



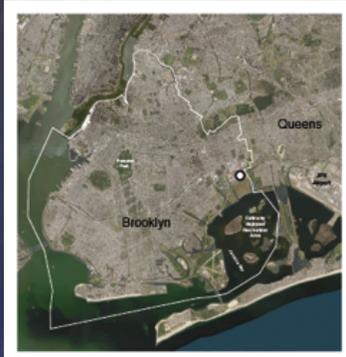
Empire State
Development



Homes and
Community Renewal

REQUEST FOR PROPOSALS

TO PURCHASE AND REDEVELOP THE FORMER BROOKLYN DEVELOPMENTAL CENTER CAMPUS EAST NEW YORK, BROOKLYN, NY



ISSUED: April 26, 2018

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 ("Designated Contacts") listed below (refer to: <http://ogs.ny.gov/aboutogs/regulations/advisoryCouncil/StatutoryReference.html>)

Designated Contacts for the procurement:

Primary Contact: Ralph Volcy

Secondary Contact: John Discolo

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

PROPOSAL DUE DATE AND TIME:

On or before 2:00 PM EST on July 13, 2018



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I. INTRODUCTION

New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”), in collaboration with New York State Homes and Community Renewal (“HCR”), is seeking proposals from responsive and responsible parties for the purchase and redevelopment of the former Brooklyn Developmental Center campus in East New York, Brooklyn (the “Project”). The total available developable land is approximately 28.5 acres or 1.2 million square feet (the “Site”).

ESD and HCR invite qualified parties to submit proposals for a high-quality, mixed-use, wellness-oriented development with affordable and supportive housing components including a set-aside of supportive housing units for people with intellectual and developmental disabilities (“I/DD”) who receive support and services funded or provided by the Office for People with Developmental Disabilities (“OPWDD”) (the “OPWDD Assisted Units”). Due to the large lot size and area context of the Site, the Project provides a unique and exciting opportunity for creative and thoughtful development.

This Request for Proposals (“RFP”) is being issued as part of New York State’s Vital Brooklyn initiative. In March 2017, New York State Governor Andrew M. Cuomo announced the “Vital Brooklyn” comprehensive community development initiative to address chronic social, economic, and health disparities in Central Brooklyn, one of the most underserved areas in New York State. Vital Brooklyn will create a stronger, more sustainable Central Brooklyn by leveraging New York State programs and resources to improve the well-being of New Yorkers in Central Brooklyn through the initiative’s eight integrated areas of investment:

- 1) Open Space and Recreation
- 2) Healthy Food
- 3) Comprehensive Education & Youth Development
- 4) Economic Development & Job Creation
- 5) Community-Based Violence Prevention
- 6) Community-Based Healthcare
- 7) Affordable Housing
- 8) Resiliency

More information on Vital Brooklyn can be found at <https://www.ny.gov/programs/transforming-central-brooklyn>.

Each party that submits a response (“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

The following table lists significant dates under the RFP process:

<u>Event</u>	<u>Timeline</u>
1. RFP Release Date	April 26, 2018
2. Site Tour	May 17, 2018
3. Deadline for Submission of Questions	May 25, 2018 by 2:00 PM EST
4. Deadline for ESD to Respond to Questions	June 1, 2018
5. Submission of Proposals	July 13, 2018 by 2:00 PM EST
6. Interviews (if necessary)	TBD
7. Anticipated Contract Date	TBD



III. SITE CONTEXT AND DESCRIPTION

Description, Surrounding Area and Transit Access

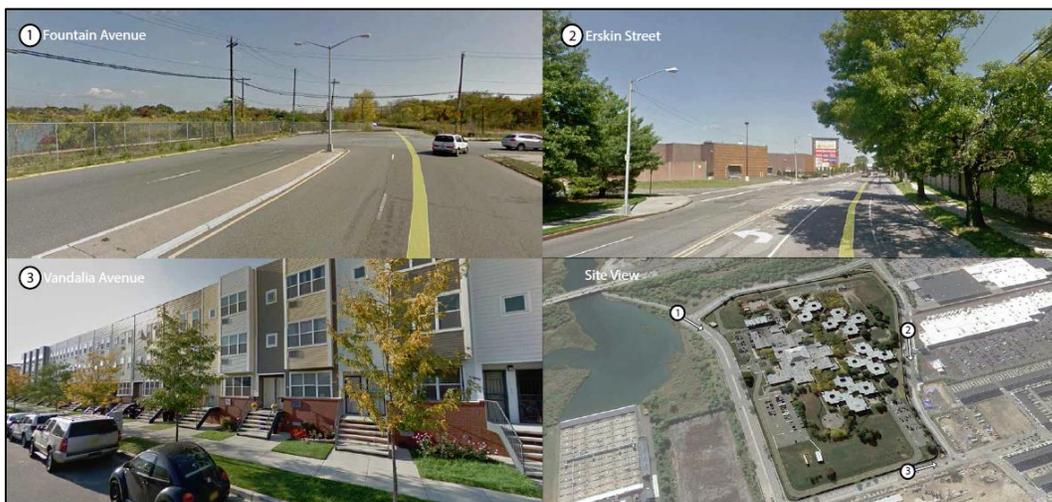
Figure 1 – Site

The Site is located within an irregularly shaped block (Brooklyn Block 4586, Lot 300) developed as the Brooklyn Developmental Center (“BDC”) campus in the Spring Creek section of East New York, Brooklyn (see Figure 1). The block is bound by Vandalia Avenue to the north, Seaview Avenue to the south, Fountain Avenue to the east, and Erskine Street to the west. There is



