



Request for Proposals
ARTHUR KILL CORRECTIONAL FACILITY

RELEASE DATE: Tuesday, May 21, 2013

SUBMISSION DATE: Wednesday, July 17, 2013

Empire State Development

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I. INTRODUCTION

New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), the State’s economic development agency, is seeking proposals for the acquisition and redevelopment (the “Project”) of the former Arthur Kill Correctional Facility, located at 2911 Arthur Kill Road in the Rossville section of Staten Island, New York (“the Site”). See Attachment A for a map of the Site.

The Site is approximately 69 acres of waterfront land along Staten Island’s West Shore. The surrounding properties are utilized for a variety of commercial, recreational, open space and industrial purposes. The Arthur Kill Correctional Facility is owned by the New York State Department of Corrections and Community Supervision (“DOCCS”), a department of the State of New York (“the State”), and was closed in 2011. ESD is acting on behalf of DOCCS and the State for the disposition of the Site.

Each party that submits a response (“Proposal”) to this Request for Proposals (“RFP”) is referred to herein as a “Respondent”, and the Respondent that is conditionally designated through this RFP process is referred to herein as the “Designated Developer”.

Respondents to this RFP may propose any and all non-residential uses. For the purposes of this RFP and the Project, residential uses are considered to include single-family housing, multi-family housing, senior housing, assisted living facilities, and any other housing-related uses. Hotels or other hospitality industry uses are not considered residential uses as defined by this RFP.

II. SITE CONTEXT AND DESCRIPTION

STATEN ISLAND WATERFRONT

Independent of the closure of the Arthur Kill Correctional Facility, the New York City Department of City Planning and NYC Economic Development Corporation (“NYCEDC”) released a land use and transportation report (the “Report”) entitled “*Working West Shore 2030 – Creating Jobs, Improving Infrastructure and Managing Growth*”, in June 2011. This Report and the accompanying “West Shore 2030 Work Plan” are guiding documents, providing a framework for future public and private investment and land use decisions. They are the product of a collaborative effort by the City of New York (the “City” or “NYC”), local civic groups and Staten Island’s elected officials.

The Report provides recommendations for areas where targeted infrastructure improvements can support future job creation. The Site is located within the area identified as the Rossville Waterfront, an area which supports a mix of maritime, light industrial, commercial and destination retail uses. Redevelopment of the Site is an integral part of this effort to spur economic development and potentially forge strong connections to the waterfront and is a unique opportunity to leverage underutilized State assets.

The City of New York owns an adjacent 33 acre site, the Rossville Municipal site (the “Rossville

Municipal Site”). See Part III of this RFP for how the Rossville Municipal Site initiative may be incorporated into Respondents’ Proposal.

SITE OVERVIEW

The Site was acquired by the State in 1967 for mental hygiene purposes but has been used since 1976 as a correctional facility. The New York State Department of Corrections and Community Supervision (“DOCCS”) closed the Site in 2011. The Site is approximately 69 acres and includes 43 buildings. Adjacent to the Site are approximately 12.5 acres of wetlands or lands underwater along the Arthur Kill, and ownership of these lands will be retained by the State and unavailable for disposition by ESD. See Attachment B for a map indicating the 12.5 acre portion.

Respondents should be advised that there are approximately 20 feet of undeveloped mapped roadbed fronting the Site. There are no immediate plans to widen Arthur Kill Road, although the City has expressed an interest in future Road widening.

Location and Transportation

The Site is located along the Arthur Kill on the southwesterly side of Staten Island at 2911 Arthur Kill Road. The Site is bounded on the north by the Arthur Kill, on the south by Arthur Kill Road, on the east by commercial, recreational, and open space uses and on the west by Industrial Loop, a private road with a mix of light and heavy industrial uses. See Attachment A for a map of the Site. The Site is identified as Lot 1, Block 7178 on the NYC Tax Maps and is located in Staten Island Community District #3. On the south side of Arthur Kill Road is the Clay Pit Ponds State Park. The Site is within a ½ mile from Exit 3 of the West Shore Expressway and within 3 ½ miles of the Outerbridge Crossing providing access to New Jersey. Bus service is accessible via Arthur Kill Road.

Zoning

The entire Site is located in an M3 District, which accommodates heavy industrial uses, but also permits light industrial and many commercial uses. The Site is also located within the Special South Richmond Development District (ZR 107-00), a NYC zoning designation, that provides additional rules to guide future development and infrastructure planning on the south shore of Staten Island. Proposed redevelopment scenarios need not be compliant with current zoning requirements. A Proposal that requires any override of municipal laws or regulations, such as zoning requirements, will be considered in light of the Development Goals set forth in Part III of this RFP. All proposed overrides of zoning requirements and other municipal laws and regulations should be specifically identified in the Proposal.

