

# REQUEST FOR PROPOSALS:



**Erie Canal Harbor  
Development  
Corporation**

A Subsidiary of Empire State Development



## **FOR THE OPERATION AND MAINTENANCE OF FIRST BUFFALO RIVER MARINA**

**32 Fuhrmann Boulevard  
Buffalo, New York 14203**

**RFP RELEASE DATE:** January 16, 2019

**RFP DEADLINE:** February 7, 2019

## **TABLE OF CONTENTS**

- I. INTRODUCTION**
- II. RFP TIMELINE**
- III. SITE HISTORY**
- IV. SITE DESCRIPTION**
- V. PROJECT GOALS**
- VI. SCOPE OF SERVICES**
- VII. PROPOSAL REQUIREMENTS**
- VIII. SELECTION CRITERIA**
- IX. OPERATOR DUE DILIGENCE**
- X. DISPOSITION PROCESS**
- XI. SUBMISSIONS**
- XII. STATEMENT OF LIMITATIONS**
- XIII. PROCUREMENT FORMS AND REQUIREMENTS**
- XIV. PROCUREMENT CHECKLIST**
- XV. EXHIBITS**

## **I. INTRODUCTION**

Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), the State of New York’s chief economic development agency, is pleased to issue this request for proposals (“RFP”) for the operation and maintenance of a private marina located at 32 Fuhrmann Boulevard, Buffalo, NY, 14203 (“the Site”) on the Buffalo City Ship Canal. In total, the Site is a 10-acre area, which includes approximately 2,000 square feet of water frontage. The Site, as more fully described and illustrated in Section IV, Site Summary, “Geography,” consists of a 115-slip boat marina, outdoor storage for approximately 300 boats, a boat launch pad, administration building, approximately 150 spaces for trailer parking and/or public patrons and a boat repair building. The Site is also immediately adjacent to the Queen City Bike Ferry landing, Wilkeson Pointe, Times Beach Nature Preserve and nearby U.S. Coast Guard station/Buffalo Lighthouse.

This RFP represents a valuable opportunity to operate an ideally located and extremely popular marina, while participating in the broader economic investment by both public and private entities. ECHDC will continue with a collective effort to extend the waterfront resurgence from Canalside to the Outer Harbor. More specifically, ECHDC is currently undergoing the design phase for three separate areas of the Outer Harbor, one of which is the First Buffalo Marina and surrounding properties. More information on this endeavor can be found at <https://outerharborbuffalo.com/accessandactivation/>. It is intended that the design will take 1-2 more years to complete with construction to follow shortly thereafter.

Geographically, the Site is located on the western edge of the City and directly across from Canalside Buffalo. It is less than five miles from the City’s downtown and is situated on the Buffalo River. These lands comprise part of the City’s Outer Harbor, an area of significant recent and planned future investment, as is described later in this RFP. (**See Exhibit A – Site Map**)

On September 12, 2016, ECHDC’s Board of Directors approved transfer of the Site, which was fully transferred in December of 2016. Shortly thereafter (2017 boating season), ECHDC rewarded a marina management contract for assumption of all operations and maintenance responsibilities in return for a combination rent/percentage of revenue.

Each party that submits a response (“Proposal”) to this RFP is referred to herein as a “Respondent,” and the Respondent that is conditionally designated through this RFP process is referred to herein as the “Designated Operator.” Respondents to this RFP may submit Proposals that meet the terms and expectations of the RFP and advance the Project Goals described in Section V below.

## **II. RFP TIMELINE**

RFP release date:	January 16, 2019
Site tour and Pre-Bid Meeting:	January 24, 2019 3:00 PM EDT
Submission of Questions by:	January 29, 2019 2:00 PM EDT
Deadline to submit Proposals:	February 7, 2019 2:00 PM EDT
Interviews:	February 11, 2019 (if necessary)
Execution of Operations Agreement:	Prior to 2019 season (expected)

## **III. SITE HISTORY**

### **History of the Outer Harbor and First Buffalo River Marina**

Buffalo's waterfront has a long and storied history since the rise of the Erie Canal in the 1800s, which includes both natural and man-made structures. The city's place in history as major port of call gave way to a series of in-fill events that forever changed the landscape of the Outer Harbor into its present-day form.

Prior to the 1900s, much of the Site was underwater lands. During this period, the Lake Erie shoreline was located east of where Fuhrmann Boulevard runs today. Most of the land that constitutes the Site was created only through fill events, in which land was deposited into Lake Erie to extend the City's western shore. These fill events followed the completion of the Outer Harbor break wall, which is located several hundred yards west of the Site.

The fill events that largely created the Outer Harbor occurred in succession over several decades. A summary of significant fill events includes:

- 1890-1925: Construction of various rail lines and sidings;
- 1925: Landfilling and construction of shipbuilding facilities at present-day Wilkeson Pointe;
- 1926-1927: Construction of the Michigan Avenue Pier and Municipal Pier (now Seaway Piers, north of the Site);
- 1931: Construction of the Niagara Frontier Authority (NFTA) Port Terminal and Pier (first occupied as a Ford Motor Company assembly plant);
- 1927-1935: Landfilling at the foot of Michigan Avenue;
- 1935-1960: General municipal landfilling (incinerator ash and unconsolidated debris);
- 1957: Construction of the Buffalo Skyway complex (NYS Route 5); and
- 1960-1965: Dredge filling along the northern portion of the Outer Harbor.

Since 1964, New York Power Authority (NYPA) has utilized the property to facilitate a water-side operation, where they owned and maintained a barge, two tugboats and an ice-breaking vessel to annually install, operate, remove and maintain the Ice Boom. In 1991, the Authority had leased mooring space for its vessels, from Ganco, Inc., which operated the First Buffalo River Marina. Around 2008, Ganco placed the property on the market and was no longer willing to lease the mooring space to the Authority. Therefore,

the Authority pursued ownership of the First Buffalo River Marina and took title to the property on October 10, 2010. In 2011, a contract was awarded to operate, maintain and manage the Marina on the Authority's behalf. Most recently, in May 2015, the Authority initiated a project to relocate its winter mooring operations at the First Buffalo River Marina to the extreme northern end of the property. This included the installation of a sheet pile wall, new wharf, and a new equipment storage building.

### **A Waterfront on the Rise**

The potential for future development on the Outer Harbor has increased dramatically following recent public investments to reclaim the waterfront. Since the closure of the Port of Buffalo, over \$125 million in local, state, and federal infrastructure improvements have been completed to simplify access to the area and facilitate recreational enjoyment. In addition to the recent addition of Wilkeson Pointe, these investments have included:

- *The Southtowns Connector/Buffalo Outer Harbor Project*, which involved a reduction in the footprint of the NYS Route 5 complex, a reconfiguration of waterfront access on Fuhrmann Blvd, and creation of a significant multi-purpose trail network on reclaimed lands;
- *Various Outer Harbor Greenway and Industrial Heritage Trail projects*, which have expanded the overall trail network and included exhibits and interpretative elements celebrating the region's rich industrial past;
- *The closure and stabilization of the former Times Beach dredge disposal area and the creation of a new Times Beach Nature Preserve*, operated in tandem with the Tiff Farm Nature Preserve; and
- *The creation and expansion of facilities at the "Gallagher Beach" area*, including a new fishing pier and picnic shelters, which will be part of the Park.
- *The creation and expansion of facilities at Wilkeson Pointe*, including a beer garden, lawn furniture and seasonal recreational vendors for kayaks and bikes;
- *The incorporation of a seasonal bike ferry and landing*, to usher the visitors between the Inner and Outer harbors
- *The leasing of various spaces for events and programming to Outer Harbor Management Group*, to incrementally add events and activities for purposes of energizing the long dormant waterfront spaces
- *The reorganization and improvements of grounds and facilities and Buffalo Harbor State Park*, including new docks, park shelters, a playground and boat launch ramp.
- *The construction and opening (Spring 2019) of bike park and event space*, including a 20-acre green space, multi-use trails and habitat restoration.

These investments have significantly refined the public's perception of the surrounding lands from a forgotten industrial landscape to an area on the precipice of a new beginning as a multi-purpose waterfront neighborhood.

ECHDC will continue its highly impactful redevelopment of Buffalo's waterfront as it implements the Outer Harbor Access and Activation Civic Improvements with a current

investment of \$5 million and \$15 million in future investments from Governor Andrew M. Cuomo’s Buffalo Billion program. The capital improvements highlight an ongoing endeavor to access and activate public space with increased bike and pedestrian access, comprehensive signage, a multi-faceted bike park and the overall revitalization of the long abandoned public spaces on the Outer Harbor. The public improvements, coupled with continuing private investment and interest, highlights the return of this magnificent stretch of Buffalo’s waterfront to a place desired by those from near and far.

**Background on Recreational Boating in the Region**

Recreational boating in New York State is a \$2 billion industry enjoyed by millions of residents and visitors.<sup>1</sup> With nearly 450,000 registered powerboats and perhaps another 300,000 non-powered watercraft, New York ranks 9th in the nation for registered boats.

Erie County, in which Buffalo is located, ranks #4 in New York State for total vessel registration in 2017, only trailing Suffolk, Nassau and Monroe counties.

In total, vessel registrations in 2017 for Erie County were as follows:

<b>COUNTY</b>	Class A <16'	Class 1 16-25'	Class 2 26-39'	Class 3 40-64'	Class 4 >=65'	Uncoded	<b>Total</b>
<b>Erie</b>	8,229	13,263	2,288	183	23	64	<b>24,050</b>

**IV. SITE DESCRIPTION**

**Site Geography**

The Site to be licensed includes approximately 10 acres of land, two of which are underwater. The northern land border of the Site shall be the public property line of lands hosting what is known as the Bike Ferry Landing property. The eastern land border of the Site will be Fuhrmann Boulevard. The western border of the Site will be the inside of the marina. Lastly, the southern border of the Site will be the public space including a parking lot, green space and boat launch.

