

LAKEFRONT DEVELOPMENT CORPORATION

Request for Proposals

SYRACUSE INNER HARBOR PROPERTY

RFP NO: 09C38

Request Issued: December 21, 2009

Proposals Due: March 31, 2010 @ 1:00 PM EDT

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Introduction

By this Request for Proposals ("RFP"), Lakefront Development Corporation ("LDC") and the New York State Canal Corporation ("NYSCC") seek proposals from qualified and experienced developers to purchase or lease for development approximately 28.6 acres of land, consisting of Parcel A1, Parcel A2, Parcel B and Parcel C (described below) adjacent to the Syracuse Inner Harbor located in the City of Syracuse, Onondaga County.

A Proposer (defined below) may submit a proposal to purchase in fee or lease one or more of parcels A1, B and C. Parcel A2 is only available for lease because Parcel A2 is currently designated as Canal Terminal property and NYSCC does not have the authority under Section 50 of the New York Canal Law to convey the fee simple title to Parcel A2 without a special act of the New York State Legislature. Parcel A1 and Parcel A2 will be awarded to the same Proposer. Accordingly, all proposals to purchase or lease Parcel A1 must also include a proposal to lease Parcel A2.

All proposals will be submitted to the LDC, with the LDC board making a recommendation to the Canal board of a top-rated Proposer for each parcel.

The Lease (defined below) will have an initial term of 40 years, with options to extend the term for up to an additional 40 years.

The minimum purchase prices for Parcel A1, Parcel B and Parcel C are (i) Parcel A1 - \$1,875,000; (ii) Parcel B - \$1,760,000; and (iii) Parcel C - \$1,750,000. The minimum annual rent for the first lease year, to be paid in annual installments, in advance, under the Lease for Parcel A1 is \$245,025, for Parcel A2 is \$100,000 for Parcel B is \$210,830, and for Parcel C is \$239,580. The lease structure shall include a 10 year flat rent, escalating 10% at each 5 year interval for Parcels A1 and A2 and 5% each 5 year interval for Parcels B and C.

Any proposal not meeting these minimum purchase prices or the minimum annual rent will not be considered for recommendation by the LDC board to the NYSCC board.

Section 1: Definitions

Adaptive reuse: Shall mean with respect to the Canal Maintenance Building and the Freight House Building a new use that retains the historic features of these buildings.

Building Permit: A document issued by the City of Syracuse Department of Code Enforcement authorizing the permittee to construct an improvement to real property.

Canal Maintenance Building and the Freight House Building: Shall mean the maintenance building and freight house located on Parcel A1.

Canal Recreationway Plan: Shall mean the plan developed, maintained and periodically revised by the Canal Recreation Commission under Sections 138-b and 138-c of the New York Canal Law. Compact diskette (CD) copies of the Plan are available by contacting the LDC.

Disposition Agreement: The applicable form of agreement attached hereto as **Exhibit I** for Parcel A1, Parcel B, or Parcel C.

Lakefront Development Corporation ("LDC"): The LDC is a 501(c) (3) not-for-profit corporation formed by the City of Syracuse and the Metropolitan Development Association of Syracuse in 1996 to facilitate the redevelopment of the Syracuse Lakefront. The LDC has been selected by the NYSCC to act as its local partner in the revitalization of the Syracuse Inner Harbor ("SIH") (defined below). The LDC board, in compliance with an agreed upon evaluation procedure, shall recommend a top-rated Proposer for each parcel to the Canal board.

Lakefront Development Corporation Board ("LDC board"): The LDC board governs the operation of the LDC and consists of a thirteen member board of directors comprised of local business leaders and community stakeholders.

New York State Canal Corporation ("NYSCC"): NYSCC is a subsidiary of the New York State Thruway Authority, created pursuant to Section 382 of the New York Public Authorities Law ("PAL"). NYSCC maintains jurisdiction over Parcels A1, A2, B, and C. The NYSCC operates under the authorization of a 7 member board named the Canal board. The Canal board shall either accept or reject the LDC board's recommendation for one or more top-rated Proposers.

Land: Shall mean the parcels of land described in Section 4.1 of this RFP.

Local Zoning: Shall mean the zoning regulations described in Section 7 of this RFP.

Lease: The form of agreements attached hereto as **Exhibit I** will be used to grant a leasehold interest in one or more of the parcels. Three form lease agreements are attached as **Exhibit I**, one for Parcel A (A1-A2), one for Parcel A2, one for Parcel B and one for Parcel C.

New York State Canal System (the "Canal System"): The Canal System consists of all the canals, canal lands, feeder canals, reservoirs, canal terminals and canal terminal lands of the state, including a navigable 524-mile inland waterway that crosses upstate New York.

New York State Thruway Authority ("NYSTA"): NYSTA is a body corporate and politic constituting a public corporation created and constituted pursuant to title nine of article two of the PAL.

Project Labor Agreement ("PLA"): A PLA is a contract between a Proposer and a labor union (or unions) establishing the union (or unions) as the collective bargaining representative(s) for all persons who will perform work on the project. The PLA is to

provide that only contractors and subcontractors who sign an agreement with the union(s) can perform project work. In exchange for labor peace, the PLA will require the Proposer to: hire workers through the union hiring halls; follow specified dispute resolution procedures; comply with union wage, benefit, seniority, apprenticeship and other rules; and contribute to the union benefit funds.

Proposer: Proposer shall mean any person, corporation or entity who submits a proposal in response to and in compliance with this RFP.

Recreationway Commission: Shall mean the Canal Recreationway Commission established under Article XIII-A of the New York Canal Law.

Syracuse's Inner Harbor ("SIH"): SIH is a body of water and adjoining un-submerged developable lands connected to Onondaga Lake which was previously appropriated by New York State for use as a working barge canal harbor.

Section 2: Background

2.1 Investment in the Canal System

The NYSTA and NYSCC have invested over \$383 million in improvements to the Canal System, targeted revitalization projects, aggressive marketing campaigns, and a five year revitalization program to preserve and develop the Canal System for the 21st century. Additionally, the NYSTA and NYSCC invested over \$700 million since 1992 to operate and maintain the Canal System. A 2002 economic benefit study concluded that these investments have yielded more than \$384 million annually in tourism and other economic benefits for upstate New York.

2.2 The Canal Recreationway Plan

All proposals for development must be consistent with the Canal Recreationway Plan, which is available upon request in electronic format on compact diskette (CD) from the LDC. The Canal Recreationway Plan presents a realistic and achievable approach to development of the Canal System. NYSTA and NYSCC are committed to this program of strategic investments in partnership with businesses and local communities.

In accordance with Section 55 of the New York Canal Law, NYSCC is authorized to lease Parcel A1, Parcel A2, Parcel B and Parcel C after review and comment by the Recreationway Commission as to the consistency of the proposed use with the Canal Recreationway Plan. If it is determined that the proposed use of a parcel is not consistent with the Canal Recreationway Plan, NYSCC will have no obligation to enter into a lease for that parcel. If Parcel A2 cannot be leased, Parcel A1 will not be leased or sold. If Parcel A1 cannot be leased or sold, Parcel A2 will not be leased.

Additionally, in accordance with Section 138-b of the New York Canal Law, NYSCC is authorized to abandon and sell Parcels A1, B and C after review and comment by the Recreationway Commission as to the consistency of the proposed use with the

Canal Recreationway Plan. If it is determined that the proposed use of Parcels A1, B or C are not consistent with the Canal Recreationway Plan, NYSCC will have no obligation to enter into a Disposition Agreement for the sale of Parcels A1, B or C.

Additional information about the Canal Recreationway Plan, the Canal System and NYSCC can be found on NYSCC's website: www.nyscanals.gov.

Section 3: Pre-Proposal Requirements

3.1 Key Dates

Below is the schedule for this RFP process. LDC reserves the right to change any or all of these dates as it deems necessary or convenient in its discretion. Date changes will be posted on the LDC website. If a Proposer fails to submit a proposal by the Proposal Due Date, set forth below, its proposal shall be rejected.

