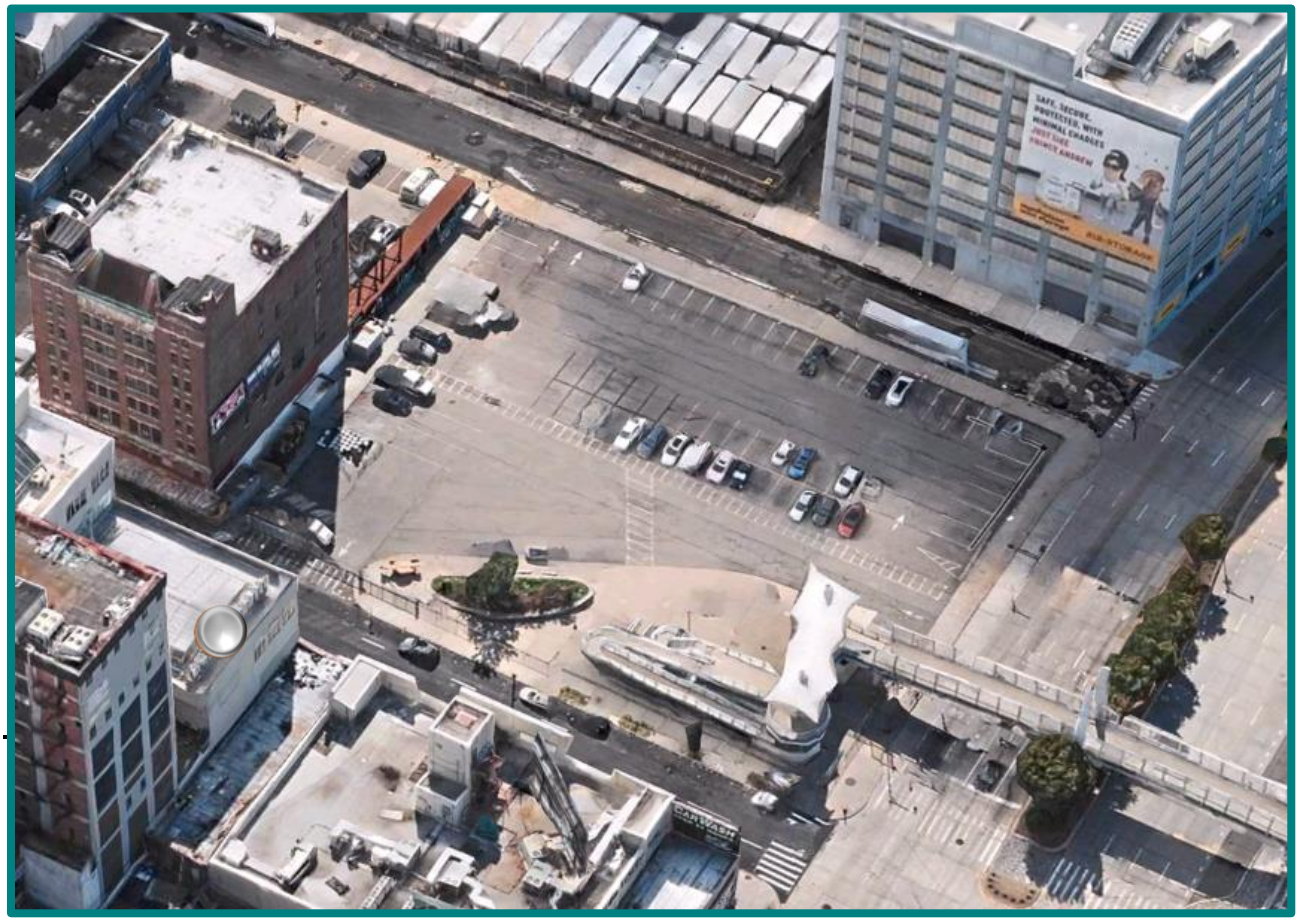
NEW YORK STATE OF OPPORTUNITY. | Empire State Development

REQUEST FOR PROPOSALS TO DEVELOP

Manhattan Block 1093. Lot 9

621 West 45th Street, New York, NY, 10036



Issued: February 27th, 2025

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below.

Designated Contacts for this Procurement:

Primary Contact: Jordan Kaplan
Secondary Contact: Julia Borukhov

All contacts/inquiries shall be made by email to the following address:
IntrepidLot2024@esd.ny.gov

This RFP is posted on the Empire State Development website:
https://esd.ny.gov/doing-business-ny/requests-proposals

Applications must be sent to the designated Dropbox:
https://www.dropbox.com/request/hNcNPRnh3IXe6P2lSHnj

Submission Deadline: May 15th, 2025 by 2:00 PM EST

Late Submissions will not be taken into consideration

I. Introduction 4
II. RFP Timeline 4
III. Site Context and Description 5
A. Site 5
B. Zoning and Land Use 7
C. Intrepid Parking Agreement 8
D. Existing Structures and Utilities 9
E. Environmental Conditions and Review Process 9
F. Ownership and Taxes 10
IV. Redeveloping Underutilized Site for Housing (RUSH) 11
V. Development Objectives and Requirements 11
G. Development Objectives 11
H. Development Program 12
I. Transaction Structure 13
J. Disposition and Legal and Regulatory Requirements and Approvals 15
K. Cost Agreement, Imprest Account and Fees 16
L. MWBE and SDVOB Subcontractor Interest 17
VI. Required Proposal Contents 17
M. Project Description 17
N. Site Plan and Architectural Design 18
O. Community Engagement Plan 19
P. Local Hiring Plan 19
Q. Financial Proposal 20
R. Development Schedule 21
S. Respondent Description and Qualifications 21
T. Imprest and Cost Agreement 23
VII. SELECTION CRITERIA 24
VIII. DEVELOPER DUE DILIGENCE 26
IX. PROPOSAL SUBMISSION INSTRUCTIONS 27
U. Submission of a Complete Two-Part Proposal 27
V. Questions 28
W. Site Visit 28

X. GENERAL PROVISIONS 29
XI. PROCUREMENT FORMS AND REQUIREMENTS 31
X. Conflicts of Interest 31
Y. State Finance Law Sections 139-j and 139-k forms 32
Z. Vendor Responsibility Questionnaire 33
AA. Iran Divestment Act 34
BB. Executive Order 16 34
CC. Executive Order 177 35
DD. Non-Discrimination and Contractor & Supplier Diversity Requirements 35
EE. Encouraging the Use of NYS Businesses in Contract Performance Form 41
FF. Certification under State Tax Law Section 5-a 42
GG. Schedule A 42
HH. Project Sunlight 43
II. Insurance Requirements 43
JJ. W-9 Form 44
XII. APPENDICES 44

I. Introduction

New York State Urban Development Corporation d/b/a Empire State Development, a public authority of the State of New York, ("ESD"), is seeking proposals ("Proposals") from qualified and responsible parties for a project (the proposed "Project") that entails the disposition and redevelopment of state-owned land for residential use, including affordable housing, and associated mixed uses. The Project would be located at 621 West 45th Street (Block 1093, Lot 9) (the "Site"). The Site currently is used for surface parking and comprises the east blockfront of State Route 9A between West 45th Street and West 46th Street in the Hell's Kitchen neighborhood of the Borough of Manhattan, City of New York.

The Site, which has a lot area of 50,584± square feet, is one of the largest undeveloped parcels of vacant land on the far West Side of Midtown Manhattan. The proposed Project offers a unique opportunity to repurpose underutilized property to address housing needs and introduce mixed uses that would support new residents and revitalize and be accessible to the surrounding neighborhood.

Each party that submits a Proposal to this RFP is referred to herein as a "Respondent." A Respondent who is conditionally designated through this RFP process is referred to herein as a "Designated Developer."