As set forth in greater detail in Part VII, Disposition Process, ESD is required to adopt a General Project Plan (“GPP”) in order to acquire the Site from the State and then convey the Site to the Designated Developer for the Project. If the Designated Developer’s Proposal requests an override of municipal law or regulations, ESD may effect such override by including it in the GPP.

Building and Site Data

The 43 buildings on the Site, most built since 1976, include 8 barracks-style housing units, kitchen/mess hall, administration building, maintenance garage, guard towers, storage

warehouse, infirmary, sewage pumping station and a gymnasium, none of which are eligible for registration with the State Historic Preservation Office. The primary buildings on the Site comprise approximately 341,330 square feet. A large parking lot for 600+ vehicles is located near the entrance to the facility. Outdoor recreational facilities are located in the rear (northerly) end of the grounds. All buildings and mechanical equipment are in good condition and were in use until December 1, 2011. For additional information, please refer to the Arthur Kill Correctional Facility Key Plot Plan attached to this RFP.

Water Distribution System

The Site is served by a buried cast iron water main that enters the Site and is distributed to the buildings on the Site. The system includes all fire hydrants on the Site which provides fire protection to all buildings.

Sanitary Sewer System

The Site is served by underground sanitary sewer piping and manholes located throughout the Site. Also included are several grease traps. Sewage is collected in an equalization tank located on the Site, and is pumped to a New York State Department of Environmental Conservation (“DEC”) permitted wastewater treatment facility via a 2 ½ inch forced main. After adequate treatment, the effluent from the wastewater treatment plant is discharged to drying/filter beds.

Sanitary Sewer Discharge

The Site discharges its sanitary sewage to the City of New York Publically Owned Treatment Works (POTW) for treatment.

Storm Water System

The Site is served by underground storm sewer piping, manholes and area drainage catch basins located throughout the Site. The Site falls under the regulatory requirements of the DEC Municipal Separate Storm Sewer System (MS4,) for storm water management (General Permit #GP02-10-002, MS4 ID #NYR-20A-502). A storm water construction permit remains open for the recent firing range construction project at the Site (DEC Permit #NYR-10M260).

Electrical Distribution

Electric service for the Site is provided by Con Edison. Power is distributed throughout the Site through underground conduits and duct banks. The power is distributed at 4160 volts, three-phase. The main disconnect switchgear is located outside the secured perimeter and is located at the south west corner of the Site parking area. The secondary voltage of the majority of the main buildings is 208 volts, which is converted by a pad mount transformer and distributed to the various areas.

Petroleum Bulk Storage

The Site has ten petroleum bulk storage tanks that are registered with DEC. Four of these tanks are above ground tanks. The underground tanks consist of two 25,000 gallon #2 fuel oil tanks, a 1,000 and 2,000 gallon gasoline and diesel vehicle fueling tank, and a 1,000 and 8,000 gallon generator diesel tank.

Air Permitting

The Site operates under a DEC Air State Facility Permit (#2-6405-00235/02001). Two new chillers and three new powerhouse boilers were recently installed. There is also one 1500kw emergency generator. In addition to these large emissions points, exempt and trivial activity sources of emissions include small combustion sources, storage tanks, exempt generators and maintenance and vocational activities. These emissions sources are registered with the DEC and certain regulatory requirements are mandated.

Range Remediation

The Site has a decommissioned firing range and a recently active firing range with a state of the art lead trap system. The decommissioned firing range had been slated for lead remediation. DOCCS, NYS Office of General Services (“OGS”), and DEC are currently evaluating lead remediation options for the decommissioned firing range.

Ownership and Taxes

The Site is currently owned by the State of New York and is exempt from property taxes. Assuming a private reuse of the Site, property taxes would be assessed by the NYC Department of Finance. More information on NYC property taxes and the NYC Department of Finance can be found at www.nyc.gov/dof.

III. DEVELOPMENT GOALS

ESD invites Respondents to submit Proposals that maximize the financial return to the government and taxpayers through reuse and redevelopment of the Site compatible with the terms of this RFP and with the surrounding current and planned uses of the West Shore of Staten Island and the resurgence of the Rossville community. Respondents are encouraged to achieve any possible cross-site synergies with the ongoing NYCEDC Rossville Municipal Site development project described in Part II of this RFP, for which NYCEDC previously issued a development RFEI. For more information on the Rossville property, please contact Munro Johnson of NYCEDC at (212) 312-3786.

Consistent with the NYC Working West Shore Report, the following uses are encouraged:

- Destination retail;
- Maritime and light-industrial development;
- Commercial recreational; and
- Public recreation and waterfront access, as appropriate, or pedestrian and bicycle connections to surrounding public sites, including Clay Pit Ponds State Park

ESD may consider other uses for the Site in addition to those stated above; however, ESD will not consider any residential uses on the Site. For purposes of this RFP and the Project, residential uses are considered to include single family housing, multi-family housing, senior housing, assisted living facilities, and any other housing-related uses.

