

PROPOSALS DUE: JUNE 30, 2011

*Canal Side  
Project*

REQUEST FOR PROPOSALS: REDEVELOPMENT OF  
DOWNTOWN SITE BUFFALO, NY



canalside

Former Donovan State Office  
Building  
125 Main Street  
Buffalo, New York

Erie Canal Harbor Development Corp.

## EXECUTIVE SUMMARY

**Background.** Erie Canal Harbor Development Corporation, (“ECHDC”) is issuing a request for proposals (“RFP”) for redevelopment of a key property in downtown Buffalo, New York. The property is located on Main Street in the heart of the Canal Side Project (the “Project”) being developed by ECHDC. Located on the site is the vacant, former Donovan State Office building containing 8 floors and approximately 160,000 square feet of developable space. The property, which borders Main Street, Washington Street, Scott Street and the on-ramp to the I-190, is approximately 2.3 acres. The southern end of the parcel will be bisected by a 0.54 acre public right of way to accommodate planned, but not yet constructed, open public space. Land to the south of the public right of way bordering Scott Street is approximately .3 acres and is also available for development under this RFP. With this RFP, ECHDC seeks to identify qualified organizations with the goal of entering into a partnership with an experienced development team to redevelop this important property.

At full build-out, the Canal Side Project is expected to consist of over 1 million square feet of commercial (retail, lodging, and office), cultural, and residential space along the Buffalo waterfront that will be designed to emphasize downtown Buffalo’s connection to the Lake Erie waterfront through the construction of a network of interpretive water elements evoking the character and vibrancy of the historic canals that once crossed the area, including segments of the Erie Canal, the Commercial Slip, and the Prime Slip. The Project will provide various year-round offerings and experiences, including restaurants, entertainment venues, retail outlets, cultural attractions, vast public spaces, and increased access to the Buffalo River, appealing to a wide demographic of visitors and residents. Development of the Donovan parcel is integral to the Project.

### **Site Details.**

Address: 125 Main Street, Buffalo, NY  
SBL No. 111.17-7-1  
Parcel Areas: 1.4 acres and .3 acres  
Utilities: All major services available

**Proposals.** While open to any/all permitted uses, proposals are intended to focus upon mixed-use development that further enhances the Canal Side district. In addition to a description of the redevelopment concept, proposals must be accompanied by a financial plan that includes a bid/offer for the parcel.

**Submission Requirements.** Five (5) bound originals and one electronic (CD) copy of the proposal must be submitted to ECHDC on or before 4:00 P.M. Local Time, on June 30, 2011 and must include all items specified in this RFP. Proposals submitted after the deadline will not be considered. Proposals shall be submitted to: **Thomas P. Dee, President, Erie Canal Harbor Development Corporation, 95 Perry Street, 5th Floor, Buffalo, New York 14203**

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>ii</b>
<b>1. INTRODUCTION.....</b>	<b>1</b>
1.1 City of Buffalo – Canal Side Development.....	1
1.2 Background and the Project Site .....	2
1.3 Site Context & Advantages.....	4
<b>2. THE CALL FOR PROPOSALS .....</b>	<b>6</b>
2.1 Objectives.....	6
2.2 Project Site Specifics.....	7
<b>3. PROPOSAL REQUIREMENTS .....</b>	<b>10</b>
3.1 Pre-Proposal Conference Call.....	10
3.2 Proposal Contents.....	10
3.3 Other Certifications/Forms.....	18
3.4 Deadline for Proposals .....	18
<b>4. PROPOSAL REVIEW PROCESS .....</b>	<b>19</b>
4.1 Process Timetable.....	19
4.2 Review of Submissions .....	19
4.3 Evaluation Criteria .....	19
4.4 Developer Interviews.....	19
<b>5. TERMS AND CONDITIONS .....</b>	<b>22</b>
5.1 Deposit and Development Agreement.....	22
5.2 Taxes and Incentives.....	23
5.3 Condition of the Site .....	24
5.4 Contingencies.....	24
5.5 Permits and Approvals .....	24
5.6 Submission of Proposals .....	25
5.7 Expenses.....	25
5.8 Brokers .....	25
5.9 Not an Offer .....	26
<b>6. GENERAL CONDITIONS .....</b>	<b>27</b>
<b>APPENDIX A: STATEMENTS AND FORMS TO BE SUBMITTED WITH PROPOSAL .....</b>	<b>31</b>

## LIST OF FIGURES

<u>Figure No.</u>	<u>Title</u>	<u>Page</u>
Figure 1-1	Aerial View of Project Site .....	1
Figure 1-2	Donovan Site Plan.....	2
Figure 1-3	Donovan Office Building .....	3
Figure 1-4	Donovan Office Building – Street Level .....	3
Figure 1-5	Proposed Canal Layout .....	5

# 1. INTRODUCTION

Erie Canal Harbor Development Corporation, (“ECHDC”), a subsidiary of New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC” – a public benefit corporation of the State of New York), is issuing this Request for Proposal (“RFP”) for the redevelopment of a key property in the downtown district of the City of Buffalo (the “City”) that is part of the Canal Side Project area.

## 1.1 City of Buffalo – Canal Side Development

The Canal Side Project is described in the Modified General Project Plan (“MGPP”) adopted by the ESDC Board of Directors in December of 2010. A copy of the plan can be found at [http://www.eriecanalharbor.com/canal\\_side.asp](http://www.eriecanalharbor.com/canal_side.asp). The Project site is bounded on the north by Upper Terrace and Exchange Streets and Perry Boulevard; on the east by Washington Street and Seymour H. Knox III Plaza; on the south by Perry Street and the Buffalo River and on the west by Erie Street, Marine Drive, and Pearl and Commercial Streets. (See **Figure 1-1**)

The site enjoys a number of benefits. These include an efficient road network that supports regional and international access; convenient access to the NYS Thruway; and proximity to a host of local and regional natural, historic, and cultural amenities, including but not limited to the HSBC Arena, the Central Wharf/Commercial Slip adjoining the Buffalo River, world-class architecture, art galleries, great music and entertainment venues.

