

CITY OF BUFFALO

MAYOR BYRON W. BROWN'S OFFICE OF STRATEGIC PLANNING

Request for Proposals City of Buffalo Looking for: A New Location for the City Animal Shelter



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SUBMISSION DEADLINE: Friday, July 29, 2022

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I. INTRODUCTION

The City of Buffalo ("City") is seeking a new location that is suitable for or can be built to suit the needs of the City of Buffalo Animal Shelter. The City of Buffalo stays committed to providing care and shelter for homeless or unwanted animals. The City wants to expand its current facility to increase the quality of care and expand amenity offerings, improving quality of life and treatment for sheltered animals.

II. FACILITY REQUIREMENTS AND QUALIFICATIONS

The Offeror must either already have the existing facility or commit to build a new Animal Shelter. Specific requirements include:

A. OFFICE BUILDING (A minimum of 13,000 sq. ft.)

- Animal Receiving/Intake Area (See section C for more details)
- Customer service area/Reception area
- 2-4 Administrative Offices for staff members
- Showroom
- Food storage room
- Supply room
- A lunch area for staff
- Large locker room to accommodate employee lockers (15-20)
- Restrooms for staff (A minimum of 2)
 - Either two unisex or one female, one male, and one unisex restroom
- Training assessment room
- 4 to 6 medical rooms
 - Two to three rooms for doctor service
 - One surgical suite
 - One room for euthanization at a minimum
- Rooms for animal enclosures/cages. Separate rooms must be designated for dogs and cats.

B. PARKING AREA AND GREEN SPACE

- Designated gated green space adjacent to the shelter for a dog park.
- A minimum of 30 on-site parking spaces for staff, city-owned vehicles, and visitors.
- An attached garage sizeable enough to house approximately 4-6 City Vehicles

C. CUSTOMER WAITING AREA

- Please note that the Customer Waiting Area should be adjacent to the Customer Service Area and should be secured. A secure animal for animals to arrive (i.e: Strays, aggressive, etc.) This could mean a floor-to-ceiling gate, plexi-glass, etc.

D. PROPERTY QUALIFICATIONS

- An existing facility is not required to follow the exact dimensions mentioned in Sections A, B, and C. However, it must have the required space as well as the amenities that have been listed.

- If the property does not already meet the requirements, the Offeror is required to build/construct the tenant improvement in accordance with the specifications set forth in Sections A, B and C.
- The Offeror must show the ability to complete and undertake the construction, and provide a timeframe.
- Outline any and all environmental issues or potential environmental issues, including but not limited to toxic, explosive, or hazardous substances, within the building or buried beneath the surface of the site whether or not under any building(s) and whether or not the adverse impact came from off-site or could have come from off-site. The Offeror is responsible for remediation if necessary.

III. PROPOSAL REQUIREMENTS

Offerors are advised to adhere to the submittal requirements of the RFP. Failure to comply with the instructions of the RFP may cause a proposal to be rejected. Submission of a proposal in response to this RFP constitutes acceptance of all requirements outlined in the RFP.

Responses must include the following information in a brief and concise format - *not to exceed ten (10) pages of narrative*. The City of Buffalo reserves the right to request additional information during the evaluation of submissions and to reject any or all submissions.

A. LETTER OF INTENT

- Each Offeror or their authorized representative shall prepare a letter of intent no longer than 3 pages. Submission of the letter shall constitute a representation by the Offeror that it is willing and able to deliver the leased space and to perform the services described in this RFP and in their proposal.
- The letter of intent must explain the Offeror's understanding of the City's intent, objectives, and how Offeror proposes to achieve its proposal. It must also discuss the Offeror's proposed plan for delivering the leased space and implementing the described services, including but not limited to whether the proposed leased space is ready for the Buffalo Animal Shelter use without any modifications necessary to the proposed leased space, whether the proposed leased space needs some improvements/modifications in order to meet the Buffalo Animal Shelter use specifications, and or whether the proposed leased space will require a full improvement build-out in order to meet the Buffalo Animal Shelter use specifications. In addition, the proposal should contain any proposed approach to project development, project management, strategies, and any additional factors that may be beneficial to the City in achieving its' goals.