ample parkland across Fountain Avenue to the east and Seaview Avenue to the south, with the Belt Parkway running along the Jamaica Bay waterfront further south. Vibrant residential neighborhoods sit across Vandalia and Erskine Avenues from the Site (“Nehemiah Spring Creek” and “Gateway Estates”), and Gateway Center, a popular destination retail complex with tenants such as BJ’s Wholesale Club, Old Navy, Home Depot, Target, Olive Garden and Red Lobster, is across Erskine Street (see Appendix A: Aerial Site Map). The Site is located in Brooklyn Community District 5. Photos of the overall Site as well as bordering streets are shown in Figure 2 below.

Figure 2 – Buildings





BDC provided residential care and treatment to individuals with intellectual and developmental disabilities from 1974 through 2015. The campus consists of seven buildings totaling 512,000 square feet on a 35-acre lot owned by the People of the State of New York (“State”) acting through the Dormitory Authority of the State of New York (“DASNY”). Building 1 combined residential and office space and day care, and is the only building still used by OPWDD for offices. Buildings 2, 3 and 4 previously served as residential facilities. Building 5 was the main administration, program and support building that included a gymnasium, swimming pool, and security, maintenance, in-patient care, and kitchen and dining spaces. Building 6 was the power plant that served all campus buildings, and Building 7 was a storage and grounds maintenance facility. It is anticipated that the offices in Building 1 will be relocated prior to disposition of the Site. However, should OPWDD require occupancy post-closing, the establishment of a post-closing occupancy agreement will be established in which OPWDD will be required to pay fair market rent for the term of its occupancy.

The Site is served by three bus lines (Q8, B13, B83), as well as the A/C train lines at the Euclid Avenue station, about a mile and a half away. The Site is proximate to the the Belt Parkway, which can be accessed from Erskine Street.

Planned Development

In 2016, two non-contiguous parcels within the BDC block (Block 4586, Lots 200 and 500) totaling approximately 6.7 acres were sold for mixed-use residential and commercial development, including affordable and supportive housing, and new access points and walkways (see Figure 3).

Development on these two parcels (“Planned Development”) is currently underway, with Fountain Seaview Limited Partnership (“FSLP”) designated as the developer. A copy of the General Project Plan (“GPP”) and Final Environmental Impact Study (“FEIS”) for the Planned Development is located online at <https://esd.ny.gov/fountain-avenue-project>.

Figure 3 – Planned Development (Brooklyn Block 4586, Lots 200 and 500)



There is a light and air easement on the Site and Planned Development that mandates a 60-foot minimum distance between any buildings on both properties, including between buildings under development by FSLP and any improvements proposed in response to this RFP.



Future Planned Open Space Development

On January 4, 2018, Governor Andrew M. Cuomo announced plans to construct a new, 407-acre State park on Jamaica Bay in cooperation with the U.S. Department of Interior, the National Park Service and the New York City Department of Environmental Protection. The park will feature opportunities for biking, hiking, water-based activities such as fishing and kayaking, and waterfront environmental education. It will span two sites, bifurcated by Hendrix Creek. Upon National Park Service approval, phase 1 is expected to fully open in 2019. Later phases will include construction of a connecting pedestrian bridge between the two sites, dedicated environmental education facilities, and an amphitheater, creating a unique and expansive cultural and natural space for the community. See Figure 4 for a map of the future park in relation to the Site.

Figure 4 – Location of Future NY State Park at Jamaica Bay



For further information, please see <https://www.governor.ny.gov/news/governor-cuomo-unveils-23rd-proposal-2018-state-state-partnership-national-park-service-and>.

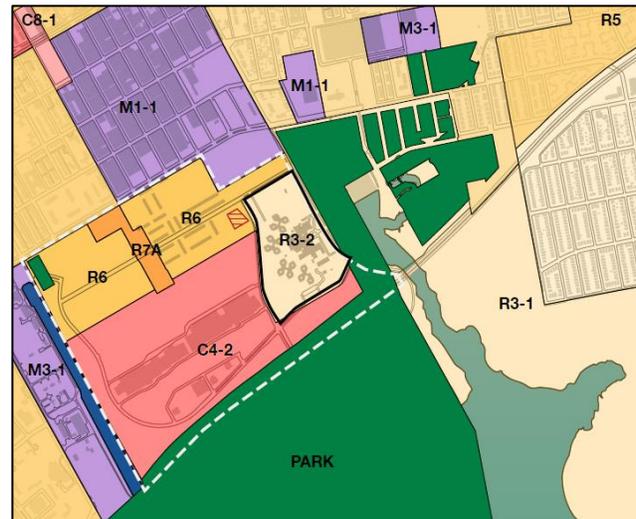


Zoning and Allowable Land Use

Currently, the Site is zoned R3-2, a general residential district that allows for, among other uses, one- and two-family residences, apartments, non-profit residences for the elderly, nursing homes and health-related facilities.