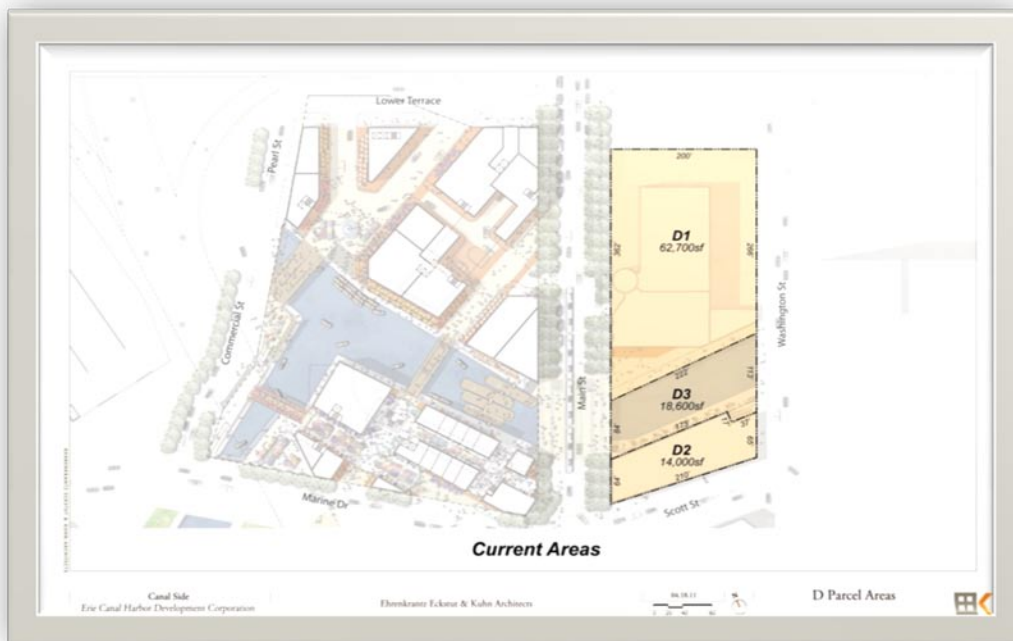


**Figure 1.1** – Aerial View of Canal Side Project area prior to demolition of the Memorial Auditorium

## 1.2 Background and the Project Site

Through a local planning process, the Donovan State Office Building Site (or “Donovan Site” or “Site”) located at 125 Main Street, is anticipated to be divided into three separate parcels designated as D1, D2 and D3 (see **Figure 1-2**). This RFP seeks development proposals for the D1 and D2 parcels. D3 is anticipated to be developed by ECHDC as public open space. D1 consists of approximately 1.4 acres and a vacant, 8-story steel and glass former state office building (see **Figure 1-3** and **Figure 1-4**). The D1 and D3 parcels are owned by ECHDC. Parcel D2 is currently vacant land consisting of approximately 0.3 acres. The northern half of D2 is owned by ECHDC. A portion of D2 bordering Scott Street is owned by the City of Buffalo. ECHDC has been involved in negotiations with the City to acquire the land to permit development on the parcel in accordance with the MGPP. While proposals will be rated primarily on the development plan associated with D1, consideration will also be given to proposals for development of D2 in the event ECHDC acquires the remaining portion of site from the City.

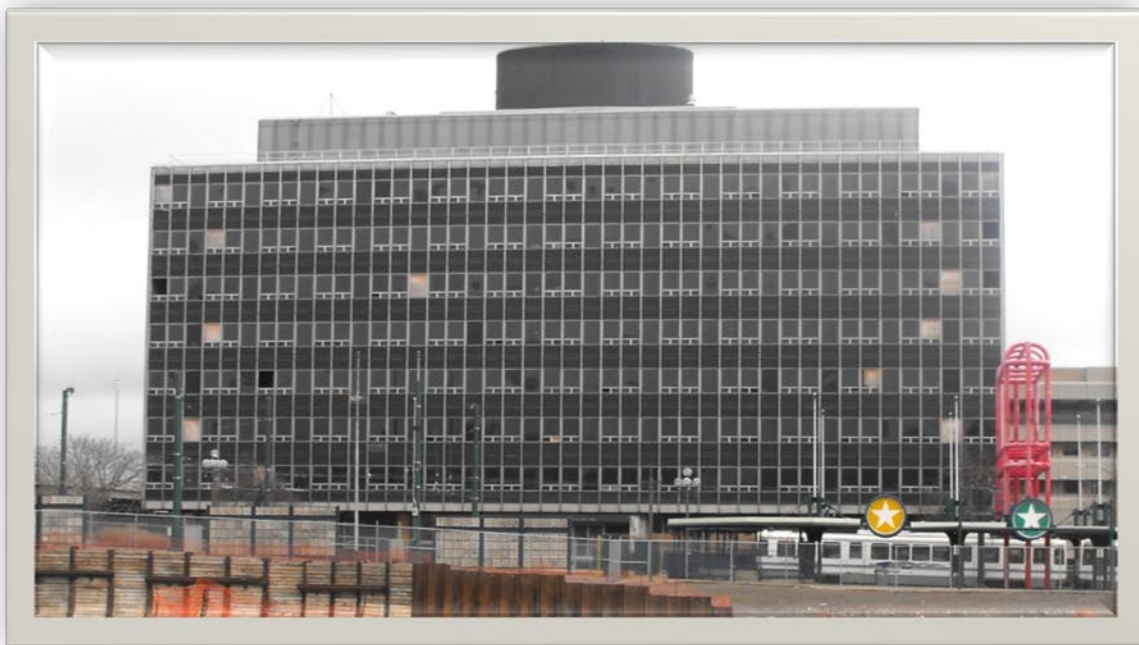
The Donovan State Office Building was acquired by ECHDC in 2008 and since that time, ECHDC has spent approximately \$7 million dollars substantially remediating hazardous waste and materials including asbestos and completing interior demolition of the building. The scope of work to be completed includes removal of non-friable caulk and metal panels surrounding the water tank; removal of non-friable roof flashings; removal of equipment (old chillers, pumps, and associated pumping located on the penthouse level); removal of old boilers and associated pumps located in the basement; and removal of the exterior façade back to the structure.



**Figure 1.2 – Donovan Site Plan**



**Figure 1.3 – Donovan Office Building**



**Figure 1.4 – Donovan Office Building – Street Level**

### 1.3 Site Context & Advantages

- **A Gateway Location.** The Donovan Site sits at the cross-roads of the City's main downtown business district and the City's inner/outer harbor. The site is two blocks from the HSBC Arena and Coca-Cola Field and is within easy walking distance of the Buffalo River and Central Wharf/Commercial Slip area developed by ECHDC.



*Central Wharf in the Evening*

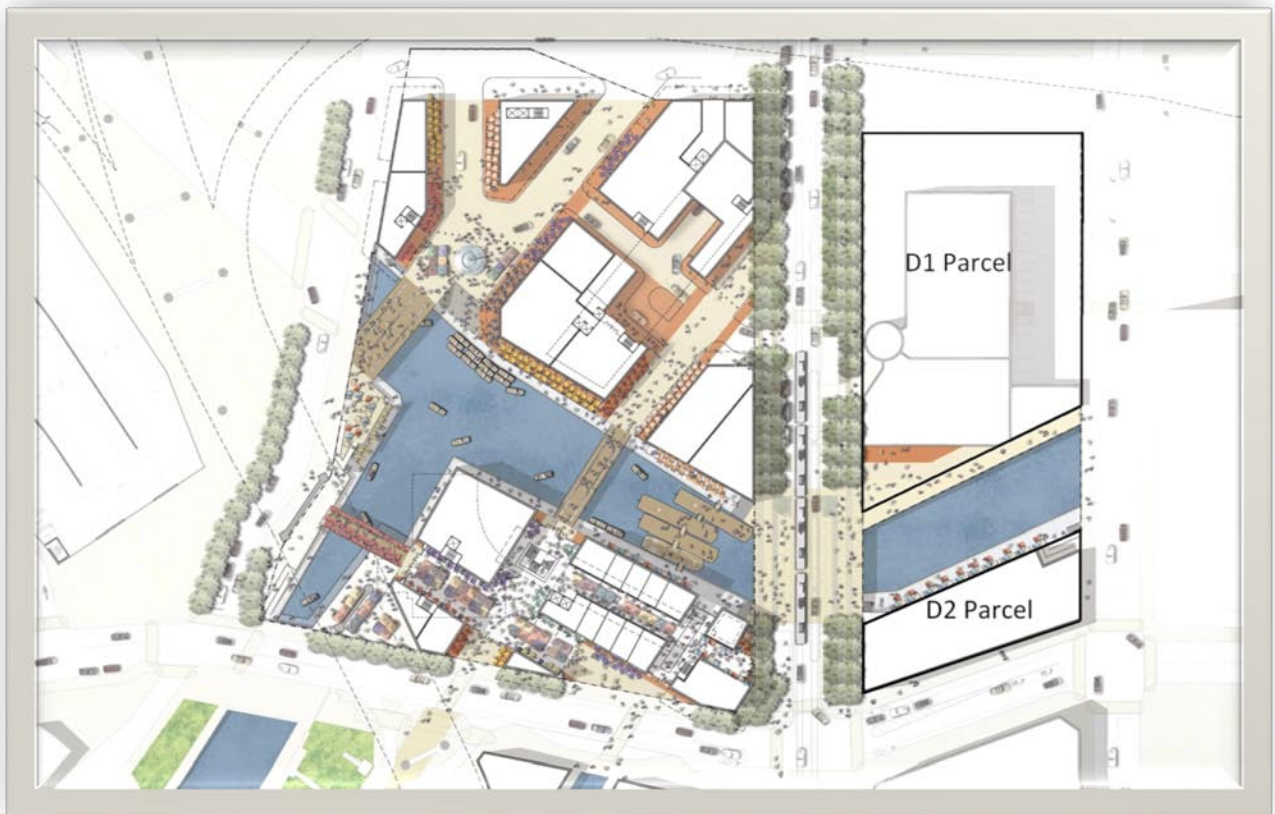
- **Clear Title & Ownership.** Fee Title/ownership of the D1 parcel in the Donovan Site rests with the ECHDC and is not impeded by any unusual constraints. Approximately half of the D2 parcel is owned by ECHDC.
- **Access to Community Facilities.** The Site is located on a major urban thoroughfare in the City, Main Street, and is adjacent to an entrance to the I-190 Thruway. In addition, outside the front door of the Donovan Building is the rapid transit system operated along Main Street by the Niagara Frontier Transportation Authority. It is within short walking distance of a variety of scenic recreational amenities (e.g., Central Wharf, the Buffalo & Erie County Naval and Military Park, and the Erie Basin Marina).
- **Within ECHDC Canal Side Project.** The Site is within the ECHDC Canal Side Project area, and thus it benefits/will benefit from various ECHDC investments and activities including demolition of the former Memorial Auditorium across the street from the Donovan site to make way for construction of a vast area of public space consisting of historic canals, towpaths, pedestrian bridges and open public space; completion of environmental review under the New York State Environmental and Quality Review Act ("SEQRA"); and the exercise of ESDC's power to override local zoning. While the City of Buffalo's zoning restrictions do not apply to the project, construction and rehabilitation in the project area is governed by design guidelines adopted in accordance with the MGPP which can be found at [http://www.eriecanalharbor.com/canal\\_side.asp](http://www.eriecanalharbor.com/canal_side.asp).
- **Public Infrastructure.** ECHDC is currently in the design process of the primary public infrastructure component of Canal Side. Public canal features will be constructed by ECHDC on the Aud Block which will include street-level water features interpreting the alignment of the Erie Canal and Commercial Slip, which once crossed the Aud Block. The canal system is being designed to ensure the system's materials, alignment and depth are as historically accurate.