Event	Date
RFP Issuance	December 21, 2009
Site Visit	January 26, 2010 at 10:00 AM
Deadline for Written Questions	February 11, 2010 at 5:00 PM
Answers to Questions	March 4, 2010
Proposal Due Date and Time	March 31, 2010 at 1:00 PM EDT

3.2 Permissible Designated Contact Person

This RFP and resulting disposition of real property interests are subject to and shall be conducted in accordance with the NYSTA and the NYSCC Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence ("NYSCC Guidelines") (copy attached as **Exhibit B**). All questions concerning this RFP must be in writing addressed to the Designated Contact Person listed below. Electronic mailed (email) questions will be accepted. LDC reserves the right to designate a different Contact Person for any reason, at any time. The LDC will post all alternate Designated Contact Person information on its website at the following address: www.syracuse.ny.us/Lakefront_RFP.aspx. Other than the Designated Contact Person, Proposers may **not** approach any officer, employee, agent or contractor of the LDC, NYSTA, NYSCC or any other State entity, relative to this RFP, except as provided in the NYSCC Guidelines and this RFP.

Joseph LaGuardia, Executive Director
Lakefront Development Corporation
One Dupli Park Drive
PO Box 11456
Syracuse, New York 13218
Phone: (315) 448-2244
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Email: jlaguardia@thesyracuselakefront.com

Answers to questions, addenda and any changes to the RFP will be posted on the LDC website. It is the responsibility of the prospective Proposer to obtain any posted information on a timely basis. The LDC will send an email notifying prospective Proposers who have registered with the LDC that such postings are available. However, the LDC shall not assume any responsibility for a notice that was not received.

3.3 Pre-Proposal Site Visit

A pre-proposal site visit will be held as follows:

Date: January 26, 2010

Time: 10:00 AM

Location: NYSCC Freight House, Solar Street, Syracuse, New York

Site visit attendees should pre-register with the Contact Person by phone, fax, or email at least three business days prior to the site visit. Proposers must sign an attendance sheet that will be circulated to document attendance at the pre-proposal site visit. The site visit will begin with a presentation by LDC after which there will be an opportunity to ask questions. Representatives from the NYSCC and Malcolm Pirnie, Inc. will also be available to answer questions. Malcom Pirnie, Inc. was retained by the NYSCC to conduct the environmental site investigation of the Syracuse Inner Harbor, which is available on compact diskette (CD) from the LDC. Any Proposer not attending the pre-proposal site visit must state in the signed cover letter described in Section 5.1 of this RFP that the Proposer waived its opportunity to attend the pre-proposal site visit and must state the following in the cover letter:

“In the event that the business entity I represent fails to attend this pre-proposal conference/site visit for any reason, it understands and agrees that it may not have the same information as other Proposers who do attend such conference/site visit. On behalf of such business entity, I hereby discharge and release the Authority, its successors, employees, agents and assigns, from any claim or liability which may arise out of or is connected in any way with this RFP, the pre-proposals conference/site visit, the Authority's selection process, or the award of a contract to any other Proposer. I also certify that I am authorized to execute this release on behalf of the business entity I represent, or as a sole owner.”

3.4 Written Questions and Responses

The LDC and the NYSCC will provide written responses to written questions related to the RFP and all attachments, including, but not limited to the form of Disposition Agreement and the form of Lease. All questions must be received by the Contact Person between December 21, 2009 and February 11, 2010 at 5:00 p.m. (the "comment period"). Questions received before or after the comment period will not be answered. Questions received during the comment period, along with the written responses, will be posted on the LDC website. Proposers may rely only on the written responses posted on the LDC website and not on any oral statements made by any person, including persons purporting to act on behalf of the LDC or the NYSCC.

3.5 RFP Errors, Omissions and Modifications

If a Proposer believes there is any ambiguity, conflict, discrepancy, omission or error in this RFP, such Proposer must immediately notify the Contact Person in writing and request clarification or modification. Notice of an ambiguity, conflict, discrepancy, omission or error in this RFP must be received by the Contact Person during the comment period. If a Proposer fails to give notice of an ambiguity, conflict, discrepancy, omission or error in this RFP during the comment period, it will not be permitted to seek clarification or modification of the terms of the RFP at a later date. Modifications or clarifications of this RFP, when appropriate as determined by NYSCC and LDC, will be posted on the LDC website. Each Proposer is responsible for conducting its own due diligence in connection with making any proposal in response to this RFP. Neither the LDC nor the NYSCC assumes responsibility for the completeness or accuracy of any factual representations presented in this RFP, including all attachments or otherwise distributed as part of the RFP process. The terms of this RFP may not be modified or amended orally.

3.6 Reimbursement for Independent Legal Costs

NYSCC will be reimbursed by the successful Proposer(s) the costs relating to independent legal assistance provided in preparation of this RFP on a per acre basis at an amount of \$1,647.00 per acre.

Section 4: Development Sought

4.1 Description of Development Parcels

4.1.1 Subject to the minimum purchase prices and minimum annual rent, the LDC and the NYSCC are seeking development proposals, consistent with applicable local zoning, for Parcel A1, Parcel B and Parcel C at fair market value cash purchase prices or fair market rental and for Parcel A2 at a fair market rental. The LDC reserves the right to reject all proposals and the NYSCC reserves the right to reject any recommendation of the LDC. Proposers may submit proposals for Parcel A1 and Parcel A2, together, and/or

Parcel B, and/or Parcel C. Except for Parcel A1 and Parcel A2, Proposers are not required to submit proposals on more than one parcel. The LDC board will be evaluating each proposal on a per parcel basis. As such, all proposals for more than one parcel must be prepared in a manner in which each parcel can be individually evaluated pursuant to the criteria set forth herein. The parcels are described in **Exhibit G** and depicted on the map attached as **Exhibit H**. The parcel demarcations indicated in **Exhibit H** are for identification purposes only and do not necessarily define the parcels with precision.

- 4.1.2 Forms of Disposition Agreements for Parcel A1, Parcel B and Parcel C and Forms of Leases (**Exhibit I**) are attached to this RFP. The Forms of Disposition Agreements and Leases provide that at the closing on the sale or the execution and delivery of the Lease of Parcel A1, Parcel B or Parcel C and upon the execution and delivery of the Lease for Parcel A2, NYSCC will be reimbursed its administrative costs relating to appraisals and surveys of the Parcels on a per acre basis at an amount of \$1,350.00 per acre.

4.2 Uses Sought for Parcels

- 4.2.1 The RFP requests proposals for Parcel A1, Parcel A2, Parcel B and Parcel C that are permitted under Part B, Section-IX, Lakefront Zoning Districts, of the Zoning Ordinance of the City of Syracuse. Part B, Section-IX, Lakefront Zoning Districts, of the Zoning Ordinance of the City of Syracuse will be available on compact diskette (CD) from the LDC upon request. Proposals for development should be consistent with the Leadership in Energy and Environmental Design ("LEED") certified rating requirements, or equivalent, and be designed to blend with the architecture of Franklin Square and the north side of the City of Syracuse.
- 4.2.2 Parcel A1 is described in **Exhibit G** and consists of approximately 7.5 acres of land. All proposals must be consistent with local zoning requirements, as further described in Section 5.2.1.7. This Parcel must be used for commercial and retail development, including specialty retail, restaurants, and entertainment venues. All office space and/or housing on this Parcel shall be located above the ground floor, which shall be a minimum height of ten feet. Proposals for this Parcel, whether for purchase or lease, shall include accommodations (strip easement) for public access to the area along the northern pier as further set forth in Section 4.2.3 of this RFP. Refer to Section 7.1(2) regarding Canal Maintenance Building and Freight House.
- 4.2.3 Parcel A2 is described in **Exhibit G** attached to this RFP and consists of approximately 2.8 acres of land, including the existing piers and bulkheads. The uses sought for Parcel A2 must be consistent with the proposed development of Parcel A1. Consistent with the terms of the Form of Lease attached to this RFP as **Exhibit I**, the tenant shall be responsible for all maintenance of, and improvements to Parcel A2, including the bulkheads and

any proposed dockage. The approximately 700 square feet of linear docks shown on the maps attached to this RFP as **Exhibit H** along the southern wall of the northern-most pier are not included as part of Parcel A2 and are not available for lease. This dockage and upland area will be retained as public property. Proposals for this Parcel shall include accommodations for public access to the area along the northern-most pier where the pavilion and water access are currently located, and due to the use of state funding for rehabilitation of this pier and the existing structures and access, the form of lease shall require that the public have access to this area.