As discussed, Proposals do not need to be compliant under existing zoning requirements.

Transaction Structure and Certain Costs

Every submission must provide for acquisition (by quitclaim) of fee to the Site subject to a declaration regarding conformance to the GPP of development at the Site. It is intended that the Site will be conveyed to the Designated Developer at closing, and that the Designated Developer will hold title during development of the Site. ESD may consider alternative transactional structures, and a Respondent may include in its Proposal an additional alternate transaction structure for review.

ESD does not anticipate providing project financing or guarantees of third-party financing. However, other incentives may be available, including through the Economic Transformation Program, which may provide grants for capital purposes and tax credits for projects that create jobs on the Site. For more information on the Economic Transformation Program, please go to: <http://www.esd.ny.gov/BusinessPrograms/EconomicTransformation.html>. In addition, the City of New York offers incentive programs. For more information on City programs go to: <http://www.nycedc.com/service/financing-incentives>

As noted below in this RFP's Part VII, Disposition Process, in order to implement the Project and dispose of the Site, ESD, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements such as: (i) the State Environmental Quality Review Act and its implementing regulations ("SEQRA"); (ii) the State Historic Preservation Act, to the extent applicable; (iii) the State's Coastal Zone Management Policies; (iv) Public Authorities Law; (v) State Finance Law; and (vi) the New York State Urban Development Corporation Act (the "UDC Act"). Such compliance must be completed before disposition of the Site to the Designated Developer for the Project. Please also note that Parts IV and VII of this RFP require that the Designated Developer enter into agreements with ESD and the State that will require the Designated Developer to pay, from the date of its conditional designation:

1. The State's costs for operating, maintaining, and securing the Site until final disposition to the Designated Developer; and
2. ESD's out-of-pocket costs and expenses incurred in connection with the Project and the disposition to the Designated Developer of the Site, including, without limitation, costs and expenses of consultants and legal counsel.

IV. PROPOSAL REQUIREMENTS

The following are the submission requirements for all Proposals responding to this RFP. ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or unresponsive to the RFP requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals for any reason or for no reason, and to proceed (or not proceed) with the development of the Site (either by itself or in conjunction with one or more third-party(ies)) without completing this RFP process.

In evaluating the capabilities of the Respondent, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent, and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP.

The initial Proposals should be not longer than 100 pages of text.

Respondent's financial offer for the Site should assume that it will be sold or leased in as-is condition. Each complete Proposal for the redeveloped Site (the "Project") must contain the following elements:

1. Respondent Description

Each entity submitting a Proposal must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal. In addition, all Respondents must complete and submit the NYS Vendor Responsibility Questionnaire, which can be accessed at: <http://www.osc.state.ny.us/vendrep/>

Each Proposal must include a description of the ownership entity or the development team, including:

- The intended form and structure of the ownership entity and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the ownership entity, showing structure (percentages) of ownership and investment must be included.
- Name, address, phone number and email and of each member of the ownership entity. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
- Background information of the ownership entity, including resumes describing the relevant experience of all principal members. This information must be submitted for every participant in a joint venture and should highlight similar projects (including a project description and approximate dollar value).
- Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
- A copy of the most recent credit report for key members of the ownership entity.
- Addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a real estate venture during the past five (5) years.
- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project in a timely manner.
- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.

2. Project Description

The Project description should include a detailed narrative describing all relevant aspects of the Project and any plans/timing of phasing of the development. The description should include:

- The proposed use.
- Type, bulk and size of each component of the development program (gross and net square footages).
- Description of the proposed uses a list of potential tenants for proposed retail components along with any letters of interest and/or intent from retail

tenants.

- The description should also address how this project will contribute to the revitalization and economic development of the Rossville community.

3. Financial Information

Respondent must submit the following:

- Pro forma cash flows, in hard copy and in Excel format on computer disk for the development and Project operation periods, including details of any as-of-right or discretionary real estate tax, other tax, energy or other governmental benefits assumed in the model. The cash flows should include a section outlining all assumptions on which all calculations were based, including minimum returns sought. This data should extend out to twenty (20) years of operations from stabilization and include all necessary capital investments over time and reserves and debt service payments associated with the financings.
- Construction sources, budget, and uses of funds, including details of equity and financing sources and a break out of all soft and hard costs and development and financing fees. Indicate escalation rates to account for any increases in construction costs in your budget or contingences.
- Permanent sources and uses of funds, including details of equity and financing sources and all development fees and financing fees to be paid.
- Evidence of ability to finance the Project including letters of interest and/or intent from equity sources and lenders.
- Evidence of Designated Developer's commitment to pay, from the date of its conditional designation: (i) the State's costs for operating, maintaining, and securing the Site until final disposition to the Designated Developer; and (ii) ESD's out-of-pocket costs and expenses incurred in connection with the Project and the disposition to the Designated Developer of the Site, including, without limitation, costs and expenses of consultants and legal counsel.
- Evidence of Designated Developer's commitment to pay, at closing on the Site, in addition to the full purchase price for the Site, to ESD an ESD operations fee in amount equal to 6.5% of the Site purchase price (or in the event that ESD has determined to accept an alternative lease based proposal, and amount equal to not less than 6.5% of the value of the lease as determined by ESD).