*Public Canals on the Aud Block*

The street-level canal system west of Main Street will consist of narrow water bodies that will emulate the original Erie Canal system. Several “barges” will be “anchored” in the canals. ECHDC consulted with the Buffalo Maritime Center on the design and historical accuracy of the anchored barges. Anticipated summertime uses will include unique row boats for rent. During winter months, a portion of the canals will be used for ice skating. (See **Figure 1-4**).

On April 12, 2011, the ECHDC Board of Directors authorized the retention of C&S Companies to complete architectural and engineering design services for the historically aligned canals and associated landscaping. It is expected that contracts for actual construction will be awarded in the Fall of 2011.



**Figure 1.4** – Proposed Canal Layout

## 2. THE CALL FOR PROPOSALS

### 2.1 Objectives

This RFP envisions redevelopment of the Site with relatively high-density mixed uses that would contribute to visitor and resident offerings in the Canal Side Project area. The particular mix of uses and proportions attributed to each are being left solely to the knowledge and creativity of prospective proposers.

The redevelopment must be consistent with the overall policies of the Canal Side Project outlined in the MGPP and consistent with the Final Generic Environmental Impact Statement (“FGEIS”) adopted by the ESDC Board on January 21, 2010, consistent with the Design Guidelines accompanying the MGPP and the Waterfront Community Development Agreement with the City of Buffalo outlining goals for development occurring in the project area.

Development of the Donovan Site is integral to the principal goal of the Project which is to transform the Canal Side Project Area into a vibrant mixed-use, year round setting for family-oriented uses, including sports, entertainment, cultural, residential, commercial and recreational uses. The Project will build upon the public development framework established through recent and committed public infrastructure investments such as the Commercial Slip, enhancements to Naval Park, and reestablishment of portions of the former street grid (e.g., Prime, Lloyd, Hanover Streets). Also, the Project will enhance public access and use of the downtown waterfront, including multimodal connections to transit, bicycle, pedestrian and waterborne networks.

In addition to creating a densely developed area with a mix of amenities and open space on parcels that have been vacant and underutilized for decades, the Project aims to provide for the following public uses and purposes:

- Strengthening and/or establishing the visual and physical connection between adjacent downtown destinations (e.g., Buffalo River, HSBC Arena, Waterfront Village, and Naval Park).
- Providing ample, visually interesting, and diverse public spaces encouraging year-round use.
- Maximizing area development potential by consolidating surface parking spaces into structured parking.
- Creating an urban, mixed-use setting that builds upon and complements the 2004 Erie Canal Harbor Master Plan (“2004 ECHMP”) urban design guidelines set forth in the City’s Waterfront Urban Renewal Plan, as amended.

- Promoting and incorporating architectural elements that celebrate and interpret the historical significance of the Erie Canal and its terminus on the 12.5-acre Erie Canal Harbor Project site.
- Creating tenant spaces suitable for a mix of uses, including office space, hotel space, ground level retail and community facility spaces, to ensure that Buffalo can capture its share of future economic growth and new jobs.
- Facilitate new development of the Project Site that contributes to a lively, urbane setting and a substantial increase in street-level interaction;
- Expand the availability of goods, services, and entertainment venues available to visitors and residents;
- Create new jobs, increase the tax base, and support investment in the City;
- Stabilize and preserve the Site value;
- Encourage further development in the adjacent areas; and
- Reach a mutually beneficial public/private partnership with the goal of returning the Site to a productive and self-sustaining use.

Proposals submitted in response to this RFP should highlight how the proposal fits in with the overall goals of the Project.

## 2.2 Project Site Specifics

### Size, Shape, and Frontages.

#### D1 parcel ≈ 1.4 acres

- Main Street: ~ 362 feet;
- Washington Street: ~266 feet;

#### D2 parcel ≈ .3 acres

- Main Street: ~ 64 feet;
- Washington Street: ~65 feet;
- Scott Street: ~ 210 feet.

**Utilities.** The entire Site is currently served and has direct connection access by all major utilities and infrastructure facilities, including water, sewer, electric, and telecommunications.

**Assessed Value.** The City's 2005 tax rolls indicate the Project Site's assessed value, including site improvements, is \$8,507,000.

**Environmental Constraints.** The Donovan Site has been subject to a Phase 1 and Phase 2 environmental assessment conducted by the URS Corporation. Copies of the assessments are available on disc to prospective developers at the office of ECHDC. Bid documents associated with the abatement and demolition work already completed by ECHDC are included on the disc.

Given the prominence of the Donovan Site in the downtown area, ECHDC is committed to a high quality of development and architectural character, as well as projects that are sensitive to overall urban design issues. The architects, engineers and other design professionals to be retained in connection with submitted proposals are strongly encouraged to review various policy documents outlined with this RFP.

### **2.2.1 General Project Plan**

In December of 2010, the ESDC Board of Directors affirmed the MGPP for the Project. Overall development in the Canal Side district is detailed in the MGPP. A copy of the MGPP can be found at ECHDC's website at: [http://www.eriecanalharbor.com/canal\\_side.asp](http://www.eriecanalharbor.com/canal_side.asp).

### **2.2.2 Zoning**

Pursuant to the original General Project Plan affirmed by ESDC in March 2010, ESDC exercised its powers to override local zoning requirements as permitted pursuant to Section 16 of the Urban Development Corporation Act. As such, development in the Canal Side Project Area is not subject to the City of Buffalo's zoning ordinance. However, development in the district must comply with the Design Guidelines ("Guidelines") that are part of the MGPP and discussed below.

### **2.2.3 ECHDC Design Standards**

All development within Canal Side is required to be LEED® certified, with a goal of achieving a LEED® Silver rating as per the MGPP. In addition, development proposals must comply with the Guidelines that are part of the MGPP. Overall, the guidelines are intended to provide high quality, attractive public spaces that employ contemporary techniques but connect to the unique history of the site and Buffalo as a whole. The Guidelines are most concerned with visual content relating to any and all parts of buildings in the district.