4.2.4 Parcel B is described in **Exhibit G** and consists of approximately 8.4 acres of land. All proposals must be consistent with local zoning requirements, as further described in Section 5.2.1.7. This parcel must be used for residential housing, interspersed with neighborhood commercial uses. Traditional neighborhood development projects are encouraged. Portions of Parcel B may contain wetlands, as defined by the United States Army Corps of Engineers (USACOE), and the disturbance of these wetlands may be regulated by USACOE. Therefore, if applicable, Proposers should take any potential wetland regulatory requirements into consideration in their proposal, including any mitigation requirements.

4.2.5 Parcel C is described in **Exhibit G** and consists of approximately 9.9 acres of land. All proposals must be consistent with local zoning requirements, as further described in Section 5.2.1.7. This parcel must be used for residential housing, interspersed with neighborhood commercial uses. While it is recognized that the market will determine the composition of housing, owner-occupied units are a priority. Traditional neighborhood development projects are encouraged.

4.3 Disposition Agreements and Leases

4.3.1 The fee simple titles to Parcel A1, Parcel B, and Parcel C shall be made available to successful Proposers pursuant to a Disposition Agreement. Proposals to lease Parcel A (A1-A2), Parcel B or Parcel C shall be made available to successful Proposers pursuant to the applicable Lease attached as **Exhibit I**. Because Parcel A2 is currently designated as Canal Terminal property, NYSCC does not have authority to convey Parcel A2 in fee absent special legislation. At the closing on the purchase or lease of Parcel A1, the successful Proposer with respect to Parcel A1 shall lease Parcel A2 according to the terms of a Lease in the form attached to the Disposition Agreement of Parcel A1. By submitting a proposal, the Proposer agrees to accept the terms set forth in the Forms of Disposition Agreements and Lease attached to this RFP as **Exhibit I**.

4.3.2 Upon the execution and delivery of a Disposition Agreement by a successful Proposer and NYSCC, the successful Proposer must deposit with NYSCC by a bank check an amount equal to ten percent (10%) of the Proposer's

aggregate bid for Parcel A1, Parcel B or Parcel C (the "deposit"). The deposit will be refunded to the Proposer, without interest, if the Disposition Agreement executed by the Proposer and NYSCC is not approved by the Attorney General for the State of New York and/or by the Comptroller of the State of New York. NYSCC may require additional assurances of timely performance by any Proposer the Canal board approves. The deposit, without interest, shall be applied to the purchase prices of Parcel A1, Parcel B and Parcel C at the time of the closings on those parcels. If the successful Proposer fails to close in accordance with the terms of the Disposition Agreement executed by the Proposer and NYSCC, the sole remedy of NYSCC will be to terminate the Disposition Agreement and to retain the deposit as liquidated damages.

- 4.3.3 The Proposer must execute a Disposition Agreement or Lease within forty-five (45) days after the Proposer is given notice of the NYSCC's written acceptance of the LDC board's recommendation ("NYSCC's acceptance"). If Proposer fails to execute a Disposition Agreement or Lease within this forty-five (45) day period, NYSCC may withdraw NYSCC's acceptance at NYSCC's sole and absolute discretion. If NYSCC withdraws NYSCC's acceptance, Proposer agrees that NYSTA, NYSCC and LDC, including their boards, officers, employees, and agents shall not be liable to Proposer for any damages, claims, actions or proceedings arising out of the withdrawal of NYSCC's acceptance, including any claim for failure to negotiate in good faith. NYSCC may withdraw NYSCC's acceptance at any time for any reason. In the event a contract for disposal (sale or lease) is not fully executed, including the approval of the New York State Office of the Attorney General and New York State Office of the State Comptroller, the Lakefront Development Corporation board, by resolution, may recommend to the New York State Canal Corporation board the next responsible Proposer as determined by the procurement procedures, whose proposal, conforming to the RFP, will be most advantageous to the Canal Corporation, price and other factors considered.
- 4.3.4 All fee and leasehold dispositions will be made in accordance with Section 2897 of the New York Public Authorities Law. Parcel A2 must be leased to the Proposer. Pursuant to Article 6-A of the New York Canal Law, in no event will the initial term of any lease exceed forty (40) years, nor will any renewal terms exceed an additional forty (40) years. In no event will NYSCC provide financing for any fee or leasehold dispositions.
- 4.3.5 Subject to prior written permission, not to be unreasonably withheld, NYSCC agrees to grant Proposer reasonable pre-closing access rights to the parcels and improvements thereon, but only after Proposer has made the deposit, executed a Disposition Agreement, and has obtained all necessary permits from NYSCC.

- 4.3.6 Title to Parcels A1, B and C will be conveyed by a quit claim deed, subject to the Permitted Exceptions applicable to each parcel. The leasehold granted by the Lease covering Parcel A2 will be subject to the Permitted Exceptions applicable to Parcel A2.
- 4.3.7 The closing shall take place within 180 days from the approval of the New York State Comptroller of the Disposition Agreement or the Disposition Agreement and Lease, subject to the Closing Conditions set forth in the Disposition Agreements.
- 4.3.8 Notwithstanding any economic development or other credits that may now, or in the future, be applied to the property, neither NYSTA, NYSCC, State of New York or LDC guarantee that any public or private funding and/or tax incentive programs will be available for the Proposer to utilize.
- 4.4 Right of Reacquisition. If a parcel is purchased in fee rather than leased, the Disposition Agreement shall include a right of reacquisition, as defined by the New York Estates, Powers and Trusts Law at §6-4.6, for the benefit of the NYSCC and its successors in interest. The Disposition Agreement shall grant the NYSCC and its successors in interest the right to reacquire the fee simple title to the parcel on the condition that Proposer fails to obtain all necessary building permits to construct the improvements described in its proposal within five (5) years after the transfer of title of the parcel to Proposer, or in the case of Parcel B, within five (5) years after the remediation of the Property is complete (See Section 4.7.3). The proposal must acknowledge that NYSCC has a substantial interest in assuring that building permits to construct the improvements described in the proposal are obtained no later than five (5) years after the transfer of title to Proposer. The proposal must further acknowledge that Proposer's failure to comply with this condition subsequent shall result in a forfeiture of Proposer's interest in the parcel. The right of NYSCC and its successors in interest to reacquire the fee simple title to the parcel shall not be construed to be a covenant or directive.
- 4.5 Lease Default. If a parcel is leased rather than purchased in fee, the Lease will provide that Proposer's failure to obtain all necessary building permits to construct the improvements described in the proposal within five (5) years after the execution and delivery of the Lease, or in the case of Parcel B, within five (5) years after the remediation of the Property, will constitute a default. Remediation of Parcel B must be complete no later than five (5) years after the execution and delivery of the Lease.
- 4.6 Project Labor Agreement. If a parcel is leased rather than purchased in fee, Proposer shall be required to negotiate a PLA and submit a feasibility study to the NYSCC no later than thirty (30) days after the date that the NYSCC board adopts the LDC board's recommendation to select the proposal. No later than fifteen (15) days after receiving the PLA and feasibility study, the NYSCC shall determine whether Proposer will be required to comply with the PLA. The

NYSCC shall require Proposer to comply with the PLA if NYSCC determines that it is in the public interest to do so and is consistent with all competitive bidding statutes, including the Public Authorities Accountability Act. The feasibility study is to be prepared by a qualified third-party consultant. Proposer shall be responsible for all costs associated with the preparation of the feasibility study and the negotiation of the PLA.