The Planned Development that is currently under construction mirrors New York City R7-A zoning, which was achieved through zoning overrides as part of that project's GPP. Proposals for the Site are anticipated to exceed as-of-right zoning to more fully utilize the Site. Respondents should anticipate that a zoning override will be provided through a GPP to realize the goals outlined in this RFP. Accordingly, Proposals must include a list of specific zoning overrides necessary to effectuate the proposed project. Proposed site plans should assume a maximum Floor Area Ratio ("FAR") equivalent to that of a New York City R6 zoning district.

Figure 5 – Zoning



Utilities

The Site is served by National Grid (<https://www.nationalgridus.com/>) for gas service, Con Edison (<http://www.coned.com/>) for electric service and the New York City Department of Environmental Protection for water service (www.nyc.gov/dep).

Environmental Conditions

The Designated Developer will be responsible for conducting all due diligence investigations and remediation, including but not limited to environmental site assessments, including sampling and testing of the soil, sediments and ground water (if any). No representation or warranty is made nor shall be given by ESD, HCR, DASNY, the State 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. Phase I and Phase II Environmental Site Assessments for the Planned Development are located online at <https://esd.ny.gov/fountain-avenue-project-feis>.

Ownership and Taxes

The Site is currently owned by the People of the State of New York acting through DASNY and is operated by OPWDD, and is thus currently exempt from property taxes. After disposition of the Site to the Designated Developer, property taxes would be assessed by the City of New York and payable by the Designated Developer, absent any other basis for the Site to be exempt from real property taxes.



More information on NYC property taxes and the NYC Department of Finance can be found at www.nyc.gov/dof.

Vital Brooklyn

Vital Brooklyn is New York State’s new comprehensive community development initiative that addresses chronic social, economic, and health disparities in Central Brooklyn, one of the most underserved areas in the State. It has been estimated that approximately 10% of an individual’s health can be attributed to the clinical care received, while the balance is a function of social and economic factors, personal choice, health behaviors and environmental factors. These nonclinical social determinants are critically important to the health of the communities of Central Brooklyn, which have measurably higher rates of obesity, diabetes, and high blood pressure, limited access to healthy foods and opportunities for physical activity, high rates of violence and crime, wide economic disparities from unemployment, high poverty levels, inadequate access to quality healthcare and mental health services, and high emergency department utilization.¹

Vital Brooklyn will create a stronger, more sustainable Central Brooklyn by addressing these issues through the initiative’s eight integrated areas: (i) Open Space and Recreation; (ii) Healthy Food; (iii) Comprehensive Education & Youth Development; (iv) Economic Development & Job Creation; (v) Community-Based Violence Prevention; (vi) Community-Based Healthcare; (vii) Affordable Housing; and (viii) Resiliency.

New York State understands and embraces the idea that the transformation of the healthcare delivery system cannot occur in isolation; this is a unique opportunity to address social determinants of healthcare. Spearheaded by a \$700 million capital appropriation, the State’s long-term investment in transforming Central Brooklyn’s healthcare is estimated at more than \$2 billion. An important component of the healthcare transformation strategy is the State’s support for the establishment of the One Brooklyn Health System, an integrated healthcare system comprised of Interfaith Medical Center, Kingsbrook Jewish Medical Center, and Brookdale University Hospital and Medical Center. An imperative of the One Brooklyn Health System and the community-based healthcare component of the Vital Brooklyn initiative is the development of a clinically comprehensive ambulatory care network.

As part of the Vital Brooklyn initiative, with the support of State Assembly Members, Community Advisory Councils were convened across Central Brooklyn to hear directly from communities. Bringing nearly 100 key community stakeholders to the table through focused discussions with implementing agencies, Central Brooklyn communities are directing the first round of State resources, while elevating unmet needs in improving overall wellness. The State is working to capture and leverage the Community Advisory Councils’ valuable input into additional action. For a summary of the 60th Assembly District’s Community Advisory Council development priorities please see Appendix B.

¹ Please also refer to https://www.northwell.edu/sites/northwell/files/20830-Brooklyn-Healthcare-Transformation-Study_0.pdf which was commissioned by the New York State Department of Health and provides background research conducted for Vital Brooklyn.



Hospital Priorities

One Brooklyn Health System (“Hospital”), aims to fulfill its commitment to expand community-based healthcare in the 60th Assembly District as envisioned in the Vital Brooklyn initiative. To that end, and as a condition of making the Site available for development, the Designated Developer will be required to construct the core and shell of a new ambulatory care facility (“Facility”) totaling approximately 28,000 square feet to be located in one or more buildings on the Site, depending on a layout plan to be agreed upon with the Hospital. The services will be consistent with the needs of the Project tenant mix. The costs of the Facility design, fit-out and equipment will be assumed by the Hospital, and the Hospital will pay for expenses necessary to operate the space and a base rent at-cost. More details on the requirements of the Facility can be found in Appendix C.

