



## **BELMONT PARK SITES A & B: REDEVELOPMENT**

**RELEASE DATE: September 5, 2012**  
**SUBMISSION DATE: October 17, 2012**

**Empire State** Development

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## **I. INTRODUCTION**

New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) is seeking Proposals for the development of Belmont Park Sites A and B through a long-term ground lease or sale of the property to a qualified developer. Site A is located on the northeast corner of Hempstead Turnpike and Cross Island Parkway, and Site B is located on the southeast corner of Hempstead Turnpike and Cross Island Parkway, in Elmont, New York, (“the Sites” or “Site A” and “Site B”).

Site A contains a total of approximately 8 acres. It is adjacent to the western end of the Belmont Park clubhouse and is bordered to the west by the Belmont Park spur of the Long Island Railroad, with five tracks and four platforms. Development of Site A is limited to hotel, resort and spa facilities; or any other use that is complementary to horse racing and pari-mutuel wagering such as certain restaurants, lounges, supporting retail, and perhaps educational or institutional uses.

Site B contains a total of approximately 28 acres. The properties surrounding the eastern side of Site B are single-family residences, and generally street-front retail, gasoline service stations and automobile repair shops along Hempstead Turnpike. Development of Site B could include a mix of retail, entertainment, a hotel, or professional office space, and must include active or passive recreational space along the southern portion of the Site.

Residential development, including senior housing and assisted living facilities and similar uses, will not be permitted on either Site.

Each party submitting a response to this Request for Proposals (“RFP”) is referred to herein as a “Respondent” and the Respondent that is ultimately conditionally designated through this RFP process is referred to herein as the “Selected Developer.” The Selected Developer will plan, finance, build and operate a first-class, mixed-use development on the Sites.

## **II. SITE CONTEXT AND DESCRIPTION**

### THE VISION PLAN

In June, 2008, the hamlet of Elmont, located within the Town of Hempstead, issued a vision plan for the community entitled “Elmont Community Vision Plan” (the “Vision Plan”). It can be found at <http://www.elmontcoalition.org/index.php/vision-plan.html>. This guiding document provides insight into the current conditions in the area, the proposed Vision for the local area (including goals and objectives), details on how the plan will be implemented, and a description of the public process that created the plan. The plan contemplates uses for the Sites that could include the uses suggested in this RFP.

### BELMONT PARK REDEVELOPMENT STUDY

In late 2008 ESD retained FXFowle to assist in preparing a redevelopment study for Sites A and B that can be found at [http://esd.ny.gov/Subsidiaries\\_Projects/BelmontFinalReport.html](http://esd.ny.gov/Subsidiaries_Projects/BelmontFinalReport.html). This study illustrates potential development locations on the Sites and contemplates a variety of uses. It also provides the feedback from interviews with local stakeholders that may be informative. Although video lottery terminal (“VLT”) gaming facilities and senior housing facilities uses are considered in the FXFowle study, such uses will neither be considered for nor allowed on the Sites. Other uses contemplated in the FXFowle study included hotel, lifestyle retail, big box retail, and sports facility uses.

### **Location and Transportation**

Located in the hamlet of Elmont, Town of Hempstead, Nassau County, New York, both Sites are currently used as overflow surface parking facilities for Belmont Park, a major thoroughbred racing facility.

The Sites are adjacent to the Cross Island Parkway, a six-lane limited access highway that extends north from the intersection of the Southern State and Belt Parkways near Valley Stream to its intersection with the Whitestone Expressway near College Point, Queens. In the vicinity of the subject property the Cross Island runs along the Nassau-Queens border. This important artery provides access to the Belt, Southern State, and Grand Central Parkways, the Long Island Expressway (I-495) and the Throgs Neck Bridge, and is restricted to non-commercial vehicles only. There are 3 exits to access the Sites from the Cross Island from the south; one exit from the north.

The Sites are bisected by Hempstead Turnpike, a four- to six-lane local road that is a major commercial corridor. Development near the Sites is characterized by neighborhood and community shopping centers and free-standing commercial buildings to the east; and small single-family homes transitioning into street-level retail in small mixed-use buildings to the west. Average household incomes within a 4- and 8-mile radius of the Sites are in excess of \$87,000 and median household incomes are in excess of \$69,000 and \$66,000, respectively.