4.7 Environmental Escrow Account for Parcel B

- 4.7.1. Pursuant to Section 7.2.6 of this RFP, NYSCC shall make the results of a hybrid Phase I environmental site investigation available to the Proposer. The hybrid Phase I environmental site investigation indicates that Parcel B may be contaminated with petroleum, toxic materials, hazardous waste, hazardous substances and/or other harmful materials (the "Contamination"). Prior to developing Parcel B, the Proposer must prepare and implement one or more work plan(s) to complete the investigation and remediate the Contamination on Parcel B (the "Work Plan"). The Work Plan must be approved by the New York State Department of Environmental Conservation ("NYSDEC") and Proposer must obtain from NYSDEC a "no further action" letter indicating that the work required by the Work Plan was satisfactorily completed and no further work is required.
- 4.7.2 At the closing on the sale of Parcel B, the purchase price received by NYSCC for Parcel B will be deposited into an escrow account (the "Escrow Account") to be held by a third-party escrow agent (the "Escrow Agent") reasonably acceptable to Proposer and NYSCC. Funds from the Escrow Account will be released by the Escrow Agent to reimburse Proposer for costs associated with the remediation of the Contamination on Parcel B. The Escrow Account shall be administered by the Escrow Agent in accordance with the terms of an Escrow Agreement, the form of which is attached to the Disposition Agreement for Parcel B. Proposer will be responsible for all fees charged by the Escrow Agent.
- 4.7.3 All remediation pursuant to the NYSDEC-approved Work Plan must be completed no later than five (5) years after the date of closing on the sale of Parcel B. If Proposer fails to remediate the Contamination, consistent with the Work Plan and to the satisfaction of the NYSDEC, within five (5) years of the closing, NYSCC shall have the right to reacquire fee simple title to Parcel B.
- 4.7.4 No later than thirty (30) days after the acceptance by NYSDEC of the final engineering report regarding the completion of remediation at Parcel B and the issuance of a no further action letter, all remaining funds in the Escrow Account shall be released to NYSCC.

- 4.8 Minority and Women-Owned Business Enterprises Participation Requirements. Upon the execution of a lease agreement, the successful Proposer agrees to cooperate with the City of Syracuse and the Canal Corporation in an effort to afford equality of economic opportunities for minority and women-owned business enterprises certified pursuant to Article 15A of the New York Executive Law and the New York State Department of Economic Development.

Section 5: Proposal Requirements

The following is a list of the information that each Proposer must provide. The requested information is not listed in any order of importance. The NYSCC and/or LDC reserve the right to, in their discretion, disqualify a proposal that does not include all of the information required below. To expedite the review of submissions, the proposal shall be submitted in a binder with the material separated by tabs numbered/lettered to match the specific information requested below. Additional information, if any, should be submitted in a separate binder. No information beyond that specifically requested is required, and Proposers should keep their submissions to the shortest length consistent with making a complete presentation.

5.1 Cover Letter

A cover letter, which is an integral part of the proposal, must be signed by the individual or individuals authorized to bind the Proposer contractually. The letter must indicate for each signatory that the signer is so authorized and the title or position the signer holds in the Proposer's organization. The cover letter shall include the following:

- 5.1.1 The name, nature of organization (e.g. corporation, partnership, etc.), location of main office - address, telephone/fax numbers and email address (if available), the Federal Tax Identification Number of the organization, and the name, business address, telephone/fax numbers and email address (if available) of the person within the organization who will be the primary contact concerning the proposal and who is to be given any notice under this RFP.
- 5.1.2 The identity of the key management and supervisory personnel who will be assigned to complete the development described in the proposal.
- 5.1.3 A statement that the selection of the Proposer will not create any conflict of interest for the LDC, NYSTA, NYSCC or the Proposer. If the Proposer believes that a conflict of interest may exist or arise, the nature of the conflict should be described in detail. The LDC, in consultation with NYSCC, will make a determination on whether any conflict warrants a rejection of the bid.
- 5.1.4 A statement that, if selected, the Proposer intends, and is ready, willing and able, to execute and deliver a Disposition Agreement or Lease, and fund the

required deposit within forty-five (45) days of the NYSCC's written acceptance of the LDC board's recommendation.

- 5.1.5 The following statement: "The undersigned hereby certifies that since the issuance of the RFP no member of the Proposer's team, or any other person acting on its behalf, has had or will have any contact with any member, officer, employee, contractor or agent of the Lakefront Development Corporation or the New York State Canal Corporation or the New York State Thruway Authority relating in any way to the Lakefront Development Corporation's 2009 SIH RFP, except as expressly permitted under the terms of the RFP".
- 5.1.6 If the Proposer did not attend the pre-proposal site visit, a statement that the Proposer waived its opportunity to attend the pre-proposal site visit.
- 5.1.7 The following statement: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:
- 1) The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor; and
 - 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
 - 3) No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition".
- 5.1.8 The statement regarding the pre-proposal site visit, as indicated in Section 3.3.

5.2 Content of Proposal

The following criteria will be evaluated for each parcel being proposed for development according to the procedure detailed in Section 6 of the RFP. Proposers must address each of the issues below for each parcel being proposed for development in order for their proposal to be considered. As such, all Proposals for more than one parcel must be prepared in a manner in which each parcel can be individually evaluated pursuant to the criteria set forth herein.

5.2.1 Proposed Development

To evaluate the feasibility of the proposed development, the Proposer must submit materials in sufficient detail to allow the LDC board to review the proposal. In addition, if a proposal calls for development of the project in phases, all those materials shall clearly identify and depict each phase of development. **Proposals for each parcel shall be evaluated separately by the LDC board.** NYSCC reserves the right to reject any recommendation of the LDC board. If NYSCC rejects the LDC board's recommendation, NYSCC may request another recommendation from the LDC board for another proposal. The LDC board also reserves the right to recommend different Proposers for Parcels A, B and C.

The Proposer shall include the following:

1. A narrative detailing the scope and character of development for each parcel, including the total square footage of any structures or other improvements proposed for a particular parcel by type of use, and the size of each improvement.
2. A description of the development schedule, including but not limited to a projected timeline of development, or if proposed in phases, for each phase of development.
3. Conceptual drawings detailing the proposed design theme should include at least the following:
 - a. A site plan showing the placement of all proposed improvements, including the relationship of all building or buildings, loading areas, streets, drives and walks, required landscaping areas, and setback lines.
 - b. Elevation drawings illustrating the exterior appearance of the proposed improvements. All proposed improvements should be designed to blend with the architectural character of Franklin Square and the north side of the City of Syracuse.
 - c. Sketches, architectural plans and drawings as may be useful or necessary to adequately depict the proposed development.

4. Market analysis which supports a current and/or future demand for proposed uses.
5. A list and description of the proposed tenants or end-users of each proposed improvement, including any letters of intent or other written commitments from prospective tenants of the project.
6. Demonstration of the ability to remediate contaminated property and to manage any post-remediation contamination during redevelopment. If post-remediation contamination will exist, demonstration of how the Proposer intends to protect the public, workers, and the environment and wildlife during the redevelopment activities and subsequent use of the developed properties is required.

There may exist an opportunity to return any contaminated parcels or portions thereof to productive use through a "Brownfield" redevelopment approach. Public and private funding, as well as certain tax incentives, are available for identification and restoration of certain qualified "Brownfield" projects. However, neither NYSTA, the NYSCC, the State of New York, nor the LDC guarantee that any public or private funding and/or tax incentive programs will be available for the Proposer to utilize. Proposer shall be solely responsible for all environmental remediation and removal costs. An environmental site investigation of the Parcels is available on compact diskette (CD) from the LDC. It is recommended that Proposers consult with the New York State Department of Environmental Conservation regarding any required remediation and/or mitigation for development of the parcels.

7. An analysis detailing the extent to which the proposed development is consistent with the City's zoning regulations, including the Tourism Overlay District, if applicable, together with an attorney's opinion that the proposed development is consistent with the City's current zoning regulations, including the Tourism Overlay District, if applicable.
8. A description of the project consistency with The Leadership in Energy and Environmental Design ("LEED") certified rating requirements and other sustainable development design features.