**Site Summary**

The Site to be licensed includes use of the following ECHDC-owned property and equipment:

- “Marina”:
  - Docks containing 115 boat slips, able to accommodate boats of up to 50’
  - 2 boat launch ramps
  - Outdoor storage space for approximately 300 boats
  - 4 gazebos

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1. *New York State 2017 Recreational Boating Report*. Download at: <https://parks.ny.gov/recreation/boating/documents/RecreationalBoatingReport2017.pdf>

- “Buildings” (*Note: all buildings are part of one structure*):
  - 2,000 s.f. administration building (with separate spaces for maintenance, utilities, bathroom/showers and office/retail)
  - 1,200 s.f. restroom/shower building
  - 1,000 s.f. service garage
  
- “Equipment”:

  - Hyster Fork Lift (white)
  - Hyster Boat Lift (yellow)
  - 50 Ton Travel Lift - 8 Straps
  - 25 Ton Travel Lift - 4 Straps
  - GMC Crane Truck
  - Ford Backhoe
  - Man Lift
  - 18'x36' Barge (Blue)
  - Ranger 8 Welder/ On Trailer
  - Craftsman Drill Press
  - 8" Bench Grinder
  - Power washer MITM Corp 2405
  - Tool Box 12 Drawer Beach /Asst Hand tools
  - Turn Table 8 Shelf / Asst Hardware- Bolts
  - 75 Boat Stands / Asst sizes (Rust Red)

### **Transportation/Access**

The Site is less than five miles from downtown Buffalo and is easily accessed by Furhmann Boulevard (NYS Rt. 5), a major municipal highway serving the waterfront south of the City. Furhmann Boulevard is readily accessible from Interstate 190, which in turn links to Interstate 90, also known as the NY Thruway. In addition, it is directly adjacent to the Queen City Bike Ferry landing, which ushers in over 50,000 visitors a year to the Outer Harbor on a seasonal (Memorial Day – Labor Day) basis.

### **Utilities**

All public utilities are available to the Site and include sanitary sewer, water, natural gas, overhead electric and telephone. Costs to operate and maintain utilities will be the sole responsibility of Designated Operator, as further outlined in Section VI Scope of Services.

### **V. PROJECT GOALS**

ECHDC invites Respondents to submit Proposals that meet the following primary Project Goals, among others:

1. Attract an experienced marina operator who, independent of any financial assistance from ECHDC, can adhere to the Scope of Services outlined in Section

- VI., as well as: efficiently operate and maintain the private marina; provide excellent customer experiences for boaters; and successfully maintain the property and equipment.
2. Attract an experienced marina operator who will be able to minimize, to the extent practicable, marina fees (no change expected for 2019 season) to be imposed on boaters while maintaining a financially sound and solvent operation.
  3. Understand the vision of ECHDC for implementation of public and private projects to sustain a cohesive and long-term plan for waterfront revitalization.

### **Rent Structure**

It is intended that the Designated Operator will begin its operation of the Site at execution of an agreement (“Contract”) for a period of two years with an option for two individual, one year renewal options at the sole discretion of ECHDC. The Contract is expected to be fully executed in time for the 2019 (May 15) boating season.

The following types of rental payments and commitments will be considered and are encouraged (**See Exhibit B – Pro-Forma**):

- A base rent and percentage of revenue/profit share under the license.

### **VI. SCOPE OF SERVICES**

Designated Operator will assume sole responsibility for the daily operations of the Marina and at a minimum be responsible for the following tasks:

#### **1. Marina Operations Management**

- a) Develop a comprehensive operation plan for managing, operating, and maintaining the Marina. The plan must also ensure a safe and enjoyable recreational facility for boaters in a cost-effective manner, as well as consideration for the surrounding public spaces such as Queen City Bike Ferry Landing, Wilkeson Pointe and the Buffalo Lighthouse, to name a few.
  - The Designated Operator shall implement Best Management Practices for operating a marina, which can be found in the United States Environmental Protection Agency’s (EPA’s) “Shipshape Shores and Waters – A Handbook for Marina Operators and Recreational Boaters [EPA -841-B—03-001]” and “Stormwater Runoff Best Management Practices for Marinas: A Guide for Operators” by Bill Hunt, NC State Biological and Agricultural Engineering, NC Cooperative Extension and Barbara Doll NC Sea Grant, based on the original manuscript written by Jay Tanski, NYS Sea Grant Extension Program, Cornell Cooperative Extension, NY Sea Grant Publication Number: NYSGI-G-98-002. The Designated Operator, on behalf of ECHDC, will be responsible for submitting a Stormwater Pollution Prevention Plan (SWPPP) to the NYS Department of Environmental Conservation regarding operations at the marina. The most recent SWPPP,



which will expire September 30, 2017, will be provided to the Designated Operator.

- The Designated Operator's plan shall be consistent with existing and future marina operations that compete effectively in prevailing market conditions.
- b) Provide facility management to the Marina including but not limited to the vessel slips, dry boat storage, docks, and other facilities outlined in Section IV (Site Summary).
- ECHDC reserves the right to utilize, at its sole discretion, the entire area immediately south of the grain elevators (approximately six acres), including the boat launch, for the purposes of enhancing the public experience and mitigating issues of public safety. ECHDC will maintain secure access for Designated Operators and its customers to their boat slips and equipment. (***See Exhibit A – Site Map***)
  - **Note:** Seasonal Dry Dock customers, as well as other marina services, will be unable to use all/part of the southernmost area during previously identified special events (minimum 60 days advance notice to Designated Operator), but not to exceed 12 total days of disturbance in a calendar year. Failure to adhere to this requirement will result in immediate removal of boats/trailers and equipment at the cost of the operator/customer, as well as possible termination of contract. ECHDC will work with Designated Operator to make alternative options available at nearby ECHDC owned sites for secure storage of boats/trailers and equipment.
- c) Provide and maintain necessary equipment to perform Marina operations, which include, but are not limited to transporting vessels for winter storage and/or summer slip rentals, installation/removal of temporary floating docks, and general Marina maintenance as outlined herein.
- The Designated Operator is permitted to utilize all ECHDC equipment (noted in Section IV) located at the Premises for work outlined herein to the extent that the equipment remains safe, functional and serviceable. ECHDC shall not be responsible for the repair and/or replacement of this equipment and any such replacement shall be at the sole discretion of ECHDC. The Designated Operator shall be responsible for the cost of parts and supplies and labor associated with the general maintenance and minor repairs of the equipment.
  - The Designated Operator shall provide storage of the following assets for ECHDC (as well as contracted vendors) on site at no additional charge: Queen City Bike Ferry and associated docks; Canalside docks; tall ship docking system. Additionally, Designated Operator will be responsible for providing all staff, equipment, vehicles and materials for the installation, removal and storage of all docks, gangways and associated parts with nearby Wilkeson Pointe floating and EZ docks.

- The Designated Operator shall be responsible for maintaining current licenses and registrations for all equipment and ensuring all personnel who operate such equipment that requires for licensure/certification, qualification, or competency as required by federal, state, and local laws, meet those requirements.
  - The Designated Operator shall submit verification and copies of all up-to-date licenses and certifications as requested by the Authority.
- d) Maintain all records and reports that pertain to the management operation of the Marina including, but not limited to:
- Wet slip tenants
  - Vessel storage tenants
  - Launch/Retrieval operations
  - Security activities
  - Financial and management/operational issues
  - Maintenance records
  - Transient slips/subleases and interim rentals
  - Collection of rents, deposits, and any other related fees
  - Environmental and regulatory fees and permits

Such records and reports shall be made available to the ECHDC upon request at any time during the term of the Agreement and shall be provided promptly to the ECHDC in the event of the termination of the Agreement.

- e) Maintain copies of, or have ready access, to the latest federal, state, and local laws and/or regulations applicable to Marina and boating activities. The Designated Operator shall ensure compliance with all such laws and regulations, including, but not limited to such permits outlined in Section VI. (2).
- f) Ensure all vessels, vehicles, and equipment berthed and/or stored within the Marina are currently registered with, but not limited to, the United States Coast Guard, and documented and properly insured, as well as operated and maintained in a clean and safe condition at all times. All vehicles, vessels, and equipment that do not meet the above criteria, shall be promptly reported to the ECHDC and after receiving the ECHDC's written authorization, immediately removed from the premises. The Designated Operator shall request copies of each vessel's current registration and proof of insurance when preparing new and/or renewed winter storage and summer slip rental contracts. Such records shall be maintained by the Designated Operator and submitted to the ECHDC annually or upon request.
- g) Develop, establish, administer, and ensure compliance with wet slip and dry storage assignment contracts to be entered into by the Designated Operator with each Marina tenant. Such contracts shall be reviewed and approved by ECHDC. ECHDC reserves the right to amend these contracts at any time.
- **Note:** The Designated Operator will be required to accept the assignment of any such slip holder agreements for the 2019 boating season. Revenue received from such slip holder agreements is

expected to be payable to the selected operator. All other contracts (storage, maintenance, seasonal dry dock, etc.) will be the sole responsibility of the successful Respondent.

- The Designated Operator may revise such contracts to be executed beginning May 1, 2020, subject to review and approval by ECHDC at least thirty (30) days prior to any suggested contract revision.
- h) Prepare a set of Marina rules and regulations subject to ECHDC review and approval, within thirty (30) days of execution of this Agreement. Such approved rules and regulations shall be visibly displayed at the Marina's entrance and distributed to all Marina tenants. These rules shall be modified or amended as required by the ECHDC or other federal, state and local laws and regulations.
- i) The Designated Operator must submit a written request to the ECHDC, for the ECHDC's prior approval of any operations the Designated Operator wants to conduct that are outside of its normal Marina activities as specified in this Agreement. All requests must be submitted at least thirty (30) days prior to any suggested Designated Operator activity.
- j) The Designated Operator shall be responsible for all of its employees' and agents' wages, benefits, insurance, and taxes in accordance with ECHDC's policies and procedures.
- k) The Designated Operator shall be responsible for the cost of training and licensing staff, required to conduct Marina operations.
- l) The Designated Operator shall be responsible for all office furniture, operational supplies, materials, equipment and services utilized in the operation and management of the Marina.