There are no significant concentrations of Class A or B office space in the vicinity of the Subject Property. The only hotels in the area are limited-service properties located along Jericho Turnpike, a major commercial corridor located north of the Sites.

Development on either Site would likely be visible to traffic along both Hempstead Turnpike and the Cross Island Parkway, which will benefit any of the commercial uses under consideration. Traffic counts are between 30,000 and 45,000 per day on Hempstead Turnpike and between 125,000 and 140,000 on the Cross Island Parkway.

Although retail is the dominant use along Hempstead Turnpike, land to the south, east and west of the Sites contains single-family residences in the Elmont and Queens Village communities, with a few smaller apartment buildings and two- and three-family homes. Belmont Park is located north of the Sites, and is one of the largest properties in the immediate vicinity of the Sites. Belmont Park is a major thoroughbred horse-racing facility that first

opened in 1905 but was completely redeveloped in 1964-1968. The new Grandstand is one the largest in thoroughbred racing, with seating for 33,000 and a total capacity of over 100,000. The attendance record for the facility is 120,139 at the Belmont Stakes, during Smarty Jones' failed Triple Crown attempt in 2004. Belmont Stakes attendance has recently been between 60,000 and 70,000.

Races are run at Belmont from May through July (the "Spring/Summer Meet"), and again from September through October (the "Autumn Meet"). During July and August and from November through April (a period of eight months in total), there are no races at the track.

Site A is directly adjacent to the Belmont Park station of the Long Island Rail Road ("LIRR"), located on a spur off of the Hempstead Branch. The station is accessed via a pedestrian bridge. LIRR service is available from Wednesdays through Sundays only during the Meets, with between two and four trains operating per day. All other times of year there is no service to the site.

Two other LIRR stations, Queens Village and Bellerose, are within 0.5 and 1 mile of the Sites, respectively, and feature direct service to Jamaica and Atlantic Terminal in Brooklyn. Access to Penn Station in Manhattan usually requires a transfer in Jamaica, and takes approximately 35 minutes during rush hours.

### **Zoning**

Currently, both Sites are zoned for residential use. However, the Elmont Community Vision Plan proposed the creation of a new mixed use zone to encourage development on the Sites that could include the uses suggested in this RFP. This special use zone has not been implemented and the current zoning of the Sites is B Residence. See attached maps, as provided by the Town of Hempstead Planning Department.

### **Building and Site Data**

Both Sites A and B are currently improved with overflow surface parking lots for Belmont Park. The sites are available in their as-is condition.

### **Ownership and Taxes**

The Sites are currently owned by the State of New York acting through the Franchise Oversight Board ("FOB"). They are encumbered by a long-term lease to the New York Racing Association ("NYRA") (the "Ground Lease"). However, New York State has the option to terminate the Ground Lease for Sites A and B for the purpose of sale or lease of those Sites to the Selected Developer.

The Ground Lease and accompanying Deed Indenture with NYRA place limitations on the use and development of Sites A and B even after termination (See attached exhibits). The Selected Developer, with support from ESD as needed, would be responsible for subdividing the Sites from the larger Belmont Park parcel in order to create separate taxable parcels. Assuming a

private reuse of the Site, property taxes would be assessed by the Nassau County Assessor's Office. More information on Nassau County property taxes can be found at <http://www.nassaucountyny.gov/agencies/Assessor/index.html>.

### **Environmental Conditions**

The Selected Developer is responsible for conducting all due diligence investigations such as environmental site assessments, including sampling and testing of the soil, sediments and ground water (if any). No representation or warranty is made or shall be given by ESD, FOB, NYRA, the State of New York or any other entity as to any environmental condition at, or under the Sites, all of which are offered as is, where is (see also Section VI below). The term "environmental condition" as used herein includes but is not limited to any hazardous and/or toxic substance as defined in any State or Federal law, rule or regulation, solid waste, petroleum and/or petroleum by-products, endangered species of fauna or flora, archeological feature or artifact or any other matter or site condition which may affect the development of the Sites.