5.2.2 Project Financials

The Proposer must show the total sources and uses of funds for all the acquisition and development costs of the project described by the Proposer. Proposers must demonstrate their commitment and ability to obtain adequate financial resources to develop their proposed project.

The following information shall be provided:

1. Proposed project budget, including proposed environmental remediation expenses. An environmental site investigation of the Parcels is available on

compact diskette (CD) from the LDC. It is recommended that Proposers consult with the New York State Department of Environmental Conservation regarding any required remediation and/or mitigation for development of Parcels A and B.

2. Proposed method and potential sources of financing for the project, including debt and equity and any terms and conditions of such financing sources. The proposal should state whether the Proposer or its principals have existing relationships with any such sources or have done prior projects with them. If historic tax credits, Federal Empowerment Zone or New York State Empire Zone benefits, or any other governmental subsidies or incentives (including "Brownfield Subsidies") will be sought, they should be identified and any prior experience of the Proposer in obtaining such benefits should be described. Contact information for each potential source of financing should be provided. Securing financing for the project is not a condition precedent to closing.
3. Evidence of financial resources of the Proposer to fully implement the project components in a timely fashion.
4. Where applicable, the ability to secure funding for "Brownfield" or "clean" redevelopment and provide evidence of its technical and regulatory expertise and experience with respect to such matters for projects of this size and complexity, as well as successful integration of remedial approaches to redevelopment design.

5.2.3 Proposer's Qualifications

The ability of the Proposer to complete the development project on budget and on schedule is dependent on the Proposer's experience and resources. Joint Proposers are permitted, provided a lead, with overall project responsibility, is designated.

To permit the evaluation of the Proposer's ability to meet this criterion, supply the following:

1. A brief history and description of the Proposer's organizational structure, including size, scope of services, capability and area(s) of specialization. The description should identify all principals of the organization. If the Proposer is a joint venture, describe the nature of the relationship between the parties and the respective roles to be played by each party. Identify any other projects undertaken as a joint venture by the parties or their affiliates.
2. The qualifications and experience of the Proposer's team that will carry out the development of the project. The development team consists of each person or entity that will play a substantial role in the creation and implementation of this development, and includes the entity designated as the developer, the architectural firm along with key personnel of the design group,

and other participants or tenants, if any, who are committed to the project as of the date of submission. The Proposer must address each of the following:

- a. If appropriate for the Parcel being bid upon, a summary of the Proposer's experience in adaptive rehabilitation of historic structures.
 - b. If appropriate for the Parcel being bid upon, a description of the Proposer's experience in rehabilitation of historically significant buildings, use of historic tax credits in project financing, both federal and state. Neither the LDC nor the NYSCC guarantee the availability of any tax credits, including, but not limited to, historic tax credits.
3. The resumes of key management and supervisory personnel who will be directly assigned to work on the development project and a description of the specific function each will perform. This information should include each individual's qualifying experience to perform the services assigned and his/her position and length of service with the development team.
 4. A client list including a detailed description of the size, total dollar value, and specific services provided for each development project the Proposer has completed within the past seven (7) years; specify the name, address and telephone number of the individual from the Proposer responsible for the supervision of such projects. Include at least one reference from a lender or investor that has provided debt or equity financing to the Proposer or its principals, for a comparable project.

Note: Photographs, renderings, elevation and other documentation that illustrate comparable projects managed by the Proposer will assist the LDC board.

5. The ability of the Proposer to finance and complete the development will be a factor in the selection process. The Proposer shall state in writing the proposed method of financing the development and indicate the ability to procure construction financing based on the proposal submitted. Proposers shall submit the following:
 - a. A financial statement (preferably audited) for the previous year of the Proposer; however, if the Proposer is a newly created or limited purpose entity, a financial statement (preferably audited) for the previous year must be submitted for the person or entity proposed by the Proposer to provide the financial capability to carry out the project.
 - b. Each Proposer must demonstrate sufficient financial assurance for construction, completion and implementation of the project, including, but not limited to payment and performance bonds and appropriate financial guarantees.

5.2.4 Benefits to Syracuse and Central New York

The Proposer must demonstrate:

1. How the proposed development will enhance the quality of life for residents of Syracuse and Central New York, including, but not to be limited to the following:
 - Pedestrian-friendly infrastructure and connectivity from Parcel(s) being bid on to the parcels remaining in public use at the southern end of the Syracuse Inner Harbor, including, but not limited to the Amphitheater and Creekwalk.
 - Construction of public amenities for visitors to the Syracuse Inner Harbor (boaters, shoppers, e.g. public restrooms, etc.)
 - Preservation of established communities surrounding the Syracuse Inner Harbor.
 - Accommodations for public access. As indicated in Section 4.2.2 (Parcel A1) and 4.2.3 (Parcel A2), access for the public is required for portions of each parcel. The content and scope of how the respective public access is addressed in the proposal for these parcels, along with any public access being provided across Parcels B or C, should be described.
2. The extent to which the proposed development enhances the economic viability of the area around the Syracuse Inner Harbor.
3. The economic benefit to Syracuse and Central NY to include but not be limited to the following:
 - Recurring local tax revenue
 - Housing/smart growth development
 - Job creation both during construction and after the project is completed
 - Opportunities for new business creation and expansion of existing businesses
 - Overall economic impact of the project
 - Ability to induce further revitalization/development in the surrounding community/region
4. An analysis detailing the extent to which the proposed development is consistent with the Canal Recreationway Plan and Provision for increased services for Canal System users.

5.2.5 Fee Proposal

1. Each proposal should set forth the proposed purchase price or annual rent to be paid per parcel to NYSCC in connection with each land disposition, and the Fee Proposal Sheet (**Exhibit J**) must be completed by each Proposer and submitted separately from the larger proposal document, as described in Section 5.3.1. For proposed fee acquisitions, the price should be set forth on both a total amount per parcel and a dollars per acre basis. (Note: Consideration for all fee transfers must be paid in full at closing. In no event will NYSCC provide financing or accept payment in installments on the sale of Parcel A1, Parcel B or Parcel C.)

5.2.6 Other Required Materials

Each proposal must include the following required materials, completely filled out and executed by the individual or individuals who signed the cover letter and or authorized to bind the Proposer contractually:

1. New York State Finance Law §§139-j and 139-k Disclosure of Prior Non-Responsibility Determinations (**Exhibit C**) – New York State Finance Law §139-k requires that Proposers disclose findings of non-responsibility made within the previous four years by any governmental entity where such prior finding of non-responsibility was due to a violation of New York State Finance Law §139-j or the intentional provision of false or incomplete information to a governmental entity.
2. Certificate of Compliance with the NYSTA/CC Guidelines Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence (**Exhibit D**) – New York State Finance Law §139-j requires that Proposers certify that they have read, understand and agree to comply with the NYSTA/CC Policy Regarding Permissible Contacts During a Procurement and the Prohibition of Inappropriate Lobbying Influence.
3. Vendor Responsibility Questionnaire (**Exhibit E**) – The NYSCC Real Property Management policies provide that the NYSCC will only dispose of real property interests to responsible Proposers. The NYSCC uses the information provided by Proposers on this Questionnaire to assist it in making a determination of responsibility.
4. Contractor Certification to Covered Agency Form ST-22-CA (**Exhibit F**) – §5-a of the New York Tax Law, and regulations, bulletins and guidelines promulgated there under, require that the NYSCC collect this information for contracts with a value in excess of \$100,000.

5.2.7 Statement of Integrity and Disclosure of Conflicts

A statement as to whether, within the last ten (10) years, the Proposer or any of its members, agents, affiliates or members' affiliates:

1. have been involved in any of the following in connection with any project or development in which it participated (whether in connection with its development or operation): bankruptcy or similar insolvency proceedings, foreclosure action (including any sale by power of attorney, deed in lieu of foreclosure or similar transfer), workout or restructuring of debt, or litigation (other than personal injury claims or landlord-tenant claims with respect to space tenants); or
2. have been convicted of or pleaded guilty to any felony or to any misdemeanor relating to any business or financial matters or involving moral turpitude; or
3. have defaulted under, or have been alleged in writing to have defaulted under, any contract or agreement with the City of Syracuse or the State of New York or any of their respective agencies, departments, bureaus, offices or authorities, including but not limited to NYSCC or NYSTA. If so, then the applicable circumstances should be described in reasonable detail.
4. have been or are presently involved in a business or other relationship with any current member of the LDC board, the NYSCC board or staff members.