B. LEASE TERM/ CERTAIN LEASE PROVISIONS EXPECTED

- The City desires to enter into a 10 (ten) year lease with a 10 (ten) year lease renewal extension option exercisable by the City. Please present offers for both City and/or offeror/landlord for all repair and maintenance.

C. FINANCIAL ABILITY AND INFORMATION

As part of the review process the developer or development team must be prepared to submit financial information.

- Financial Readiness: Submit a letter of good standing issued by a bank or lending institution that provides information with regards to length of time developer has held an account along with proof of funds and demonstrates financial capacity.
- Detail experience: With any public funding sources that may be used for the redevelopment of the proposed project.

Note: The release of this information will be restricted subject to the City's compliance with the Freedom of Information Law and other State and Federal statutes.

The developer must be prepared to provide the following within a week of a request from the City of Buffalo:

- Current financial statements - Developer or development team should submit a current financial statement in addition to financial statements for the previous two years. In the case of a newly formed development entity, the proposal should include a financial statement of the general partners or corporate affiliate(s), prepared by a Certified Public Accountant and including the most recent audit of all parties. The statement should show the assets, liabilities, and net worth of the developer or development team.
- Other disclosures - Include any prior negative financial history involving the proposed developer or development team and/or its owners, partners, shareholders, and board members. In the body of the proposal, the developer or development team must address the following questions:
 - Has the developer or development team or any of the affiliated individuals listed defaulted on a real estate obligation? If so, please explain.
 - Has the developer or development team or any of the affiliated individuals listed been delinquent on a commercial or housing development debt? If so, please explain.
 - Has the developer or development team or any of the affiliated individuals listed been the defendant in any legal suit or action? If so, please explain.
 - Has the developer or development team or any of the affiliated individuals, listed declared bankruptcy or made compromised statements with creditors? If so, please explain.
 - Are there any current legal proceedings or judgments recorded against the developer or development team or any of the affiliated individuals listed? If so, please explain.
 - Has the developer or development team or any of the affiliated individuals ever been debarred or prohibited from bidding on work by any state or federal agencies such as the U.S. Department of Housing and Urban Development, U.S. Small Business Administration, Erie County, or the Dormitory Authority of New York State? If so, please explain.

D. REFERENCES

Provide three (3) references from projects previously undertaken by the developer demonstrating capacity to undergo a project of this scale and complexity.

THE CITY OF BUFFALO RESERVES THE RIGHT TO REJECT ANY OR ALL RESPONSES SUBMITTED

IV. EVALUATION CRITERIA

The City will enter into a Memorandum of Agreement with the applicant whose proposal best meets the following selection criteria and offers the greatest prospect of successful completion.

A. QUALITY OF PLAN

- Completeness of Application Proposal: all required documents have been submitted and the project is presented in a clear and concise manner.
- Proposed Development must be consistent with local plans: proposal must prove to have impacts on the extent to which the project will be an asset to the neighborhood, the City and the region.
- Project Readiness: Overall reasonableness and feasibility of executing the developer's proposed development plan.
- Facility Requirements: Proposals must incorporate all facility requirements set forth in this RFP.
- Environmental Readiness: Applicants must be able and prepared to address any and all environmental issues which includes, but is not limited to, asbestos removal, mold, lead, etc.
- Inclusion: Inclusion is a core value to Mayor Brown's Administration. The proposed development must demonstrate meaningful participation from certified Minority and Women-Owned Business Enterprises (M/WBE), minority and women workforce participation and mentor protégé opportunities at all project levels, including, financing, management, design, and construction.

