

FOR CONSIDERATION

July 20, 2023

TO: The Directors

FROM: Hope Knight

SUBJECT: Gowanus Neighborhood Mixed Income Housing Development Program
(the “Program”)

REQUEST FOR: Authorization to Administer the Program, Adopt Program Requirements; and Authorization to Take Related Actions

I. ESD Directors’ Summary

The Directors are requested to specify the Gowanus Neighborhood Mixed Income Housing Development Program (the “Program”) requirements and authorize the Program staff to solicit, review and process applications to participate in the Program. Through the Program, Empire State Development (“ESD”) would provide tax relief for certain rental residential developments within the boundaries of the City of New York’s Gowanus Neighborhood Rezoning district that meet certain levels of affordability pursuant to having vested in the Real Property Tax Law § 421-a(16) tax exemption program (“Affordable New York”). The goal of ESD’s Program is to facilitate much needed rental housing development, including affordable housing units within New York City, and to facilitate the achievement of the City’s other goals for the Gowanus Neighborhood Rezoning.

II. Background

On September 22, 2021, the New York City Planning Commission (the “Commission”) approved the Gowanus Neighborhood Rezoning. The approval culminated a multi-year community engagement process that developed a shared long-term vision for the area, which the Commission determined to be a neighborhood in need of widespread remediation of large underdeveloped and underutilized brownfield sites with rich transit access. The Commission determined the Gowanus Neighborhood Rezoning would create approximately 8,500 new residential units with approximately 3,000 new affordable homes as a result of the Mandatory Inclusionary Housing (“MIH”) designation in connection with the rezoning. Residential developments within the Gowanus Neighborhood Rezoning district will be required to comply with MIH, the provisions of which are included in New York City Zoning Resolution Section 23-90 (Inclusionary Housing).

In addition, the Commission determined the Gowanus Neighborhood Rezoning would spur economic and job growth; facilitate brownfield remediation; foster safe, more active streets; create a vibrant, accessible, and resilient waterfront; generate new community resources; and support the overall remediation of the Gowanus Canal.

Affordable New York was the residential tax exemption program that facilitated the development of mixed-income housing throughout New York City. It expired on June 15, 2022, with developments vested into the program required to secure Temporary Certificates of Occupancy (“TCO”) for all residential units by June 15, 2026. Failure to meet this deadline results in ineligibility for the tax benefit.

The uncertainty for certain developments to meet the 2026 TCO deadline has deterred new residential construction throughout New York City. This has created a significant barrier to the implementation of residential development within the boundaries of the Gowanus Neighborhood Rezoning district and the realization of the housing, economic redevelopment, and environmental goals developed collaboratively by community, elected, and public agency stakeholders.

Facilitating housing production within the Gowanus Neighborhood Rezoning district through ESD’s Program will provide much needed additional housing, including affordable housing, in the Gowanus community. It will also contribute to economic growth through the creation of construction and permanent jobs in the neighborhood, spur brownfield cleanups and contribute to the continued revitalization of the area.

III. Program Overview and Eligibility

To spur development, through a Request for Applications (“RFA”), ESD will accept submissions from developers with shovel ready or near-term ready vested rental Affordable New York sites. A development shall be deemed vested under Affordable New York if it has a Commencement Date on or before June 15, 2022. Commencement shall mean, with respect to any multiple dwelling, the date upon which excavation and construction of initial footings and foundations lawfully begins.

The property to be developed must comply with the site’s zoning regulations and all local building and construction codes and other similar local requirements. To implement the Program, the fee title to the property to be developed would be transferred to ESD (for nominal consideration) for the duration of the site’s involvement with the Program, and the property would be leased back to the site’s developer and would be subject to supplemental rent (such supplemental rent referred to as a “Payment in Lieu of Tax” or “PILOT”), which would require payments at a reduced level that would mirror the residential tax exemption that the site would have received under Affordable New York in exchange for affordable housing requirements that are based on Affordable New York’s options, with the addition that the required affordable housing units be permanently affordable. The applicant would also be required to comply with all other

requirements and obligations (including, without limitation, labor) of the Affordable New York Program. ESD would obtain the City's consent to the PILOT arrangements. At the conclusion of the Program, the lease would terminate, title of the property would revert to the tenant or its designee and the site would become subject to the applicable real estate property taxes at that time.

