses or development.

Respondents shall not rely upon any statement or information given to respondents by the State, ESD or USA Niagara including, without limiting the foregoing, any information contained in this Request or made available pursuant to this Request or otherwise. Each respondent shall make its own analysis and evaluation of the Facility. Each respondent shall obtain its own independent legal, accounting, engineering and technical advice on all matters relating to the Facility, including, without limiting the foregoing: examination, review and verification of any information provided by or on behalf of the State, ESD or USA Niagara and its advisors.

In the event that the selected respondent does not enter into any agreement for the Facility, USA Niagara may, in its sole discretion, invite any of the other respondents and others to participate in a further competitive process to determine a new selected respondent.

USA Niagara will not pay for or refund any costs and expenses incurred by any respondent in responding to this Request or by any preferred respondent following selection or designation.

All determinations as to the completeness or compliance of any response or as to the eligibility, qualification or capability of any respondent will be within the sole and absolute discretion of USA Niagara.

Selection or designation of any respondent or a response pursuant to this Request will not create any rights for the respondent including, without limitation, rights of enforcement, equity or reimbursement. USA Niagara shall have no obligation or liability whatsoever to any person or entity whose response is selected or designated as a result of this Request unless and until a Operating Agreement shall have been fully executed and delivered by all parties thereto and all consents and approvals necessary for USA Niagara’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 Operating Agreement.

A respondent may be rejected if USA Niagara determines, in the exercise of its 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 or member 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 USA Niagara, ESD, 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 USA Niagara, ESD and the State.

USA Niagara is under no legal obligation to obtain or enter into any agreement for the Facility through a competitive bid process. This Request does not constitute an offer of any nature and does not obligate USA Niagara to undertake any action or to proceed with the project.

USA Niagara will review all responses for completeness and compliance with the terms and conditions of this Request, and may request from any and all of the respondents, at any time during the selection process, additional information, material, clarification, confirmation or modification of any submitted response. USA Niagara may also, but is not obligated to, make requests for additional material or for clarification or modification of any submitted response which is incomplete or non-conforming as submitted. Submission of a response shall constitute the respondent’s permission to USA Niagara to make such inquiries concerning the respondent and members of the development team as USA Niagara, in its sole discretion, deems useful or appropriate including, without limitation, authorization to contact the respondent’s bank(s) and credit references, and any other persons identified in the response and to obtain release of pertinent financial and other information. Except at the request or by the consent of USA Niagara in its sole discretion, no respondent will be entitled to change its response once submitted.

USA Niagara may at any time exclude those responses which, in the sole discretion of USA Niagara, fail to demonstrate the necessary qualifications or which fail to comply with the terms and conditions of this Request

USA Niagara reserves the right, in its sole discretion, to reject at any time any or all responses; to withdraw the request without notice; to negotiate with one or more respondents submitting responses and/or enter into agreements with respect to the Facility (including to parties other than those responding to this request) on

terms other than those set forth herein. USA Niagara 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 USA Niagara pay or be liable for any costs incurred by a respondent in responding to this request or in connection with the negotiation of any agreement.

No brokerage fees, finders' fees, commissions or other compensation will be payable by USA Niagara in connection with the selection of any respondent or the negotiation and closing of any agreement. Submission of a response by a respondent in response to this request will constitute an undertaking by the respondent to hold harmless and indemnify USA Niagara from and against any and all expenses, damage or liability (including, without limitation, attorney's 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 request, selection or non-selection hereunder or negotiation and execution (or non-execution) of any agreement.

Public access to material submitted by respondents in response to this request 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, neither the State, ESD nor USA Niagara shall be liable if the State, ESD or USA Niagara releases information pursuant to FOIL which the respondent believes to be a trade secret or detrimental to its business.

In the event that USA Niagara becomes aware of any material misrepresentation in the information supplied by a respondent, USA Niagara shall have the right to reject at any time the response 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 USA Niagara, in its sole discretion.

It is the policy of the State, ESD and USA Niagara to comply with all federal, State and local laws, policies, orders, rules and regulations that prohibit unlawful discrimination because of 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 Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ESD's and/or its subsidiaries participation in projects or initiatives, and/or the use of their funds. ESD's non-discrimination and affirmative action policies will apply to this initiative. M/WBEs are encouraged to respond.

The selection of a respondent will create no legal or equitable rights in favor of the selected respondent, including rights of enforcement or reimbursement. A

respondent's response for a site is not assignable and only the party identified as the operator in the selected respondent's submission will be permitted to execute the Operating Agreement.

By submitting a response for this Request, the respondent agrees to be bound by all the terms and conditions of this Request.