B. EXPERIENCE AND QUALIFICATIONS

- Background, qualifications, experience, and expertise of the development team and any affiliated partner in like ventures or similarly sized development or completed similar project(s) but smaller in size and scope.
- Include developer's experience in working and partnering with communities as well as both public and private partners. In addition, it should detail previous success in engaging the participation of adjoining neighborhoods and communities in the development process.
- Neighborhood economic development/job creation and/or retention.
- Projects stressing diversity within development team, workforce, and tenant/owners.

C. FINANCIAL CONSIDERATIONS

- Proposals must clearly state an offer for lease. The City desires to enter into a 10 (ten) year lease with a 10 (ten) year lease renewal extension option exercisable by the City. Please present offers for both City and/or offeror/landlord for all repair and maintenance.
- Project budget is complete and all sources and uses of funds are clearly defined and documented with evidence of commitments; costs are limited to amounts or percentages specified in the request for proposals.
- Cost effectiveness, reasonableness of the development budget.
- The financial feasibility based on realistic development and operating pro forma.
- Reasonable certainty of prospective cash flows incorporated into team's analysis.
- Demonstrated financial capacity of the team and its individual members.

V. SUBMISSION INSTRUCTIONS

Prospective purchasers must not owe the City of Buffalo any debt or have a violation on any property in the City. The deadline to submit proposals is **Friday, July 29th, 2022 at 5:00 p.m. EST** Responses received after this date and time shall not be considered.

Responses and a photocopy of the check for the RFP administration fee set out below, must be received electronically via email sent to Hope Young-Watkins at hyoung-watkins@city-buffalo.com. On the subject line, please write **Re: Animal Shelter**. Proposals must receive a reply from Hope Young-Watkins to confirm receipt of submission.

Respondents looking to electronically submit proposals too large for email transmission should notify Hope-Young-Watkins no later than 24 hours prior to the published RFP deadline to request a secure link to upload the electronic files.

The RFP administration fee of \$100 must be received as a check made out to the City of Buffalo at the time of proposal submission. Checks must be sent by registered mail at the address below:

Hope Young-Watkins, Director of Real Estate
Mayor's Office of Strategic Planning
65 Niagara Square, Room 905
Buffalo, NY 14202

All questions or inquiries regarding the RFP must be submitted in writing to Hope Young-Watkins at hyoung-watkins@city-buffalo.com.

Questions and inquiries will be accepted from all interested parties until **Friday, June 3rd, 2022 at 5:00p.m. EST**. No responses will be provided for questions and inquiries received after this time. Questions received from all Respondents will be answered and shared with all Respondents via the City's website at (www.city-buffalo.com) by **Friday, June 17th, 2022 by 5:00 p.m. EST**.

City of Buffalo Office of Strategic Planning (OSP) accepts no responsibility for, and each Respondent agrees not to rely upon, any verbal or written statements or representations from any other person, whether or not employed by OSP. OSP may, in its sole discretion, also elect to provide both the question(s) and the written answer(s) to all known respondents via e-mail. Respondents are solely responsible for ensuring that OSP has accurate contact information, including an e-mail address for the receipt of such correspondence. OSP does not assume any responsibility for undelivered e-mails or for the receipt of any communication sent to any Respondent.

Schedule:

Release of Request for Proposals:	Friday, April 29, 2022
Deadline for Questions:	Friday, June 3, 2022 at 5:00pm EST
Answers Posted to Website:	Friday, June 17, 2022 by 5:00pm EST
Proposals Due:	Friday, July 29, 2022at 5:00pm EST

VI. RESERVATIONS

- The City reserves the right to stop the selection process at any time if it is considered to be in the best interest of the City. The City also reserves the right to reject any or all proposals submitted.
- The City reserves the right to seek additional information from respondents and related entities.
- All decisions related to this RFP are subject to all applicable federal, state, and local laws and regulations, and the policies and procedures of the City of Buffalo.
- All costs associated with the preparation of the proposal, as well as any other related materials, will be borne by the respondent.
- The determination for eligibility for various incentive programs is the responsibility of the developer or development team.