4. Team Member Qualifications

- Identification and qualifications of each member of the development team, including all persons or entities that will design, develop, or operate the Project, as well as the attorney, engineer, general contractor and other professionals, as appropriate, including leasing and management, who will be involved with this Project.
- A description of similar projects undertaken by the members of the Respondent's team (including a statement of the dollar value of such projects, the project manager's name and key partners, where applicable).
- Availability of each of the principal members of each firm and their availability for commitment to the Project.

5. Site Plan and Architectural Design

- A summary of the proposed building program for the Project at the Site with square footages for each use.
- At a minimum, a set of concept sketches on 8.5” x 11” paper, showing the proposed Project and a set of schematic renderings of the proposed Project showing the principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage.
- A description of the proposed exterior materials and other relevant specifications.
- A description of sustainable building practices that will be incorporated into the project during construction and operation of the improvements.

6. Zoning Calculation

Respondent must submit a floor area ratio (“FAR”) analysis showing all calculations, including proposed use groups and proposed parking. Respondent should identify any requested overrides of existing as of right zoning and other municipal laws and regulations.

7. Development Timeframe

Respondent must submit development timeline (subdivided into phases, if necessary), identifying the estimated length of time to reach key milestones, including: commencement and completion of design; financing; commencement and completion of construction; potential tenants; and operational stabilization.

Any contingencies that may affect this time line should be identified.

8. Purchase Price or Ground Lease Structure

If a **sale** is proposed, the purchase price must be expressed in a fixed, non-contingent dollar amount. The Designated Developer will be required to enter into a Development Agreement that provides the terms of any phasing of the Project and agreements to develop the Site in compliance with the proposed development plan. The purchase price will be paid in full at closing. Transfer of title will be by quit-claim deed (without any representations or warranties) at the closing.

If a **ground lease** is proposed, the following types of rental payments will be considered:

- An initial payment upon execution of the lease;
- A portion of, or full, base rental payments during the construction period.
- A base rent that commences at the completion of construction and is adjusted annually;
- A percentage of gross revenues; and
- A participation in the net proceeds of the sale or refinancing of the Project is encouraged.

The NPV calculation of land rent to ESD including all up-front payments, fixed annual payments, participation in cash flow and proceeds of any sale or refinancing should be provided.

ESD expects fair market value of the land to be achieved from the Present Value of the proposed rents. Consideration will be given to the level of risk associated with the source of each type of rent payment when estimating the associated Present Value.

The term of the ground lease shall be appropriate to permit the acquisition of sufficient financing and investment capital to support the types of uses contemplated by this RFP and approved by ESD. Respondents are required to include specifics regarding the terms, conditions and the initial duration of the ground lease term and any renewal periods.

During the term of the ground lease, the Designated Developer as tenant shall have the right to encumber its interest in the estate by mortgage for the sole purpose of securing financing for construction of the improvements and/or for long-term financing or refinancing of any such improvements. The Designated Developer shall have no right to encumber the fee simple absolute title prior to closing or to any ESD remainder or residual interest in the improvements.

The underlying fee ownership and rental income stream shall not be subordinated.

ESD shall have the right to approve any assignment or transfer of any ground lease and intends to participate in any proceeds from any such assignment or transfer. No assignment or transfer of the lease shall be permitted prior to three years after stabilization. The ground lease shall provide throughout the term of the lease that the Project shall be managed by a qualified person, firm or corporation.

9. Mechanicals, Equipment, Infrastructure

Respondent shall provide an overview of how the principal spaces, systems and building elements would be modified, reused or demolished. Proposal should outline all necessary development, including modifications from current “as-is” condition, and include an estimated schedule, budget and funding sources.

10. Flood Zones

Proposals should identify any flood zone and note how Respondent will meet Federal Emergency Management Agency guidelines as necessary.

V. SELECTION CRITERIA

When evaluating proposals, the following selection criteria may be considered in no order of priority. Proposals may be reviewed by ESD and other State officials. The sale of the Site is subject to approval of the ESD Directors, the Commissioner of General Services, the Public Authorities Control Board, the Comptroller of the State of New York and the New York State Attorney General.