In general, the Guidelines require the Board of ECHDC to refer all development proposals within Canal Side to a three person Design Committee and to consider the Design Committee's recommendations prior to approving any proposed development at Canal Side. Evaluations of the Design Committee are limited to ensuring consistency with the Guidelines.

The full set of ECHDC Design Guidelines may be downloaded from the ECHDC website using the following link:

[http://www.eriecanalharbor.com/pdf/CanalSide/MGPP101210exhibitsCD\\_part1.pdf](http://www.eriecanalharbor.com/pdf/CanalSide/MGPP101210exhibitsCD_part1.pdf) and

[http://www.eriecanalharbor.com/pdf/CanalSide/MGPP101210exhibitsCD\\_part2.pdf](http://www.eriecanalharbor.com/pdf/CanalSide/MGPP101210exhibitsCD_part2.pdf)

### **2.2.4 Inspections**

Since the Project Site is vacant, it is readily accessible for visual inspection from adjoining public rights-of-way. If Proposers wish to undertake a more intensive on-site inspection of the premises and Donovan Office Building, they must arrange such through ECHDC. Neither the State, ECHDC, nor the ESDC shall be responsible or liable for any damages or injury to proposers or their employees, agents, contractors and representatives resulting from any visit to the Site whether or not scheduled in accordance with this RFP. Proposers are advised that they must execute and deliver to ECHDC a Hold Harmless Agreement (without omission, addition, amendment, modification or supplement) prior to any Site visit (see **Attachment 1**).

### 3. PROPOSAL REQUIREMENTS

Interested firms/teams are required to follow the guidelines and instructions contained in this section. At its discretion, ECHDC/ESDC may make clarifications or amend this RFP at any time. In the event it becomes necessary to revise or amend any part of this RFP, all revisions, clarifications, and changes will be provided by addenda posted on the ECHDC website <http://www.eriecanalharbor.com/> and the New York Contract Reporter website, <http://www.nyscr.org> under the corresponding advertisement.

It is the responsibility of all respondents to check the ECHDC and New York State Contract Reporter websites for posting of clarifications, amendments, or addenda on an ongoing basis.

#### 3.1 Pre-Proposal Conference Call

Before submitting a proposal, prospective Proposers are encouraged to examine documents noted in the RFP available on the ECHDC website and available on disc at the office of ECHDC.

A non-mandatory pre-proposal conference call for prospective Proposers will be held at **2:00 p.m. on May 17, 2011**. To participate in the call, ***please contact Kaitlin McGee at ECHDC at 716-846-8238 prior to close of business on May 13, 2011.***

Proposers will be required to provide “sign-in sheet” information—company name, address/phone, and contact person email—and will be provided a toll-free number and password the day of the conference call. ECHDC representatives will be present on the call to provide an overview of the RFP and information for completing required forms/certifications.

#### 3.2 Proposal Contents

Proposals for parcel D1 of the Site should contain specific information organized as follows:

##### 3.2.1 Proposal Executive Summary

- A. Narrative summarizing the overall proposal
- B. Table summarizing proposed uses by type
- C. Development team

##### 3.2.2 Adaptive Reuse Plan

- A. Narrative explaining the rationale for the proposed uses of the Donovan Building including:

- a. Rationale for unit types proposed, (retail, restaurant, commercial, residential rental or owner-occupied)
  - b. Discussion of the market conditions that support the proposed uses, absorption assumptions, etc.
- B. A complete break-down of uses proposed for the property by floor and including the following detail:
- a. Type of unit (retail-restaurant, commercial, 1-bedroom, 2-bedroom, etc.);
  - b. Square footage of each unit type;
  - c. Amenities provided as part of the project (i.e. types of interior finishes, parking, open floor plans, ceiling heights, balconies, etc.)

### 3.2.3 Project Design

- A. Perspective renderings giving an architectural and urban design sense as the setting for the proposed development
- B. Site plan (to scale) showing building elements, open space, building access, parking etc.
- C. Building elevations (to scale)
- D. Floor plans (to scale)
  - a. For Typical floor plans-provide only one (1)
  - b. Non-typical floor plans-provide as required
  - c. Plans shall show such detail as to indicate, stairwells, elevators, access to the garage, mechanical room, refuse storage, etc.
  - d. For projects proposing residential units, detail should indicate bedrooms, bathrooms, kitchens, etc.
- E. Primary material elements to be used in the building's façade.
- F. Description of how the physical components of the proposed development are consistent with Canal Side Design Guidelines (e.g., Building orientation, façade articulation, ground-level uses, architectural elements, materials, etc.).

### 3.2.4 Project Cost Estimates – Use of Funds

ECHDC will be utilizing professional expertise in the area of construction to evaluate the construction costs for the proposals for redevelopment of the building. In order to fully evaluate the feasibility of the project costs for construction, detailed order of magnitude costs for major categories must be provided.

- A. Hard Costs
  - a. Electrical Systems/Wiring
  - b. Fire Suppression
  - c. Plumbing
  - d. HVAC
  - e. Elevator
  - f. Major Structural
  - g. Windows
  - h. Roofing
  - i. Fixtures and Other Equipment
  - J. Building Materials (inclusive of dry wall, flooring, framing, exterior shell, doors, etc.)
  
- B. General Costs
  - a. Mobilization
  - b. Site Work /Utility
  
- C. Soft Costs
  - a. Architectural
  - b. Engineering
  - c. Permit Fees
  - d. Insurance
  - e. Overhead
  - f. Legal
  
- D. Other
  - a. Financing Fees
  - b. Closing Costs
  - c. Developer's Fee
  - d. Carrying Costs
  - e. Other Costs

A detailed description of assumptions used in development of the project costs must be included. The proposals should also indicate any consideration for LEED Certified building technologies. A complete set of the original Donovan Building drawings are available on disc at the offices of ECHDC.

### **3.2.5 Project Funding – Source of Funds**

A complete source of funding shall be included for the proposed project including both Construction and Permanent Sources. Detailed assumptions shall include interest rates, repayment terms, and loan requirements (anticipated conditions precedent, i.e. pre-sale of unit and leasing requirements, appraisal value estimate, loan-to-value requirement, etc.). The

proposal shall include letters from any financial institution/sources committing funding for the project.

ECHDC is not requiring that the proposal include detailed financial statements of the development entity at this time. However, during the proposal review process, full financial disclosure may be required by the ECHDC in order to determine the financial strength of the entity and ability to undertake the project to completion.

### **3.2.6 Purchase Offer and Other Financial Assumptions.**

Proposals must clearly state the offer/bid and ownership structure for the building and land parcel comprising the Project Site. In addition to a proposed purchase price or lease/rent payment, the proposal must include a proposed Common Area Maintenance Charge (“CAM”) payable on a monthly basis to ECHDC in a minimum amount of \$0.75 per square foot annually. CAM charges shall increase annually based on the Consumer Price Index. The CAM is required to pay for administration, security, maintenance, repairs, utilities, events, and insurance associated with the Canal Side District. ECHDC will consider proposals that condition the payment of CAM charges on space actually occupied/leased by the developer. For any such proposals that include conditional CAM payments on space actually leased/occupied, the conditional payment of CAM shall be limited to occupancy/leased space exceeding 50% of the total square feet available.

It should be noted that no State, ESDC/ECHDC and/or County or City funding or assistance should be assumed in the 10-year pro forma other than funding or assistance that may be generally available from existing programs or sources for which the developer may be entitled or eligible to apply. However, the financial plan may identify funding “gaps” related to realization of the proposed development and a reasonable, unleveraged internal rate of return for the Proposer.

In the event of a projected “gap”, the pro forma may suggest potential options to address such gap that may be considered by ECHDC (i.e., payment in lieu of taxes [PILOT], building land discounts/write downs, below-market interest loans, capital incentives, etc.) However, it shall be in the sole discretion of ECHDC to consider whether such assistance options will be reasonably available, or other equivalent measures to address such gaps. Developers are not prohibited from seeking incentives, tax incentives/credits, property tax abatements, etc. from any other entity.