VII. TERMS AND CONDITIONS

The City will enter into a Memorandum of Agreement with a preferred developer whose proposal best meets the evaluation criteria and proposal requirements set forth in this RFP (Request for Proposals). Upon completion of the new Animal Shelter, the City desires to enter into a 10 (ten) year lease with a 10 (ten) year lease renewal extension option exercisable by the City. The Mayor's Office of Strategic Planning will consider if developers and/or development teams were awarded projects by OSP in the 12 months preceding the application, and this can be the basis for not selecting a developer.

VIII. GENERAL REQUIREMENTS

1. Non-Discrimination

The successful developer(s) shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The successful developer(s) shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the developer(s) shall, in all solicitations or advertisements for employees placed by or on behalf of the developer(s), state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam era, and comply in all other aspects with the requirements the Buffalo City Code and Ordinances.

2. Americans with Disabilities Act Compliance Provisions

Any developer(s) awarded a contract pursuant to the RFP are required to abide by the regulations of the Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. The contractor will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires vendors associated with the City of Buffalo to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship. Developer(s) also agree to post in a conspicuous place, accessible to employees and applicants, notices of their policy on non-discrimination.

In the event of the contractor's noncompliance with the non-discrimination clauses of this contract, this contract

may be canceled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible by the Buffalo Common Council from any further participation in City contracts in addition to other remedies as provided by law.

3. Applicable Law

The laws of the State of New York shall govern all interpretations of this contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Erie, State of New York, regardless of the place of business, residence, or incorporation of the developer. Each party agrees that all claims and matters shall be heard and determined in any such court and each party waives any right to object to such filing on venue, forum non-convenient or similar grounds.

4. Conflict and Priority

In the event that a conflict is found between provisions in any contract arising from this Request for Qualifications, the successful developer's proposal or the City's Request for Qualifications, the provisions in the following rank order shall take precedence: 1) Contract; 2) Request for Qualifications; and 3) developer's proposal.

5. Ownership of Materials

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from any contract arising from this RFP shall constitute the property of the City. The City may use, extend, or enlarge any document produced under the contract without the consent, permission of, or further compensation to the developer.

6. Disclaimer

This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. This RFP is not binding on the City. No other party, including any developer to this RFP or further developers to any RFP that may be issued by the City, is intended to be granted any rights hereunder. Any response to this RFP, including written documents and verbal communication, with the exception of materials marked as trade secrets or confidential, may be subject to public disclosure by the City, or any authorized agent of the City. Any materials submitted or ideas elicited in response to this RFP shall be the sole and absolute property of the City with the City having title thereto and unrestricted use thereof.

7. Publicity

All publicity (including, but not limited to, news releases, news conferences, and commercial advertising) relating to this RFP and/or the services or products sought by this RFP and/or any contract awarded pursuant to this RFP shall require the prior written approval of the City.

8. Freedom of Information Law

The City of Buffalo is subject to the provisions of Article 6 Section 89 of New York State Public Officer's Law, entitled the Freedom of Information Law. All responses, in their entirety, submitted in response to this Request for Qualifications shall constitute a record subject to public disclosure pursuant to the Freedom of Information Law. It is the sole responsibility of each Developer to this Request for Qualifications to identify those portions deemed to constitute a "trade secret" or proprietary information of the commercial enterprise. Any such information shall be clearly marked "CONFIDENTIAL". The phrase trade secret is more extensively defined to include a formula, process, device or compilation of information used in one's business which confers a competitive advantage over those in similar businesses who do not know it or use it. The subject of the trade secret must not be of public knowledge or of a general knowledge in the trade or business. A corresponding letter, on company letterhead, must be provided describing the factors and extent to which the disclosure of the "CONFIDENTIAL" information would cause substantial injury to the competitive position of the commercial enterprise. The entire response shall not be marked "CONFIDENTIAL". Any portion of the response that is not clearly identified as "CONFIDENTIAL" may be disclosed pursuant to the Freedom of Information Law. **THE**

CITY OF BUFFALO DOES NOT ASSUME ANY RESPONSIBILITY WHATSOEVER TO ANY OFFEROR IN THE DISCLOSURE OF RECORDS PURSUANT TO THE FREEDOM OF INFORMATION LAW, COURT ORDER, OR ANY OTHER METHOD OF DISCLOSURE PROVIDED FOR UNDER THE LAW.