IV. DEVELOPMENT OBJECTIVES AND DEVELOPMENT PROGRAM REQUIREMENTS

The primary development objectives for the Project are to provide affordable housing, improve wellness and economic opportunities in the neighborhood as part of the Vital Brooklyn initiative and provide for Integrated Supportive Housing (“ISH”) opportunities in partnership with OPWDD and HCR.² ESD and HCR are thus seeking Proposals for a high-quality, mixed-use development that meets the following goals (“Development Objectives”):

Development Objectives

- Redevelop the former Brooklyn Developmental Center into a new mixed-use development with amenities that benefit the surrounding community including:
 - Extremely low-, low-, and moderate-income housing
 - Supportive and senior housing
 - Retail and commercial spaces
 - Public health & wellness-oriented amenities including communal recreation spaces such as playgrounds, green space and walking paths, academic uses, cultural space and community facilities
- Provide new local job opportunities for residents
- Incorporate sustainable and green building practices

² More information on OPWDD’s ISH program is located online at i) https://opwdd.ny.gov/opwdd_community_connections/housing_initiatives/nys-opwdd-integrated-supportive-housing-ish-program-overview; ii) https://opwdd.ny.gov/opwdd_community_connections/housing_initiatives/ish; and iii) https://opwdd.ny.gov/news_and_publications/opwdd_news/nys-opwdd-integrated-supportive-housing-ish-program-presentation-june-13-3017.



- Ensure meaningful participation by Minority Owned Business Enterprises (“MBE”), Women Owned Business Enterprises (“WBE”) and Service-Disabled Veteran-Owned-Business (“SDVOB”)³

Respondents must also include the following in the development program of any Proposal:

- Provision of OPWDD Assisted Units as described in the Introduction above, totaling no more than 20% of the Site’s proposed residential units. The inclusion of any additional special populations groups beyond individuals with I/DD may be subject to additional limitations, including but not limited to the requirements of the Federal Home and Community Based Services Settings Rule (79 Fed. Reg. 2947, Jan. 16, 2014).
- One or more office spaces for a supportive services provider(s) for the OPWDD Assisted Units, which shall be selected by OPWDD in conjunction with the Designated Developer.
- The core and shell for the Hospital’s Facility, to be underwritten at an at-cost rent.
- Set-aside of 20,000 to 40,000 square feet of land, anticipated to be conveyed to the New York City School Construction Authority (“NYCSCA”) for a future school (“School”). The School is anticipated to be a stand-alone structure.
- Active ground floor spaces, with a preference for retail along Erskine Avenue to enhance the pedestrian experience and serve residents (see Figure 6 below).
- A street grid and pedestrian-friendly environment that connects to the surrounding neighborhood.

³ For more information on MBE, WBE and SDVOB requirements, please visit **Section XI: PROCUREMENT FORMS AND REQUIREMENTS**



Figure 6 – Suggested Retail and/or Commercial or Community Uses



The Development Objectives will be effectuated through an ESD GPP for the Site and a restrictive declaration ensuring compliance therewith.

Preferred Proposals will have a master plan and single developer for the entire Site, phased over a reasonable timeframe.

Transaction Structure

The Designated Developer must acquire fee title to the entire Site (by quitclaim deed), subject to a restrictive declaration requiring development of the Site to conform to the GPP. It is intended that the Site will be conveyed to the Designated Developer at closing, and that the Designated Developer will hold title during development of the Site; however ESD will consider Proposals that contemplate a lease through construction. ESD may require that the Site be conveyed to a Housing Development Fund Corporation. The sale of the Site will be subject to approval by DASNY.

As noted below in **Section VIII: Disposition Process**, in order to implement the Project and dispose of the Site, ESD and DASNY, with the cooperation of the Designated Developer, must comply with legal and regulatory requirements including but not limited to: (i) the State Environmental Quality Review Act and its implementing regulations (“SEQRA”); (ii) the State Historic Preservation Act, to the extent applicable; (iii) Public Authorities Law; (iv) State Finance Law; and (v) the New York State Urban Development Corporation Act (the “UDC Act”); (v) the Facilities Development Corporation Act (“FDCA”); and (vi) any actions required to remediate any adverse tax treatment of tax exempt bonds used to finance the original acquisition and improvement of the Site. Such compliance must be completed before



disposition of the Site to the Designated Developer for the Project. ESD may also consult with or otherwise involve other State entities as necessary, including DASNY, OPWDD and HCR to review the RFP and select the Designated Developer. Please also note that that 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 consultants and legal counsel (see also “Other Considerations” section below); and
- ESD’s administrative fee at closing equal to the cost of direct and actual staff time on the project from the time of designation until closing, capped at one million dollars (\$1,000,000).

Respondent’s financial offer 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.

Other Considerations

Respondents must provide as part of their submission a signed letter agreement (the “Cost Letter” or “Cost Agreement”) in the form provided in Appendix D, 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 Letter shall be accompanied by the Respondent’s check in the amount of \$500,000 (“Cost Letter Check”). The Cost Letter Check will not be deposited initially. If the Respondent is selected as the Designated Developer to enter into negotiations with ESD, the Cost Letter Check will be deposited into an ESD imprest account (“Imprest Account”) for the Designated Developer. ESD would draw on the Imprest Account in order to pay such costs related to the Designated Developer’s proposal. The Cost Letter provides that the Designated Developer will fully replenish the Imprest Account in the amount of \$250,000 each time the balance of the Imprest Account is reduced to below \$250,000. The Cost Letter payment amounts will be returned to each non-designated Respondent when it is determined that the Respondent is no longer under consideration.

V. REQUIRED PROPOSAL CONTENTS

The following must be submitted with all Proposals responding to this RFP. ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete 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 in **Section XI: Procurement Forms and Requirements**, each complete Proposal must contain the following elements:

A. 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. In order to be considered a “Qualifying Organization,” Respondent firms or joint ventures of firms must demonstrate collectively:

- Significant experience, expertise and capacity in:
 - Developing and operating real estate;
 - Developing mixed-use projects that incorporate affordable housing, community space and commercial space;
 - Equity investments in substantial or ground-up real estate development projects;
 - At least three (3) development projects in 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, commercial, and community space.