II. RFP Timeline

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Release of RFP	February 27th, 2025
Site Tour Date and Location, Deadline for RSVP	March 13th, 2025 for RSVP Tour Date: March 20th, 2025
Deadline for Submission of Questions	March 27th, 2025 by 5:00 PM EST
Deadline for ESD to Respond to Questions	April 10th, 2025
Deadline for Submission	May 15th, 2025 by 2:00 PM EST

Please note, ESD reserves the right to change any of the dates stated in this RFP.

III. Site Context and Description

A. Site

The Site (see Figure 1) is located at 621 West 45th Street, New York, NY (Block 1093, Lot 9) on the easterly side of State Route 9A between West 45th and West 46th Streets. The approximately 50,584 square foot Site is owned in fee by the People of the State of New York, acting by and through its agent, the New York State Department of Transportation ("NYSDOT"). ESD's disposition of the Site to the developer must be in an amount not less than the property's fair market value. See section V. I. for more information on fair market value.

NYSDOT acquired the Site by eminent domain in two phases, in 2000 and 2002, to support reconstruction of State Route 9A (a/k/a 12th Avenue, the West Side Highway, Miller Highway or Joe DiMaggio Highway). The Property is utilized for parking by the Intrepid Sea, Air & Space Museum (the "Museum"), an American military and maritime history museum located at Pier 86 and the westerly side of Route 9A directly across from the Property-and for access to the Hudson River Park The Property is improved with the eastern terminus of a pedestrian bridge over State Route 9A, an asphalt-paved parking lot with a capacity of 14 bus-sized parking spots, an approximately 90 square foot security booth, a concrete paved sidewalk, and a 6-foot security fence with accessory outdoor lighting, drainage gutter and landscaping.

The Site is encumbered by NYSDOT's unrecorded agreement dated October 28, 2002 with the Hudson River Park Trust and the Museum's operator, the Intrepid Museum Foundation (the "Intrepid Parking Agreement," a copy of which is attached hereto as **Appendix A**). The Intrepid Parking Agreement permits the Museum to use and occupy the Property for parking of vehicles affiliated with school trips and other Museum tours and special events and to use and occupy the pedestrian bridge for 24 hour access to the Hudson River Park. Under Article 14 of the Intrepid Parking Agreement, NYSDOT expressly reserves NYSDOT's and the State's right to develop or dispose of the Property, subject to preservation of the Museum's express rights of use provided in the Intrepid Parking Agreement, which include 14 bus-parking spots and pedestrian access to the bridge connecting the site to the Museum. The Intrepid Parking Agreement is coterminous with the Museum's separate lease of Pier 86 from the Hudson River Park Trust, which remains in place through 2051, with renewal options beyond that date.

ESD's disposition of the Site will be subject to the Intrepid Parking Agreement, to all terms and conditions of that agreement, and to the Intrepid Museum Foundation's ongoing right to use the Site for parking and for the existing pedestrian bridge as provided in the Intrepid Parking Agreement. The Intrepid Parking Agreement is further discussed in Section III. C. of this RFP

Figure 1: Local Context

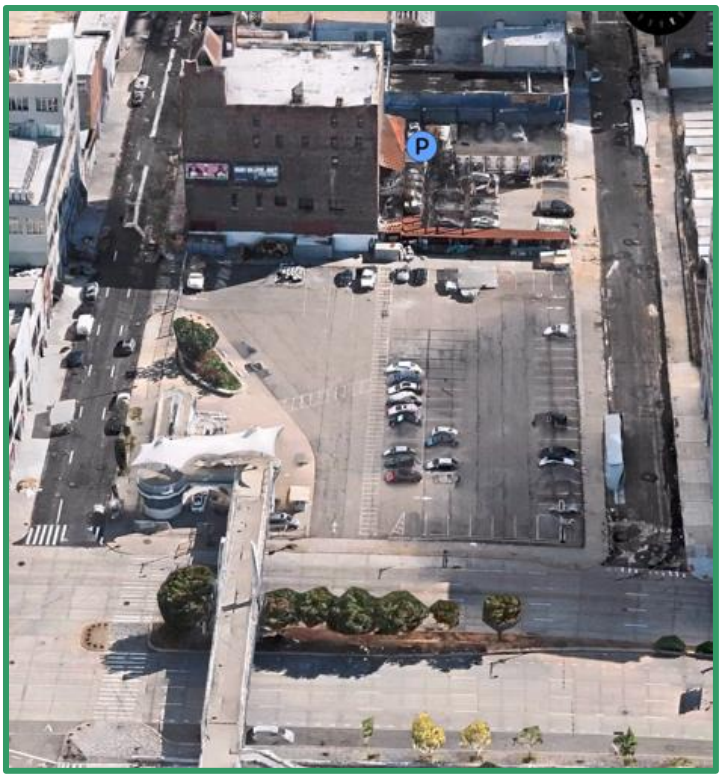


Figure 2: View of Site looking East

B. Zoning and Land Use

The Site is located in an M2-4 Manufacturing Zoning District and the Special Clinton District. Under the New York City Zoning Resolution, M2 districts occupy the middle ground between light and heavy industrial areas. M2-1, M2-2, M2-3 and M2-4 districts are mapped mainly in New York City's older industrial areas along the waterfront.

The Site is moderately accessible to multiple modes of transportation. The nearest transit hub, the 42nd St-Port Authority Bus Terminal, is located nine blocks away from the Site. The Site is also located along the M12 and M50 bus routes.

Additionally, the Site is proximate to the Lincoln Tunnel and Route 9A. The Site is also a short walk from the NY Waterway Ferries at Pier 79 (see Figure 4).

Furthermore, the Site is located directly along the eastern waterfront of Manhattan facing the Hudson River, which is lined by the Hudson River Park – a network of green spaces from West 14th St to West 59th St. The pedestrian bridge over Route 9A connects the Site directly to the Hudson River Park.

More specifically, the Site is located transversely from Pier 84 at Hudson River Park, a large pier on the river featuring greenery, a dog park, a boathouse with programs and kayak rentals, and the Museum.

Proposals to redevelop the Site are anticipated to deviate from as-of-right zoning to utilize the Site more fully and to incorporate residential and other uses that currently are not permitted in M2-4 zoning districts. Respondents should anticipate that ESD will support the Project by considering proposed overrides of City zoning and potentially other local laws that are inconsistent with the proposed goal of redevelopment of the underutilized Site. Such overrides would be implemented under a General Project Plan ("GPP") that would be presented to ESD's Directors for approval in accordance with the New York State Urban Development Corporation Act ("UDC Act").

Accordingly, proposals must include a list of specific zoning overrides necessary to implement the proposed redevelopment of the Site. Proposals are expected to take advantage of the recent legal change that allows projects to exceed 12 floor area ratio ("FAR") FAR for residential, but should not exceed an FAR equivalent of 18 FAR for the Site, inclusive of all uses except parking. Building heights and densities should consider the immediate surrounding neighborhood context and fabric, ranging from the 42nd Street corridor to 49th Street to the north, while minimizing shadow impacts on nearby residential buildings, outdoor recreation spaces, and other sensitive uses. Proposals should incorporate variations in building form and façades to ensure a vibrant and varied streetscape.

Respondents must provide two proposals for consideration (Scenarios A and B as detailed in Section H of this RFP). Both Scenarios envision residential or mixed-use development with a minimum of twenty-five percent and thirty percent affordable units respectively, in accordance with the provisions of the Affordable Neighborhoods for New Yorkers Tax Incentive Program, which is codified in New York State Real Property Tax Law ("RPTL") §485-x and in accordance with the instructions in Section H. Additional uses should reflect the needs of current and future residents in the area; consider commercial and community facility uses that would be compatible with the neighborhood and support other uses proximate to the site; and take into consideration that Manhattan Community Board 4 ("CB4") has expressed a preference for residential use at the Site. All affordable housing units must be located on site. The Designated Developer will be required to enter into a regulatory agreement with New York State Homes and Community Renewal ("HCR") governing the terms of the affordable housing. The Designated Developer will not be eligible for direct government subsidy, such as tax-exempt bonds and low-income housing tax credits.