## **2. Environmental Operational Requirements**

- a) The Designated Operator shall adhere to all applicable federal, state, local environmental and safety laws, rules, regulations, policies, and requirements.
- b) The Designated Operator shall notify the ECHDC in order to obtain any necessary environmental permits that may be required as a result of activities at the Marina.
- c) A NYS Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity (GP-0-06-002) is required for all marinas that fuel or maintain vessels, i.e. power washing, performing repairs, painting, etc. The Designated Operator, in conjunction with an ECHDC environmental representative (currently Liro Engineers, Inc.), shall comply with all regulations associated with said permit before engaging in these activities.
  - The New York State Department of Environmental Conservation's (DEC's) requirements for the MSGP are delineated in DEC's Stormwater Pollution Prevention Plan (SWPPP) Checklist for Marinas.
  - Direct discharges from power washing shall not enter the Buffalo River unless the Designated Operator obtains a State Pollutant Discharge Elimination System (SPDES) Permit.

- Should the Designated Operator uncover or desire to install a direct discharge, the Designated Operator shall immediately notify ECHDC in order to obtain a SPDES permit.
  - Discharges from power washing may not infiltrate directly or pass through a filter medium prior to entering the groundwater. The aforesaid discharges shall be collected and transported, following notification to and receipt of written approval from the ECHDC, to a licensed wastewater treatment plant.
  - Ensure no illegal or illicit discharges occur from vessels, in accordance with all applicable federal, state, local environmental laws, rules, regulations, policies, and requirements.
- d) Establish and communicate an environmental policy for Marina operations and boater activity, including allowable and prohibited boater maintenance, to all Marina customers.
- No maintenance activities that require welding or may lead to a release of liquid and/or gaseous discharges shall be permitted on site.
- e) Ensure that an area is designated for used oil, used oil filters, and used bilge pad. The Designated Operator shall maintain on site, sufficient quantities of absorbent materials for use in case of chemical or oil spills. In the event of any actual or suspected spill of any chemical, petroleum product, or waste water, the Designated Operator shall immediately notify ECHDC's designated representative and immediately take all measures necessary to control the spread of the spilled material, and to clean it up.
- f) This area shall be maintained by the Designated Operator, and all waste materials must be disposed of properly.
- g) Implement and maintain a recycling program for paper, plastics, glass, zinc and other metal anodes, used oil, and any other recycling materials.
- h) The Designated Operator shall not permit the storage of any hazardous substances or materials, including, but not limited to illuminating oils, oil lamps, turpentine, benzene, or other similar substances or explosives of any kind, or any substance or thing prohibited by the standard policies of fire insurance companies in New York State.
- i) The Designated Operator shall properly handle, store, and use all fuel, including propane tanks in a manner that meets all applicable building and fire codes, rules, and regulations.
- j) The use of fireworks, firework displays, or any pyrotechnics shall not be permitted on the Premises.

### **3. Maintenance and Repair of Facilities and Equipment**

- a) The Designated Operator shall be responsible to provide any all tools, fixtures, furnishings, equipment and other appurtenances necessary to successfully operate the Marina in accordance with the terms set forth in this Agreement.

- b) Provide an annual inspection and maintenance schedule to prevent deterioration of facilities and equipment. Deficiencies shall be immediately reported to the ECHDC.
- c) Perform monthly scheduled inspections and accurately document conditions of the Marina facilities and equipment. Additional inspections may be performed as required or at the request of the ECHDC.
- d) Maintain Marina facilities and equipment including, but not limited to the following:
  - All docks/fingers and gangways
  - Interior/exterior of all ECHDC-owned buildings and improvements
  - Boat hoists
  - Boater restrooms and showers
  - Utility services
  - Storage facilities
  - Fencing, gates, and locks
  - Lighting systems
  - Parking and access road areas
  - Dry storage areas
- e) Groom and maintain the Marina landscape and water areas, including, but not limited to the following:
  - Marina parking lots, access roads, and lawn areas
  - Ensure that harbor waters are kept free of debris and obstructions
  - Snow removal
- f) Provide custodial/janitorial services to all Marina facilities. The Designated Operator shall ensure facilities are maintained in a clean and sanitary condition at all times. This includes coordination for maintenance and cleanup of all temporary bathroom facilities.
- g) Repair, replace, rebuild and paint all or any part of the premises as needed or directed by the ECHDC.
  - The Designated Operator shall submit a written request to the ECHDC for any proposed modification to the interior, exterior, or any surrounding areas on the Premises.
- h) Repair all damage to the Premises resulting from vandalism or other destructive acts. All such damage shall be immediately reported to the ECHDC. Such proposed repairs shall be subject to review and approval by the ECHDC.

#### **4. Vessel Monitoring/Inspection**

- a) Maintain records of all vessels berthed in the Marina, and ensure that no vessel is in such a condition that it may list, capsize, sink, or release fuel, motor oil, or any other hazardous material, or other pollutant into the water.
- b) Maintain a comprehensive list of slip occupant tenants that includes vessel information and slip assignments.

- c) Maintain a comprehensive list of dry storage tenants that will include a description of the stored items and ensure that they are registered and/or documented and insured.
- d) Perform visual inspections of all vessels upon initial and all subsequent slip assignments, and at appropriate frequencies thereafter, the Designated Operator is also required to ensure the vessel is registered and documented as well as in compliance with berthing requirements as set forth in the winter storage and summer slip assignment contracts.
- e) Immediately report any and all abandoned or derelict vessels to the Authority in writing.

**5. Hours of Operation**

- a) The summer slip rental season begins May 1<sup>st</sup> and ends October 15<sup>th</sup> of each year.
- b) Winter storage season begins October 16<sup>th</sup> and ends April 30<sup>th</sup> of the following year.

**6. Security**

- a) Provide all necessary security measures to protect patrons, guests, employees, and all other individuals from any disturbance or other occurrence that may be attributable to the Marina operations.
- b) Monitor and maintain access to key-locked facilities and repair/replace locks as required. Copies of all keys shall be provided to the ECHDC.
- c) Any and all security breaches shall be immediately reported to the ECHDC in writing.

**7. Utilities, Trash and Debris**

- a) The Designated Operator shall be responsible for all utility costs including, but not limited to, electricity, fuel oil and gasoline, natural gas, and water and sewer services, as required by Marina operations. Telephone costs vary are based on operator preference for service. Most recent telephone bill was approximately \$2,500 for the year. Reported utility costs for the last two calendar years are below, based upon former operator’s audit:

<i>Utility</i>	<i>2017</i>	<i>2018</i>
<i>Water &amp; Gas</i>	\$16,725	\$14,600

- b) The Designated Operator shall be responsible for the cost of storage, removal and disposal of all refuse and garbage generated from the Marina operations. Disposal of all refuse left by patrons on the premises is the sole responsibility of the Designated Operator. For storage and disposal of environmentally-sensitive products, refer to Section VI. (2).

## **8. Signage**

- a) All written requests for signage installation shall be submitted to ECHDC for review and acceptance at least thirty (30) days prior to any suggested changes.
- b) ECHDC reserves the right to erect, remove, or change signs at the exterior of the Premises as it deems necessary and desirable for the convenience of the public. No exterior signs shall be erected or removed or changed by the Designated Operator without prior written approval of the ECHDC.

## **9. Sale or Distribution of Products & Services**

- a) The Designated Operator is not permitted to sell or distribute any items, or to promote or provide any commercial services to the public at the Premises, except as specified in this Agreement or where prior approval has been obtained from ECHDC.
- b) The sale of new and/or used vessels, motors, or associated equipment and components shall not be permitted on the Premises, except as specified in this Agreement or where prior approval has been obtained from ECHDC.
- c) No alcoholic beverages or tobacco products may be sold or distributed at the Premises.

## **10. Accounting and Financial Reporting**

- a) The Designated Operator shall keep books and records of account in accordance with generally accepted accounting principles and procedures. ECHDC reserves the right to inspect and audit all books and records at any reasonable time. The Designated Operator shall furnish copies of all records upon request by the ECHDC.
- b) The Designated Operator shall submit quarterly revenue and expense statements to ECHDC and maintain books and records in accordance with generally accepted accounting principles. The ECHDC reserves the right to audit all sales records. The Designated Operator must retain all such records and provide those records to the ECHDC upon its request.
- c) The Designated Operator will provide a yearly, independent audit, at the sole expense of the Designated Operator.
- d) The Designated Operator may submit an alternate method of submitting monthly revenue and expense statements, subject to review and approval by the ECHDC.
- e) The Designated Operator shall submit a written request to the ECHDC for any proposed changes in pricing. All requests must be submitted to the ECHDC for approval, at least thirty (30) days prior to any suggested changes in pricing.
- f) Gross receipts shall mean the total amount received by or accruing to, the Designated Operator, its agents, employees and contractors by reason of the privileges granted under this Agreement, from any and all sales for cash or credit, for consumption, or use on or off the Premises of any goods or services as outlined in this Agreement and approved by the ECHDC. Only the following

may be excluded or deducted from the gross receipts for the purpose of computing the reports and payments due the ECHDC:

- excise, sales or other taxes which are imposed upon the sale of goods or services and which are collected by the Designated Operator. This exclusion from gross receipts is not intended to apply to any franchise fees or taxes, capital gains taxes, income or similar taxes that are based upon profits of the Designated Operator.