- *Consistency with Development Goals:* Thoughtful and innovative design consistent with the uses stated in this RFP’s Section III “Development Goals.”

- *Consistency with NYC’s “Working West Shore 2030” Report:* The Report is referenced in Part II above. Among other things, the Report encourages increases to infrastructure capacity through: (i) on-site stormwater collection through bioswales or DEP Bluebelt detention ponds; (ii) widening of Arthur Kill Road; (iii) providing vehicular access/cross-access easements between adjacent large properties to accommodate future traffic/development proposals.
- *Economic Impact on West Shore Staten Island:* Projected expenditures, including; construction costs, annual operating costs, and retail spending.
- *Financial Feasibility:* Respondent’s demonstrated financial condition to complete the Project; availability of identifiable funding sources to finance the Project; sufficient revenue to support operating revenues, scheduled payments related to capital costs, reserve fund contributors and debt service.
- *Purchase Price:* Provide a competitive price for the purchase of the Site.
- *Development Team Qualifications:* Experience, development skills, and financial resources necessary to complete a high-quality Project on time and within budget.
- *Employment Impact:* Creation of incremental (construction) and permanent on-site employment and payroll.
- *Environmental Impact:* The incorporation of sustainable building practices and the degree of LEED or Energy Star Certification.
- *Schedule and Timing:* Proven ability to complete the Project in a timely manner.

VI. DEVELOPER DUE DILIGENCE

“As-Is” Condition

Respondents should assume that the Site , including supporting building infrastructure, will be sold “AS IS” and “WHERE IS” without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent’s purpose (*e.g.*, conveyed by quitclaim).

ESD will post information regarding the RFP on the RFP website (<http://www.esd.ny.gov/CorporateInformation/RFPs.html>); such information could include building descriptions, maps, and surveys. A Phase 1 Environmental Site Assessment is available for review upon request to: ArthurKillRFP@esd.ny.gov. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the potential Respondents or to the Respondents.

Respondents must rely on their own research and investigations for all matters, including, costs, title, survey, development, financing, construction, remediation, and renovation.

VII. DISPOSITION PROCESS

The following is a summary description of the disposition process. After a review of the Proposals, ESD intends to conditionally designate one of the Respondents as the Designated Developer. The Designated Developer will enter into a Memorandum of Understanding (“MOU”) with ESD regarding the disposition of the Site and the Project and separate agreements with each of ESD and the State regarding payment by the Designated Developer of expenses as

described at the end of this section. In implementing the Project, including the disposition process, ESD intends to:

- i. conduct a SEQRA compliant environmental review of the Project, including any Coastal Zone Management requirements;
- ii. prepare, in accordance with the UDC Act and in consultation with the Designated Developer, a proposed GPP for the Project that is inspired by the Designated Developer's Proposal;
- iii. present to ESD Directors for adoption for purposes of a public hearing the draft environmental review, the draft GPP, essential transaction contract terms, any required Public Authorities Law findings, any municipal law and regulation overrides, and any other applicable statutory or regulatory requirements;
- iv. give prior notice of and conduct a public hearing in order to receive comments on the proposed GPP and essential contract terms (including the draft environmental review);
- v. review such comments, and either affirm or modify the proposed GPP as a final GPP and authorize proposed transaction;
- vi. present the Project to the Public Authorities Control Board for its approval review;
- vii. prepare, in consultation with the Designated Developer, and record for the Site in the *City Register* a declaration (the "Declaration") regarding conformance to the GPP of the Project's development at the Site, including, as may be applicable, overrides of municipal laws and regulations, permitted uses, bulk and height limits, and similar matters; and
- viii. deliver to the Designated Developer, *at closing*, a quitclaim deed for the Site that is subject to the Declaration.

This process may take approximately twelve months from the commencement of the environmental review, however depending upon the complexity of the Project the duration of that process may vary.

The Respondent identified to become the Designated Developer shall pay all of ESD's out-of-pocket costs and expenses (including, without limitation, costs and expenses of consultants, legal counsel, and appraisers) related to the disposition of the Site and the Project. At the time of and as a pre-requisite to its designation, such Respondent and ESD shall enter into an agreement pursuant to which, among other things: (i) the Respondent shall deposit into an ESD imprest account funds (in an amount that shall be satisfactory to ESD) that shall be held by ESD and used by ESD for payment of such out-of-pocket costs and expenses; (ii) each time that the

balance in the imprest account falls below 50% of the original amount required to be deposited into the account, the Respondent shall promptly make an additional payment into the ESD imprest account so that balance in the account shall be returned to such original amount; and (iii) the amount remaining in the imprest account after all such costs and expenses are paid will be returned to the Respondent.