Any development on the Site will be subject to the New York City Construction Codes, including the General Administrative Provisions, Building Code, Plumbing Code, Mechanical Code, Fuel Gas Code, and Energy Conservation Code. The Site is located in a Coastal Zone, and as such, all development must comply with applicable New York State Coastal Zone Management requirements and policies.

C. Intrepid Parking Agreement

The Site is located directly across the street from the Intrepid Sea, Air & Space Museum (the "Museum") and is encumbered by NYSDOT's agreement with the Hudson River Park Trust and the Museum's operator, the Intrepid Museum Foundation (the "Intrepid Parking Agreement," a copy of which is attached hereto as **Appendix A**). The Intrepid Parking Agreement permits to the Museum the "use and occupancy of the bridge and east side facility, for parking of vehicles affiliated with school trips and other Intrepid tours and special events, not to exceed more than 14 bus size equivalent spaces at any one time, during each of the foregoing period: (i) the regular hours of the Intrepid Museum operation from 8:00 AM to 7:00 PM daily ("Business Hours"); (ii) at all hours during the seven (7) days period which is currently referred to as 'Fleet Week;' and (iii) at such additional hours as the Intrepid may reasonably deem necessary outside of Business Hours in connection with scheduled evening special programming and events at the Intrepid (hereinafter 'Special Event'), not to exceed 150 evenings per year. The Intrepid will not charge or collect any additional or specific parking charge for bus parking or other vehicle use of the east side facility." Under the Intrepid Parking Agreement, NYSDOT specifically reserves all rights for the future development of the east side facility and any other areas owned by the State on the east side of the bridge, subject to the express right of use provided to the Museum under the Intrepid Parking Agreement.

Each Proposal to this RFP must outline a plan for how it will preserve the Museum's rights for parking and use and occupancy of the pedestrian bridge under the Intrepid Parking Agreement during

construction and for the full term of the proposed redevelopment of the Site. Specifically, proposers are expected to submit plans for the provision of parking that accommodates 14 bus parking spots during regular business hours and for Fleet Week and Special Events, in addition to a site circulation plan, and 24-hour public access to the pedestrian bridge. Proposers will also be expected to negotiate and agree to the details of such plans with the parties to the Intrepid Parking Agreement.

D. Existing Structures and Utilities

The Site is currently a surface parking lot and thus the Designated Developer will need to re-establish utility connections. The Designated Developer will be responsible for connecting to any electric, gas, water, steam and/or telecom networks. ESD makes no warranties or representations about the accuracy of Figure 1 of this RFP or the New York City tax map depiction of the Site shown in **Appendix B**. Respondents are advised to conduct their own due diligence regarding site conditions.

E. Environmental Conditions and Review Process

Pursuant to New York's State Environmental Quality Review Act and its implementing regulations ("SEQRA"), an environmental review of the proposed Project must be conducted as part of ESD's approval of the Project. Depending upon the Proposal, an Environmental Assessment or Environmental Impact Statement may be required to evaluate potential environmental impacts of the proposed development, together with any feasible and prudent mitigation measures that may be advisable to eliminate or reduce certain anticipated environmental impacts. Additionally, in consultation with the Federal Highway Administration ("FHWA"), a National Environmental Policy Act ("NEPA") review may be required. For more information on environmental reviews and the disposition process, see Section V (J): Disposition and Approvals.

The Designated Developer will be responsible for conducting all due diligence investigations and remediation, including, but not limited to, environmental site assessments, which include sampling and testing of the soil, sediments, and ground water (if any). No representation or warranty is made nor shall be given by ESD, the State of New York, or any other entity as to any environmental condition at or under the Site, which is offered "AS IS" and "WHERE IS". 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 Site.

According to information made available online by the New York State Department of Environmental Conservation, the Site comprises the northeastern portion of a former manufactured gas plant ("MGP") that was operated by the Consolidated Gas Company from 1877 to 1913. The Site once held two gas holders with associated structures and a purifying house, some remnants of which may still be located under the surface of the Site. MGP operations caused these structures to leak coal tar to the subsurface. The coal tar is a source of groundwater and soil contamination, causing elevated levels of volatile and semi-volatile organic compounds in both the soil and groundwater.

Consolidated Edison Company of New York, Inc. ("Con Ed"), successor in interest to the Consolidated Gas Company, has entered into an Order on Consent and Administrative Settlement with the New York State Department of Environmental Conservation ("NYSDEC") (Index No. CO 0-20180516-519), effective July 23, 2018 (the "Consent Order") to perform the investigation and remediation of MGP-related contamination of the Site. A Notice of Order of the Consent Order was recorded in the Office of the City Register, New York County on September 24, 2018 at City Register File No. 2018092400395001. Investigation and remediation reports and other documents associated with the Consent Order are available online at the following NYSDEC document repositories (DEC Info Locators):

- https://www.dec.ny.gov/data/DecDocs/231109
- https://www.dec.ny.gov/data/DecDocs/V00532

Additional site details, including environmental and health assessment summaries, are available on NYSDEC's Environmental Site Remediation Database (by entering the site ID, 231109) at: https://www.dec.ny.gov/cfmx/extapps/derexternal/index.cfm?pageid=3.

ESD does not certify the accuracy of completeness of the foregoing environmental information and documentation of the Site that has been made publicly available by NYSDEC. As stated above, Respondents are responsible for independently investigating and performing their own due diligence of environmental matters associated with the Site. All development of the Site must be coordinated with Con Ed's ongoing responsibilities for investigation, monitoring and remediation of the Site under the NYSDEC Consent Order and associated NYSDEC requirements.

F. Ownership and Taxes

The Site is currently owned by the State of New York and operated by NYSDOT, and is thus currently exempt from New York City property taxes.

At closing ("Closing"), the Designated Developer will take ownership and possession of the Site without contingencies. The Designated Developer will be responsible for all applicable taxes, including but not limited to New York City and New York State Transfer Taxes due with respect to ESD's conveyance of the Site to the Designated Developer, subject to any exemptions that may be available.

In the event of a sale, the Site will be subject to New York City real property taxes and charges. Property tax exemptions may be available for eligible Projects or Project components. For details of relevant tax exemption programs, Respondents should consult relevant statutes and rules. Proposals should indicate which tax exemption program(s), if any, Respondents plan to utilize. It is the

Designated Developer's responsibility to apply for and meet the requirements of any specific tax benefit program(s). More information on NYC property taxes and the NYC Department of Finance can be found at www.nyc.gov/dof.

IV. Redeveloping Underutilized Site for Housing (RUSH)

As part of the 2024 State of the State and the FY2025 Enacted Budget, Governor Kathy Hochul outlined a vision for addressing New York State's housing crisis to make the State more affordable and livable for all New Yorkers. This groundbreaking and multifaceted plan to build new housing across the State included a $500 million capital fund to develop up to 15,000 new homes on state land through the Redevelopment of Underutilized Sites for Housing initiative (RUSH) after signing an executive order last year requiring all state agencies to examine properties within their control to determine their housing potential.

RUSH funding is available to meaningfully offset the cost to the Designated Developer of meeting the requirements of the Intrepid Parking Agreement. When submitting Proposals, Respondents should clearly note how much RUSH funding is being requested and provide basis for that request, including a breakdown of the construction estimate for the required parking spaces pursuant to the Intrepid Parking Agreement. ESD will evaluate Proposals in part on Respondents' ability to propose approaches that fulfill the Intrepid Parking Agreement while limiting the amount of RUSH Funding requested.

V. Development Objectives and Requirements

G. Development Objectives

The primary development objectives of the Project are to provide housing, including a minimum of 25 percent permanent affordable housing, overall improvement in economic opportunities, and revenue for the State of New York. ESD is seeking Proposals for a high-quality development meeting the following objectives (the "Development Objectives"):

- Provide housing, including permanent affordable housing, as specified in the RFP;
- To accommodate parking and pedestrian bridge requirements in accordance with the Intrepid Parking Agreement;
- To generate revenue for State of New York through the disposition of the Site;
- Create economic opportunities in the State of New York and for New York State and City residents;
- Provide economic benefits to the State of New York in the form of ongoing tax revenues and jobs;
- Incorporate environmentally sustainable, resilient, and energy efficient development and building design that respond directly to the targets stipulated in the Climate Act (Climate Leadership & Community Protection Act); and
- Ensure meaningful participation by certified MBE, WBE, and SDVOB entities.