## 11. Insurances

- a) Designated Operator shall procure at its sole cost and expense insurance with limits not less than those described below or as required by law, whichever is greater and shall provide coverage to Designated Operator, the People of the State of New York, ESD and ECHDC for claims of damage to property and personal injuries, including death, which may arise from the conduct of Designated Operator and/or the performance of the services authorized by this license. Limits may be provided through a combination of primary and umbrella/excess policies. If umbrella/excess policies are used, coverage will be at least as broad as and follow form to the underlying primary policies.
  - **Commercial General Liability Insurance** with a limit of not less than five million dollars (\$5,000,000) for Each Occurrence and five million dollars (\$5,000,000) General Aggregate
    - a) Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.
    - b) General Liability shall include the products/completed operations and personal/advertising coverage.
    - c) These limits should apply per location.
    - d) Coverage shall include coverage for Independent Contractors.
    - e) Policy shall also include Contractual Liability for liability assumed under this Contract and all other Contracts relative to the location.
    - f) Delete contractual exclusion, or any other policy exclusions, for work done within 50 Feet of a Railroad, Light Rail, Subway or similar tracked conveyance or provide endorsement CG2417-Contractual Liability-Railroads.
  - **Automobile Liability Insurance** with a Bodily Injury/Property Damage combined single limit of \$1,000,000 each accident to cover all vehicles including owned, non-owned and hired
  - In accordance with Sections 57 and 220(8) of the Workers' Compensation Law, State Parks requires annual proof of both **Workers' Compensation Insurance and Disability Insurance**. Workers Compensation Insurance must include coverage for Longshoremen



and Harbor Workers in the amount of one million dollars (\$1,000,000) per occurrence.

a) Employers Liability Limits:

\$1,000,000 Bodily Injury each Accident

\$1,000,000 Bodily Injury by Disease – Policy Limit

\$1,000,000 Bodily Injury by Disease – Each Employee

- **Marine General Liability with a limit of \$1 million dollars (\$1,000,000) for each occurrence and five million (\$5,000,000) in the aggregate**
- Marina Operators Legal Liability with a limit of one million (\$1,000,000) per occurrence with respect to the loss of or damage to vessels or craft, including all equipment customarily used therewith, and the property of others, while in the Designated Operators care, custody or control.
- Non-Owned and Owned Watercraft Liability – Protection and Indemnity with a limit not less than five million (\$5,000,000) per occurrence with respect to bodily injury, or property damage arising out of the use, or ownership of vessels.
- **Boat Dealers Commercial Property** covering the Site and ancillary structures, including piers, docks, wharves, bulkheads and seawalls, fixtures, equipment including coverage for vessels and marine supplies for sale, insuring the same for replacement value, with all risk coverage, in which ECHDC/ESD is named as “loss payee.”
- **Ship Repairer’s Legal Liability** If providing services as outlined in Section VI. Scope of Services 5) Optional Services, the Designated Operator shall provide Ship Repairer’s Legal Liability covering watercraft and equipment in their care, custody and control; damage to third party property and personal injury, arising in the course of their operations; pollution, including clean-up costs and consequential loss and loss of use of damaged watercraft including wreck removal
- **Environmental Liability Insurance** including sudden and accidental pollution coverage to include all bodies of water, with a limit of not less than five million dollars (\$5,000,000) for each occurrence
- **Liquor Liability Insurance** in the amount of five million dollars (\$5,000,000) per occurrence for in-house beverage facilities, third party events, and any other offerings.
- **Fidelity/Crime Insurance** with a limit of not less than five million dollars (\$5,000,000) per occurrence with respect to employee theft, forgery or

alteration, inside the premises – theft of money and securities, inside the premises – robbery or safe burglary of other property, outside the premises, computer fraud, funds transfer fraud, and money orders/counterfeit money.

- **Security Guard Insurance** with a limit of not less than one million dollars (\$1,000,000) and a two million dollar aggregate (\$2,000,000) with respect to assault & battery, false arrest, and personal injury.
  - **Certificates of Insurance** - Certificates of insurance reasonably acceptable to the ESD/ECHDC shall be filed with the ESD/ECHDC within ten (10) days after award of the contract to the Designated Operator and prior to commencement of the lease. All required insurance shall be maintained without interruption from the date of commencement of the lease. These certificates and the insurance policies shall contain a provision that coverages afforded under the policies will not be materially modified, cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to ESD/ECHDC. The provisions of this Section shall apply to all policies of insurance required to be maintained by the Designated Operator pursuant to the Contract Documents. The People of the State of New York, ESD & ECHDC are to be included as additional insureds, on a primary & non-contributory basis, on ALL liability policies. All policies are to contain a full waiver of subrogation in favor of the People of the State of New York, ESD & ECHDC. Final insurance requirements may vary based on the operating plan of the Designated Operator. In the event the Designated Operator chooses to move forward with any type of capital improvements such as dredging, major construction, etc., the State of New York, UDC/ESD & ECHDC reserve the exclusive right to expand the insurance requirements as they see fit before the commencement of work to correspond to the increased exposure and risks associated with the subject work.
- b) As respects General Liability, the additional insured endorsements shall be on a form at least as broad as ISO Forms CG2010 07 04 & CG2037 07 04 combined and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured. This requirement applies to all policies under which ESD & ECHDC, are required to be named as Additional Insureds. Designated Operator shall, by specific endorsement to its primary commercial general liability policy, and automobile liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and not concurrent with any other valid and collectible insurance available to the Additional Insureds.

- c) Designated Operator shall, by specific endorsement to its umbrella/excess liability policy, cause the coverage afforded to the Additional Insureds thereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds and not concurrent with or excess to any other valid and collectible insurance available to the Additional Insureds whether provided on a primary or excess basis.
- d) Designated Operator shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include blanket written contractual liability covering all indemnity agreements;
- e) Designated Operator shall, by specific endorsement to its primary and umbrella/excess liability policies, provide that defense costs are not be considered as damages so as to erode the policy limits required under sections 1 – 5 above.
- f) All policies shall contain a waiver of subrogation in favor of ESD and all others
- g) Deductibles and Self-Insured Retentions Any deductibles or self-insured retentions must be declared to and approved by ESD
- h) Designated Operator shall require all subcontractors to include Additional Insured endorsement CG 2038 04 13 and CG 20 37 07 04 with respect to General Liability.
- i) **Directives**
  - No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.
  - All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least A- VII by A.M. Best and Company, or meet such other requirements as are acceptable to the ESD/ECHDC.
  - Should the Designated Operator fail to provide or maintain any insurance required by this contract, the ESD/ECHDC may, after providing written notice to the Designated Operator, purchase insurance complying with the requirements of this Article and charge back such purchase to the Manager.
  - The Designated Operator shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the Designated Operator. Failure of the Designated

Operator to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.

- Neither the procurement nor the maintenance of any type of insurance by the ESD/ECHDC or the Designated Operator shall in any way be construed or deemed to limit, discharge, waive or release the Designated Operator from any of the obligations or risks accepted by the Designated Operator or to be a limitation on the nature or extent of said obligations and risks of the Designated Operator.
- The Contract may, at the sole option of the ESD/ECHDC, be declared void and of no effect if the Designated Operator fails to comply with the provisions of this Article.
- The Designated Operator shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the ESD/ECHDC and of the insurance companies issuing such policies.

- j) **Other Insurance** - Any type of insurance or any increase of limits of liability not described in this section which the Designated Operator requires for their own protection or on account of any statute shall be their own responsibility and at their own expense.

## **12. Indemnification**

- a) Designated Operator will assume all risks in the performance of all activities authorized by the license and agree to defend, indemnify and hold harmless the People of the State of New York, ESD and ECHDC (hereinafter, the "Indemnitees") from and against any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature, whether direct or indirect, caused or contributed to by Designated Operator and Designated Operator's contractors, vendors, materialmen, employees, agents, invitees and guests, and/or arising out of Designated Operator's conduct and/or Designated Operator's performance pursuant to the license, provided however that Designated Operator's indemnity shall not extend to any claims, liabilities, losses, damages, expenses, accidents or occurrences arising out of, relating to, or in connection with: (i) the negligence of any Indemnatee; or (ii) the Indemnitees' ordinary upkeep and maintenance of the Site and its grounds and facilities outside of the Site. Designated Operator shall defend at its sole cost and expense any action commenced for the purpose of asserting any claim of whatsoever character arising out of the license. Designated Operator's responsibility under this section shall not be limited to the required or available insurance coverage.

### **13. License Fee/Rent**

- a) In accordance with Section V, "Project Goals," Designated Operator shall propose an annual rent fee payable to ECHDC. This payment shall be distinct and separate from any and all costs associated with items outlined in this Section (VI) and within the proposed license.

### **VII. PROPOSAL REQUIREMENTS**

Each Respondent is required to submit a narrative describing in detail their proposal for operation of the premises. Proposals should be submitted in three-ring binders or similar format as outlined in greater detail in Section XI, Submissions. Respondents should structure their Proposal under the assumption that ECHDC will award a two-year contract (with two additional one-year options for renewal, at sole discretion of ECHDC). Each Proposal must contain the following:

- 1. Respondent Description:** A description of the corporation tenant entity that is submitting the Proposal including, but not limited to:
  - a) The intended form and structure of the owner or tenant entity and any proposed partnership or joint venture must be clearly explained. A chart/diagram of the owner or tenant entity, showing structure (percentages) of ownership and investment must be included.
  - b) Name, address, phone number and email of each member of the owner or tenant entity. Respondents must provide the Federal EIN numbers of the development entity and identify a primary contact person.
  - c) Resumes of key management team members.
  - d) Current operating budget and previous three (3) years of audited financials for all entities with an ownership percentage in the Proposal.
  - e) Documentation addressing whether the Respondent, or any participating member of the team, has been involved in any litigation or legal dispute regarding a business venture during the past five years.
  - f) Description of background and experience in marina management and operations at a facility of comparable scale and scope.
  