Other financial assumptions should be considered in preparation of an adaptive reuse proposal for the Donovan Site:

A. An appraisal establishing a sales price for the remaining building structure will be prepared if an acceptable proposal is selected, however, the developer must include an estimated purchase offer or lease payment amount in the proposal. ECHDC will consider a reduction in the purchase price if justified.

- B. Construction and permanent financing commitments must be secured by December 15, 2011;
- C. Parking, either through the development of on-site (structured or non-structured) or off-site is the responsibility of the developer.
- D. The determination for eligibility for various incentive programs as listed in the previous section is the responsibility of the developer; and
- E. Sale of the building is subject to ECHDC approval, a public hearing and approval by the Public Authorities Control Board (PACB).
- F. Performance Bonds will be required during the development period. Liquidated damages will be assessed upon failure to meet substantial project completion milestones.

### **3.2.7 Project Pro Forma**

A 10-year project pro-forma must be provided showing revenue by use, expenses, and debt service. The pro forma shall include pre-development, construction and operating phases (through stabilization). A link to a pro forma Microsoft Excel worksheet is included as **Attachment 2**. Assumptions regarding the development of the pro forma should be as detailed as possible. Proposal must include both an electronic and hard copy of completed pro forma. Proposals submitted without the pro forma or incomplete pro forma data will not be considered.

### **3.2.8 Project Team**

The proposal shall identify the project participants and relevant background information.

- A. Development Entity
  - a. Type of development entity to be formed (LLC, Corp. etc.)
  - b. Principals with at least 20% owner interest in the company
- B. Other participants in project including architecture and engineering firms, construction manager, financial consultant, etc.
- C. Experience of the project participants with similar projects
- D. Listing and description of projects that the participants have successfully undertaken directly.

- E. Names, addresses and telephone numbers of those individuals who may be contacted during the period of proposal evaluation.

### **3.2.9 Project Schedule**

Provide a schedule for the overall project detailing such milestones as design development, financing commitments, construction, project completion, etc. At a minimum, construction for the D1 parcel must begin by December 15, 2011 and be completed as evidenced by a permanent certificate of occupancy by January 1, 2014.

### **3.2.10 Project Impacts**

An explanation of how the proposed development would advance overall economic development objectives outlined in Section 2.1. Discussion should include projected jobs and average annual salaries that would be generated by the proposed redevelopment, both during renovations/construction and permanent (i.e., in the first three [3] years of operation). Include specific supporting data to indicate how the project will contribute to the economic benefit of the community (i.e., net new jobs, tax revenues, spending, and economic activity). Discussion should also focus on the developer's commitment to diversity and how it anticipates meeting the goals contained in section 3.3.2. Discussion should also focus on the developer's commitment to green development.

### **3.2.11 Other Development-Specific Requirements**

- A. Proposed commercial development - At minimum, proposals must provide signed leases and/or letters of intent from credit worthy tenants for at least 25% occupancy in the Donovan Building.
- B. Proposed residential development – Proposals providing for at least 20% of low/moderate income housing shall be given preference.
- C. Proposed Hospitality developments – Proposals involving use of the site for hotel space must provide a franchise agreement with a full-service or business-class hotel with a minimum 3 diamond/3 star rating or developer must show proof of a previous franchise agreement(s) with an equivalent level hotel in the last ten (10) years.

### **3.2.12 Proposals for D2 Parcel**

As discussed above, the RFP also seeks development proposals for the D2 Parcel. However, as ECHDC does not currently hold title to the entire parcel, development proposals for D2 do not require the detailed submission required by sections 3.2.1 through 3.2.10. Rather, proposals

for D2 should include a narrative of the proposed development, conceptual design documents and project costs estimates.

### 3.2.13 Issues and Concerns

The proposal should identify any issues or concerns in relation to the project. Any deletions or additions to the scope of the project should be clearly stated with justification and recommendations as to why the changes are being proposed.

## 3.3 Other Certifications/Forms

Proposals shall include forms indicating compliance with various state regulations and policies. These are discussed in the following sections and listed in the checklist in Appendix A.

### 3.3.1 State Finance Law Sections 139-j and 139-k

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this solicitation. These Procurement Requirements (1) govern permissible communications between potential respondents and ESDC and ECHDC or other involved governmental entities with respect to this solicitation during the procurement process; (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 solicitation.

Compliance with the Procurement Requirements requires that:

- A. All communications regarding this solicitation, from the issuance of this solicitation through final award and approval of any resulting contract (the “Restricted Period”), be conducted only with the contact person(s) listed in this section.
- B. The completion by respondents of the Contractor Disclosure of Contacts Form, the Offerer Disclosure of Prior Non-Responsibility Determinations (see **Attachment 3**) and the Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law (see **Attachment 4**).
- C. Periodic updating of such forms during the term of any contract resulting from this solicitation.
- D. Respondents must submit each of these forms, properly completed, as part of their proposals. The Procurement Requirements also require ESDC and ECHDC employees to obtain and report certain information when contacted by prospective bidders during the Restricted Period, make a determination of the responsibility of bidders and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the State Finance Law provisions, that

prospective bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible bidder 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.

A copy of ESDC's Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k is can be reviewed at:

<http://esd.ny.gov/corporateinformation/Data/RFPs/RequiredForms/PermissibleContactsPolicyJan2007.pdf>.

Neither this summary nor the referenced Policy is 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:

[www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html](http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html)

All potential Respondents are solely responsible for full compliance with the Procurement Requirements.

PURSUANT TO STATE FINANCE LAW SECTIONS 139-j and 139-k, ALL QUESTIONS, COMMENTS, REQUESTS FOR CLARIFICATION AND OTHER COMMUNICATIONS REGARDING THIS SOLICITATION MUST BE VIA EMAIL TO THE FOLLOWING PERSON AND CONTACT WITH ANY OTHER PERSONS REGARDING THIS SOLICITATION IS PROHIBITED BY LAW:

**Mark Smith, Director of Construction**  
**Erie Canal Harbor Development Corporation**  
**95 Perry Street, 5<sup>th</sup> Floor**  
**Buffalo, New York 14203**  
**Phone: (716) 846-8252**  
**Email: msmith@empire.state.ny.us**

All questions and requests for clarification will be responded to in writing and will be posted on the ECHDC website at <http://www.eriecanalharbor.com/> and the New York State Contract Reporter website at <http://www.nyscr.org> under the corresponding advertisement.

### **3.3.2 Non-Discrimination and Affirmative Action**

It is the policy of the State of New York, ESDC and ECHDC to comply with all federal, State and local laws, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that New York State Business Enterprises, Minority and Women-owned Business Enterprises (M/WBEs), Minority group members and women share in the economic opportunities generated by ECHDC/ESDC's participation in projects or initiatives, and/or the use of ECHDC/ESDC's funds. ECHDC/ESDC's non-discrimination and affirmative action policy will apply to this initiative.

The preferred developer will agree to use its best efforts to achieve: a) not less than 20/5% New York State certified Minority and Women-Owned Business Enterprise (M/WBE) contractor and/or subcontractor participation during the development of the project, which includes the pre-construction, construction and operation-maintenance phases; and b) an overall goal of 30% Minority and Female workforce participation during construction. M/WBEs companies are encouraged to respond.

In addition, in order to promote local hiring in district, the preferred developer and tenants with more than 30 employees are encouraged to:

- A. use the New York State Department of Labor (“DOL”), the Buffalo and Erie County Workforce Investment Board (“WIB”) and other local job placement centers for all job recruiting purposes to identify local residents for employment consideration;
- B. give an identified workforce agency (e.g. WIB, Buffalo Employment & Training Center) at least ten (10) business days to refer appropriate City residents for employment consideration before filling the position;
- C. provide an identified workforce development agency with criteria to screen qualified candidates for all job positions;
- D. participate in workforce development agency workshops as relating to employment opportunities in the Project area; and
- E. to send a representative to all job fairs sponsored by local workforce development agencies.