H. Development Program

Respondents must also include the following development program in any Proposal; failure to comply with the State requirements may result in disqualification of the response from evaluation.

Respondents are instructed to submit proposals that cover two different residential programs:

Scenario A

- Residential component ("Residential Component")
  - A maximum total floor area equivalent to 18.0 FAR.
  - Twenty-five percent of the units must be affordable according to Affordable Neighborhoods for New Yorkers Tax Incentive Program (AKA 485x).
  - Affordable housing units must be permanently affordable.
  - At least 5 percent of the affordable units must be three-bedroom units.
  - To the maximum practicable extent, the design standards (excluding bedroom mix) for the affordable housing Units should be equivalent to the standards set forth in the City of New York's Mandatory Inclusionary Housing Program, as described in Section 23-96 of the Zoning Resolution. However, preference will be given to proposals that exceed the MIH vertical distribution requirements.
  - Affordable Units must have equal access to amenities, entrances, elevators and other resources of the building; Fixtures and finishes must be the same as non-income restricted units.

Scenario B

- Residential component ("Residential Component")
  - A maximum total floor area equivalent to 18.0 FAR.
  - At least twenty-five percent of the units must be affordable according to Affordable Neighborhoods for New Yorkers Tax Incentive Program (AKA 485x), with an additional 5% affordability at 130 percent Area Median Income (AMI). Which equates to 30% of the total units as affordable.
    - Proposals that exceed 30% will receive more points in the scoring category of "Development Program, Design and Community Benefits" (See Section VII).
  - Affordable housing units must be permanently affordable.
  - At least 20 percent of the affordable units must be multi-bedroom units.
    - 15 percent of the affordable units must be 2-bedroom units
    - 5 percent of the affordable units must be 3-bedroom units
  - To the maximum practicable extent, the design standards (excluding bedroom mix) for the affordable housing Units should be equivalent to the standards set forth in the City of New York's Mandatory Inclusionary Housing Program, as described in Section 23-96 of the Zoning Resolution. However, preference will be given to proposals that exceed the MIH vertical distribution requirements.

- Affordable Units must have equal access to amenities, entrances, elevators and other resources of the building; Fixtures and finishes must be the same as non-income restricted units.

Respondents are expected to minimize the financial impact of Scenario B

Please note the only difference between Scenario A and B are in the Residential Program Component.

- All proposals must provide active ground floor uses, maintaining the street wall to the extent feasible, such as lower floor retail/commercial uses and/or community facility uses.
  - Respondents should consider Community Facility uses existing cultural assets in the community, such as non-profit theatres, museums, and other cultural facilities for inclusion in their proposals.
- Commercial office and hotel uses are not permitted as part of the development program.
- Respondents should consider EV charging and air-filtration for bus parking as part of their proposals
- All proposals must fulfill all the requirements of the Intrepid Parking Agreement.

I. Transaction Structure

It is anticipated that ESD will enter into an agreement or multiple agreements with the Designated Developer that will memorialize the parties' rights and responsibilities in connection with the proposed disposition and development of the Site. Because the Site currently is owned by NYSDOT and was acquired by NYSDOT for the reconstruction of Route 9A, a federally assisted highway project, both federal and state requirements must be satisfied in connection with its proposed disposition for non-transportation purposes.

These requirements and the anticipated transaction structure are outlined as follows:

- Consistent with Title 23, Section 710.403(c), of the Code of Federal Regulations ("CFR"), NYSDOT would deem the parcel excess to transportation needs, as the parcel was taken for the purpose of equipment staging during the Route 9A Reconstruction Project and replacement parking, provided that the property remains subject to long term commitments for free bus parking and a pedestrian bridge use under the Intrepid Parking Agreement.

- As authorized by New York State Highway Law § 30(18), NYSDOT would resolve to dispose of the excess parcel "on terms beneficial to the state."

- Under the authority of New York State Public Lands Law § 30-a(1), NYSDOT would deem the Site to be "abandoned" for the purpose for which it was acquired, at which point it

would become "unappropriated lands" whose custody would be transferred from NYSDOT to the New York State Office of General Services ("OGS").

- Pursuant to § 13-a of the New York State Urban Development Corporation Act (codified in NY Unconsolidated Laws § 6263-a), OGS would transfer the Site to ESD and ESD would dispose it to the Designated Developer selected through the RFP process to effectuate the proposed Project.
- ESD's disposition of the Site to the Designated Developer would be made expressly subject to the Intrepid Parking Agreement and all of its terms and conditions.
- ESD's disposition of the Site to the developer must be in an amount no less than the property's fair market value, as supported by independent appraisal secured by ESD. Fair market value shall be determined in a manner consistent with generally accepted appraisal standards, including those set forth in the *Uniform Standards of Professional Appraisal Practice* by the Appraisal Foundation and those established by the Appraisal Institute.
- The full cash consideration for the Project Site must be paid to ESD at Closing. Respondent's financial offer for the Site should assume that the Site, including any and all improvements, buildings and infrastructure, utilities, trade fixtures, machinery and equipment, and personal property at the Site, will be conveyed "AS IS" and "WHERE IS" without any 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 Designated Developer's purposes.
- ESD may consider using some proceeds from the sale of the property for public benefit to the extent permitted by applicable federal and state laws, regulations and policies and subject to any required approvals from FHWA and NYSDOT.

ESD will enter into one or more agreements with the Designated Developer at Closing to implement the disposition of the Site and implementation of Project requirements, including but not limited to a purchase and sale agreement, a quitclaim deed without representations or warranties that is subject to the Intrepid Parking Agreement and a restrictive declaration in favor of ESD, to be recorded against the Site, requiring development and use of the Site to conform to the GPP.

ESD intends to dispose of the site through a sale but reserves the right to request revised Proposals that reflect a long-term ground lease of the Site instead of a sale. In all proposals an upfront payment equivalent to or greater than the appraised value must be made to accommodate the FHWA requirements. ESD reserves the right to make such requests to all Respondents or to a subset of all Respondents as set forth in Section VII: Selection Criteria. Any Respondents still under consideration

may be given the opportunity to revise their Proposals, and any related provisions of the RFP will be amended or deemed amended as necessary.

J. Disposition and Legal and Regulatory Requirements and Approvals

In order to implement the Project and sell or lease the Site, ESD, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements including but not limited to: (i) SEQRA; (ii) Public Authorities Law; (iii) Section 14.09 of the New York State Historic Preservation Act, to the extent applicable; (iv) State Finance Law; (v) the UDC Act; and (vi) the Public Authorities Accountability Act. Such compliance must be completed before conveyance of the Site to the Designated Developer for the Project. ESD may also consult with or otherwise involve other State entities as necessary, including NYSDOT, OGS, and, to review the Proposals and select the Designated Developer.