9. Conflicts of Interest

Confidentiality and lack of potential conflicts of interest is vital to maintaining the integrity of every contract entered into with the City. **Therefore, each Developer must disclose any perceived, potential, or actual conflicts of interests and/or relationships/connections.** Such relationships may include, but are not limited to, connections to persons and organizations within the City of Buffalo through:

- Professional or Political associations
- Political donations
- Blood or Marriage
- Friendships
- City of Buffalo employees who currently work for your company, or come to work for your company during the RFP process, and after (should you receive a contract from the City of Buffalo) as employees or consultants
- Union Affiliations/Memberships
- Board Member

Each Proposer further agrees that no member of the governing body, officer, employee, or agent of the City shall have any pecuniary interest or otherwise, direct or indirect, in the any contract arising from this RFP.

10. Statement of Compliance and Conflicts of Interest

Your signature below denotes that your organization, company or corporation and/or the officers, directors, employees or agents thereof have reviewed and agreed to comply with State Finance Law §139-k. No past or present lobbyist, employee, officer or board member of your organization, company or corporation may contact any past or present City of Buffalo Employee, Union Leader, Elected Official (City or otherwise) in an attempt to influence the outcome of the RFP decision. Additionally, any potential or identified conflicts of interest shall be disclosed. As conflicts are discovered, they must be disclosed in writing, to the designated contact person identified in the RFP, during the entire RFP, award, contract negotiation, ratification, and execution process and even after contract award.

Conflict or Potential Conflict:

Signature: _____

Company: _____

Title: _____

Date: _____

IX. RELEASE AND INDEMNITY AGREEMENT

This Release and Indemnity Agreement is given by _____, Buyer's Name to be inserted, (hereinafter "Grantee") to the City of Buffalo (the "City") as a condition to the delivery of, and as a material part of, a quit claim deed to certain real property commonly known as _____ in the City of Buffalo (the "Property").

I. RELEASE PROVISION: Grantee covenants and agrees at its sole cost and expense, to defend, release and save harmless City and its officers, employees, directors, agents and representatives from and against any and all damages, losses, charges, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements, and/or expenses, including without limitation, all attorneys' and experts' fees, costs of investigation, monitoring, remedial response, removal, restoration or permanent acquisition of any kind whatsoever, which may now or in the future be undertaken, suffered, paid, awarded, assessed, imposed, asserted or otherwise incurred by Grantee, individually or collectively, at any time resulting from or arising out of:

(a) the past, present, or future presence, Release or threatened Release of any Hazardous Substances, including but not limited to petroleum or any petroleum-based substances, in, on, above or under the Property or migrating to parcels now or hereafter owned by Grantee.

(b) any personal injury, wrongful death, or property or other damages arising under any statutory, common law or tort law theory, arising out of, or related to, the remediation of the Property or parcels now or hereafter owned by Grantee.

(c) Grantee's failure to promptly undertake and/or diligently pursue to completion all necessary, appropriate, and legally authorized investigative, containment, removal, clean-up and/or other remedial actions with respect to a release or threat of release of any hazardous substance, including but not limited to petroleum or petroleum-based products, on, at or from the Property or migrating off the Property to any and all other locations off-site.

(d) human exposure to any hazardous substance, including but not limited to petroleum or petroleum-based products, noises, noxious fumes, vibrations, or nuisances of whatever kind from any condition on the Property resulting from Hazardous materials, or the ownership, use, operation, sale, transfer, or conveyance thereof.

