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REQUEST FOR PROPOSALS

RFP # 12-D-023

DISPOSAL OF PUBLIC HOUSING LAND

FORMER ARCHBISHOP THOMAS J. WASH HOMES SOUTH

INSTRUCTIONS TO APPLICANTS

CONTRACTS DIVISION

SUBMISSION DATE
JANUARY 8, 2014
3:00 P.M.

ADVERTISEMENT
HOUSING AUTHORITY OF THE CITY OF NEWARK
REQUEST FOR PROPOSALS
DISPOSAL OF PUBLIC HOUSING LAND
RFP #13-D-023

The Newark Housing Authority ("NHA") through its powers as a redevelopment agency in accordance with the Local Redevelopment and Housing Law hereby gives public notice of its intent to dispose of a parcel of land "**As-Is**" located in the North Ward of Newark identified as the southern portion of the former Archbishop Thomas J. Walsh Homes South public housing community. Such disposal is subject to approval by the Department Of Housing and Urban Development ("HUD"). The site is a relatively flat, square four (4) acre parcel located between the Central Railroad Company of New Jersey and Route 21 Service Road; Grafton Avenue is the nearest cross street. The site is behind the recently completed "Waterfront" Community Center. The site is a heavily industrial area. It is likely the rear of the parcel will have a separate entrance from the community center along an existing right of way, but this must be determined as part of the site plan. Access to the site is limited. The parcel is as follows:

Block: 727

Acres: 4+/-

Lot: 1 Rear

Address: 2-20 Grafton Avenue Rear
(1883-1951 McCarter Highway)

Complete details of this Request for Proposals may be obtained by visiting www.newarkha.org following a brief registration process (click on Business Opportunities; a link for new registrants and returning registered users can be found at the left).

A site visit is offered on Wednesday, December 18, 2013 at 10:00 a.m. commencing at the Waterfront community center parking lot, 2 Grafton Avenue, Newark, NJ 07104. **General question about the site will be addressed during the site visit however, for the purposes of submitting an application participants should rely solely on information provided in writing as part of this solicitation process. The Newark Housing Authority is not responsible for the use by any participant of information not provided in writing as part of this solicitation process.**

One (1) original and three (3) copies of the application is required, along with one electronic copy on disc or flash drive. Applications are to be submitted in a sealed envelope(s), and are due no later than **Wednesday, January 8, 2014 at 3:00 p.m.**

All responses shall be clearly marked "**RFP #13-D-023, DISPOSAL OF PUBLIC HOUSING LAND AT THE FORMER ARCHBISHOP THOMAS J. WALSH HOMES SOUTH**" and shall be addressed and submitted to the following:

CONTRACTS DIVISION
NEWARK HOUSING AUTHORITY
500 BROAD STREET, 5TH FLOOR
NEWARK, NEW JERSEY 07102

The NHA is an equal opportunity agency which does not discriminate against any person because of race, color, age, religion, sex, national origin, handicap or familial status. The NHA solicits and encourages Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) and Section-3 Business participation in all of its endeavors.

Keith D. Kinard
Executive Director

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SECTION 1 – GENERAL INFORMATION

The Newark Housing Authority (“NHA”) is not only a public housing authority but a redevelopment agency as defined in the Local Redevelopment and Housing Law 40A:12A-3. NHA has developed specific development, redevelopment and property disposition program guidelines (“Guidelines”) to govern the disposition of all land it controls under its powers as a redevelopment agency. These guidelines are a part of this Request for Proposals and constitute the full intent of the NHA in disposing of the above cited properties.

The NHA has recently completed development of a 25,000 square foot community center in the front of this site. The property is subject to a federal Declaration of Trust. The Declaration of Trust requires that any proposed uses benefit the public through the provision of services to the community an/or potential jobs. The minimum acceptable price will be based upon the appraised value of the site, plus associated transaction costs.

NHA is seeking commercial development supportive of the adjacent NHA community – Riverside Villa – and the greater North Ward community, and will generate additional permanent jobs that will be available for Newark residents, and public housing residents in particular.