After a review of the Proposals, ESD intends to conditionally designate one Respondent or Respondent Team as the Designated Developer. The Designated Developer and ESD will sign a non-binding term sheet regarding key aspects of the Project and disposition of the Site, and the Designated Developer will enter into separate agreements with ESD regarding payment by the Designated Developer of costs and expenses as described in Section V, Development Objectives and Requirements. In implementing the Project, including the rezoning and the disposition process, ESD intends to undertake the following steps, however, additional steps may be required to effectuate the disposition process and comply with all relevant law, regulations, and/or approvals:

- Conduct a SEQRA-compliant environmental review of the Project, which may require preparation of either an Environmental Assessment (“EA”) or Environmental Impact Statement (“EIS”);

- Prepare, in accordance with the UDC Act and in consultation with the Designated Developer, a GPP for the Project; and, if a zoning override is proposed, ESD design controls (“Design Guidelines”) that will be utilized in lieu of zoning requirements for the proposed development of the Site;

- Present to ESD’s Directors the GPP for initial adoption and, if applicable, the EA or Draft EIS (“DEIS”) for acceptance; obtain authorization from ESD’s Directors to hold a public hearing and receive public comment on the GPP and, if applicable, the DEIS;

- Give prior notice of and conduct one or more public hearings to present and receive public comments on the GPP and, if applicable, the DEIS; review public comments, received at the hearing and during the public comment period; and respond to them as may be appropriate;

- Prepare a Final EIS ("FEIS") if a DEIS was issued;

- Request and present to the ESD's Directors to affirm or modify the GPP and adopt findings under the UDC Act and SEQRA as necessary and authorize the proposed transactions with the Designated Developer regarding the disposition and development of the Site; and

- If necessary, present the proposed disposition of the Site for Project purposes to the Public Authorities Control Board (PACB) for approval and obtain all necessary approvals from other governmental entities, if necessary, including the Comptroller of the State of New York, the New York State Attorney General, the State Division of Budget, and any other entities if as described above in Section III.C. of this RFP or as otherwise required by law.

K. Cost Agreement, Imprest Account and Fees

The Designated Developer must enter into agreements with ESD that will require the Designated Developer to pay, from the date of its conditional designation:

- ESD's ongoing out-of-pocket costs and expenses incurred in connection with the Project and Site disposition to the Designated Developer, including, costs and expenses of environmental consultants and legal counsel;
- ESD's administrative fee, paid at Closing, for the cost of direct and actual staff time on the project from the time of conditional designation as Designated Developer until certificate of occupancy, at one million dollars ($1,000,000);
- An annual asset management fee as specified by NYS HCR, the amount of which will be determined at time of closing.

Respondents must provide as part of their Proposal a signed letter agreement (the "Cost Agreement") in the form provided in **Appendix C** pursuant to which the Respondent will pay ESD for ESD's reasonable out-of-pocket costs and expenses, including without limitation, those for consultants and legal counsel, incurred by ESD in the event that the Respondent is selected as the Designated Developer. The signed Cost Agreement shall be accompanied by the Respondent's check in the amount of $500,000 ("Cost Agreement Check") payable to "NYS Urban Development Corporation d/b/a Empire State Development". The Cost Agreement Check will not be deposited initially. If the Respondent is selected as the Designated Developer to enter into negotiations with ESD, the Cost Agreement Check will be deposited into an ESD Imprest account ("Imprest Account") for the Designated Developer. If a Respondent is not selected as the Designated Developer, the Cost Agreement Check will be returned to the Respondent.

ESD will draw on the Imprest Account to pay costs related to the Project. The Cost Agreement provides that the Designated Developer will fully replenish the Imprest Account in the amount of $500,000 each time the balance of the Imprest Account is reduced to below $250,000. Following Closing, any amount remaining in the Imprest Account and not required to pay outstanding costs will be returned to the Designated Developer. Instructions for submitting the Cost Agreement Check are provided in Section IX. Proposal Submission Instructions.

L. MWBE and SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Business Enterprises ("MWBE") and Service-Disabled Veteran Owned Businesses ("SDVOB") may request that their firm's contact information be included on a list of firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS certification to: IntrepidLot2024@esd.ny.gov

Nothing prohibits an M/WBE or SDVOB Vendor from proposing as a prime contractor.

VI. Required Proposal Contents

The following must be submitted with all Proposals responding to the RFP. ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete, inconsistent with stated requirements within this RFP, or nonresponsive to the RFP requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals, and to proceed (or not proceed) with the development of the Site without completing this RFP process.

In evaluating the capabilities of the Respondents, 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. ESD further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

In addition to the forms required as described later in Section XI: Procurement Forms and Requirements (the "Administrative Proposal"), each complete Proposal must contain the following elements (the "Technical Proposal"):

TECHNICAL PROPOSAL

M. Project Description

The project description should include a detailed narrative describing all relevant aspects of the Project. Please note that anything provided as part of your description or renderings in your proposal will be assumed by ESD to be an element of your proposal that has been accounted for in the underwriting and is anticipated to be part of the final project. The project description should address:

- Proposed development program, including the specific mix of affordable and market rate housing proposed, and a description of how the Project will advance the Development Objectives set forth in this RFP;
- Type, height, bulk, and size (gross and net square footages) of the development;
- A list of proposed partners or tenants and any letters of credit or intent from potential tenants, including proposed community facilities;
- Total Development Cost, including acquisition fees and costs associated with land acquisition;
- Data and market analysis or studies that support the demand for proposed retail and commercial uses, including residential and non-residential market comparables;
- Estimated number of direct and indirect permanent and construction jobs to be created by the Project;
- A detailed plan on how the Respondent would meet a 30% MWBE goal and a 6% SDVOB goal for the Project pursuant to Executive Law Article 15-A ("Article 15-A") and its implementing regulations; and
- A description of how the proposed development will ensure that all requirements under the Intrepid Parking Agreement will be protected and preserved, including the Intrepid Museum parking and pedestrian bridge requirements.

N. Site Plan and Architectural Design

Each Respondent must include:

- A summary of the proposed building program for the Project with gross and net square footages for each use;
- At a minimum, a set of concept sketches of the proposed Project and a set of schematic renderings of the proposed Project showing the site plan, principal elevations and massing, typical floor plans, streetscape, open space and landscape plans, entry features and signage;
- A description of the proposed architectural character, exterior materials, and other relevant specifications;

- A description and schematic rendering of proposed parking that accommodates 14 bus parking spots, in addition to a circulation plan;

- A comprehensive table describing how the project responds directly to the targets stipulated in the Climate Act; including a description of resiliency and sustainability strategies, floodproofing, and green building practices that will be incorporated in the Project during construction and operation;

- A narrative describing the broader sustainability, energy, and carbon neutrality strategy for the Project, including the proposed types and levels of certifications that best support that strategy (e.g., LEED Gold or higher, etc.). Proposals that contemplate the highest certification levels will be considered by ESD to be more competitive than Proposals that contemplate other lower certification(s) or no certification;

- A stacking chart showing the distribution of Affordable Housing Units;

- A description of the proposed urban design approach given the pedestrian and vehicular interaction required to by the easements described in Section III. C: Intrepid Parking Agreement;

- A narrative describing how the Project will seek to minimize shadow impacts on nearby residential buildings, outdoor recreation spaces and other sensitive uses; and

- A preliminary land use analysis showing all square footage calculations, zoning equivalencies, proposed uses, and proposed parking. Respondents must identify all desired zoning overrides and any required permits and authorizations to effectuate the Project.

O. Community Engagement Plan

Respondents must submit a community engagement plan that details how residents and local stakeholders will be informed of project plans throughout the design and construction process. The Designated Developer will be expected to present their plans at community and stakeholder meetings as needed. This includes, but is not limited to, meetings with adjacent property owners, local civic and chamber organizations, community boards, and local elected officials. At a minimum, the Respondent must be prepared to present details including elevation and site plan renderings, an overview of key project facts (unit count, building height, amenities, community benefits, etc.), and the overall project timeline.

P. Local Hiring Plan

Respondents should include a narrative as part of the Proposal describing their commitment to local hiring, including an explanation of how the Project will create jobs for local residents and a summary of which community organizations the Respondents will partner with to maximize local hiring.

Q. Financial Proposal

All proposals must contain a purchase price that is equal to or greater than the Upset Price as defined in Section V, Transaction Structure. Respondents must provide a high-level term sheet outlining all key deal terms including rental terms, proposed rent abatements, and escalations.

Respondent's Financial Proposal for the Site should assume that the Site, including any and all improvements, infrastructure and equipment at the Site, will be conveyed "AS IS" and "WHERE IS" without any 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 Designated Developer's purpose.