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:

- The intended form and structure of the team. Any proposed partnership or joint venture must be clearly explained. A chart or diagram of the partnership structure must also be included. In addition, the following concerns should be addressed:



- Experience in affordable and/or supportive housing development: Respondents should describe their previous experience in acting as a principal developer and/or operator of large developments incorporating affordable or supportive housing.
 - Experience in commercial/retail development: Respondents should describe their previous experience as a principal developer and manager of large developments incorporating commercial and/or retail space leased to third parties.
 - Experience in marketing: Respondents should describe their previous experience marketing commercial or retail spaces in urban mixed-use developments.
 - Other experience that makes the Respondent team uniquely suited to plan and develop a large-scale, mixed-use Site.
- 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.
 - Summaries of comparable projects completed by members of the Respondent team. For each project, the following information is requested:
 - Name of Respondent
 - Project Name
 - Completion Date
 - Project Description
 - Location
 - Current Status of Project
 - Total Development Cost
 - Reference Name, Email Address, Telephone
 - Relevance to RFP



- 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
- 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, HCR or Hospital 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.

B. Project Description

The Project description should include a detailed narrative describing all relevant aspects of the Project and timing of phasing, if any. The description should address:

- Proposed development program and use, including the specific mix of affordable, supportive and/or 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 each component of the development program



- A list of potential tenants and any letters of interest and/or intent from potential tenants, including any proposed community centers, nonprofit space, or commercial retail
- Total Project cost
- Estimated number of direct and indirect permanent and construction jobs estimated to be created by the Project

C. 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 principal elevations and massing, floor plans for each use, streetscape and landscape plans, entry feature and signage
 - Concept sketches should identify specific opportunities where the Hospital's Facility would be located as well as possible location(s) for the School and other Site amenities
- A diagram(s) showing:
 - vehicular and pedestrian circulation within the Site
 - vehicular and pedestrian ingress and egress access points for the Site
- A description of the proposed exterior materials and other relevant specifications
- A description of sustainable features that will be incorporated into the Project during construction and operation

D. Parking Calculation

Respondents must provide an estimate of the number of parking spaces required by the Project and demonstrate how parking will be accommodated. Please note that the parking requirements of the Facility must be taken into account.

E. Zoning Calculation

Respondents must submit a preliminary zoning analysis showing all calculations, including proposed use groups, and proposed parking. Respondents must identify all desired zoning overrides, and any required permits and authorizations to effectuate the Project.

F. Development Timeframe

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; tenant lease-



up; and operational stabilization for each component of the development program. Any contingencies that may affect this time line should be identified.

G. Financial Information

Respondents must complete and submit the following:

- All tabs found in “Appendix_E_Form F_Vital Brooklyn RFP Underwriting Template.xlsx” (“Form F”) attached as Appendix E detailing the Projects sources and uses of funds, budget, number of units, financing terms, discretionary tax or other governmental benefits, operating expenses and 30 year pro forma cash flows. Form F should be “live-linked” and submitted on USB flash drive.
- Information regarding minimum returns sought and all necessary capital investments over time and reserves and debt service payments associated with all financings (this information can be added to Form F or submitted as a separate file.)
- Letters of interest and/or intent from lenders and, if applicable, equity investors.
- Cost Letter, Cost Letter 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 consultants and legal counsel; and (ii) ESD Administrative Fee equal to direct and actual staff time spent on the Project from the time of selection as Designated Developer until closing, capped at one million dollars (\$1,000,000).

If a Proposal is contingent on receiving financing or incentives, the Respondent should include proposed terms for such financing in its Proposal.

HFA term sheets can be found at:

http://www.nyshcr.org/Funding/HFA/NYS%20Housing%20Finance%20Agency%20Term%20Sheet_7.14.17.pdf.

Related ESD programs are at: <http://esd.ny.gov/Business Programs.html>.

H. Demolition Plan

If Respondent plans to demolish the existing structures on the Site, Respondent must provide an overview of the estimated schedule, budget and funding sources for demolishing of any existing structure(s). Respondent may include this information in Form F or in a supplemental file.

I. Purchase Price

The purchase price must be expressed in a fixed, non-contingent dollar amount. The purchase price will be paid in full at closing. Transfer of title will be by quit claim deed (without any representations or warranties) at closing.



J. Community Amenities and Outreach Plan

Respondents must list community amenities that will be included in the Project as well as a detailed plan for community outreach.

K. Procurement Forms and Requirements

Schedule A attached to this RFP (see Appendix F) states standard requirements that must be included in every contract entered into with ESD. The Designated Developer must agree to abide by these requirements and provide any information requested by ESD in connection with these requirements. Accordingly, Respondents 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. [State Finance Law §§139-j and 139-k forms](#) (submit with Proposal)
- ii. [Vendor Responsibility Questionnaire](#) (submit with Proposal or online and include copy of submitted form with Proposal)
- iii. Iran Divestment Act Statement (submit with Proposal)
- iv. Non-Discrimination and Contractor & Supplier Diversity Requirements (submit with proposal)
 - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - o [OCSD-2 - Staffing Plan](#)
 - o [OCSD-4 – MWBE and SDVOB Utilization Plan](#)
- v. [Encouraging the Use of NYS Businesses in Contract Performance Form](#) (submit with proposal)
- vi. [SDVOB Utilization Plan](#) (submit with proposal)
- vii. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#) (submit with proposal)
- viii. [W-9 Form](#) (submit with proposal)

Additional information about these items, and ESD's procurement requirements, can be found in **Section XI: Procurement Forms and Requirements.**

VI. SELECTION CRITERIA

ESD shall establish a review committee to evaluate Proposals. When evaluating Proposals, the following selection criteria will be considered with the accompanying weightings and used to calculate an overall Proposal score.