(e) a violation of any applicable state or federal statute or regulation with respect to any condition now or hereafter existing on the Property.

(f) any investigation, prosecution, enforcement, action, suit, request to negotiate or consent order or other action by any governmental body or office, including but not limited to the New York Department of Environmental Conservation ("DEC") or the Environmental Protection City and Agency ("EPA") related in any manner whatsoever to the Property.

(g) any and all costs in connection with any clean-up, removal and/or investigation of environmental contamination, deposited on or into the Property or migrating therefrom, whether from on or off site, for which legal requirements mandate be cleaned up at, or removed from, the Property or any other property contaminated from the migration of hazardous material off-site. The release of City hereunder shall in no way be limited, abridged, impaired, or otherwise affected by the following:

(i) the release of Grantee, the City and or any other person from the performance or observance of this agreement by operation of law, City's voluntary acts or otherwise.

- (ii) the invalidity or unenforceability of any of the terms or provisions of any of the Property purchase documents and or related documents.
- (iii) any applicable statute of limitations.
- (iv) any investigation or inquiry conducted by or on behalf of the City or any other indemnitee (and or releasee) or any information which City or any other indemnitee (and or releasee) may have or obtain with respect to the environmental or ecological condition of the Property.
- (v) the sale, transfer or conveyance of all or part of the Property.
- (vi) the release or discharge in whole or in part of Grantee in any bankruptcy, insolvency, reorganization, arraignment, readjustment, composition, liquidation, or similar proceeding or.
- (vii) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of Grantee.

Grantee, and its representatives, agents, employees, successors, predecessors and or assigns, shall be precluded now and in the future from asserting any and all claims (whether direct claims, cross-claims, third-party claims, defenses, counter-claims or other types of claims) against City, individually or collectively, including any claims under (without limitation) the Resource Conservation and Recovery Act, the Oil Pollution Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the New York State Environmental Conservation Law, and or the New York State Navigation Law.

II. REPRESENTATIONS AND WARRANTIES: City makes no representations or warranties with respect to the past, present, or future presence, Release or threatened Release of any Hazardous Substances, including but not limited to petroleum or any petroleum-based substances, in, on, above or under the Property, and/or migrating off the Property to any and all other locations off-site. City makes no representations or warranties as to any past, present, or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon. Further, the City makes no representations and or warranties whatsoever as to the condition and or as to the permitted use of the Property, the improvements thereon, environmental conditions at the Property and or in connection with the title to the Property or any other matter with respect to the Property.

III. GRANTEE ACKNOWLEDGEMENTS: GRANTEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY SHALL CONVEY ITS INTEREST IN THE PROPERTY TO GRANTEE AND THAT GRANTEE SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS AND WITH ALL FAULTS" AND THAT GRANTEE IS NOT RELYING UPON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FROM GRANTOR, NOR ANY OFFICER, EMPLOYEE, ATTORNEY, AGENT OR BROKER OF CITY AS TO ANY MATTER WHATSOEVER CONCERNING THE PROPERTY INCLUDING, BUT NOT BY WAY OF LIMITATION: (i) the quality, nature habitability, merchantability, use, operation value, marketability, adequacy or physical condition of the Property or any aspect or portion thereof, including, without limitation, structural elements, appurtenances, access, landscaping, parking, plumbing, sewage, and utility systems, facilities and appliances, soils, geology and/or groundwater, (ii) the dimensions or lot size of the Property, (iii) the development or income potential, or rights of or relating to, the Property, or the Property's use, habitability, merchantability, or fitness, or the suitability, value, or adequacy of the Property for any particular purpose, (iv) the zoning or other legal status of the Property or any other public or private restrictions on the use of the Property, (v) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any Governmental Authority or of any other person or entity (including, without limitation, the Americans with Disabilities Act), (vi) the ability of Grantee to obtain any necessary governmental approvals, licenses or permits for Grantee's intended use or development of the Property, (vii) the presence or absence of Hazardous