A copy of each respondent’s Equal Employment Opportunity Policy Statement, Staffing Plan of the anticipated workforce to be utilized on the Proposer’s Team (Schedule A-1 – see Attachment 5) and Schedule of Minority and Women Business Participation (Schedule A-2 – see Attachment 6) shall be included as part of the response to this RFP. In the forms, the firm is required to denote all the consultants/subcontractors it proposes to use in achieving M/WBE participation. The ESDC Affirmative Action Unit (“AAU”) is available at (212) 803-3224 to assist in identifying New York State certified M/WBEs that can provide goods and services in connection with the contract.

### **3.4 Deadline for Proposals**

Five (5) bound originals and one electronic (CD) copy of the proposal must be submitted to **ECHDC by 4:00 P.M. Local Time, on June 30, 2011.** Proposals shall be submitted to:

**Thomas P. Dee, President  
Erie Canal Harbor Development Corporation  
95 Perry Street, 5<sup>th</sup> Floor  
Buffalo, New York 14203**

## 4. PROPOSAL REVIEW PROCESS

### 4.1 Process Timetable

The following target dates are intended as a guide for the proposal process:

May 2, 2011	RFP Issue Date
May 17, 2011	Pre-Proposal Conference Call
June 30, 2011	Due Date for Proposal Submissions
July 11, 2011	Interviews of Development Teams
July 18, 2011	Designation of Preferred Developer

### 4.2 Review of Submissions

ECHDC will review all proposals for completeness and compliance with the requirements of this RFP and may request from any or all of the proposers additional material, clarification, confirmation or modification of any submitted proposal, including proposals that are incomplete or non-conforming as submitted. Except at the request or by the consent of ECHDC (which consent shall be in the sole and absolute discretion of ECHDC), proposers will not be entitled to change their proposals once submitted.

A committee designated by ECHDC (“Selection Committee”) shall review all proposals and may consult with ECHDC and City advisors, if any.

A Preferred Developer shall be designated in the sole and absolute discretion of ECHDC based upon the Evaluation Criteria.

### 4.3 Evaluation Criteria

In reviewing and evaluating proposals and preparing recommendations for the ECHDC Board of Directors, ECHDC staff will consider such criteria (all criteria considered by ECHDC being referred to collectively as the “Selection Criteria”) that, in ECHDC’s sole and absolute discretion, are in the best interests of ECHDC and the State. The criteria listed below are of significant concern to ECHDC:

- a. The quality of the development plan and its integration within Canal Side, the Buffalo Waterfront and the greater Downtown Buffalo;
- b. The potential beneficial impact on the City of Buffalo;
- c. The ability of the proposer to complete the project by January 1, 2014;

- d. The amount of the purchase offer or rental/lease proposal;
- e. The amount of proposed CAM payable to ECHDC. The minimum CAM required for any proposal is \$0.75 per square foot regardless of the ownership structure proposed. CAM charges are required in addition to any other taxes, special assessments or other charges applicable to the property. ECHDC will consider CAM payments conditioned on actual occupied/leased space. However, CAM payment may not be conditional with regard to the first 50% of space in the building.
- f. Economic impact of project, including jobs created and/or retained;
- g. Proposer's compliance with the requirements, provisions, terms and conditions of this Request;
- h. Proposer's integrity and previous record of performance and dealings with any state, municipal and federal entities, including, without limiting the foregoing, ECHDC and agencies of the State of New York.
- i. Extent that the proposed Project Team, and/or individual members or member firms on the Team, meet the requirements of the NYS Comptroller's Office and ESDC policies on procuring Responsible Vendors, specifically in the following four major categories:
- **Financial and Organizational Capacity to Undertake the Project:** Factors to be considered include, but are not limited to, assets, liabilities, liquidity, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, or existence of appropriate accounting and auditing procedures for control of property and funds.
  - **Legal Authority to do Business in New York State:** Demonstrated by a foreign corporation's registration with the New York State Department of State under the Business Corporation Law or Not-for-profit Corporation Law (Note that both foreign and domestic businesses and not-for-profit corporations, limited partnerships, limited liability partnerships, and limited liability companies must all file documentation with the Department of State for such authority) and absence of any findings removing/preventing such authority.
  - **Integrity:** Factors to be considered include, but are not limited to, criminal indictments or convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by federal, state or local governments, or prior determinations of integrity-related non-responsibility.
  - **Previous Contract Performance:** Factors to be considered may include reports of less than satisfactory performance, early contract termination for cause, contract

abandonment, court determinations of breach of contract, etc.

#### **4.4 Developer Interviews**

Following ranking of proposals, a number of developer teams (to be determined by the Selection Committee) may be asked to present their proposals to the Selection Committee.

After the interview process, the developers will receive a final ranking. ECHDC will negotiate exclusively with the first ranked developer (i.e., the “Preferred Developer”). If during the negotiation, the Selection Committee concludes that it is unlikely an agreement will be finalized with the Preferred Developer, the Selection Committee will be at liberty to enter into negotiations with the second-ranked respondent and so forth until it enters into an acceptable agreement to undertake the Project or stop the process.

## **5. TERMS AND CONDITIONS**

### **5.1 Deposit and Development Agreement**

#### **5.1.1 Application Fee**

All proposals are required to include at submission a non-refundable application fee in the amount of \$5,000. The application fee covers the direct and indirect costs associated with RFP review process.

#### **5.1.2 Deposit**

All proposals are required to include at submission a deposit in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) to be applied as liquidated damages for breach by the selected developer concerning development of the D1 parcel. The Deposit may be in the form of certified or cashier's check or irrevocable standby letter of credit, satisfactory in all respects to ECHDC and ESDC in their sole discretion. Deposits from proposals not selected as the preferred developer, will be returned without interest.

Immediately upon notification of selection by ECHDC, the selected developer must increase the deposit to One Million Dollars (\$1,000,000) by certified or cashier's check or irrevocable standby letter of credit payable in favor of ECHDC, , satisfactory in all respects to ECHDC and ESDC in their sole discretion. In the event that the selected developer fails to make the Deposit within five (5) business days after notification of its selection, ECHDC may terminate the selection of that developer and select another developer.

The submission of a proposal shall constitute an agreement by the submitting developer to enter into a Development Agreement and provide all the security items as required hereunder, all within the time period stated in the selected proposal. At a minimum, the development agreement will require construction to begin no later than December 15, 2011 and be completed by January 1, 2014.

The Deposit shall, among other things, secure the selected developer's obligation for timely submission of all documents and information deemed necessary by ECHDC, documents such as development plans and construction documents, as well as proceeding with construction in a timely manner as set forth in the approved project completion schedule with respect to development of parcel D1. The rights of ECHDC shall be in addition to, and shall not diminish, any other rights (whether under law or in equity) of ECHDC, including the right of ECHDC to terminate the selection of the developer's obligation as Preferred Developer, with respect to the Development Agreement. ECHDC's remedies for failure to develop D2 in a timely manner will be limited to terminating the developer's status as Preferred Developer for the D2 parcel.

The submission of a proposal shall constitute an agreement by the submitting proposer to enter into a Development Agreement. Except as provided below, in the event that a Preferred Developer with respect to the Site fails to promptly enter into the Development Agreement ECHDC may terminate the designation of the Preferred Developer.

Failure by ECHDC for any reason to execute a Development Agreement with a developer will not create any liability on the part of ECHDC/ESDC, its shareholders, or any of its directors, officers, employees, agents, consultants or contractors, except that if ECHDC shall fail to execute a Development Agreement with the developer where the developer has not breached any of the terms or conditions of this request and is not otherwise at fault, ECHDC shall return the Deposit without interest.

The submission of a proposal shall constitute agreement by the submitting proposer that the sole remedy for any ECHDC breach of this RFP or the Development Agreement is the return of the Deposit.