Proposals may be reviewed by ESD, HCR and other State officials. The sale of the Site is subject to approval of the ESD Directors, the Commissioner of General Services, the Public Authorities Control



Board (“PACB”), DASNY, and the Comptroller of the State of New York and the New York State Attorney General and any consents required by the FDCA.

Criteria		Weighting
Development Concept and Program	<ul style="list-style-type: none">Proposed development concept’s quality, design, uses, coherence and conformity to the Development ObjectivesA high-quality development with a mix of affordable and supportive housing, ground-floor commercial, retail and/or community facility space, and public health and wellness-oriented amenities, including open space	25%
Financial Offer	<ul style="list-style-type: none">Competitiveness of the proposed financial terms and financial benefits to New York State, as well as the financial feasibility of the Project	20%
Affordability	<ul style="list-style-type: none">Proposals providing affordable and supportive housing units to a range of incomes that contribute to the economic diversity and strength of the neighborhood with the least amount of subsidy	20%
Respondent Qualifications	<ul style="list-style-type: none">Experience, financial capabilities and qualifications of the ownership entity in developing, financing, leasing, operating and managing projects of similar size and nature	10%
Project Design and Timing	<ul style="list-style-type: none">Proposed Project development and construction planProposed retail and commercial development strategyInnovative technical solutions to enhance design, construction and/or operations/managementIncorporation of sustainable building practices	10%
Community Benefit	<ul style="list-style-type: none">Responsiveness of proposal to community priorities articulated by the Vital Brooklyn Community Advisory Council (see Appendix B)	10%
Quantitative Factors	<ul style="list-style-type: none">ESD will award 5% to Respondents that are certified Minority or Women-owned Business Enterprises (MWBs) as defined in section three hundred ten of the New York State Executive Law or Service-Disabled Veteran-owned Business Enterprises (“SDVOBs”) as defined in section three hundred sixty-nine-h of the New York State Executive Law	5%



In order to be awarded points pursuant to the Quantitative Factors Selection Criterion, the Respondent must (1) identify itself as an MWBE or SDVOB and (2) be registered with the NYS Department of State as an entity authorized to conduct business in New York State. Respondents identifying themselves as MWBEs must be listed in the directory of New York State-certified MWBEs (“MWBE Directory”) as of the closing of the period for responses to this RFP. The MWBE Directory is available at: <https://ny.newnycontracts.com/>. Respondents identifying themselves as SDVOBs must be listed in the directory of New York State-certified SDVOBs (“SDVOB Directory”) as of the closing of the period for responses to this RFP. The SDVOB Directory is available <http://www.ogs.ny.gov/Core/SDVOBA.asp>.

ESD reserves the right to conduct 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 shall undertake to pursue uniformity in the questions it asks 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. ESD reserves the option to hold oral interviews as part of the selection process; Respondents who are invited for an interview will receive additional instructions upon their invitation.

ESD anticipates that a single Respondent will be conditionally designated based upon the evaluation committee’s determination of the best Proposal for ESD and the State.

VII. 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 representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent’s purpose.

ESD will post information regarding the RFP on the RFP website (<http://www.esd.ny.gov/CorporateInformation/RFPs.html>); 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 BDCRFP@esd.ny.gov.

Respondents must rely solely on their own independent research and investigations for all matters, including, costs, title, survey, development, financing, construction, and remediation, and shall 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 the potential Respondents or to the Respondents.

VIII. DISPOSITION PROCESS

The following is a summary description of the disposition process. After a review of the Proposals, ESD intends to conditionally designate one respondent 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 each of ESD and the State regarding payment by the Designated Developer of costs and expenses as described at the end of this **Section IV: Development Objectives and Development Program Requirements**. In implementing the Project, including the disposition process, ESD intends to:

- i. conduct a SEQRA-compliant environmental review of the Project, including any applicable historic preservation requirements;
- ii. prepare, in accordance with the UDC Act and in consultation with the Designated Developer, a draft GPP for the Project that reflects the Designated Developer’s Proposal;
- iii. assist DASNY and OPWDD, as necessary, in obtaining such consents and approvals, and provide such notices as may be required to convey the Site to ESD at a value established in accordance with and pursuant to the Community Reinvestment Act (Unconsolidated Laws §4405 (13));
- iv. present to ESD Directors the draft environmental review, the draft GPP, essential transaction contract terms, any required Public Authorities Law findings, and any other applicable statutory or regulatory requirements, for adoption prior to a public hearing;
- v. give prior notice of and conduct a public hearing in order to receive comments on the proposed GPP and essential contract terms (including the draft environmental review);
- vi. review such comments, and either affirm or modify the proposed GPP as a final GPP to be presented to ESD Directors to authorize the proposed transaction;
- vii. present the Project to the PACB for its approval;
- viii. prepare, in consultation with the Designated Developer, and record in the *City Register* a restrictive declaration (the “Declaration”) regarding the Project’s conformance to the GPP, including the affordable housing components; and
- ix. obtain title to the Site from DASNY and deliver to the Designated Developer, at closing, a quitclaim deed without covenants for the Site that is subject to the Declaration.