- 2. Project Description:** The Project description should include a detailed narrative describing all relevant aspects of the Project. The description should address:
  - a) A narrative detailing the proposed vision for the Site which shall include the Respondent's approach to operations and maintenance of the Site and the marina.
  - b) Specific plans for meeting each enumerated element of the Scope of Services in Section VI.
  - c) All planned modifications to the Marina's slip layout or capacity, if any
  - d) Number and titles of operational staff members for the Project expected to be assigned to the Site both during and outside of season.
  - e) All plans for how existing Respondent resources, including marina-related resources and services, may be leveraged in order to improve operational efficiency of the Site.

- f) Proposed plan for the use of certified minority and women-owned business enterprises (“MWBES”), as well as service disabled veteran-owned business enterprises (“SDVOB’s”) and the employment of such group members (“Project Diversity Plan”) for improvements made to the Site during the term of the license. Please refer to Section XIII (4.) for further information.
3. **Financial Offer:** Summary of financial consideration to be provided by the Designated Operator in exchange for Contract. This should include:
- a) A rent payment offer, presented as an annual flat fee with escalation schedule, and a percentage of revenue/profit from all receipts and sources, payable to ECHDC.
  - b) Schedule of Proposed slip holder fees for 3 years (2020-2022) of operations (2019 slip fees to remain unchanged) following Designated Operator’s signing of License with ECHDC. ECHDC reserves the right to require or allow all Respondents under competitive consideration to modify their Proposals to reduce or limit proposed slip holder rate increases prior to selecting a Designated Operator. Respondents are encouraged to provide a schedule of slip fees that is reasonable and measured. All slip fees are subject to the prior review and approval of ECHDC.
  - c) A completed pro-forma workbook in the form provided (**See Exhibit B-Pro-forma**).

### **VIII. SELECTION CRITERIA**

Proposals will be reviewed by representatives from ECHDC and other State of New York officials. The Contract will be subject to approval, as required under applicable law and regulation, which include approval of the ECHDC Board of Directors.

Selection of the Designated Operator shall be based on a determination of the best value to ECHDC. When evaluating proposals, the following criteria will be considered in order of priority:

- **Financial Offer (40 Points):** Provision of competitive terms for the management of the Site, including potential rent payments, revenue-sharing arrangements and any other financial consideration provided.
- **Proposed Operations Plan (30 Points):** Overall quality of proposed approach to the Site and marina operations. Elements to be considered include but are not limited to operating schedules, slip fee schedules and plans for marketing and promotion.
- **Team Qualifications (25 Points):** Experience, skills, and resources necessary to manage waterfront property.. The background and experience of the respondent team in managing marinas will be among the elements considered.

- **Diversity Practices (5 Points):** Respondents will be awarded points based on the contents of the Diversity Practices Questionnaire and Diversity Scoring Matrix (See Exhibit C).

Prior to selecting the Designated Operator, ECHDC reserves the right to remove Respondents from competitive consideration at one or more points throughout the solicitation by shortlisting the Respondents with the best Proposals based on these selection criteria and subsequently soliciting favorable modifications to original Proposals. In order to remain in competitive consideration, Respondents are encouraged to present their most competitive Proposal terms at each stage of the solicitation.

ECHDC also reserves the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of their proposals and to ensure a full and complete understanding of each proposal. ECHDC shall undertake to pursue uniformity in the questions it asks to Respondents to the extent practicable, but ECHDC may ask different or additional questions to different Respondents in the context of any individual interview or in writing. ECHDC shall convene a committee of staff who shall be permissible contacts for the purpose of such interviews, and Respondents who are invited will receive additional instructions upon their invitation. Currently, ECHDC expects (if necessary) that first-round interviews will be conducted on February 11, 2019.

## **IX. OPERATOR DUE DILIGENCE**

### **“As Is, Where Is” Condition**

Respondents should assume that the Site, including land, improvements, and any supporting building infrastructure, will be contracted AS IS and WHERE IS without representation, warranty, or guaranty as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the Respondent’s purpose (e.g., conveyed by quitclaim).

ECHDC will be posting a subset of documents regarding the RFP on its website at <https://esd.ny.gov/doing-business-ny/requests-proposals>; Respondents are encouraged to check back for updates. ECHDC makes no representation or warranty concerning the accuracy or utility of information posted or otherwise provided to the potential Respondents or to the Respondents via its website, the online shared folder, or other means. Information currently included in the online shared folder includes information related to: i) the RFP, ii) the Site’s existing conditions.

Prospective Respondents should notify ECHDC of their interest as soon as possible in order to ensure that they receive all updates associated with this solicitation by sending an email to [FBRMarinaOperatorRFP@esd.ny.gov](mailto:FBRMarinaOperatorRFP@esd.ny.gov). Respondents must rely on their own research and investigations for all matters, including, costs, title, survey, development, financing, construction, remediation, and renovation.

## **X. DISPOSITION PROCESS**

The following is a summary description of the disposition process. After a review of the Proposals, ECHDC intends to conditionally designate one of the Respondents as the Designated Operator. The Designated Operator will enter into a License with ECHDC regarding the Site. In implementing the Project, including the disposition process, ECHDC intends to:

1. Present to ECHDC Directors the essential transaction contract terms, any required Public Authorities Law findings, and any other applicable statutory or regulatory requirements;
2. Ensure Designated Operator's Proposal complies with all building, fire, and other applicable codes and regulations, as enforced by the City of Buffalo and State of New York;

## **XI. SUBMISSIONS**

Six (6) hard copies and one (1) electronic copy (in the form of a flash drive) of the Proposal identified by "First Buffalo River Marina RFP" must be received by ECHDC by 2:00 PM EDT on February 7, 2019 at the following address:

Erie Canal Harbor Development Corporation  
95 Perry St. Suite 500  
Buffalo, NY 14203  
Attn: Steven P. Ranalli, Vice President  
RE: First Buffalo River Marina RFP

The ECHDC reserves the right to reject a submittal if any document or item listed in this solicitation is incomplete, improperly executed, indefinite, ambiguous, and/or is missing. Additionally, factors such as, but not limited to the following may also disqualify a Respondent without further consideration:

- Evidence of collusion among Respondents;
- Any attempt to improperly influence any member of the evaluation panel or Committees;
- Discovery that a Respondent purposely misled or knowingly provided false or inaccurate information in a Proposal;
- A Respondent's default under any type of agreement, which resulted in the termination of that agreement;
- Existence of any unresolved litigation or legal dispute between the Respondents and ECHDC.

The ECHDC reserves the right to reject any and all submittals and to waive any informalities or irregularities in procedure.



### **RFP Inquiries**

ECHDC will accept written questions *via email* from prospective Respondents regarding the RFP until 2 p.m. January 29, 2019. Please submit questions to:

[FBRMarinaOperatorRFP@esd.ny.gov](mailto:FBRMarinaOperatorRFP@esd.ny.gov)

Written questions must include the requestor's name, e-mail address and the Respondent represented. Responses to all timely and appropriate questions will be posted on ECHDC's website at:

<https://esd.ny.gov/doing-business-ny/requests-proposals>

No contact related to this solicitation with ECHDC Board members, staff or consultants, other than emails to the designated e-mail account for the solicitation will be allowed by Respondents or employed representatives of Respondent team members during the procurement period of this RFP. Any such contact by a Proposer will be grounds for disqualification.

### **Site Tour and Pre-Bid Meeting**

ECHDC expects to hold a pre-bid meeting followed by a formal Site tour at 3 p.m. on January 24, 2019. The Site tour will include a walkthrough of Site facilities followed by a Q&A session with ECHDC. Answers to questions posed during the Q&A session will be posted on ECHDC's website. Please email [FBRMarinaOperatorRFP@esd.ny.gov](mailto:FBRMarinaOperatorRFP@esd.ny.gov) with a list of attendees if you plan on participating in the scheduled Site tour. ECHDC may choose to offer one or more additional tour(s) at its discretion.

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

## **XII. STATEMENT OF LIMITATIONS**

1. This RFP, submissions from Respondents to this RFP, and any relationship between ECHDC and Respondents arising from or connected or related to this RFP, are subject to the specific limitations and representations expressed below, as well as the terms contained elsewhere in this RFP. By responding to this RFP, Respondents are deemed to accept and agree to this Statement of Limitations. By submitting a response to this RFP, the entity acknowledges and accepts ECHDC's rights as set forth in the RFP, including this Statement of Limitations.
2. The issuance of this RFP and the submission of a response by any firm or the acceptance of such response by ECHDC does not obligate ECHDC in any manner whatsoever. Legal obligations will only arise upon execution of a formal contract by ECHDC and the firm(s) selected by ECHDC.

ECHDC reserves the right: (i) to amend, modify, or withdraw this RFP; (ii) to revise any requirements of this RFP; (iii) to require supplemental statements or information from any responding party; (iv) to accept or reject any or all responses thereto; (v) to extend the deadline for submission of responses thereto; (vi) to negotiate or hold discussions with any respondent (or multiple respondents) and to correct deficient responses which do not completely conform to the instructions contained herein; and (vii) to cancel, in whole or part, this RFP, for any reason or for no reason. ECHDC may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of each Respondent.