5.3 Submission of Proposal

- 5.3.1 The Proposer must submit twenty (20) original printed hard copies and two (2) compact diskettes (CD) in pdf format of the proposal, excluding the Fee Proposal Sheet (**Exhibit J**), to the LDC contact person by 1:00 PM EDT on March 31, 2010. Under separate cover, the Proposer shall submit twenty (20) original printed hard copies and two (2) compact diskettes (CD) in pdf format of the Fee Proposal Sheet (**Exhibit J**) by 1:00 PM EDT on March 31, 2010. The Proposal must include a Short Environmental Assessment Form relating to the purchase and/or lease with Part 1 completed, signed and dated by the Proposer (finalists may be required to submit additional copies). Proposal binders and the Fee Proposal sheets (**Exhibit J**) should be packed in sealed boxes, and both the proposals and the Fee Proposal Sheet (**Exhibit J**) may be included in the same box.
- 5.3.2 LDC will not accept any proposal received after 1:00 PM EDT on March 31, 2010. A Proposer may withdraw or modify a proposal any time prior to the final filing date by sending written notification to the LDC contact person. A Proposer may thereafter re-submit a previously withdrawn proposal if done so by the final filing date.
- 5.3.3 Neither LDC nor NYSCC shall be liable for any costs of any kind incurred by a Proposer in attending a pre-proposal site visit, preparing a response to this

RFP, clarifying or negotiating the terms of any response or otherwise in connection with the RFP, including any inaccuracies or incomplete information that may be contained in this RFP. By submitting a proposal, a Proposer will be deemed to have confirmed its agreement to the foregoing and that it will not make any claims for or have any right to damages because of any misinterpretation or misunderstanding of the services requested, any lack of information or any inaccuracy contained in this RFP.

- 5.3.4 All proposals submitted in response to this RFP shall become the property of the LDC and NYSCC and may be made available for a public review and comment. A Proposer should mark those sections of its proposal that it believes contain proprietary information. The LDC and NYSCC reserve the right to make their own, independent determinations as to whether material so marked is proprietary; the LDC and the NYSCC will give proprietary treatment only to that material which they have determined to be proprietary. Please note that the economic proposals and analysis may not be designated as confidential or proprietary.
- 5.3.5 All proposals will be furnished by LDC to the LDC board, NYSCC and their respective professional advisors. Further, the response of LDC and NYSCC to third party requests for information contained in a proposal may be governed by New York Public Officers Law Articles 6 and 6-A, as applicable. The return of proposals not selected for award shall be in the sole and absolute discretion of the LDC and the NYSCC.
- 5.3.6 Proposals may not be submitted by telegraph, fax or electronic mail (email) means.

Section 6: Evaluation of Proposals

6.1 Overview

The LDC board with 2 NYSCC representatives as observers will review and evaluate each of the submitted written proposals. The purpose of the evaluation process is to examine the responses for compliance with this RFP and to identify a recommended proposal that best meets the SIH development objectives for each parcel. The LDC may retain consultant(s) to evaluate portions of each proposal and incorporate those findings into the review and recommendations.

6.2 Preliminary Review

- 6.2.1 Each proposal will be dated and time stamped when received. No proposals will be considered after the due date and time. Corrections by the Proposer will only be allowed up until the due date and time.
- 6.2.2 Each proposal will be preliminarily reviewed by the Executive Director of the LDC to determine if it contains all of the submission requirements in the RFP. For those determined to be incomplete, the Executive Director of the LDC

shall consult with NYSCC to determine whether the missing information can be clarified by the Proposer or if it should be declared non-responsive.

6.3 Evaluation Criteria

Below is a list of the five main evaluation criteria and corresponding weights. The Evaluation Committee will evaluate each proposal using the criteria and will assign a score for each criterion. The score for each criterion will be multiplied by the respective weight in order to arrive at a final score for each of the criteria. The sum of all of the criteria final scores for a proposal will result in the total score earned by each Proposer.

Criteria		Weight
1. Proposed Development	(refer to 5.2.1)	25%
2. Project Financials	(refer to 5.2.2)	20%
3. Proposer Qualifications	(refer to 5.2.3)	15%
4. Benefits to Syracuse and Central NY	(refer to 5.2.4)	20%
5. Fee Proposal	(refer to 5.2.5)	20%

6.4 Evaluation Process

6.4.1 Following the preliminary review described in Section 6.2, the LDC board will receive and review all responsive proposals submitted for each of the evaluation criteria, as described in Section 5.2, that best serves the use sought for a particular Parcel. If a Proposer submits a proposal or proposals for the development of multiple Parcels, the LDC board shall evaluate each proposal for each Parcel separately and distinctly from the other Parcels.

6.4.2 A quorum of the LDC board, along with the NYSCC observers will convene interviews of each Proposer, at which the Proposer will be allowed a presentation of their proposal(s) and LDC board members will be permitted to ask questions. Interviews of the Proposers are mandatory and will be conducted in an open forum of the LDC board. The interview process may include presentations, site visits, reference checks and/or any additional information or clarification that is deemed necessary. However, Proposers will not be allowed to change their proposals at this time. The Executive Director of the LDC, as the designated contact person, shall complete a “Report of Contact” form pursuant to New York State Finance Law §§ 139 j and k for each Proposer’s presentation. The interviews shall be videotaped by the LDC to allow viewing by LDC board members not available to attend the presentations/interviews.

6.4.3 At the conclusion of the interviews/presentations, the LDC board members present for the interviews/presentations or who viewed them on videotape, shall, individually, evaluate the proposals and record a “Preliminary Raw Score” for each sub-criteria for each proposal, based upon RFP Sections 5.2.1 through 5.2.4, and on a scoring sheet to be provided. Only those board members present

for the interviews/presentations or who reviewed them on videotape, and who attend the meeting described in Section 6.4.4, shall be permitted to submit a score sheet.

- 6.4.4 The LDC board members present for the interviews/presentations or who viewed them on videotape shall convene a meeting and submit score sheets, with preliminary raw scores, for each proposal and present them to the NYSCC observers. A quorum of LDC board members must be present. Only score sheets from LDC board members in attendance at this meeting shall be considered. The scoring of each proposal by each LDC board member present shall be tallied and a preliminary average raw score (no weights added) developed for each proposal, including a score for each of the four main criteria (excluding the score for the “Fee Proposal”), each of the sub-criteria and a final score.
- 6.4.5 The LDC board members shall, at the same meeting, in executive session, discuss the preliminary average raw scores for each proposal. LDC board members should be prepared to discuss the pros and cons of each of the sub-criteria for each of the proposals per RFP Sections 5.2.1 through 5.2.4. Based upon this discussion, those LDC board members present raw scores for any of the sub-criteria on any of the score sheets, providing justification, in writing, for each score change and noting such on the space provided on the score sheets.
- 6.4.6 The NYSCC observers shall collect all score sheets, ensuring that the “Final Raw Score” is recorded, and shall tally a final average raw score (no weights added) for each of the sub-criteria for each proposal. The NYSCC observers shall then apply the weights to each of the sub-criteria, as assigned by the Weighing Committee, and to the five main criteria, as listed in the RFP, and develop a final score for each proposal. A list shall be created, ranking each proposal based upon these final, weighted scores.
- 6.4.7 The LDC board shall adopt by resolution in a public session to accept the results of the evaluation process and recommend the highest rated Proposer for each parcel. This resolution shall be adopted and forwarded to the NYSCC board within thirty (30) days of the conclusion of the interviews with Proposers. The President of the LDC board and/or the Executive Director of the LDC shall make a presentation on the LDC board recommendation(s) to the NYSCC board.
- 6.4.8 If the NYSCC board, by resolution, approves the LDC board’s recommendation, the NYSCC staff will notify the Proposer(s) and the Proposer(s) shall be required to execute a Disposition Agreement or Lease within forty-five (45) days of the NYSCC board’s approval of the LDC board’s recommendation. The required deposit made payable to the NYSCC is also due at that time.