### **Public Approval Process**

The disposition and development of the Sites will be subject to all applicable rules and regulations including, but not limited to, the State Environmental Quality Review Act (SEQRA) and the Public Authorities Accountability Act. In addition, any development would be subject to unanimous approval by the FOB and approval by the ESD Directors, Commissioner of General Services, Public Authorities Control Board, the Comptroller of the State of New York, and the New York State Attorney General. The Selected Developer will be responsible for all costs associated with complying with any such required reviews and procedures.

ESD will establish an imprest account that shall be funded by the Selected Developer and used by ESD to pay such costs incurred by ESD, FOB, and the State of New York (including the costs and expenses of legal counsel). The account shall be initially funded by the Selected Developer at the time of its conditional designation by ESD in the amount of one million dollars (\$1,000,000) and thereafter the Selected Developer shall, promptly after notice from ESD, pay to ESD such funds necessary in order to replenish the account and maintain the funding in the account at one million dollars. After conclusion of the transaction, any amount remaining in the imprest account and not required to pay such costs will be returned to the Selected Developer.

### **III. DEVELOPMENT OBJECTIVES**

While the ESD prefers Proposals from a master developer for both Sites, it will consider Proposals that address the development of only one of the Sites. The development of the Sites can be phased over an acceptable timeframe. ESD will consider offers for acquisition of the fee simple title to the Sites or for a long-term ground lease.

The following are development objectives for each of the Sites.

**Site A: - Lodging Facility and Complementary Uses**

Site A uses may include lodging, resort and spa facilities or any other use (other than those uses expressly excluded in this RFP) that is complementary to horse racing and pari-mutuel wagering.

**Site B: - Mixed-Use Including Retail and Recreation**

Site B Proposals may include a mix of uses (other than those uses expressly excluded in this RFP), including (but not limited to):

- Retail;
- Lodging facility;
- Professional office space; and
- Institutional, or educational

Passive or active recreational use is required on the southern portion of Site B. Recreational uses may include a park, sports fields, indoor recreation facility, arena or stadium. Any on-going maintenance or management associated with the recreational facility shall be the responsibility of the Selected Developer.

A landscaped buffer between the commercial uses on Site B and the single-family housing to the east and south is required. Maintenance of the landscaped buffer will be the sole responsibility of the Selected Developer.

Neither residential uses (including senior housing and assisted living uses) nor gaming facility uses will be considered for either of the Sites.

Under the terms of the Ground Lease, overflow parking must be made available on the Sites for the running of the Belmont Stakes and the Breeder's Cup.

ESD does not anticipate providing project financing or Government guarantees of third-party financing.

**IV. PROPOSAL REQUIREMENTS**

The following are the submission requirements for all proposals to this RFP. ESD and FOB reserve the right, each in its sole discretion, to reject any proposal that is deemed incomplete or unresponsive to the RFP requirements. ESD and FOB also reserve the right, each 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(s) (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 and FOB may utilize any and all information available to them (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 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. 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.
- A statement addressing whether any participating team members have been involved in any litigation or legal dispute regarding a real estate venture during the past five years.

### **3. 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 on Sites A and B. The description should include:

- The proposed uses for Sites A and B
- Type and size of each component of the development program (gross and net square footages).
- Description of each of the proposed uses (such as type of hotel(s)/lodging including flag and management companies, types of retail/office tenants), a list of potential tenants for the proposed retail components along with any letters of interest and/or intent from retail tenants and hotel flag/management companies.
- Description of the types of recreation facilities, passive or active. For recreational uses, please provide a description of the facilities (indoor or outdoor), and intended management/operation of the facility. For passive recreational uses, please describe how any publicly accessible spaces will be maintained.
- The description should also address how this project will contribute to the revitalization of the Elmont Community.

### **4. Site Plan and Architectural Design**

- A summary of the proposed building program for each 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.

### **5. Zoning Calculation**

Respondent must submit a preliminary zoning analysis showing all calculations,

including proposed use groups, required and proposed parking. Respondent should identify all necessary zoning changes, required permits and authorizations.