3. All information submitted in response to this RFP is subject to the Freedom of Information Law (FOIL), which generally mandates the disclosure of documents in the possession of ECHDC upon the request of any person, unless the content of the document falls under a specific exemption to disclosure. If any Respondent wishes to claim that any information submitted in its response to this RFP constitutes a Trade Secret or is otherwise exempt from disclosure under FOIL, such claim must be made at the time of the response, and must be in writing supported by relevant and material arguments.
4. ECHDC reserves the right, in its sole discretion, without liability, to utilize any or all of the RFP responses, including late responses, in its planning efforts. ECHDC reserves the right to retain and use all the materials and information, and the ideas, suggestions therein, submitted in response to this RFP (collectively, the "Response Information"), and each Respondent must grant an unconditional and perpetual license without charge to ECHDC to use any copyright or other legally protected rights in and to the Response Information.
5. This RFP shall not be construed in any manner to implement any of the actions contemplated herein, nor to serve as the basis for any claim whatsoever for reimbursement of costs for efforts expended in preparing a response to the RFP. ECHDC will not be responsible for any costs incurred by Respondents related to preparing and submitting a response to this RFP, attending oral presentations, or for any other associated costs.
6. To the best of ECHDC's knowledge, the information provided herein is accurate. Respondents should undertake appropriate investigation in preparation of responses.
7. News Release – Recipients of this solicitation shall make no news/press release pertaining to this solicitation or anything contained or referenced herein without prior written approval from ECHDC. Any news release pertaining to this solicitation may only be made in coordination with ECHDC.

8. Prohibited Persons – No respondent to this solicitation will be selected if an individual who is an owner, shareholder, member, partner, officer or director, or otherwise a principal and/or its management team is determined, in ECHDC's and/or ECHDC's sole discretion, to have been convicted of a felony or a crime involving moral turpitude, to be an organized crime figure, to be under indictment or criminal investigation, to be in arrears or in default of any debt, contract or obligation to or with the City of Buffalo or State of New York, or any other of their instrumentalities or otherwise to be a prohibited person as defined by ECHDC. The selected Respondent and all principals thereof, if applicable, and/or owners, shareholders, members, partners, officers or directors of the Respondent's team are subject to investigation by ECHDC. The selection of a Respondent may be revoked in the event that any derogatory information is revealed by such investigations.
9. This solicitation and any contract or agreements resulting herein are subject to all applicable Federal, State and local laws, rules, regulations and executive orders.
10. ECHDC shall not be obligated to pay any fee, cost or expense for brokerage commissions or finder's fees with respect to the execution of the contract. It shall be a condition of any contract that the Respondent agree to pay the commission or other compensation due to any broker or finder in connection with the transaction, and to indemnify and hold harmless the State, the City and ECHDC from any obligation, liability, cost or expense incurred by it as a result of any claim for commission or compensation brought by any broker or finder by reason of the transaction.
11. ECHDC and ESD reserve the right to modify the requirements set forth herein and to expand, limit or otherwise alter the scope of the requested services.
12. By submission of a proposal, the Respondent agrees that it shall take no affirmative action to solicit from any Federal, State, local or other governmental regulatory agency any order, directive or other mandate to conduct any remedial action with respect to chemical or industrial wastes or other hazardous substances or petroleum substances, if any, on the Site. The Site shall be leased "as is" and "where is" condition and the Designated Operator shall be required to waive any claims against ECHDC and State Parks relating to the environmental condition of the Site.
13. The contract shall contain, among other terms, certain provisions required by law or policies of the City and State, including, without limitation, provisions providing that the Designated Operator:
  - a. is an independent contractor;
  - b. shall defend, indemnify and hold harmless the State, ECHDC, and their respective officers, directors, employees and agents from and against any claims or damages relating to the respondent's acts and omissions;

- c. shall maintain financial and other records relating to the contract and make such records available for inspection and audit;
- d. have no conflicts of interest with, or outstanding financial obligations owing to, the State or ECHDC;
- e. is qualified to do business in the State of New York and is in receipt of all licenses, if any, required by applicable governmental entities; and
- f. shall represent and warrant that neither it nor any of its directors, officers, members, or employees has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services as set forth in the Contract. The successful respondent must further agree that in the performance of the services no person having such a conflict of interest shall be employed by it.

### **XIII. PROCUREMENT FORMS AND REQUIREMENTS**

Additional requirements for this RFP are described below. Relevant forms, where required to be submitted, must be executed and included in the submission in the same order as listed below:

1. State Finance Law §§139-j and 139-k forms
2. New York State Vendor Responsibility Questionnaire For-Profit Business Entity
3. Iran Divestment Act Statement
4. Non-Discrimination and Contractor & Supplier Diversity Requirements
5. Encouraging the Use of NYS Businesses in Contract Performance Form
6. Certification Under State Tax Law Section 5-a
7. Schedule A (for review only—no separate form requirement)
8. Project Sunlight (for review only—no separate form requirement)
9. W-9 Form
10. EO-177 Form

#### **1. State Finance Law Sections 139-j and 139-k forms**

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential respondents and ECHDC or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed below; the completion by Respondents of the Offerer Disclosure of

Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ECHDC web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

**Respondents must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal.** Copies of these forms are available at:

[http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](http://www.empire.state.ny.us/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf).

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by prospective respondents during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a prospective respondent is found to have knowingly and willfully violated the State Finance Law provisions, that prospective respondent and its subsidiaries, related or successor entities will be determined to be a non-responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is: [FBRMarinaOperatorRFP@esd.ny.gov](mailto:FBRMarinaOperatorRFP@esd.ny.gov).

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

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

(under "ESDC Policy Regarding Permissible Contacts under SFL 139").

All potential Respondents are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

## **2. Vendor Responsibility**

All Respondents to this RFP must be "responsible," which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ECHDC and the Contractor, if any, shall include clauses providing that the Contractor remain "responsible" throughout the term of the contract, that ECHDC may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ECHDC may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ECHDC requires that all respondents to this RFP register in the State's Vendor Responsibility System ("VendRep System"). The

VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Respondents are to file the required Vendor Responsibility Questionnaire online via the VendRep System or may choose to complete and submit a paper questionnaire. Please include a copy of your VendRep submission receipt with your proposal. If you submit a paper questionnaire please submit it using certified mail and provide a copy of the return receipt.

To enroll in and use the VendRep System, see the System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us).

Respondents opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry. Per the website, respondents are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)." For ECHDC RFPs concerning the purchase and redevelopment of real estate, it is most common for a Respondent to complete the form as a "Non-Construction" company. Unless the Respondent is primarily a Construction firm, the Respondent should thus fill out the Vendor Responsibility Questionnaire as a "Non-Construction" entity, either as a For-Profit or Not-For-Profit entity, depending on the Respondent organization type.

### **3. Iran Divestment Act**

Every Proposal made to ECHDC pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. No Response that fails to certify compliance with this requirement may be accepted as responsive.

### **4. Non-Discrimination and Contractor & Supplier Diversity Requirements**

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED**

## **BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§140-145 ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of ESD contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises ("MWBE'S") in state procurement contracting versus the number of ("MWBE's") that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified MWBE program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ESD establish goals for maximum feasible participation of New York State MWBEs and the employment of minority group members and women in the performance of New York State contracts.

### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, ECHDC hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State certified minority-owned business enterprises ("MBE") participation and 15% for New York State certified women-owned business enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) related to the total value of ECHDC's funding. A contractor ("Contractor") on the subject contract ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that ESD may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set

forth in the Contract, such finding constitutes a breach of Contract and ESD may withhold payment from the Contractor as liquidated damages.

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

By submitting a bid or proposal, a bidder on the Contract (“Bidder”) agrees to demonstrate its good faith efforts to achieve its goals for the utilization of MWBEs by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a Bidder may arrange to provide such evidence via a non-electronic method by contacting ESD’s Office of Contractor and Supplier Diversity at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov). Please note that the NYSCS is a one stop solution for all of your MWBE and Article 15-A contract requirements. For additional information on the use of the NYSCS to meet Bidder’s MWBE requirements please see the attached MWBE guidance, “Your MWBE Utilization and Reporting Responsibilities Under Article 15-A.”

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

1. An MWBE Utilization Plan, [Form OCSD-4](#), with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD.

ESD will review the submitted MWBE Utilization Plan and advise the Bidder of ESD’s acceptance or issue a notice of deficiency within 30 days of receipt.

2. If a notice of deficiency is issued, the Bidder will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to Empire State Development, Office of Contractor and Supplier Diversity, 633 Third Avenue, New York, NY 10017, [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

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

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or



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

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

The Contractor will be required to submit a Contractor's Quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Contractor, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Bidder will be required to submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, [Form OCSD-1](#), to OCSD with their bid or proposal.

To ensure compliance with this Section, the Bidder will be required to submit with the bid or proposal an Equal Employment Opportunity Staffing Plan, [Form OCSD-2](#), identifying the anticipated work force to be utilized on the Contract. If awarded a Contract, Bidder shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, [Form OCSD-3](#), in such format as shall be required by ESD on a quarterly basis during the term of the contract.

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

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

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

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

Form OCSD-1:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_1MWBEEEOPolicyStatement.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEEOPolicyStatement.pdf)

Form OCSD-2:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_2StaffingPlan.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf)

Form OCSD-3:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_WorkforceUtilizationReport.xlsx](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_WorkforceUtilizationReport.xlsx)

Form OCSD-4:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD\\_4MWBEUtilizationPlan.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4MWBEUtilizationPlan.pdf)

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

### **Diversity Practices**

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Respondents is practical, feasible, and appropriate. Accordingly, respondents shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See Exhibit C).

### **SERVICE-DISABLED VETERAN-OWNED BUSINESS (“SDVOB”) PARTICIPATION**

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors,

suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at:

<http://ogs.ny.gov/Core/SDVOBA.asp>

Bidders/Proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law.

For purposes of this procurement, ESD hereby establishes a goal of 3% for SDVOBs, based on the current availability of qualified SDVOBs. The Contractor must document good faith efforts to provide meaningful participation by SDVOBs in the performance of the Contract.

A copy of each Bidders/Proposers SDVOB Contract Performance Use form proposing specific certified firms to be utilized or industries where SDVOB firms shall be sought is to be included as part of the response to this RFP. A copy of the aforementioned form is available at:

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

General inquiries or questions relating to aforementioned policies, SDVOB participation and the goals specified herein may be addressed to OCSD at [OCSD@ESD.NY.GOV](mailto:OCSD@ESD.NY.GOV).