This process may take up to twenty-four (24) months from the commencement of the environmental review, depending upon the complexity of the Project.

As outlined in **Section IV** of this RFP, ESD will establish an Imprest Account that shall be funded by the Designated Developer and used by ESD and its designated agents to pay costs incurred in connection to the Project (including the costs and expenses of legal counsel). The Imprest Account shall be initially funded by the Designated Developer at the time of its conditional designation by ESD in the amount of five hundred thousand dollars (\$500,000) and thereafter, in accordance with the Cost Agreement, the Designated Developer shall, promptly after notice from ESD, fully replenish the Imprest Account in the amount of \$250,000 each time the balance of the Imprest Account is reduced to below \$250,000. Upon closing, any amount remaining in the Imprest Account and not required to pay outstanding costs will be returned to the Designated Developer.



IX. PROPOSAL SUBMISSION INSTRUCTIONS

A. Proposal Submission

Ten (10) hard copies and one (1) electronic copy (in the form of a USB flash drive) of the Proposal identified as “**Brooklyn Developmental Center RFP**” must be received by ESD by **July 13, 2018 at 2:00 PM EST** at the following address:

Empire State Development
633 Third Avenue, 35th Floor
New York, NY 10017
Attn: Ralph Volcy
Re: Brooklyn Developmental Center RFP

It is the responsibility of each Respondent to ensure timely submission of its Proposal. Proposals received after the scheduled date and time cannot be accepted.

A Respondent accepts all provisions of this RFP by submitting a Proposal and is responsible for the accuracy of its submission.

B. RFP Inquiries

ESD will accept written questions via email from prospective Respondents regarding the RFP. Respondents may submit questions to: BDCRFP@esd.ny.gov.

Written questions must include the requestor’s name, e-mail address and the Respondent represented, and must be received by **May 25, 2018 at 2:00 PM EST**. Responses to all timely and appropriate questions will be posted on ESD’s website on **June 1, 2018** at:

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

If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, notification should be sent immediately via e-mail to BDCRFP@esd.ny.gov requesting written clarification or modification to this RFP. Should ESD find it necessary, an addendum or modification to this RFP will be posted on the ESD web site:

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

Other than emails to the designated email account for the RFP at BDCRFP@esd.ny.gov, no contact regarding this RFP with ESD Directors, staff or consultants, or any other governmental entity (except for a member of the State Legislature or State legislative staff), is allowed during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.



C. Site Tour

ESD has scheduled a tour of the Site on **May 17, 2018**. Respondents are not required to attend, but must email BDCRFP@esd.ny.gov at **least two days in advance** if they wish to participate. When emailing regarding tour participation, Respondents should provide the name, title, firm, telephone number and email address of all representatives who will attend. Due to security and logistics reasons, ESD asks that no more than five people per Respondent team attend the Site Tour.

ESD reserves the right to modify the RFP schedule at its 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: <http://www.esd.ny.gov/CorporateInformation/RFPs.html>.

X. STATEMENT OF LIMITATIONS

The RFP submissions from Respondents, and any relationship between the State and Respondents arising from or connected or related to this RFP, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFP.

1. By responding to this RFP, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFP, the entity acknowledges and accepts ESD's rights as set forth in the RFP, including this Statement of Limitations.
2. The issuance of this RFP and the submission of a Response by any firm or the acceptance of such Response by ESD does not obligate ESD in any manner whatsoever with regard to development of the Site. ESD shall only incur such obligations upon execution of a formal contract by ESD and the Designated Developer.
3. ESD reserves the right to: (i) amend, modify, or withdraw this RFP; (ii) revise any requirements of this RFP; (iii) require supplemental statements or information from any Respondent; (iv) accept or reject any or all Proposals; (v) extend the deadline for submission of Proposals; (vi) negotiate or hold discussions with any Respondent and correct deficient Proposals that do not completely conform to the instructions contained herein; and (vii) cancel, in whole or part, this RFP, for any reason or for no reason. ESD may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of each Respondent.
4. All information submitted in response to this RFP, including accompanying documents, is subject to the Freedom of Information Law (FOIL) found in Article 6 of the N.Y. Public Officer Law. FOIL provides that certain records are exempt from disclosure, including those that contain (1) trade secrets, (2) information that, if disclosed, would cause substantial injury to the competitive position of Respondent, or (3) critical infrastructure information.



Respondents should identify portions of their Proposals and accompanying documents they believe fall under these exemptions by submitting their Proposals in both redacted and un-redacted form. Records may be redacted to protect only the portions of documents that fall within a FOIL exemption. An entire document may not be withheld if only a portion of the document is exempt from disclosure. Along with the redacted version, Respondents may provide a detailed justification for the portions of their Proposal they believe fall into the exemptions discussed above. Blanket assertions that information is a trade secret, confidential, or proprietary are insufficient to justify withholding information under FOIL. The identified information will be reviewed and a determination will be made as to whether the information is exempt from disclosure under FOIL. The State's determination may be appealed pursuant to POL §89(5)(c). Please note that if Respondents do not submit a redacted version, their Proposals may be released in un-redacted form if requested under FOIL.