Development proposals may not be contingent on use of City or State of New York subsidy sources (except RUSH as it pertains to the Intrepid Parking Agreement), including tax exempt bond financing and low-income housing tax credits. Proposals that contemplate the use of any City or State financing, capital subsidies or rental subsidies for the Proposal will not be considered.

Proposals should include total Project costs, including all hard costs, soft costs, contingencies, and escalations.

Additionally, ESD will score proposals on both residential program scenarios.

Respondents must submit a ten-year pro-forma ("Pro-Forma") statement, provided in Excel and "live-linked," including:

- A completed Financial Proposal Summary Form (**Appendix D: Financial Proposal Summary Form**) that is included as a sheet in Excel and live linked to the Pro-Forma;
- Statement of assumptions on which all calculations are based;
- Sources and uses of funds;
- Construction budget, including any demolition and remediation costs;
- Operational budgets, including contributions to capital reserve;
- Detailed description of proposed equity investment and construction and permanent financing, including a detailed breakdown of all sources of equity and terms, including required return for equity as well as interest rate and term for financing;
- Detailed narrative of your financial proposal including timing and any conditions related to the offer
- Detailed breakdown of the construction cost estimate for the required parking spaces and circulation space pursuant to the Intrepid Parking Agreement
- Information regarding minimum financial returns sought and all necessary capital investments over time and reserves and debt service payments associated with all financings; and
- Letters of interest and/or intent from lenders and, if applicable, equity investors.

Respondents should include a brief summary and terms that explains at a high level how the Respondent would approach the financing of the Project, including reference to any expected tax abatements or tax credit program equivalents. Proposals should assume income generated from market rate units cross-subsidize affordable units. Respondents should assume no housing capital

subsidy, tax exempt bonds, or low-income housing tax credits will be available for this project and any financial analysis should reflect sources and uses without reference to public subsidies (except RUSH). Similarly, responses should demonstrate financial viability of the project without the assumption that funding for remediation, demolition, or acquisition will be made available, though such assumption does not preclude the possibility of fund availability in the future.

R. Development Schedule

Respondents must submit a development timeline (including phasing, if applicable), 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 the development program. Any contingencies that may affect this timeline should be identified.

S. Respondent Description and Qualifications

Each Respondent must demonstrate sufficient financial resources and professional ability to develop the Site in a manner consistent with its Proposal. To be considered a "Qualifying Organization," Respondent firms or joint ventures of firms ("Respondent Teams") must demonstrate collectively significant experience, expertise, and capacity in:

- Developing and operating residential or mixed-use projects that incorporate affordable housing;
- Equity investments in substantial or ground-up real estate development projects;
- At least two (2) completed high-rise development projects in comparable urban locations the last ten years; and
- At least two (2) projects in the last seven years for which Respondent acted as a developer and/or principal operator of buildings incorporating affordable housing and community space.

For this RFP, up to twenty (20) points (see Section VII: Selection Criteria) will be awarded to Respondent Teams that include one or more New York State or New York City Certified Minority and/or Women-Owned Business Enterprise(s) (each an "MWBE Developer") that will solely or collectively hold at least 20% of the managing ownership interest in the Residential Component of the Project and must receive a commensurate interest in the totality of the economic benefits of the Project, including, but not limited to, all available cash flows and sale/refinancing proceeds. A fee-only arrangement for the minority and/or women owned business(es) will not satisfy this requirement (unless developer fee is the only cashflow available to the Respondent Team under any applicable term sheet(s) used). Projects with lower MWBE ownership percentages will be awarded fewer points in the Quantitative Factors section of the Selection Criteria.

ESD reserves the right to determine whether a Respondent satisfies these requirements based on the experience of the Respondent Team's constituent members. Entities that do not meet the above eligibility criteria (e.g., construction contractors, facility managers and operators, providers of design,

engineering, surveying, and specialty construction or maintenance services; and/or lenders or other capital providers, legal or financial advisors, or other providers of professional services) may participate in a submission as part of a Respondent Team that includes a Qualifying Organization.

Each proposal must also include a description of the Respondent Team including:

Development Team

- A 1-page explanation, with figures and organizational charts, laying out the intended form and structure of the firm, joint venture partnerships, contractors, and subcontractors. Any proposed partnership or joint venture must be clearly explained.
- Respondents must also include a chart or diagram that clearly illustrates the Project Team structure and an accompanying table reflecting the availability and time each member on the Project Team will dedicate to the Project.

Past Projects and Experience

- Experience developing housing: Respondent Team members should describe their previous experience as principal developer.
- Intended General Contractors should also be presented with an explanation of their background and experience.
- A description of the Architect's experience in designing all proposed uses and other experiences that makes the Architect uniquely suited to design and facilitate coordination on the Project.
- Other experience that makes the Respondent Team uniquely suited to plan, develop, and manage the proposed project.

Contact and Financial Information

- Name, address, phone number and email of each member of the Respondent Team. Respondents must also provide their Federal Employer Identification Number ("EIN") and identify a primary contact person.
- Current operating budget and previous three (3) years of audited financials. If available, copies of the interim financial statement for each quarter since the last fiscal year for which audited statements are provided. In addition, any details that describe the financial strength of the Respondent should be provided including but not limited to:
  - Details of any material events that may affect the entity's financial standing since the last annual or interim financial statements provided;
  - Details of any credit rating; and
  - Details of any bankruptcy, insolvency, company creditor arrangement or other insolvency litigation in the last three fiscal years.

References and Past Project Descriptions

- Summaries of comparable projects completed by members of the Respondent Team. For each project, the following information is requested:
- Name of Respondent Team member;
- Project name;
- Current status of project / completion date or anticipated completion date;
- Project description;
- Location;
- Total Development Cost;
- Reference (name, email, telephone number);
- Relevance to RFP; and
- Documentation addressing whether any participating member of the Respondent Team has been involved in any litigation or legal dispute against the State or any agency, department, authority or subdivision of the State or any litigation or legal dispute regarding a real estate venture during the past five years.

Additional Information

- Description of any prior RFPs for which Respondent has been selected, but which have not resulted in a successfully developed project.
- Any additional documentation or information evidencing the strength of the Respondent and its ability to complete the Project.
- All required procurement forms identified in Section XI, Procurement Forms and Requirements of this RFP.

Please note the following entities and individuals are precluded from responding to this RFP and from participating as part of any Respondent Team, unless otherwise authorized by ESD:

- Any consultant firm that has provided professional services to ESD or NYSDOT in connection with the Project;
- Any entity that is a parent, affiliate, or subsidiary of any of the foregoing entities, or that is under common ownership, control, or management with any of the foregoing entities; and
- Any employee or former employee of any of the foregoing entities who was involved with the Project while serving as an employee of such entity.

Notwithstanding the foregoing, if ESD determines in its sole discretion that there is no conflict, or that adequate safeguards are in place to prevent the conflict from occurring, or that all of the work provided by such firm, entity, or employee has been made publicly available by ESD, then ESD may provide written authorization that such firm, entity, or employee may respond to the RFP or participate on a Respondent team.

T. Imprest and Cost Agreement

In addition, Respondents must complete and submit a Cost Agreement, Cost Agreement Check and evidence of Respondent's commitment to pay, from the date of its selection as Designated Developer: (i) ESD's out-of-pocket costs and expenses incurred in connection with the Project and the disposition

of the Site, including, without limitation, costs and expenses of environmental consultants and legal counsel; and (ii) ESD Administrative Fee as described in Section VI: Required Proposal Contents.

VII. SELECTION CRITERIA

ESD shall establish a selection committee to evaluate Proposals. When reviewing Proposals, the selection committee will consider the following criteria and assign point values to each Proposal based on their evaluation. Scenario A and B will be scored separately, although points awarded for Respondent Experience and Qualitative Factors will be the same under both Scenarios. The maximum number of points any Proposal may receive is 100.