##### **5. Encouraging the Use of NYS Businesses in Contract Performance Form**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Respondents for this ECHDC contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ECHDC to assess the use of New York State businesses in each Proposal, ECHDC requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, included as ***Exhibit E***.

##### **6. Certification Under State Tax Law Section 5-a**

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable

services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. **To comply with STL 5-a, all Respondents to this solicitation must include in their Proposals a properly completed Form ST-220-CA, or an affidavit that the Respondent is not required to be registered with the State Department of Taxation and Finance. A copy of the ST-220-CA form and affidavit is accessible at the Required Forms for Vendors link at the ESD web site: labeled "Schedule A- Conditions Applicable to the Corporation's Agreements for Materials and Services (includes ST220 and all other required forms) at <http://esd.ny.gov/CorporateInformation/RFPs.html>**

Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

#### **7. Schedule A**

Following final selection of a Contractor, ECHDC will prepare a contract defining all project terms and conditions and the Contractor's responsibilities in conformance with "Schedule A," which can be found at:

[http://intranet.empire.internal/Finance/2018/ScheduleA-Services\\_Materials-March2018.pdf](http://intranet.empire.internal/Finance/2018/ScheduleA-Services_Materials-March2018.pdf)

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

#### **8. Project Sunlight**

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ECHDC by a person (also broadly defined) for the purposes of procuring a state contract for real property (as contemplated in this RFP) must be reported by ECHDC to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Respondents and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

## 9. W-9 Form

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

## 10. EO 177 Certification

In accordance with Executive Order No. 177 (issued on February 3, 2018, available here <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO177.pdf> any entity that provides goods or services to ESD must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the New York State Human Rights Law. Accordingly, all Respondents must submit an EO 177 certification form with their proposal. The form is attached to this RFP as ***Exhibit F***.

**XIV. PROPOSAL CHECKLIST**

I, \_\_\_\_\_, a principal of the firm \_\_\_\_\_ certify that the following information has been submitted as part of the response to this Request for Proposals.

- Submitted all required information with respect to the Proposal, including, but not limited to, a respondent description, project description, and pro-forma that clearly outlines all assumptions (Section VII)
- Completed and submitted State Finance Law Sections 139-j and 139-k forms (Section X)
- Completed and submitted ST-220-CA Form or affidavit (Section X)
- Submitted Copy of VendRep receipt (Section X)
- Completed an Equal Employment Opportunity Policy Statement (Form OCSD-1, Section X)
- Completed and submitted Iran Divestment Act Statement (Section X)
- Completed and submitted Use of NYS Business Form (Section X)
- Completed and submitted EO 177 Certification (Section X)
- Submitted 6 physical copies and one electronic copy of the Proposal to the listed address (Section VII)

Signed: \_\_\_\_\_

Name:

Date:

**XV. EXHIBITS**

*Exhibit A – Site Map*

*Exhibit B – Pro-Forma*

*Exhibit C - Diversity Practices Questionnaire & Diversity Practices Scoring Matrix*

*Exhibit D – Site Photos*

*Exhibit E – Use of NYS Business in Contract Performance Form*

*Exhibit F – EO 177 Certification*

*\*All exhibits can be found at <https://www.nyscr.ny.gov/>.*

# **Exhibit A**

## Site Plan



**COURSES AND DISTANCES 1-3**

1	S82°17'47"W	115.36'
2	N36°16'23"W	141.89'
3	S57°55'36"W	131.81'

UNITED STATES OF AMERICA  
(REPUTED OWNER)  
SOUTH PIER LIGHTHOUSE  
L. 97, P. 93

A Portion of  
Map No. 2516,  
Parcel No. 3286  
1.04± acres  
(Lands to be Retained)

Authority of the  
STATE OF NEW YORK  
(OWNER)  
RE: Map No. 2516,  
Parcel No. 3286

Authority of the  
STATE OF NEW YORK  
(OWNER)  
RE: Map No. 2516,  
Parcel No. 3286

Authority of the  
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(OWNER)  
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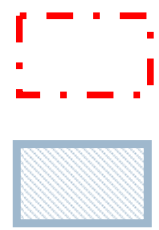
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RE: Map No. 2516,  
Parcel No. 3286

Authority of the  
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(OWNER)  
RE: Map No. 2516,  
Parcel No. 3286

- LEGEND**
- PK NAIL
  - REBAR REBAR
  - F IRON PIPE
  - ⊙ MH UNKNOWN MANHOLE
  - ⊙ CBR ROUND CATCH BASIN
  - CB CATCH BASIN
  - ⊙ STORM MH STORM MANHOLE
  - ⊙ SAN MH SANITARY MANHOLE
  - CO CLEANOUT
  - ⊙ SIGN ONE POST SIGN
  - ⊙ LP ONE HEAD LIGHT POLE
  - ⊙ UP UTILITY POLE
  - ⊙ UP/L UP/L
  - ⊙ GUY GUY WIRE
  - ⊙ HYD HYDRANT
  - ⊙ WV WATER VALVE
  - ⊙ GUM GASLINE MARKER
  - ⊙ GM GAS METER
  - ⊙ GV GAS VALVE
  - ⊙ TBOX TELEPHONE BOX
  - ⊙ PI POINT OF INTERSECTION
  - PIN & CAP PIN & CAP

**GENERAL NOTES**

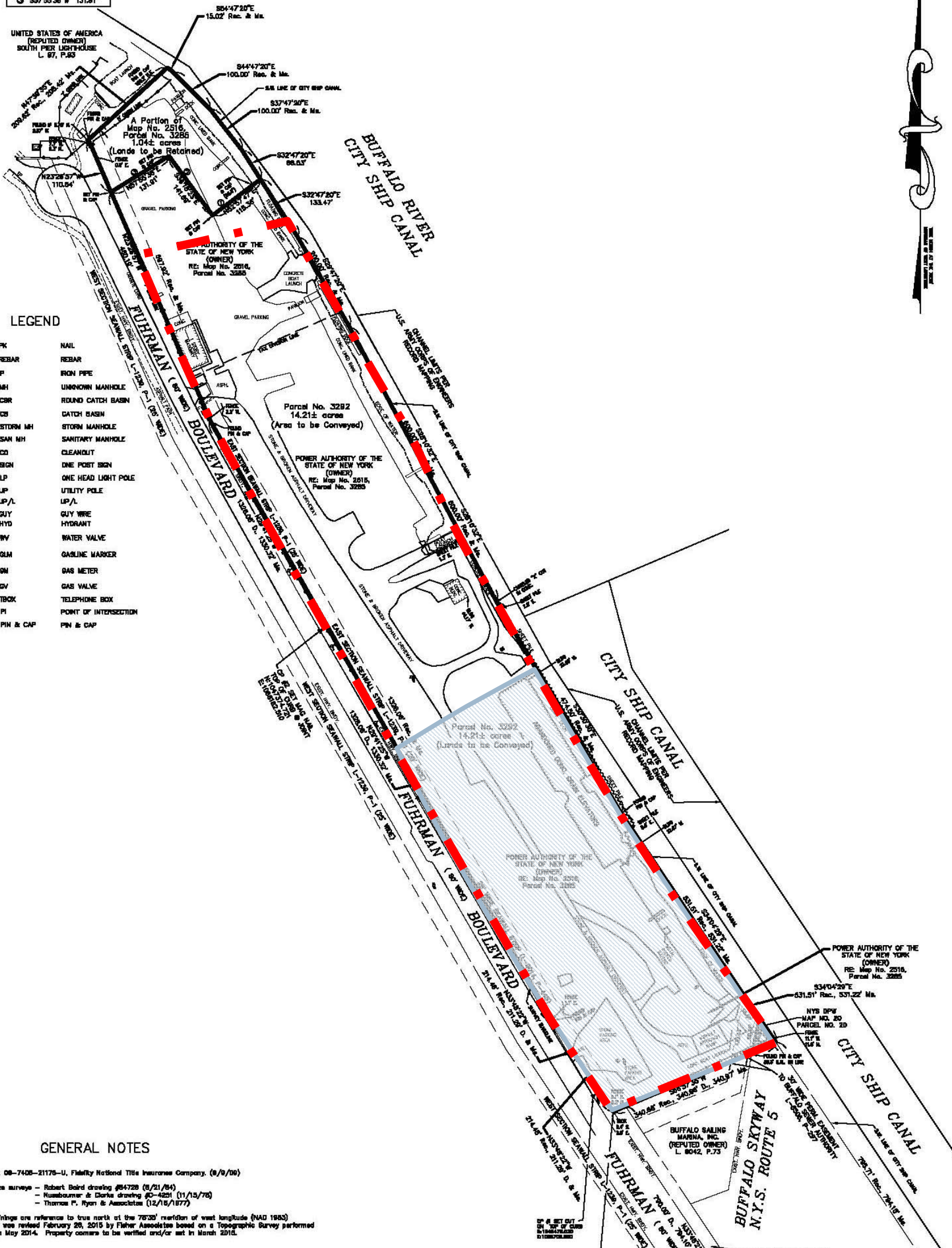
Title No. 08-7408-21176-U, Fidelity National Title Insurance Company, (8/9/08)  
 Reference surveys - Robert Baird drawing #84728 (8/21/84)  
 - Humbauer & Clark drawing #0-4281 (11/15/70)  
 - Thomas P. Ryan & Associates (12/16/1877)  
 All bearings are reference to true north at the 78°30' meridian of west longitude (NAD 1983)  
 Mapping was revised February 26, 2015 by Fisher Associates based on a Topographic Survey performed by us in May 2014. Property corners to be verified and/or set in March 2015.