#### **6. Development Timeframe**

Respondent must submit an overview of the development timeframe (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; and operational stabilization for each component of the development program.

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

#### **7. 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 for each use, 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 ten (10) years of operations from stabilization and include all necessary capital investments over time and reserves and debt service payments associated with the financings. The cost of maintenance and (if necessary) management of any recreational uses must be included in the pro forma. If an institution or educational entity is developing for their own use, they are exempt from this requirement but must show evidence of capability of paying the proposed sale price or lease payments within the timeframe proposed, as well as having the capacity for construction and long term operation.
- Construction budget estimate, including a breakdown of all hard and soft costs as well as financing costs. Indicate escalation rates to account for any increases in construction costs or contingencies in the budget. Make sure that a specific cost for the recreation area is included in any phases that are applicable.
- Sources and uses of funds, including details of equity and financing sources during construction as well as permanent sources and uses of funds.
- Provide any potential sources of financing or equity with letters of interest, if available.
- Upon selection, Respondents must be prepared to provide more detailed information concerning the sources of financing and equity to ESD and the certainty of their commitments to the Project.

#### **8. Purchase Price or Ground Lease Structure**

ESD will consider either a sale of the Sites or a long-term ground lease. In either case, a non-refundable good-faith payment of a minimum of \$150,000 shall be made to ESD upon signing of a Development Agreement by the Selected Developer.

If a **sale** is proposed, the purchase price must be expressed in a fixed, non-contingent dollar amount. The Selected 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 property in compliance with the proposed development plan. The purchase price will be paid in full at closing. ESD shall transfer such title as it may have 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 of a minimum \$250,000 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 (for any hotel/lodging uses proposed)
- 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 Selected Developer 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 Selected Developer shall have no right to encumber the fee simple absolute title of ESD or to its remainder or residual interest in the improvements.

ESD's 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. M/WBE 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 GROUNDS TO DEVELOPER

The selected 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 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](mailto: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 MWBE goal. 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](mailto: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 ESD elects to sell the development site, the selected 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 project sites.

## **V. SELECTION CRITERIA**

When evaluating proposals, the following selection criteria will be considered in no order of priority. Proposals may be reviewed by ESD, FOB and local elected officials. As noted above, the sale or lease of the Sites is subject to unanimous approval of the FOB and approval of the ESD Directors, Commissioner of General Services, Public Authorities Control Board, the Comptroller of the State of New York, and the New York State Attorney General.

1. Experience, financial capabilities and qualifications of the ownership entity in developing, financing, leasing, operating and managing projects of similar size and nature.
2. Demonstrated experience of the development team members in the design, engineering, construction, management of projects similar in size, complexity, and quality level.
3. The proposed development concept's quality, design, mix of uses, and coherence with the Vision Plan; the appeal to neighboring community members and other stakeholders; and the extent to which a proposed development for Site A is complementary to horse racing.
4. The speed and efficiency with which the Respondent will be able to complete development, financing, construction and lease-up of the Project. This includes the ability of the Respondent to obtain commitments from both retail tenants and hotel management companies, as appropriate.
5. The proposed financial terms and financial benefits to New York State, as well as the financial feasibility of the Project.
6. The incorporation of sustainable building practices and the degree of LEED or Energy Star Certification.
7. The scope and character of participation in the Project by certified M/WBEs in both equity, construction and jobs created.

## **VI. DEVELOPER DUE DILIGENCE**

### **“As-Is” Condition**

Respondents should assume that the Sites, including any and all infrastructure, will be leased or 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.

Respondents, though, must rely solely on their own independent investigation, inspection, research, analysis and conclusions for all development, financing, construction and renovation costs and all other matters and shall not rely on the information provided in connection with this RFP.

## **VII. DISPOSITION PROCESS/GROUND LEASE NEGOTIATIONS**

After a review of the Proposals, ESD intends to conditionally designate the Selected Developer in order to enter into a contract of sale or long-term ground lease with ESD. An alternate developer will be selected in the event an agreement cannot be reached with the Selected Developer in a timely manner. The sale or lease of the Sites will be subject to the property disposition rules of the Public Authorities Accountability Act and to final unanimous approval by the FOB.