Criteria		**Achievable Points**
Development Program, Design, and Community Benefits	□ Proposed development plan's program of uses, site plan, project design (including attractiveness and buildability), and incorporation of sustainable and resilient building practices. □ Building to be designed with exceptional quality and embody design excellence. □ Benefits provided to surrounding communities, including but not limited to economic impact, public uses, amenities, and job creation □ Accommodation of Intrepid Museum bus parking and circulation and pedestrian bridge requirements □ Maximize pedestrian connection to Hudson River Greenway □ Minimize shadow impact on Hudson River Greenway □ Program meets the Affordable Housing requirements stated in Section V. H, Development Program for Scenarios A and B respectively. Additional points will be awarded for exceeding these requirements in Scenario B. □ Resiliency measures to address the site's proximity to high-risk flood zone AE □ Sustainability certification equivalent to LEED Gold or higher □ Building electrification and compliance with the Climate Leadership and Community Protection Act	Up to 35 Points

	□ Proposals that contemplate the highest sustainability certification levels will be considered by ESD to be more competitive than Proposals that contemplate lower certification(s) or no certification; □ Proposed plan to maximize density, including but not limited to leveraging access to and/or site control of nearby parcels to create a larger, more dense project footprint □ Timeliness and feasibility of Development Schedule	
Respondent Experience and Execution	□ Experience, financial capabilities and qualifications of the Respondent Team in developing, financing, constructing, leasing, site environmental remediation, operating and managing projects of similar size and nature □ Experience with affordable housing marketing, leasing, compliance, and operations □ Ability and capacity of a dedicated Project Team to execute the project and meet project milestones both pre- and post- closing	Up to 25 Points
Financial Proposal	□ Meeting the required purchase price as described in section V. I. □ Competitiveness of the proposed financial offer and financial terms □ Financial feasibility of the project □ Efficient use of RUSH resources □ Meet or exceed appraised fair market value	Up to 20 Points
Qualitative Factors	□ ESD will award up to 20 points based on the percentage of MWBE Developer ownership in the Project as described in Section VI (S)	0 points for <20% MWBE Ownership 10 points for 20% MWBE Ownership 15 points for 30% MWBE Ownership 20 points for 40% MWBE Ownership

ESD reserves the right to conduct in-person interviews with or pose questions in writing to individual Respondents in order to clarify the content of Respondents' Proposals and to ensure a full and

complete understanding of each Proposal. ESD will undertake to pursue uniformity in questioning Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of any individual interview or in writing. Respondents who are invited for an interview will receive additional instructions upon their invitation.

ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete, inconsistent with stated requirements within this RFP, or nonresponsive to the RFP requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals, and to proceed (or not proceed) with the development of the Site without completing this RFP process.

In evaluating the capabilities of Respondents, ESD may use any and all information available, including information not provided by Respondents. Proposals should clearly and concisely state the unique capabilities, experience, and advantages of Respondent and demonstrate Respondent's capability to satisfy the requirements and objectives set forth in this RFP. ESD further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

ESD anticipates that a single Respondent will be conditionally designated based upon the evaluation committee's determination of the best Proposal, and as further described in Section V (J): Disposition and Approvals.

VIII. DEVELOPER DUE DILIGENCE

Respondents should assume that the Site, including land, improvements, and any supporting building infrastructure, will be disposed of "AS IS" and "WHERE IS" without any express or implied warranties, guarantees, or representations as to quantity, quality, title, character, physical and environmental condition, size, or kind, or that the same is in condition or fit to be used for the Respondent's purpose.

Information regarding the RFP will be posted on the ESD website (**https://esd.ny.gov/doing-business-ny/requests-proposals**). Respondents are encouraged to check for updates. Prospective Respondents should notify ESD of their interest as soon as possible in order to ensure that they receive all updates associated with this RFP by sending an email to **IntrepidLot2024@esd.ny.gov.**

Respondents must rely solely on their own independent research and investigations for all matters, including, but not limited to: encumbrances, including easements; costs; including taxes; title; survey; development; financing; construction; and remediation. Respondents should not rely on the information provided in connection with this RFP. ESD makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to potential or actual Respondents.

IX. PROPOSAL SUBMISSION INSTRUCTIONS

U. Submission of a Complete Two-Part Proposal

Respondents submitting a proposal are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, hardcopies, emails) will not be accepted. When submitting each proposal, Respondents must comply with the following:

Upload the main folder to the specific Dropbox:
https://www.dropbox.com/request/hNcNPRnh3IXe6P2lSHnj

Proper format: Please create a folder with company name – RFP title – date of Submission.

example: ABDX, Inc. – Manhattan Block 1093, Lot 9 RFP – 1.1.2025

Included in that main folder should be two sub-folders, one for the Administrative Proposal and one for the Technical Proposal. The main folder should be uploaded to the Dropbox by choosing the following option: "Add Files → folders from computer". All documents in the folders should be properly labeled.

Late proposals will not be considered for award.

Respondents should send their Cost Agreement Check (as described in Section V: Development Objectives and Requirements, Part D. Cost Agreement and Imprest Account) to the following address:

Empire State Development

655 Third Avenue, 4th Floor

New York, NY 10017

Attn: Vanessa Calizaire

Re: Manhattan Block 1093, Lot 9 RFP

ADMINISTRATIVE PROPOSAL

Schedule A of this RFP states standard requirements that must be included in every contract entered into with ESD. The successful Respondent must agree to abide by these requirements and provide any information requested by ESD in connection with these requirements. Accordingly, Respondent

should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Respondent's proposal.

i. https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf, submit with proposal

ii. State Finance Law §§139-j and 139-k forms, submit with proposal

iii. Vendor Responsibility Questionnaire, submit with proposal or submit online (and include copy of submitted form with proposal)

iv. https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf,

submit with proposal

v. https://esd.ny.gov/sites/default/files/EO16-certification.pdf

vi. https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf

vii. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal

- OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement
- OCSD-2 - Staffing Plan
- OCSD-4 - MWBE and SDVOB Utilization Plan

viii. Encouraging the Use of NYS Businesses in Contract Performance Form, submit with proposal

ix. Certification under State Tax Law Section 5-a 220-CA or Affidavit, submit with proposal

x. W-9 Form, submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in **Section XI** of this RFP ("**Procurement Forms and Requirements**").

Late proposals will not be considered for award.

V. Questions

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section III: RFP Timeline to IntrepidLot2024@esd.ny.gov. Questions will not be accepted orally, and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

W. Site Visit

Optional Site visit hosted by ESD will be scheduled for March 20th, 2025 but the date may be subject to change. Respondents are not required to attend but encouraged to do so. Respondents who wish to attend must RSVP to IntrepidLot2024@esd.ny.gov on or before March 13th, 2025 in order to receive notice of the visit time and date. When signing up to attend, please provide the name of the Respondent and Firm, and the name, title, telephone number, and email address of all representatives who are attending. ESD reserves the right to limit the number of visitors on Site visits and to require such procedures as necessary to ensure the safety and security of visitors.

ESD reserves the right to modify this RFP schedule at their discretion. Notification of changes in connection with this RFP will be made available to all interested parties by e-mail and via ESD's website: https://esd.ny.gov/doing-business-ny/requests-proposals.

X. GENERAL PROVISIONS

The issuance of this RFP and the submission of a Proposal by a Respondent or the acceptance of such a Proposal by ESD does not obligate ESD in any manner. ESD reserves the right to:

i. amend, modify, or withdraw this RFP;

ii. revise any requirement of this RFP;

iii. require supplemental statements or information from any responsible party;

iv. accept or reject any or all responses hereto;

v. extend the deadline for submission of responses hereto;

vi. negotiate potential contract terms with any Respondent;

vii. communicate with any Respondent to correct and/or clarify responses which do not conform to the instructions contained herein;

viii. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and

ix. extend the term of any agreement on terms consistent with this RFP.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Respondent.

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, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the "Response Information") for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD's retention or use of the Response Information.