The State and the Respondent identified to become the Designated Developer shall enter into an agreement that provides as follows. The Designated Developer will fund the State's costs for operating, maintaining, and securing the Site from the date (the "Designation Date") of ESD's conditional designation of the Designated Developer through and including the date of the disposition of the Site to the Designated Developer. This requirement can be filled in either of two ways: (i) commencing from the Designation Date, the Designated Developer shall monthly pay to the State its costs for operation, maintenance, and security of the Site; or (ii) prior to or simultaneously upon the Designation Date, the Respondent shall deposit with the State funds in the amount of \$250,000.00 which shall be held by the State and used by the State solely for payment of the costs of operating, maintaining, and securing the Site for a period of 18 months, and each time that the balance in that account falls below \$125,000, the Designated Developer shall promptly make an additional deposit into the imprest account so that balance in the account shall equal \$250,000. Should additional monies be required to fund the continued costs of operating, maintaining, and securing the Site for a period longer than 18 months, the Designated Developer shall be required to make additional monthly payments until title is transferred. Any amounts remaining in such account after all such costs and expenses are paid will be returned to the Designated Developer.

At closing on the Site, in addition to the full purchase price for the Site, the Designated Developer shall pay to ESD an ESD operations fee in amount equal to 6.5% of such purchase price, or in the event that ESD has determined of accept an alternative lease based proposal, and amount equal to not less than 6.5% of the value of the lease as determined by ESD.

VIII. SUBMISSIONS

Five (5) hard copies and one (1) electronic version of the Proposal identified by "Arthur Kill RFP" on the envelope must be submitted and received by ESD by Noon on July 17, 2013. Such Proposals must be delivered to the following address:

Empire State Development
633 Third Avenue, 37th Floor
New York, NY 10017
Attn: Andrew Moelis

Project Inquiries

ESD will accept written questions via email from prospective Respondents regarding the RFP. Please submit questions to:

ArthurKillRFP@esd.ny.gov

Written questions must include the requestor's name, e-mail address, and the Respondent represented. All written questions must be received by June 3, 2013. A response to all appropriate questions will be posted on the ESD website by June 19, 2013:

<http://www.esd.ny.gov/CorporateInformation/RFPs.html>

Site Visits

Potential Respondents may attend a site tour with ESD staff on May 29, 2013 at 11:00 am. Please email ArthurKillRFP@esd.ny.gov by May 24, 2013, if you plan on participating in the site tour.

IX. PROJECT TIMELINE

- RFP Release: May 21, 2013
- Site Visit: May 29, 2013
- Final Question Due Date: June 3, 2013
- ESD Responds to Questions: June 19, 2013
- RFP Responses Due: Noon EST, July 17, 2013

ESD reserves the right to modify this schedule at its discretion. Notification of changes in connection with this RFP will be made available to all interested parties via ESD's website: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

X. STATEMENT OF LIMITATIONS

1. This RFP, submissions from Respondents to this RFP, and any relationship between ESD and Respondents arising from or connected or related to this RFP, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFP. By responding to this RFP, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFP, the entity acknowledges and accepts ESD's rights as set forth in the RFP, including this Statement of Limitations.
2. The issuance of this RFP and the submission of a response by any firm or the acceptance of such response by ESD does not obligate ESD in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by the ESD and the firm(s) selected by ESD.

ESD reserves the right: (i) to amend, modify, or withdraw this RFP; (ii) to revise any requirements of this RFP; (iii) to require supplemental statements or information from any responding party; (iv) to accept or reject any or all responses thereto; (v) to extend the deadline for submission of responses thereto; (vi) to negotiate or hold discussions with any respondent and to correct deficient responses which do not completely conform to the instructions contained herein; and (vii) to cancel, in whole or part, this RFP, for any reason or for no reason. ESD may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at

the sole cost and expense of each Respondent.

3. All information submitted in response to this RFP is subject to the Freedom of Information Law (FOIL), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person, unless the content of the document falls under a specific exemption to disclosure. If any Respondent wishes to claim that any information submitted in its response to this RFP constitutes a Trade Secret or is otherwise exempt from disclosure under FOIL, such claim must be made at the time of the response, and must be in writing supported by relevant and material arguments.
4. ESD reserves the right, in its sole discretion, without liability, to utilize any or all of the RFP responses, including late responses, in its planning efforts. ESD reserves the right to retain and use all the materials and information, and the ideas, suggestions therein, submitted in response to this RFP (collectively, the "Response Information"), and each Respondent must grant an unconditional and perpetual license without charge to ESD to use any copyright or other legally protected rights in and to the Response Information.
5. This RFP shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a response to the RFP. ESD will not be responsible for any costs incurred by Respondents related to preparing and submitting a response to this RFP, attending oral presentations, or for any other associated costs.
6. To the best of ESD's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of responses. A site inspection will be coordinated to give all Respondents the opportunity to examine existing conditions. Respondents are strongly encouraged to participate.