## **VIII. PROPOSAL PROCEDURE**

Five (5) hard copies and one (1) electronic version of the Proposal identified by “Belmont Park Sites A and B RFP” on the envelope must be submitted and received by ESD by Wednesday, October 17, 2012 at 2:00 pm. Such Proposals must be delivered to the following address:

Empire State Development  
633 Third Avenue, 37<sup>th</sup> 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:

BelmontParkRFP@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 October 1, 2012. A response to all appropriate questions will be posted on the ESD website:

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

## Site Visits

Potential Respondents may attend a site tour and Q&A session with ESD staff on September 27, 2012 at 11:00 am. Please email BelmontParkRFP@esd.ny.gov by September 24, 2012, if you plan on participating in the site tour.

## IX. PROJECT TIMELINE

RFP Release:	September 5, 2012
Site Visit:	September 27, 2012
Final Question Due Date:	October 1, 2012
ESD Responds to Questions:	October 5, 2012
RFP Proposals Due:	October 17, 2012

Upon conditionally designating the Selected Developer (which will require unanimous approval by the FOB), ESD, FOB and the Selected Developer will have a 45-day exclusivity period within which to negotiate the terms of a Developer's Agreement consistent with the terms of this RFP. **ESD and FOB may agree to extend this exclusivity period at their sole and absolute discretion.** Upon the completion of the Developer's Agreement, the Selected Developer will have 60 days to negotiate the terms of and execute the Ground Lease or Agreement of Sale.

## 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 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 the 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, if ESD deems it in its best interest to do so. 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 the responding party.

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. In addition, all Proposals may be discussed at meetings of the FOB and the ESD Directors, which meetings are subject to the Open Meetings Law.
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.
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; however, the Respondent may not rely on this information. Respondents must undertake appropriate investigation in preparation of responses and all other matters. A site inspection will be scheduled and posted on the RFP website. Respondents are strongly encouraged to participate.

## **XI. PROCUREMENT AND TAX LAW REQUIREMENTS**

### **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: <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.

#### **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 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 (x) 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 above, at the email address provided above; (y) 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 (each form is accessible at the Required Forms for Vendors link at the ESD web site under “RFPs/RFQs”); and (z) 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 of and Agreement pursuant to State Finance Law as part of their submittal.**

The Procurement Requirements also require ESD staff (except the designated Contact Person, Andrew Moelis) to obtain and report certain information when contacted by prospective Respondents during the restricted period. If a prospective Respondent is found to have knowingly and willfully violated the State Finance Law provisions, that 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.

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 “ESD Policy Regarding Permissible Contacts under SFL 139”).

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

## **Vendor 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. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [www.osc.state.ny.us/vendrep](http://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 OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us).

Vendors 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](http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry. The ESD Board of Directors must make a determination of the responsibility of the successful bidder(s) and make all such information publicly available in accordance with applicable law.

## **XII. INSURANCE REQUIREMENTS**

- A. Commercial General Liability insurance - \$2 million per occurrence / \$5 million aggregate
- B. Auto Liability insurance - \$2 million per occurrence
- C. Excess Umbrella Liability insurance - \$2 million per occurrence / \$10 million aggregate minimum
- D. Professional Liability insurance - \$1 to \$3 million minimum (preferably \$5 million)
- E. Worker's Compensation & Employer's Liability insurance at NYS statutory limits
- F. Disability insurance coverage at NYS statutory limits
- G. The NYS Urban Development Corporation (d/b/a Empire State Development) and the People of the State of New York, acting by and through the State Franchise Oversight Board ("FOB"), as their interests may appear, must be named as an "additional insured" on a primary and non-contributory basis on all of the following policies: Commercial General Liability, Auto Liability, and Excess Liability policies
- H. All policies above should include a waiver of subrogation in favor of the NYS UDC (d/b/a Empire State Development) and the People of the State of New York acting by and through the State Franchise Oversight Board
- I. The Selected Developer will also be required to defend, indemnify and hold harmless ESD, the State of NY and FOB ('indemnities') against any and all claims and liabilities due to the actions and activities of the Selected Developer, except only for those arising from negligence or misconduct of the indemnities