Sites will be eligible for the Program if they satisfy the following Program Requirements and return the application by the date specified in the RFA:

1. Located in the Special Gowanus Mixed Use District Plan (New York City Zoning Resolution Article VIII, Chapter 9) (see attached Exhibit 1).
2. Vested under Affordable New York by June 15, 2022. A development shall be deemed vested under Affordable New York if it has a Commencement Date on or before June 15, 2022. Commencement Date shall mean, with respect to any eligible multiple dwelling, the date upon which excavation and construction of initial footings and foundations lawfully begins.
3. Provide for at least 50 rental residential units.
4. All units will be registered as rent stabilized that would have been required to be rent stabilized under Affordable New York. Provided further that all affordable units will comply with Affordable New York except that they shall be permanently affordable.
5. At the time of application submission, the proposed plans for the site must comply with the site's underlying zoning district regulations, applicable local building and construction codes, and all other regulatory requirements for construction.
6. Not receiving any other residential tax exemption/abatement/credit, except tax credits related to the Brownfield Cleanup Program or any other environmental remediation program.
7. Provide evidence of ownership or path to imminent ownership.
8. Comply with ESD's Minority- and Women-Owned Business Enterprises contracting requirements.
9. Acceptance of ESD's lease terms and other contracting requirements, including but not limited to indemnification, insurance, administrative fee, cost agreement and responsibility requirements (including financial and organizational capacity, legal authority, integrity, and previous experience evidencing ability to complete the proposed development).

A site must receive a TCO for all residential units within 48 months of ESD transaction closing. The 48-month timeline for receiving TCO may be extended at the discretion of ESD. Sites will receive benefits and be subject to all requirements akin to those of Affordable New York. During the PILOT period, developments will be responsible to pay for assessments for local improvements, which would be determined by the New York City Department of Finance ("NYC DOF").

Program staff will bring the specific transactions back to the ESD Directors for their consideration and approval and request the ESD Directors to make any additional determinations or approvals required with respect to the Program prior to entering into any purchase, lease or associated documents and closing the transactions.

IV. Environmental Review

ESD staff has determined that the requested authorization to adopt Program Requirements and administer the Program constitutes Type II actions as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No environmental review is required in connection with these actions.

V. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises (MWBES) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD programs. The applicant shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% and a SDVOB Participation Goal of 6%.

New York State Homes and Community Renewal's ("HCR") Office of Economic Opportunity & Partnership Development will be the central entity managing compliance of goals on this development related to utilization of Minority and Woman-Owned Business Enterprises and Service-Disabled Veteran-Owned Businesses.

VI. Requested Actions

The Directors are requested to: (i) adopt the Program Requirements, as described above; and (ii) authorize Program staff to take the above-described actions towards implementation of the Program consistent with these materials; and authorize the taking of related actions. As noted above, Program staff will bring the specific transactions to the ESD Directors for their consideration and approval and request the ESD Directors to make any additional determinations or approvals required with respect to the Program prior to entering into any purchase, lease or associated documents and closing the transactions.

VII. Recommendation

Based on the foregoing, I recommend that the requested actions be approved.

VIII. Attachments

Resolution

Exhibit 1 – Gowanus Neighborhood Rezoning / Program Boundaries

July 20, 2023

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT -
Gowanus Neighborhood Mixed Income Housing Development Program (the "Program") -
Authorization to Administer the Program, Adopt Program Requirements; and Authorization to
Take Related Actions

BE IT RESOLVED, that the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation") hereby is authorized to implement the Gowanus Neighborhood Mixed Income Housing Development Program (the "Program"), substantially as described in the materials presented in this meeting (the "Materials"), a copy of which is ordered filed with the records of the Corporation, provided that further authorization shall be required prior to entering into any transaction pursuant to the Program; and be it further

RESOLVED, that the Corporation adopts the Program requirements, as described in the Materials, and authorizes the President and Chief Executive Officer of the Corporation, or her or his designee(s), to amend, from time to time, such requirements as he or she deems necessary or appropriate to effectuate the purposes of the Program; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or her or his designee(s) is hereby authorized to solicit, review and process applications pursuant to the Program in accordance with the Requirements and these Materials and to take such other actions as are necessary in order to effectuate the purposes of the Program; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation, or her or his designee(s), be and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all action as he or she may in his or her sole discretion consider to be necessary or appropriate to effectuate the foregoing resolutions.

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Exhibit 1
Gowanus Neighborhood Rezoning / Program Boundaries

Appendix A - Special Gowanus Mixed Use District Plan

LAST AMENDED 11/23/2021

Map 1: Subdistricts (11/23/21)