### **5.1.3 Development Agreement**

The Development Agreement will be provided to the selected Preferred Developer following designation. The Development Agreement will require at a minimum, for the Selected Developer to begin construction on D1 by December 15, 2011 and complete construction as evidenced by a permanent certificate of occupancy by January 1, 2014. With respect to D2, the Development Agreement will provide development milestones in the event the remaining portion of the property is acquired by ECHDC.

Upon receipt by ECHDC of evidence satisfactory in all respects of valid permanent certificates of occupancy for all improvements and structures provided for in the approved plans, and provided that no default or dispute is in existence, or deemed as imminent by ECHDC, with respect to the Development Agreement, ECHDC will apply the Deposit; first to then outstanding developer obligations in accordance within the terms and conditions of the Development Agreement; and if any remaining, second to the developer.

The Development Agreement shall also provide for liquidated damages in the amount of \$100,000 per month for the unreasonable failure of the Preferred Developer to complete the project by January 1, 2014.

## **5.2 Taxes and Incentives**

No proposal shall be conditioned upon the receipt of tax abatements and/or any other economic incentives (see **Section 3.2.2**). It is expected that the developer will pay full property taxes on the property. However, the selected developer is not prohibited from seeking any available tax abatements, benefits or other economic incentives.

### **5.3 Condition of the Site**

Proposals are invited for the Site on an “as is, where is” basis.

### **5.4 Contingencies**

All proposals must be submitted in accordance with the provisions, requirements, terms and conditions of this RFP. Proposals which are contingent or which are submitted in any other form will not be considered.

### **5.5 Permits and Approvals**

All major Site use and environmental review procedures and approvals for development of the Site will be under the New York State Environmental Quality Review Act ("SEQRA"). Construction on the Site by the Preferred Developer will also be subject to requirements of the following codes, where applicable:

- Building Code of New York State;
- Energy Conservation Construction Code of New York State;
- Fire Code of New York State;
- Fuel Gas Code of New York State;
- Mechanical Code of New York State;
- Plumbing Code of New York State;
- Property Maintenance Code of New York State; and
- Residential Code of New York State.

Redevelopment and reuse must comply with the federal Americans with Disabilities Act (ADA) and implementing regulations and standards.

The selected Preferred Developer is required, at its own expense, to: (1) obtain from all appropriate government authorities all construction and ancillary approvals for the development of the Site including, but not limited to, all site plan approvals, SEQRA documentation, building permits and approvals that would be required if the selected developer were the fee owner of the Site, and (2) comply with all applicable federal, state, and local laws and regulations.

The Preferred Developer shall have no rights to the use or occupation of any private property or City sites adjacent to the Site for purposes of staging, storage, construction, access, scaffolding or any other purpose without first obtaining a Special Permit from the City. The Special Permit shall contain provisions deemed material and necessary to safeguard the property and may include specific provisions for appropriate insurance and indemnification satisfactory to ECHDC and the City in all respects.

## 5.6 Submission of Proposals

Only proposals that comply with all provisions, requirements, terms and conditions outlined in this RFP will be considered for review by ECHDC.

Proposals for less than the entire Site will not be considered, although phasing of a proposed development will be considered if a demonstrated need is presented by the Proposer.

ECHDC reserves the right to independently investigate or request clarification of the contents of any proposal, including requiring any proposer to provide additional information or to make an oral presentation. All materials submitted in response to this RFP become ECHDC's property without any obligation to return such materials. All determinations of completeness of any submission and its compliance with the provisions, requirements, terms and conditions of this RFP and the eligibility or qualification of any proposer shall be in the sole and absolute discretion of ECHDC. ECHDC may waive any of the provisions, requirements, terms and conditions of this RFP.

Subsequent to submission of proposals in response to this RFP, ECHDC, in the exercise of their sole and absolute discretion, may enter into parallel negotiations with two or more proposers, may designate two or more proposers for "short list" consideration, may request best and final offers, and/or may conduct other additional competitive proceedings with respect to the potential disposition covered by this RFP.

## 5.7 Expenses

ECHDC and ESDC shall not be liable for any costs or expenses (including, without limiting the foregoing costs and expenses of legal counsel) incurred by any proposer in responding to this RFP, in connection with the Site or under any other circumstances, including, without limiting the foregoing, whether or not a particular proposal was accepted, rejected or otherwise designated or selected or if ECHDC elect not to proceed with the disposition process. All costs and expenses incurred by each proposer in connection with this RFP or the Site will be borne by the proposer, including, without limiting the foregoing, all costs and expenses in connection with: surveys, reports, studies, research and other due diligence work; preparation of each proposal; advice and representation of legal counsel; responding to this RFP, and the Development Agreement.

## 5.8 Brokers

Proposals shall be accepted from principals only. No brokerage fees, finder's fees, commissions or other compensation will be payable by the State, ECHDC or ESDC in connection with the selection of a proposer or the disposition of the Site. Submission of a proposal by a proposer in response to this RFP constitutes an undertaking by the proposer to hold harmless and indemnify and defend the State, ECHDC and the ESDC from and against any and all expenses, damages or liability (including, without limiting the foregoing, attorneys' fees and

disbursements) arising out of any claim for such fees, commissions or other compensation made in connection with such proposer's response to this RFP, selection or (non-selection) thereunder, and/or execution (or non-execution) of a Pre-Development Agreement and Development Agreement.

## **5.9 Not an Offer**

This RFP does not constitute a solicitation or an offer for the Site or any portions thereof, nor a solicitation or offer to the Site or any portions thereof. Neither ECHDC/ESDC, the State, any of the State's agencies, departments, offices, public authorities or other entities, nor any affiliate or subsidiary of any of the foregoing, shall incur any obligation or liability on account of this RFP or any submission made in connection with this RFP or any other reason unless and until a Development Agreement setting forth all the terms and conditions of the transaction have been fully executed and unconditionally delivered by all the parties thereto and all necessary consents and approvals for ECHDC's entry into such agreements have been obtained including, without limiting the foregoing, approval by ECHDC.

No proposal for the Site shall be deemed accepted until closing on the Development Agreement has occurred.

ECHDC reserves the right, in its sole discretion, not to select or accept one or more proposals submitted for the Site in connection with this RFP, including, without limiting the foregoing, the highest-ranked proposal for the Site. ECHDC has no obligation, under this RFP or otherwise, to dispose of the Site, or any portion of the Site, through a competitive proposal process, including, without limiting the foregoing, to dispose of the Site to the highest proposer or proposers. ECHDC may at any time withdraw the Site, or any portion of the Site, included in this RFP. ECHDC has the right in its sole and absolute discretion to reject any and all proposals, to accept any proposal, and to elect not to proceed with the process set forth in this RFP. ECHDC may, at any time, dispose of the Site, or any portion of the Site, in any appropriate manner.

ECHDC has no obligation to discuss its reasons for selecting, accepting or rejecting any proposals with any proposer.

## 6. GENERAL CONDITIONS

Neither the State, ECHDC or ESDC make any representations or warranties whatsoever with respect to this RFP, without limiting the foregoing, representations or warranties as to: the accuracy or completeness of any information or assumptions contained in or provided in connection with this RFP or otherwise furnished to respondents; the use or development, or potential use or development, of the Project or any portion thereof; the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities for all land and improvements constituting the Project and for the adjacent properties; the absence or presence of hazardous substances or toxic materials in, under or upon the Project and the adjacent properties; compliance with environmental laws; tax assessments that may be made by the City, tax rates that may be established by the City and/or the amount of PILOT payable; and the suitability of the Project for any specific uses or development.

Each respondent shall make its own analysis and evaluation of the Project Site, including, without limiting the foregoing: the physical condition, environmental condition, layout, configuration, size, boundaries, access, location, systems and utilities for all land and improvements constituting the Project and for all adjacent lands; the absence or presence of hazardous substances or toxic materials in, under, or upon the Project Site and adjacent lands; compliance with environmental laws; and the suitability of the Project Site for any use or development. Each respondent shall obtain its own independent legal, accounting, engineering and technical advice on all matters relating to the Project, including, without limiting the foregoing: examination, review and verification of any information provided by or on behalf of the State, ESDC, ECHDC and its advisors; land and improvements constituting the Project Site and adjacent to the Project Site; all local laws, regulations and conditions that may affect the use and development of the Project; and all other matters that may be material.