6.4.9

1. The NYSCC staff will provide all Proposers with a Notice of Tentative Contract Award which indicates the successful Proposer(s) to which the NYSCC intends to award a Contract. An unsuccessful Proposer may request a debriefing with NYSCC and LDC staff to discuss reasons that its proposal was not selected. Such requests for a debriefing must be made within 10 business days from the date of the Notice of Tentative Contract Award and directed to the Contact Person identified in this RFP.
2. Neither LDC nor NYSCC shall be bound in any way to a Proposer, nor shall any Proposer be, or be deemed to have been, awarded any rights with respect to this RFP until the deposit is made with NYSCC and a formal written agreement in the form of a Disposition Agreement or Lease providing for the disposition of the land has been approved by the members of the NYSCC board and duly executed by the Proposer and NYSCC and approved by the NYS Office of the State Comptroller.

6.5 Additional Procurement Rights

By submission of a proposal, the Proposer acknowledges and agrees that the LDC board and NYSCC each reserve the right to:

- Accept or reject, for any or no reason, any or all proposals received in response to this RFP;
- Reject any proposal where the NYSCC determines that the Proposer(s) is non-responsible under New York State Finance Law §§139-j or 139-k or another State agency or authority has found the Proposer(s) non-responsible under New York State Finance Law §§ 139-j or 139-k within the prior four (4) years;
- Correct any arithmetic errors in the proposals;
- Waive any non-compliance with the requirements of this RFP contained in proposal submissions. This waiver shall in no way modify the RFP or excuse a Proposer that enters into an agreement with NYSCC from full compliance with the RFP;
- Request that Proposers clarify elements in their proposals; and
- Contact any clients on the Proposers client list and/or references furnished as part of the proposal, with the understanding that the party making such contacts will keep them confidential, except that any such contacts may be shared with the LDC, the NYSCC and their respective professional advisors;

6.6 Public Announcements

No public announcements or news releases pertaining to any award of the right to develop any parcel shall be made by any Proposer without NYSCC's prior written consent. Proposers are hereby on notice that generally NYSCC will not grant permission for public announcements or news releases and will limit the use of NYSCC's name by a Proposer to references only.

Pursuant to Section 2897(6)(b)(ii) of the New York Public Authorities Law, responsive proposals will be publicly disclosed on the date that the New York State Comptroller's Office approves, or definitively advises that it will not approve, a disposal agreement(s) for the parcel(s) under this RFP, and thereafter at the New York State Thruway Authority/Canal Corporation offices at 200 Southern Boulevard, Albany, NY 12209.

Section 7: Contract Terms and Conditions

7.1 Legal Requirements/Permits/Approvals

It will be the responsibility of the Proposer to comply, at its own expense, with all applicable federal, state and local legal requirements, including New York environmental laws and labor laws, and to coordinate all necessary project reviews and approvals, including but not limited to the following.

1. State and local building permits.
2. State Historic Preservation Office (SHPO) - Given the location of the property and its historic use, all development plans affecting the Canal Maintenance Building and the Freight House will require review by SHPO. Proposals for Parcel A1 shall include the adaptive reuse of the Freight House, except for proposals involving the relocation of the Freight House to the portion of the real property comprising the SIH that will be retained by NYSCC paralleling Kirkpatrick Street. Such relocation would be permitted only after consultation with SHPO and NYSCC and at the Proposer's sole cost and expense. If relocation of the Freight House is of interest, Proposers should include it in their proposals. In addition, depending upon the nature of the proposed development and the amount of prior ground disturbance on the parcels that are the subject of this RFP, a cultural resource and/or archeological survey may be required.
3. Local Zoning - In January 2004, the City of Syracuse adopted zoning regulations for the SIH district and surrounding Lakefront parcels. A copy of these regulations can be obtained by contacting Heather Lamendola, Zoning Administrator for the City of Syracuse at (315) 448-8634 or the LDC. All projects must comply with local zoning laws and/or regulations applicable to privately developed land.
4. Subdivision - Proposers will be responsible for any subdivision of the land required under local laws and/or regulations in connection with their proposals.

5. Title - NYSCC is not making any warranty or representation with respect to title to any of the parcels.
6. Canal Recreationway Plan - All projects must be consistent with the New York State Canal Recreationway Plan, as determined by the Canal Recreationway Commission. If it is determined by the Canal Recreationway Commission that the project proposed for Parcel A2 is not consistent with the Canal Recreationway Plan, NYSCC will have no obligation to enter into a Disposition Agreement or Lease for Parcel A1, or a Lease for Parcel A2. If it is determined by the Canal Recreationway Commission that the project proposed for Parcel A1 is not consistent with the Canal Recreationway Plan, NYSCC will have no obligation to enter into a lease for Parcel A2, or a Disposition Agreement or Lease for Parcel A1. Similarly if it is determined by the Canal Recreationway Commission that the proposed use of Parcels B or C are not consistent with the Canal Recreationway Plan, NYSCC will have no obligation to enter into a Disposition Agreement or Lease for Parcels B or C.
7. Portions of Parcel B are wetlands, as defined by the United States Army Corps of Engineers (USACOE), and the disturbance of these wetlands may be regulated by USACOE. Therefore, Proposers should take any potential wetland regulatory requirements into consideration in their proposal, including any mitigation requirements.

7.2 Environmental Diligence and Review

- 7.2.1 Matters relating to the redevelopment of the SIH were the subject of a generic Environmental Impact Statement ("EIS") prepared in connection with the adoption of the Canal Recreationway Plan. Electronic copies of the Plan will be made available on CD from the LDC.
- 7.2.2 NYSCC shall conduct an environmental impact review of the land transfers, including the Lease, under the New York State Environmental Quality Review Act ("SEQRA") prior to entering into any Disposition Agreement and/or Lease. Part I of a Short Environmental Assessment Form must be completed and submitted with each proposal.
- 7.2.3 In connection with applications by the Proposer to federal, state and local agencies for approvals associated with project development, an environmental impact review of the proposed development of the parcels shall be conducted under SEQRA and, if appropriate, under the National Environmental Policy Act ("NEPA"). If the City of Syracuse, acting through one of its boards, commissions or other entity, is an "involved agency," as this term is defined in the regulations implementing SEQRA, the City intends to seek "lead agency" status, as this term is defined in the regulations implementing SEQRA, for the SEQRA review of the development projects.

- 7.2.4 Proposers should be aware that the SIH and the prior uses of the surrounding lands may give rise to material environmental issues and should plan to conduct their diligence efforts accordingly. It is recommended that Proposers consult with the NYSDEC regarding any required remediation and/or mitigation for development of all of the parcels.
- 7.2.5 Proposer shall be solely responsible for the costs of removal of soil and remediation of all parcels acquired as necessary based on the Proposer's use, pursuant to this RFP. It is recommended that Proposers consult with NYSDEC regarding any required remediation and/or mitigation for development of all of the parcels. Proposer shall not attempt to seek contribution for removal, remediation or any other form of environmental clean up costs from the State of New York, NYSTA, NYSCC, or LDC. The Proposer shall be solely responsible for the identification, appropriate characterization, and remediation of all lakefront properties contaminated with petroleum, toxic materials, hazardous substances or hazardous wastes in accordance with applicable New York State and Federal requirements. Moreover, the Proposer shall familiarize itself with any sites within the SIH that are listed by the New York State Department of Environmental Conservation pursuant to Title 13 of Article 27 of the New York Environmental Conservation Law ("ECL") on the Registry of Inactive Hazardous Waste Disposal Sites, and those other properties, if any, listed as contaminated pursuant to ECL, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.A. § 9601 et seq. ("CERCLA"), and other applicable State and Federal laws.
- 7.2.6 NYSCC retained an environmental consultant to conduct a hybrid Phase I environmental site investigation of the parcels. An electronic copy of the environmental consultant's report is available on compact diskette (CD) from the LDC. Any questions regarding the hybrid Phase I environmental site investigation must be submitted in writing during the comment period as set forth in Sections 3.1 and 3.4. It is recommended that Proposers consult with the NYSDEC regarding any required remediation and/or mitigation for development of Parcels A and B. Representatives of the environmental consulting firm and the New York State Department of Environmental Conservation will be available during the pre-proposal site visit on January 26, 2010.
- 7.2.7 Portions of Parcel B may contain wetlands, as defined by the United States Army Corps of Engineers (USACOE), and the disturbance of these wetlands may be regulated by USACOE. Therefore, if applicable, Proposers should take any potential wetland regulatory requirements into consideration in their proposal, including any mitigation requirements.
- 7.2.8 At the closing on the sale or lease of a parcel, the purchaser or tenant, if applicable, will be required to release and indemnify NYSCC from

environmental losses in accordance with the terms of the Release and Agreement to Indemnify annexed to the Disposition Agreement.