5. ESD reserves the right, in its sole discretion, without liability, to utilize any or all of the RFP Proposals, including late responses, in its planning efforts. ESD reserves the right to retain and use all the materials and information, and the ideas, suggestions therein, submitted in response to this RFP (collectively, the "Response Information") for any purpose. Each Respondent must grant an unconditional and perpetual license without charge to ESD to use any copyright or other legally protected rights in and to the Response Information. By submitting a Proposal, each Respondent waives any and all claims against ESD and the State relating to the retention or use of the Response Information.
6. This RFP shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a Response to the RFP. ESD will not be responsible for any costs incurred by Respondents related to preparing and submitting a Proposal in response to this RFP, attending oral presentations, or for any other associated costs.
7. To the best of ESD's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of Proposals.
8. Should ESD determine that negotiations with a selected Respondent will not result in an executable contract, ESD may begin negotiations with a different Respondent without again requesting Proposals.

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 VI of this RFP, as well as information about ESD's procurement requirements.



A. 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 Contacts; the completion by Respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the 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 Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by 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.

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

http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan_2007.pdf.

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. All members of a Respondent team, including consultants, must complete the forms required above.



B. 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 any 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. Respondents should include a copy of their Vend-Rep submission receipt or paper questionnaire in their Proposals.

To enroll in and use the Vend-Rep System, Respondents should consult the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. 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 Vend-Rep 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).”

C. 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: <http://www.ogs.ny.gov/about/regs/ida.asp>

D. 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%** for MWBE participation, **15%** for New York State-certified Minority-owned Business Enterprise ("MBE") participation and **15%** for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A contractor ("Contractor") on any contract 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, 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 Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

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, 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 Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting Proposal, 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 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 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.

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, 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 Respondent as being non-responsive under the following circumstances:

- a) Respondent fails to submit an MWBE Utilization Plan;
- b) Respondent fails to submit a written remedy to a notice of deficiency;
- c) Respondent fails to submit a request for waiver; or
- d) ESD determines that Respondent has failed to document good faith efforts.

The Designated Developer 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 Designated Developer 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 Proposal in response to this RFP, Respondent agrees with all of the terms and conditions in [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf) located online at <https://esd.ny.gov/sites/default/files/SCHEDULE%20B.pdf>. 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 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.

Respondent is required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form # 4, 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.

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 Contractor 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:

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/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3: <https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

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

Article 17-B of the New York State Executive 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 or Respondent’s Contractor(s) should reference the directory of New York State Certified SDVOBs found at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor 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. Contractor 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 with their Proposal (<https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>).

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 or Respondent’s Contractor(s) of ESD acceptance or issue a notice of deficiency within 20 days of receipt.

D. If a notice of deficiency is issued, Respondent or Respondent’s Contractor(s) 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 or Respondent’s Contractor(s) and direct the Respondent or Respondent’s Contractor(s) to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on Form 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, Contractor 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. Contractor 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 Contractor non-responsibility.

- **Request for Waiver**

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

B. In accordance with 9 NYCRR § 252.2(m), a Respondent or Respondent's Contractor(s) 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/Contractor'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. Contractor 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 (Form OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor 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 the Designated Contacts.

- **Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Respondent or Respondent's Contractor(s) 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:

A. Copies of solicitations to SDVOBs and any responses thereto

B. Explanation of the specific reasons each SDVOB that responded to Respondent's or Respondent's Contractors' solicitation was not selected



- C. Dates of any pre-RFP, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract
- D. 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
- E. Other information deemed relevant to the waiver request

- **Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor 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 Contractor 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 Contractor 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 Contractor shall pay damages as set forth therein.

General inquiries or questions relating to the aforementioned policies, SDVOB participation, and the goals specified herein may be addressed to OCSD at OCSD@esd.ny.gov.

E. 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 to this RFP are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of any 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:

<http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

F. Certification under State Tax Law Section 5-a

Any contract resulting from this RFP is 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 RFP 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 (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.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 RFP will require periodic updating of the certifications contained in Form ST-220-CA. Proposals 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 Respondent 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 Respondent and all sub-consultants.

G. Schedule A

Following final selection of a Respondent as a Designated Developer, ESD will prepare a contract defining all project terms and conditions and the Designated Developer's responsibilities in conformance with Schedule A. A sample Schedule A is attached as Appendix F.

Respondents should review the terms found in Schedule A, 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.

H. Project Sunlight

This RFP 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.

I. Insurance Requirements

The Designated Developer will be required to provide the following insurance (at a minimum and to the extent applicable):

1. Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;



2. In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
3. Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
4. Must show evidence of Disability insurance coverage at State statutory limits;

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as an additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

Final Insurance Requirements are to be determined by ESD once the structure of the transaction with the Designated Developer has been finalized.

J. W-9 Form

Each Respondent must submit a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) with Proposal.

XII. APPENDIX

Below is a list of appendices attached to and made a part of this RFP:

Appendix A: Aerial Site Map

Appendix B: 60th Assembly District Community Advisory Council Development Priorities

Appendix C: One Brooklyn Health Development Requirements

Appendix D: Cost Agreement Letter

Appendix E: Form F Vital Brooklyn RFP Underwriting Template.xlsx

Appendix F: Schedule A