Materials on, in, under, above or about the Property, (viii) the quality of any labor or materials used in any improvements, (ix) the condition of title to the Property, (x) City's ownership of the Property or any portion thereof, or (xi) the economics of or the income and expenses, revenue or expense projections or other financial matters, relating to, the operation of the Property. Without limiting the generality of the foregoing, Grantee expressly acknowledges and agrees that Grantee is not relying upon any representation or warranty of City, nor any officer, employee, attorney, agent, or broker of City, whether implied, presumed or expressly provided at law or otherwise, arising by virtue of any statute, common law or other legally binding right or remedy in favor of Grantee. Grantee further acknowledges and agrees that City is under no duty to make any inquiry regarding any matter that may not be readily known by City and or by any officer, employee, attorney, agent, or broker of City. This section and all provisions of this Agreement shall survive the delivery, acceptance and or recordation of the deed to which this Agreement is attached.

Any reports, repairs or work required by Grantee are the sole responsibility of Grantee, and Grantee agrees that there is no obligation on the part of City to make any changes, alterations, or repairs to the Property or to cure any violations of law or to comply with the requirements of any insurer. Grantee, at Grantee's sole cost and expense, shall be responsible for obtaining any permits necessary for use of the Property and shall also be responsible for any repairs or alterations necessary for same, all at Grantee's sole cost and expense. Grantee agrees to remediate any and all contamination deposited on to or into the Property or migrating therefrom as may be directed by any governing regulating agencies, including, but not limited to the DEC and/or EPA.

By executing this Release and Indemnity Agreement, Grantee acknowledges that Grantee has had the right and a full opportunity to conduct any testing or other investigation of the Property and has fully availed itself of such right or has otherwise waived such right and opportunity.

IV. DEFINITIONS: As used in this Agreement, the following terms shall have the following meanings:

"Hazardous substance" means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous waste, hazardous or toxic substances and any other material defined as a hazardous substance in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; The Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq.; The Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 et seq.; Articles 15 and 27 of the New York State Environmental Conservation Law or any other federal, state, or local law, regulation, rule, ordinance, by-law, policy, guidance, procedure, interpretation, decision, order, or directive, whether existing as of the date hereof, previously enforced or subsequently enacted.

"Environmental Law" means any present and future federal, state, and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act, the Clean Water Act; the Clean Air Act, the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as

common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property.

"Release" with respect to any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances. Release shall also have the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., and the regulations promulgated thereunder and Articles 15 and 27 of the New York State Environmental Conservation Law, and the regulations promulgated thereunder.

"Remediation" includes but is not limited to any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance; any actions to prevent, cure or mitigate any Release of any Hazardous Substance; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to herein.

"Legal Action" means any claim, suit or proceeding, whether administrative or judicial in nature.

"Loss or Losses" includes any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including but not limited to strict liabilities), obligations, debts, diminution in value, fines, penalties, charges, costs of Remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys' fees, engineers' fees, environmental consultants' fees, and investigation costs (including but not limited to costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards to the extent recoverable at law or in equity.

"Fines" or "Penalties" means any levy imposed by a governmental body or office, including but not limited to the DEC or EPA, authorized by statute or regulation, that is not, directly, or indirectly, compensation for, or reimbursement of, any actual cost incurred, liability imposed, or loss sustained by said governmental body or office or any other party. It is specifically understood that "fines" or "penalties" are levies imposed as a punitive or deterrent measure and do not include any other type of loss, except as otherwise defined by statute or regulation.

V. THESE PROVISIONS TO RUN WITH THE LAND AND IMPROVEMENTS All of the provisions contained in this Release and Indemnity Agreement shall run with the land and improvements constituting the Property and shall be binding upon Grantee and all its successors and assigns as well as upon subsequent purchasers or owners of the Property.

RESPONDENT'S SIGNATURE