XI. PROCUREMENT REQUIREMENTS

Required forms for this RFP are described below. Relevant forms must be executed and included in the submission in the same order as listed below:

1. State Finance Law §§139-j and 139-k forms;
2. New York State Vendor Responsibility Questionnaire For-Profit Business Entity;
3. Iran Divestment Act Statement; and
4. Equal Employment Opportunity Policy Statement and MWBE forms

In addition, Responses will be subject to Project Sunlight as described below.

State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential respondents and ESD or other involved governmental entities with respect to this RFP; (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 RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, 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; the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under “RFPs/RFQs”); and periodic updating of such forms during the term of any contract resulting from this RFP. **Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal.** Copies of these forms are available at: http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by prospective respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a prospective respondent is found to have knowingly and willfully violated the State Finance Law provisions, that prospective respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent 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.

The designated contact person for this solicitation is Andrew Moelis, Strategic Planning Associate at ESD, 633 Third Avenue, New York, NY 10017-8109. All comments and questions must be sent to him by email at ArthurKillRFP@esd.ny.gov.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

<http://esd.ny.gov/CorporateInformation/RFPs.html> (under “ESDC Policy Regarding Permissible Contacts under SFL 139”).

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and the sub-consultants complete the forms required above.

Vendor Responsibility

All Respondents to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its

obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Designated Developer, if any, shall include clauses providing that the Designated Developer remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD encourages vendors to register in the State's Vendor Responsibility System (“**VendRep System**”). The VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Respondents are invited to file the required Vendor Responsibility Questionnaire online via the VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the VendRep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company’s trade industry.

Iran Divestment Act

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. No Proposal that fails to certify compliance with this requirement may be accepted as responsive.

MWBE Goals

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and

women-owned business enterprises (“MWBEs”) 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 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, MWBEs, minority group members and women share in the economic opportunities generated by ESD’s participation in projects or initiatives, and/or the use of ESD funds. ESD’s Non-Discrimination and Contractor & Supplier Diversity goals will apply to this initiative.

LEASING OF SITE TO DEVELOPER

The Designated Developer shall be required to use its Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve the participation of certified Minority Business Enterprises (“MBE”) totaling 13% and Women Business Enterprise (“WBE”) totaling 10% of the total value of the Project. The overall MWBE participation goal for the Project shall be no less than 23% of the total value of Project.

A copy of each Respondent’s completed Equal Employment Opportunity Policy Statement (Form OCSD-1), anticipated Staffing Plan (Form OCSD-2) and MWBE Utilization Plan (Form OCSD-3) shall be included as part of the response to this RFP.

If not included herewith, the forms may also be requested from ESD’s Office of Contractor & Supplier Diversity (“OCSD”) at OCSD@ESD.NY.GOV.

Only the prime consultant shall complete these forms. In the Utilization Plan (Form OCSD-3) the prime consultant must list all of the sub-contractors and sub-consultants it proposes to use in achieving the MWBE goals. OCSD is available to assist you in identifying New York State certified MWBEs that can provide goods and services in connection with this contract. If you require MWBE listings or have other questions relating to MWBE requirements herein, please contact the OCSD with your inquiries and comments at OCSD@ESD.NY.GOV. Be sure to include all relevant contact information for your company and details pertaining to this project.

SALE TO DEVELOPER

In the event the Designated Developer purchases the Site, the Designated Developer shall commit to ESD’s policy of Non-Discrimination and is encouraged to meet the Leasing of Grounds MWBE project goals as outlined above. Favorable consideration shall be given to Proposals that include plans to achieve the above-mentioned MWBE participation goals in the development of the Project.

Project Sunlight

Under the Public Integrity Reform Act of 2011, “appearances” (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a

state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract for real property (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

XII. TAX LAW REQUIREMENTS

Certification Under 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 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. **To comply with STL 5-a, all Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA, or an affidavit that the Respondent is not required to be registered with the State Department of Taxation and Finance. A copy of the ST-220-CA form and affidavit is accessible at the Required Forms for Vendors link at the ESD web site: labeled “Schedule A- Conditions Applicable to the Corporation’s Agreements for Materials and Services (includes ST220 and all other required forms) at <http://esd.ny.gov/CorporateInformation/RFPs.html>**

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. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

XIII. INSURANCE REQUIREMENTS

The Designated Developer will be expected to comply with ESD’s insurance requirements, as listed below.

- A. Commercial General Liability insurance - \$2 million per occurrence / \$4 million aggregate.
- B. Auto Liability insurance - \$2 million per occurrence
- C. Excess Umbrella Liability insurance - \$2 million per occurrence / \$10 million aggregate minimum.
- D. Worker’s Compensation & Employer’s Liability insurance at New York State statutory limits.
- E. Disability insurance coverage at New York State statutory limits.