7.3 New York State Finance Law §§ 139-j and 139-k Certification

By execution of the Disposition Agreement, Proposer will certify that all information Proposer has provided to the LDC and the NYSCC with respect to New York State Finance Law §§ 139-j and 139-k is complete, true and accurate.

7.4 Suspension, Abandonment and Termination

7.4.1 The NYSCC shall have the right, in its sole and absolute discretion, to postpone, suspend, abandon or terminate the Disposition Agreement or its obligation to enter into a Lease at any time and for any reason, and such action shall in no event be deemed a breach of contract. This includes the NYSCC's right to terminate the Disposition Agreement or its obligation to enter into a Lease in the event the NYSCC finds that the certification made by the Proposer in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete. This also includes the NYSCC's right to terminate the Disposition Agreement or its obligation to enter into a Lease at any time in the event the NYSCC finds that the Proposer is non-responsible or has failed to accurately disclose vendor responsibility information.

7.4.2 In the event the NYSCC exercises its right to postpone, suspend, abandon or terminate the Disposition Agreement or its obligation to enter into a Lease, Proposer must within ten (10) days of such postponement, suspension, abandonment or termination deliver to the NYSCC all records, documents and data pertaining to services rendered under the Disposition Agreement.

7.4.3 In the event the NYSCC exercises its right to postpone, suspend, abandon, or terminate the Disposition Agreement its obligation to enter into a Lease for convenience, due to no fault of the Proposer, the NYSCC will fix the value of the work performed as of such postponement, suspension, abandonment or termination date, as verified by audit, and compensate the Proposer accordingly.

7.5 Liability

The Proposer shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of the Proposer in connection with its activities under the Disposition Agreement or prior to the entering into a Lease. Further, it is expressly understood that the Proposer shall indemnify and save harmless the NYSTA, the NYSCC, the LDC and the State of New York, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of the Proposer under the Disposition Agreement or Lease, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided.

For the purposes of the Forms of Lease provided in **Exhibit I**, NYSCC insurance requirements for leases were developed by a team of in-house professionals from the NYSTA/NYSCC departments of Finance and Accounts, and Legal. Additionally, an independent consultant provided background, research and industry standards to help the in-house team set those requirements. The requirements are continually reviewed and adjusted based on the lease's scope of services and exposures (risks). However, the Proposer shall not be required to indemnify the NYSTA or the NYSCC for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the NYSTA or the NYSCC and shall not be required to indemnify the State of New York for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the State. The provisions of this section shall survive the expiration or termination of the Disposition Agreement.

7.6 Ethics

During the term of any Disposition Agreement and prior to entering into a Lease, the Proposer shall not engage any person who is, or has been at any time, in the employ of the NYSTA, NYSCC or New York State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of current or former NYSTA, NYSCC or New York State employees, and/or the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Commission on Public Integrity (collectively, "Ethics Provisions"). Proposer certifies that all of its employees who are former employees of the NYSTA, NYSCC or New York State and who are assigned to perform services for the Proposer shall be assigned in accordance with all Ethics Provisions. Further, no person who is employed by Proposer and who is disqualified from providing services pursuant to any Ethics Provision may share in any net revenues of the Proposer deriving from the Disposition Agreement or Lease.

Proposer shall identify and provide the NYSCC with notice of those Proposer's employees who are former employees of the NYSTA, NYSCC or New York State and will be assigned to perform services for the Proposer. The NYSCC may request that Proposer provide it with whatever information the NYSCC deems appropriate about each such person's engagement, work cooperatively with the NYSCC to solicit advice from the New York Commission on Public Integrity, and, if deemed appropriate by the NYSCC, instruct any such person to seek the opinion of the New York Commission on Public Integrity. The NYSCC shall have the right to cancel or terminate the Disposition Agreement or Lease at any time if any work performed on behalf of the Proposer is in conflict with any Ethics Provisions.

7.7 Confidentiality and Non-Disclosure

7.7.1 "Confidential Information" means any information not generally known to the public, whether oral or written, that the NYSCC claims is confidential and discloses to the Proposer so that the Proposer can secure real property

interests from the NYSCC pursuant to the Disposition Agreement or Lease. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: RFP documents, plans, drawings, specifications, reports, product information, and data; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the NYSCC deems confidential. The NYSCC will identify written Confidential Information by marking it with the word “Confidential” and will identify oral Confidential Information as confidential at the time of disclosure to the Proposer.

- 7.7.2 Confidential Information does not include information which, at the time of the NYSCC disclosure to the Proposer: (a) is already in the public domain or becomes publicly known through no act of the Proposer; (b) is information that the NYSCC has approved in writing for disclosure; or (c) is required to be disclosed by the Proposer pursuant to law so long as the Proposer provides the NYSCC with notice of such disclosure requirement and an opportunity to defend prior to any such disclosure.
- 7.7.3 The Proposer may use Confidential Information solely for the purposes of securing real property interests from the NYSCC pursuant to the Disposition Agreement. The Proposer shall not make copies of any written Confidential Information without the express written permission of the NYSCC. The Proposer may share Confidential Information with third parties that agree to the confidentiality provisions of this RFP and/or any resulting Disposition Agreement or Lease and that are necessary for the Proposer’s to secure real property interests from the NYSCC pursuant to the Disposition Agreement or Lease (e.g. consultants and subcontractors); however, the Proposer shall share only that Confidential Information that is necessary to the third party’s development of its contribution to secure the real property interests. The NYSCC’s disclosure of Confidential Information to the Proposer shall not convey to the Proposer any right to or interest in such Confidential Information and the NYSCC shall retain all right and title to such Confidential Information at all times.
- 7.7.4 The Proposer shall hold Confidential Information confidential to the maximum extent permitted by law. The Proposer shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that the Proposer uses to maintain its own confidential information.
- 7.7.5 Upon the written request of the NYSCC, the Proposer shall return all written Confidential Information to the NYSCC.\

7.8 Standard Contract Clauses and Exhibits

The Exhibits listed below and attached hereto will to the extent applicable be incorporated into and made a part of the Disposition Agreement or Lease. The NYSCC will not entertain proposals to modify any of the Exhibits. Should a Proposer object to any of the terms of any of the appendices, those objections should be set forth in detail in its response to this RFP.

- Exhibit A** Standard Clauses for New York State Thruway Authority and New York State Canal Corporation Procurement Contracts
- Exhibit B** NYSCC Guidelines
- Exhibit C** Disclosure of Prior Non-Responsibility Determinations
- Exhibit D** Certificate of Compliance
- Exhibit E** Vendor Responsibility Questionnaire
- Exhibit F** Contractor Certification to Covered Agency Form ST-220-CA
- Exhibit G** Legal Descriptions of Parcels
- Exhibit H** Map of Parcels
- Exhibit I** Forms of Disposition Agreements and Leases
- Exhibit J** Fee Proposal Sheet