Respondents shall not rely upon any statement or information given to respondents by the State, ESDC or ECHDC including, without limiting the foregoing, any information contained in this RFP or made available pursuant to this RFP, or otherwise.

In the event that the selected respondent does not execute a Development Agreement for the Project, ECHDC may, in its sole discretion, invite any of the other respondents to participate in a further competitive process to determine a new selected respondent.

In addition to those terms and conditions stated elsewhere, this RFP is subject to the following:

- a. The preferred developer must comply with all applicable federal, state and local laws and regulations.
- b. The preferred developer must accept the Project Site in “as is, where is” condition on the date of disposition.
- c. Conveyance by ECHDC will be governed by a Development Agreement.

- d. Demolition, removal, alteration or conversion of any existing improvement or portions thereof at the Project Site is to be performed at the sole cost and expense of the preferred developer after closing under the Development Agreement.
- e. ECHDC will not pay for or refund any costs and expenses incurred by any respondent in responding to this RFP or subsequent selection stages or by any preferred developer following selection and/or designation.
- f. All determinations as to the completeness or compliance of any response/proposal or as to the eligibility, qualification or capability of any respondent will be within the sole and absolute discretion of ECHDC.
- g. Selection or designation of any respondent pursuant to this RFP or subsequent selection stages will not create any rights for the respondent including, without limitation, rights of enforcement, equity or reimbursement. ECHDC shall have no obligation or liability whatsoever to any person or entity whose response/proposal is selected or designated as a result of this RFP unless and until a Development Agreement shall have been fully executed and delivered by all parties thereto and all necessary consents and approvals necessary for ECHDC entry into such agreement have been obtained, and then all such obligations and liabilities shall be solely in accordance with the terms and conditions of such Development Agreement.
- h. A respondent may be rejected if ECHDC, in its exercise of sole and absolute discretion, that such respondent, any respondent partner, or member of a respondent team or any principal, partner, officer, director, affiliated person, or principal shareholder of the respondent, of any respondent partner, or of any member of a respondent team, has been convicted of, or pled guilty or nolo contendere to, a felony or crime of moral turpitude, is an "organized crime figure," under indictment or criminal investigation, or is in arrears or in default on any debt, contract, or obligation to or with ECHDC, ESDC, the State, or any of their respective affiliates, subsidiaries, agencies, departments or instrumentalities. Each respondent, respondent partner, and member of a respondent team and any principal, partner officer director, affiliated person, or principal shareholder of the selected respondent, respondent partner, or member of the respondent team may be required to complete a background questionnaire with respect to the foregoing, or other matters, and may be subject to investigation by ECHDC, ESDC and the State. ECHDC is under no legal obligation to dispose of the Project through a competitive bid process. This RFP does not constitute an offer of any nature and does not obligate ECHDC to undertake any action or to proceed with the Project.
- i. ECHDC will review all responses/proposals for completeness and compliance with the terms and conditions of this RFP, and may request from any and all of the developers, at any time during the selection process, additional information, material, clarification, confirmation or modification of any submitted response and/or proposal. ECHDC may also, but is not obligated, to make requests for additional material or for clarification or modification of any submitted response and/or proposal which is incomplete or non-conforming as submitted.

Submission of a response and/or proposal shall constitute the respondent's permission to ECHDC to make such inquiries concerning the respondent and members of the respondent's team as ECHDC, in its sole discretion, deem useful or appropriate including, without limitation, authorization to contact the respondent's bank(s) and credit references, and any other persons identified in the proposal and to obtain pertinent financial and other information. Except at the request or by the consent of ECHDC, in its sole discretion, no respondent will be entitled to change its proposal once submitted.

- j. ECHDC may at any time exclude those proposals which, in their sole discretion, fail to demonstrate the necessary qualifications for development, or which fail to comply with the terms and conditions of this RFP.
- k. ECHDC reserves the right, in its sole discretion, to reject at any time any or all proposals; to withdraw the request without notice; to negotiate with one or more developers submitting proposals and/or to negotiate with respect to, and dispose of the Project (including to parties other than those responding to this request) on terms other than those set forth herein. ECHDC reserves the right to waive compliance with and/or change any of the terms of this request and to waive any informalities or irregularities in the request process.
- l. Under no circumstances will ECHDC pay or be liable for any costs incurred by a firm/team in responding to this RFP or subsequent stage or in connection with the transfer of the Project Site.
- m. Responses and/or proposals shall be accepted from principals only. No brokerage fees, finder's fees, commissions or other compensation will be payable by the State, ESDC, or ECHDC in connection with the selection of a respondent or the disposition of the Project Site. Submission of a statement of interest and/or proposal in response to this RFP or subsequent stage constitutes an undertaking by the respondent to hold harmless and indemnify and defend the State, ESDC and ECHDC from and against any and all expenses, damages or liability (including, without limiting the foregoing, attorneys' fees and disbursements) arising out of any claim for such fees, commissions or other compensation made in connection with such respondent's response to this RFP or subsequent stage, selection or (non-selection) thereunder or execution (or non-execution) of a Development Agreement.
- n. Respondents of this RFP shall make no news/press release pertaining to this RFP or anything contained or referenced herein without prior written approval from ECHDC. Any news release pertaining to this RFP may only be made in coordination with ECHDC.
- o. Public access to material submitted by respondents to this RFP or subsequent stage shall be governed by the relevant provisions of the Freedom of Information Law, which constitutes Article 6 of the New York State Public Officers Law ("FOIL"), and regulations adopted pursuant thereto. If any respondent submits information which it believes to be a trade secret or otherwise exempt from disclosure under FOIL, it must specifically identify such information and state in writing the reasons why the information should be exempt from

disclosure Notwithstanding the foregoing, ECHDC shall not be liable if ECHDC releases information pursuant to FOIL which the respondent believes to be a trade secret or detrimental to its business.

- p. In the event that ECHDC becomes aware of any material misrepresentation in the information supplied by a developer, ECHDC shall have the right to reject at any time the response and/or proposal of the respondent, to refuse to negotiate or continue negotiations with the respondent and to take any other action, including retaining any deposit made by the respondent, as shall be deemed appropriate by the ECHDC, in its sole discretion.
- q. The selection of a preferred developer will create no legal or equitable rights in favor of the selected developer, including rights of enforcement or reimbursement. A developer's response and/or proposal for the Project Site is not assignable and only the party identified as the developer/principal in the selected developer's submission will be permitted to execute the Development Agreement.
- r. Contracts that result from this procurement may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law section 2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the state, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If this contract is subject to OSC review and approval, then the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with this contract, unless and until OSC approval has been received.
- s. The selected developer will be required to comply with the insurance requirements set forth by ECHDC and ESDC.
- t. By submitting a response and/or proposal for the Project, the developer agrees to be bound by all the terms and conditions of this RFP.

## **APPENDIX A: STATEMENTS AND FORMS TO BE SUBMITTED WITH PROPOSAL**

- Qualifications & Proposal per Requirements of Section 3 of this RFP.
- Attachment 1 – Hold Harmless Agreement
- Attachment 2 – Pro Forma Worksheet. The file can be found at ECHDC’s website.
- Attachment 3 – Offerer Disclosure of Prior Non-Responsibility Determinations (State Finance Law Section 139-j and –k Required Form)
- Attachment 4 – Model Language to Obtain Offerer’s Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j(3) and § 139-j(6) (b)
- Attachment 5 – Schedule A-1: Contractors Staffing Plan (Non-Discrimination and Affirmative Action Form)
- Attachment 6 – Schedule A-2: Schedule of Minority/Women Owned Business Participation (Non-Discrimination and Affirmative Action Form)

**Note:** State Finance Law and Non-Discrimination/Affirmative Action forms can also be found at:

<http://esd.ny.gov/corporateinformation/rfps.html>