Property Line  
 Seasonal Public Access Area

**Exhibit A**  
**Site Map**

**First Buffalo Marina**  
**32 Fuhrmann Blvd**



# **Exhibit B**

Pro-Forma

**INSTRUCTIONS**

Cells with black text and gray shading have been completed by ECHDC or include calculations and should not be modified by the Respondent.	Highlighted cells with blue text should be completed by the Respondent
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**PRO FORMA  
REVENUE ASSUMPTIONS**

**1. REVIEW CURRENT MARINA RATES**

Slip Size	Current Rates		Proposed Rent % Increase			
	Current #	Current %	2019	2020	2021	2022
20' w/ electricity	22	19%	0%			
30' w/ electricity	75	64%	0%			
40' w/ electricity	20	11%	0%			
<b>TOTAL SLIPS</b>	<b>117</b>					
Seasonal Park and Launch	70	N/A	N/A			
<b>TOTAL</b>	<b>187</b>	<b>N/A</b>				

**2. INPUT PROPOSED SEASONAL SLIP RENTS**

Slip Sizes	Proposed #	Current Rates		Proposed Rents			
		2017 Rate	2018 Rate	2019	2020	2021	2022
20' w/ electricity	0	\$ 1,100	\$ 1,150	\$ 1,150	\$ -	\$ -	\$ -
30' w/ electricity	0	\$ 1,415	\$ 1,550	\$ 1,550	\$ -	\$ -	\$ -
40' w/ electricity	0	\$ 1,680	\$ 1,875	\$ 1,875	\$ -	\$ -	\$ -
Seasonal Park and Launch	0	\$ 425	\$ 425	\$ 425	\$ -	\$ -	\$ -
Other slip type (if applicable)	0	\$ -	\$ -	\$0	\$0	\$0	\$0
Other slip type (if applicable)	0	\$ -	\$ -	\$0	\$0	\$0	\$0

**3. INPUT ALL ANNUAL REVENUE ASSUMPTIONS**

Projected Marina-Related Revenues	Current Revenues		Revenue Projections			
	2017	2018	2019	2020	2021	2022
Summer Slip Rentals	\$160,800	Unavailable	\$0	\$0	\$0	\$0
Seasonal Park and Launch	\$30,900	Unavailable	\$0	\$0	\$0	\$0
Boat storage and related activities	\$139,700	Unavailable	\$0	\$0	\$0	\$0
Marina Services	\$92,000	Unavailable	\$0	\$0	\$0	\$0
Day Use fees	\$1,000	Unavailable	\$0	\$0	\$0	\$0
Other revenue source (if applicable)	\$0	\$0	\$0	\$0	\$0	\$0
All Other	\$0	\$0	\$0	\$0	\$0	\$0
<b>MARINA REVENUES SUBTOTAL</b>	<b>\$424,400</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

All Other Site-Related Revenues	2018	2019	2020	2021	2022
Other revenue source (if applicable)	N/A	\$0	\$0	\$0	\$0
Other revenue source (if applicable)	N/A	\$0	\$0	\$0	\$0
Other revenue source (if applicable)	N/A	\$0	\$0	\$0	\$0
Other revenue source (if applicable)	N/A	\$0	\$0	\$0	\$0
Other revenue source (if applicable)	N/A	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**INSTRUCTIONS**

Cells with black text and gray shading have been completed by ECHDC or include calculations and should not be modified by the Respondent.	Highlighted cells with blue text should be completed by the Respondent
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**PRO FORMA  
EXPENSE ASSUMPTIONS**

**Input Expense Projections**

**1. INPUT MARINA EXPENSE ASSUMPTIONS**

Projected Marina-Related Expenses	2019	2020	2021	2022
Salary and benefits	\$0	\$0	\$0	\$0
Insurance	\$0	\$0	\$0	\$0
Utilities	\$0	\$0	\$0	\$0
Input description of other expense type (if applicable)	\$0	\$0	\$0	\$0
Input description of other expense type (if applicable)	\$0	\$0	\$0	\$0
All Other	\$0	\$0	\$0	\$0
<b>MARINA EXPENSES SUBTOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ALL OTHER SITE-RELATED OPERATING EXPENSES	2019	2020	2021	2022
Input description of other expense type (if applicable)	\$0	\$0	\$0	\$0
Input description of other expense type (if applicable)	\$0	\$0	\$0	\$0
Input description of other expense type (if applicable)	\$0	\$0	\$0	\$0
<b>OTHER OPERATING EXPENSES SUBTOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## INSTRUCTIONS

Cells with black text and gray shading have been completed by ECHDC or include calculations and should not be modified by the Respondent.

Highlighted cells with blue text should be completed by the Respondent

### REVENUES

	2019	2020	2021	2022
Marina Revenues Subtotal	\$0	\$0	\$0	\$0
Other Revenues Subtotal	\$0	\$0	\$0	\$0
Total Revenues	\$0	\$0	\$0	\$0

### EXPENSES

Marina Expenses Subtotal	\$0	\$0	\$0	\$0
Site Lease Payment to ECHDC	\$0	\$0	\$0	\$0
% Revenue Payment to ECHDC	\$0	\$0	\$0	\$0
Other Operating Expenses Subtotal	\$0	\$0	\$0	\$0

### INCOME

Total Operating Revenues	\$0	\$0	\$0	\$0
Total Operating Expenses	\$0	\$0	\$0	\$0
Operating Income	\$0	\$0	\$0	\$0

Average Projected Tax Rate	\$0	\$0	\$0	\$0
Projected Taxes	\$0	\$0	\$0	\$0

Post-tax income	\$0	\$0	\$0	\$0
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# PROPOSED LEASE TERM SHEET

**TEAM NAME**

INSERT TERM NAME HERE

**Instructions**

**Respondent Response**

**Slip Rate Increases**

- Year 1 weighted average slip rate % Increase*
- Year 2 weighted average slip rate % Increase*
- Year 3 weighted average slip rate % Increase*
- Year 4 weighted average slip rate % Increase*


**Financial Offer**

*Summary of financial consideration to be provided by the Designated Operator in exchange for Lease. This consideration should include:*

*i. A lease payment offer, presented as an annual flat fee with escalation schedule and a percentage of revenue, payable to ECHDC*

<p>Base Rent: \$</p> <p>"</p>	<p>( % yearly escalation)</p> <p>" Revenue: %</p>
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# **Exhibit C**

Diversity Practices  
Questionnaire

&

Diversity Practices Scoring  
Matrix



I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?<sup>1</sup>

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<sup>1</sup> Do not include onsite project overhead.





4. Does your company provide technical training<sup>2</sup> to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

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<sup>2</sup> Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.



If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan



All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of  
Owner/Official

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Printed Name of  
Signatory

---

Title

---

Name of Business

---

Address

---

City, State, Zip

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STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_

Notary Public

## New York State Diversity Practices Scoring Matrix

Questions

<b>Q1 - CDO or other person tasked with function</b>					Yes	No	Total
					5 pts	0 pts	
<b>Q2 - Percentage of prior yr. revenues that involved M/WBEs as subs or JVs/partners</b>	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	20 pts	14 pts	10 pts	6 pts	2 pts	0pts	
<b>Q3 - Percentage of overhead expenses paid to M/WBEs</b>	20%+	15-19%	10-14%	5-9%	1-4%	0%	
	16 pts	10 pts	7 pts	4 pts	1 pts	0pts	
<b>Q4 - M/WBE Training</b>			Robust	Moderate	Minimum	None	
			16 pts	8 pts	4 pts	0 pts	
<b>Q5 - M/WBE Mentoring</b>			Robust	Moderate	Minimum	None	
			12 pts	8 pts	4 pts	0 pts	
<b>Q6 - Written M/WBE goals included in the Company's procurements</b>			Robust	Moderate	Minimum	No	
			20 pts	12 pts	6 pts	0 pts	
<b>Q7 - Formal Supplier Diversity Program</b>			Robust	Moderate	Minimum	No	
			6 pts	4 pts	2 pts	0 pts	

# New York State Diversity Practices Scoring Matrix

<b>Q8 - Utilization Plan</b>			Robust	Moderate	Minimum	No	
			5 pts	3 pts	1 pts	0 pts	
<b>Total Diversity Score (Max 100 pts)</b>							
<b>Weighted Score</b>							

# **Exhibit D**

Site Photos

## The Slips and The View







**The Building**





**The Heavy Equipment**





## The Yard



# **Exhibit E**

Use of NYS Business

in

Contract Performance

Form

**ENCOURAGING USE OF NEW YORK STATE BUSINESSES  
IN CONTRACT PERFORMANCE**

**Vendor Name and Date:** \_\_\_\_\_

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State (“NYS”), bidders/proposers for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider NYS businesses in the fulfillment of the requirements of the contract. Such partnering may be as sub-contractors, suppliers, protégés or other supporting roles (herein collectively called “Subcontractors”).

Bidders/proposers need to be aware that, if selected through this ESD solicitation, they will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive NYS Subcontractors in performing the contract, including without limitation: (i) purchasing commodities; and (ii) utilizing services and technology. Further, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its NYS business partners. NYS businesses will promote the contractor’s optimal performance under the contract, thereby benefiting public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore encourages bidders/proposers to provide maximum assistance to NYS businesses in their use of the contract. The potential participation by all kinds of NYS businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of NYS businesses by responding to the questions below (negative responses will not adversely affect contract selection):

(A) Do you anticipate the need for Subcontractors fulfilling the requirements of this ESD contract? Yes  No

(B) Do you anticipate that NYS businesses will be used in the performance of this ESD contract as Subcontractors? Yes  No

**NOTE:** If the answer to question (B) is Yes, please identify NYS businesses that will be used and attach identifying information such as name, address, contact information, nature of business. Please also be prepared to provide ESD on a regular basis (at least quarterly) with the amounts paid to NY businesses.



# **Exhibit F**

EO 177 Certification

# EO 177 Certification

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The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Contractor:

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20\_\_