Required Approvals

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

Performance

The Contractor's performance will be assessed by the Corporation according to the achievement of The Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. The Corporation will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to the Corporation, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

Additional Services Requested

The Corporation may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Corporation, if it decides that

the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the Corporation. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify the Corporation of any proposed changes in staff immediately. The Corporation has an absolute right and discretion to approve or disapprove any proposed changes in staff. The Corporation, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP is intended to secure the professional services of the Contractor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

XI. PROCUREMENT FORMS AND REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Respondent's submission pursuant to Section IX of this RFP, as well as information about ESD's procurement requirements.

X. Conflicts of Interest

Respondent must attest it has read, understood and will comply with the following provisions https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

i. **Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member, or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

ii. **Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.

iii. **Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

Y. 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 above; the completion by Respondents of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding 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 periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at: State Finance Law §§139-j and 139-k forms.pdf (ny.gov)

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by 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 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. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

Z. Vendor Responsibility Questionnaire

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 Respondent, if any, shall include clauses providing that the Respondent 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 requires that all Respondents register in the State's Vendor Responsibility System ("Vend-Rep System"). The Vend-Rep 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 to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. **Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.**

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep . For direct Vend-Rep 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 Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry. Per the website, Respondents are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

AA. 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 Respondent and each person signing on behalf of any Respondent 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 Respondent 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. For further information and to view this list please go to: Iran Divestment Act of 2012 | Office of General Services (ny.gov).

BB. Executive Order 16

In accordance with New York State Executive Order 16 ("EO-16), all Respondents must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

> "By submission of a bid, each Respondent and each person signing on behalf of any Respondent 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 Respondent is in compliance with EO-16."

The required certification can be found at: https://esd.ny.gov/sites/default/files/EO16-certification.pdf and must be signed and included in all Proposals.

CC. Executive Order 177

In accordance with New York State Executive Order 177, all Respondents must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at:

https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf and must be signed and included in all Proposals.

DD. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules, and Regulations, ESD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of ESD contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of 30% percent for MWBE participation, 15% percent for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15% percent for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A Designated Developer resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: https://ny.newnycontracts.com. For guidance on how ESD will evaluate a Designated Developer's "good faith efforts," refer to 5 NYCRR § 142.8.

The Respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Designated Developer achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a Respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newnycontracts.com, provided, however, that a Respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity ("OCSD") at OCSD@esd.ny.gov.

Additionally, a Respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

a) An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.
    a. ESD will review the submitted MWBE Utilization Plan and advise the Respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.
b) If a notice of deficiency is issued, the Respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent and direct the Respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Proposal.

ESD may disqualify a Respondent as being non-responsive under the following circumstances:

    a. If a Respondent fails to submit an MWBE Utilization Plan;

b. If a Respondent fails to submit a written remedy to a notice of deficiency;
c. If a Respondent fails to submit a request for waiver; or
d. If ESD determines that the Respondent has failed to document good faith efforts.

The successful Respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful Respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Respondent agrees with all of the terms and conditions **SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**. The Respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its Proposal.

If awarded a Contract, Respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a monthly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Designated Developer and

sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Required with Proposal:

Form OCSD-1: https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf

Form OCSD-2: https://esd.ny.gov/sites/default/files/media/document/OCSD-2-Staffing-Plan-07-16-24.pdf

Form OCSD-4: https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf

Required if selected as the Designated Developer:

Form OCSD-3: https://esd.ny.gov/sites/default/files/media/document/OCSD-3-Workforce-Utilization-Report-070124.xlsx

Form OCSD-6: https://esd.ny.gov/sites/default/files/media/document/OCSD-6-Compliance-Report-100224.pdf

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov.

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES (SDVOBs)

Article 3 of New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Respondents are expected to consider

SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contract Goals

A. **ESD hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs**. For purposes of providing meaningful participation by SDVOBs, the Respondent should reference the directory of New York State Certified SDVOBs found at: https://online.ogs.ny.gov/SDVOB/search. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Designated Developer is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

B. Designated Developer must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

A. In accordance with 9 NYCRR § 252.2(i), Respondents are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.

B. The Utilization Plan shall list the SDVOBs that the Respondent intends to use to perform the Contract, a description of the work that the Respondent intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.

C. ESD will review the submitted SDVOB Utilization Plan and advise the Respondent of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

D. If a notice of deficiency is issued, Respondent agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Respondent and direct the Respondent to submit, within five business days of notification by ESD, a request for a partial or total waiver of

SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

E. ESD may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:

(a) If a Respondent fails to submit an SDVOB Utilization Plan;

(b) If a Respondent fails to submit a written remedy to a notice of deficiency;

(c) If a Respondent fails to submit a request for waiver; or

(d) If ESD determines that the Respondent has failed to document good faith efforts.

F. If awarded a Contract, Designated Developer certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

G. Designated Developer further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Designated Developer non-responsibility.

Request for Waiver

A. Prior to submission of a request for a partial or total waiver, Respondent shall speak to the Designated Contacts at ESD for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Respondent that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Respondent may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Respondent's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Designated Developer shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Designated Developer is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such non-compliance, ESD may issue a notice of deficiency to the Designated Developer. The Designated Developer must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

   Waiver requests should be sent to OCSD.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Designated Developers must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

(1) Copies of solicitations to SDVOBs and any responses thereto.

(2) Explanation of the specific reasons each SDVOB that responded to Respondent's solicitation was not selected.

(3) Dates of any pre-bid, pre-award or other meetings attended by Designated Developer, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.

(4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Designated Developer is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Designated Developer and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Designated Developer found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Designated Developer shall pay damages as set forth therein.

EE. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Respondents for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: https://cdn.esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf.

FF. 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 (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (https://esd.ny.gov/sites/default/files/media/document/STL5A-Affidavit-2025.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. 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.

GG. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with Schedule A. A sample can be found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

Please note Respondents do not need to complete the entire Schedule A with the submission of their Proposal. However, Respondents should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Respondents will need to accept these terms prior to contract execution.

HH. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. 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 (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.

II. Insurance Requirements

The Designated Developer will be required to indemnify and hold harmless ESD, NYSDOT, OGS, and the State of New York (collectively, the "Indemnified Parties") and to provide appropriate insurance coverage as determined by ESD once the structure of the transaction has been finalized including (at a minimum and to the extent applicable):

- Commercial General Liability of $5 million per occurrence and $10 million in the aggregate;
- Commercial Automobile insurance with a limit of not less than $2 million, $5 million if environmental work included;
- Umbrella/Excess Liability: $25 million to $100 million;
- Contractor's Pollution Liability/Pollution Legal Liability insurance may be required to the extent necessary to cover the Designated Developer's environmental indemnification to ESD and the State of New York;
    - Contractor's Pollution Liability: $5 million;
    - Pollution Legal Liability: $2 million;
- Professional Liability may be required: $2 million;
- Architects and Engineers Professional Liability may be required: $2 million;
- Builders' Risk/Installation Floater may be required;
- Marine Protection and Indemnity may be required: $5 million per occurrence, $10 million aggregate;
- Railroad Protective Liability may be required: $2 million per occurrence, $6 million aggregate;

- Cyber Professional Liability may be required: $3 million;
- Valuable Papers Insurance may be required: $500,000;
- Contractor's Protective Professional Indemnity Insurance may be required: $5 million;
- Evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits, at least $1 million;
- Evidence of Disability insurance coverage at State statutory limits;

The Indemnified Parties must be named as additional insured on a primary and non-contributory basis on all policies except for Worker's Compensation and Professional Liability. All policies above should include a waiver of subrogation in favor of the Indemnified Parties.

JJ. W-9 Form

Provide a completed W-9 form (https://www.irs.gov/pub/irs-pdf/fw9.pdf), submit with proposal.

XII. APPENDICES

- **Appendix A**: Intrepid Parking Agreement
- **Appendix B**: New York City Tax Map of Site
- **Appendix C**: Cost Agreement
- **Appendix D**: Financial Proposal Summary Form
- **Appendix E:** ESD IT Security Standard Brief