F. The NYS Urban Development Corporation d/b/a Empire State Development and the People of the State of New York, must be named as a Certificate Holder on a primary and non-contributory basis on all of the following policies: Commercial General Liability, Auto Liability, and Excess Liability policies

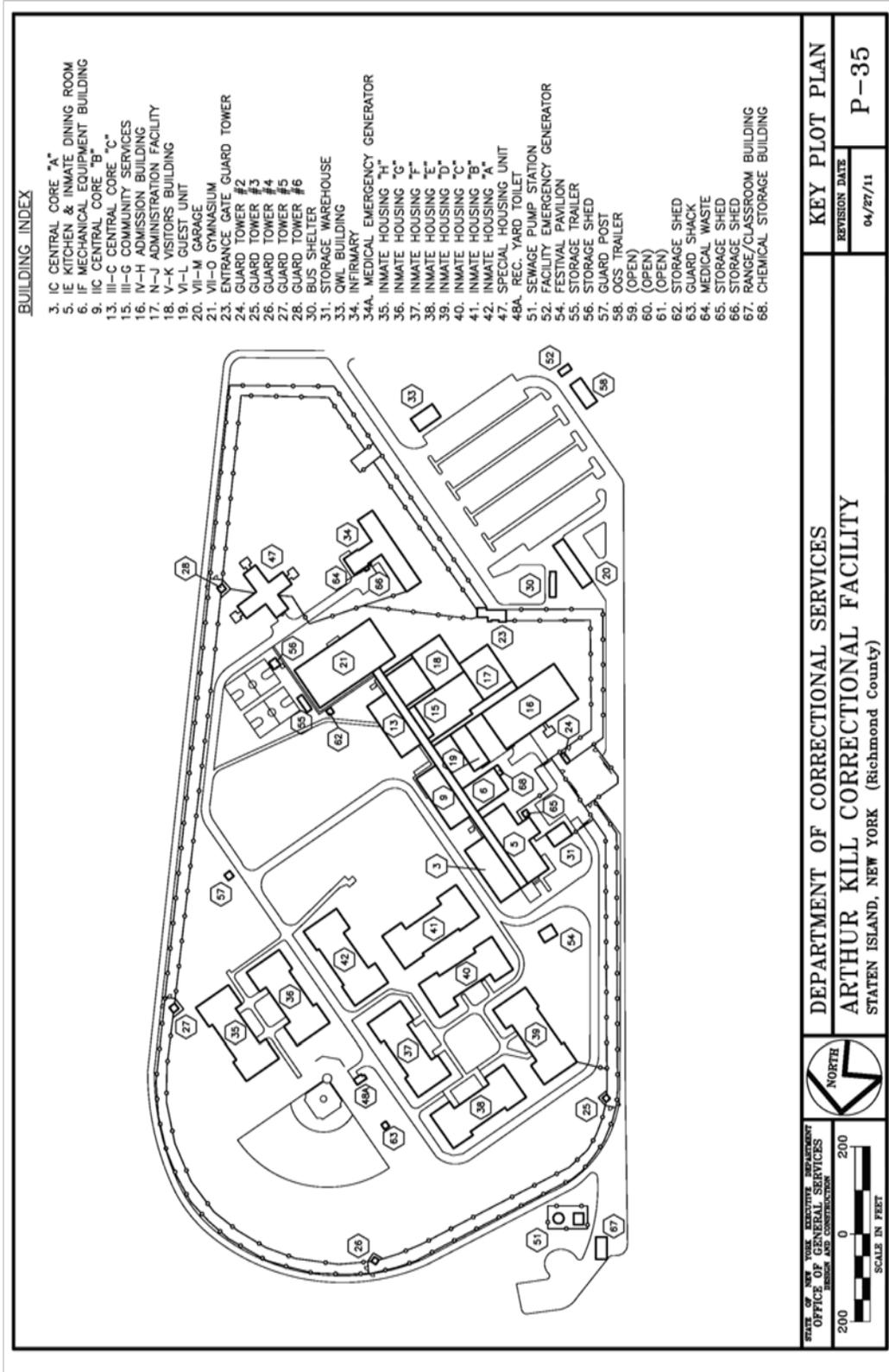
All policies above should include a waiver of subrogation in favor of the NYS UDC d/b/a ESD and the People of the State of New York.

General Provisions

ESD reserves the right to reject any or all proposals submitted if such election is deemed to be in the best interest of ESD. ESD assumes no obligation, no responsibility and no liability for costs incurred by respondents prior to the issuance of a contract. Any contract issued to a pre-qualified consultant will include the provisions of the attached Schedule A.

ATTACHMENT A

SITE KEY PLOT PLAN



ATTACHMENT B

WETLANDS MAP