SECTION 2 - INTRODUCTION

The NHA desires to dispose of a 4+/- acre parcel of land in its “as is” condition in the North Ward of Newark identified as the southern portion of the former Archbishop Thomas J. Walsh Homes public housing community. The site is a relatively flat, square parcel located between the Central Railroad Company of New Jersey and Route 21 Service Road; Grafton Avenue is the nearest cross street. The site is behind the recently completed NHA “Waterfront” community center. The site is in a heavily industrial area, and access to the site is limited. The parcel is as follows:

Block: 727

Acres: 4+/-

Lot: 1 Rear

Address: 2-20 Grafton Avenue Rear
(1883-1951 McCarter Highway)

The NHA has a goal of selling the property to a business that is currently operating in Newark and needs to expand or is relocating to Newark. The business should generate additional permanent jobs that will be available for Newark residents and public housing residents in particular. The minimum acceptable price for the site will be based upon the appraised value and the NHA's cost of doing business.

SECTION 3 – REQUEST FOR PROPOSALS PROCESS

The NHA has developed specific development, redevelopment and property disposition program guidelines” (“Guidelines”) to govern the disposition of all land it controls under its powers as a redevelopment agency. These Guidelines are attached herewith and made a part of this RFP and constitute the full intent of the agency in soliciting requests for proposals in order to dispose of the above cited property.

- **SITE VISIT:**

A site visit is scheduled for Wednesday, December 18, 2013 at 10:00 a.m. Interested parties should assemble in the parking lot of the “Waterfront” community center located at 2 Grafton Avenue, Newark NJ 07104. NHA staff/escort will be available to address general questions regarding the parcel.

- **QUESTIONS**

Questions pertaining to this proposal will be received until 10:00 a.m. Friday, December 20, 2013. Questions must be submitted in writing to: contractingofficer@newarkha.org, and contain the subject line “13-D-023 LAND DISPOSAL.”

- **SUBMISSION**

One (1) original and three (3) copies of all of the application is required, along with one electronic copy on disc or flash drive are to be submitted no later than 3:00 p.m. on Wednesday, January 8, 2013. Proposals shall be clearly marked “**13-D-023 Disposal of Public Housing Land at the Former Archbishop Thomas J. Walsh Homes South**” with the company name and address and addressed to the following:

**CONTRACTS DIVISION
NEWARK HOUSING AUTHORITY
500 BROAD STREET, 5TH FLOOR
NEWARK, NEW JERSEY 07102**

SECTION 4 – SELECTION CRITERIA

The NHA will evaluate each application based upon the following criteria:

CATEGORY	DESCRIPTION	POINTS
Financial Capability	Points will be awarded based upon the applicants	40

	evidence that: • Financial capability as demonstrated in financial statements • Efficacy of proposed financial plan • Ability to have acquisition funding available within 60-90 days	
Proposed Use of Site	The creation or relocation of a business that will: • Serves to keep permanent jobs in Newark • Provision jobs or training for public housing residents • Serves to create additional permanent jobs	30
Experience	Five to ten years of experience in running a successful business that either exists in Newark or is being relocated to Newark	20
References	Three references must be provided from the following categories (one each per category) • A lending institution that has provided capital for your business in the past • A supplier or material man • A customer	10
TOTAL		100

SECTION 5 – SUBMISSION REQUIREMENTS

The submission must include a written proposal that covers all of the following elements in addition to all of the standard submission documents outlined elsewhere in this RFP. Failure to provide any of the information defined below at time of submission may result in a non responsive proposal.

1. Submission/Proposal Review Fee

The NHA charges a non-refundable submission or proposal review fee for all land transactions under its authority as a redevelopment agency. The fee must be presented at time of submission in the form of a certified check or bank draft. Failure to provide the required fee shall render the proposal submission unresponsive and cannot be cured by the governing body. (See attached “*Property Disposition and Redevelopment Program Guidelines*” for details on all fees.)

2. Executive Summary/Introduction

The Executive Summary or Introduction should provide a description of the proposed use for the property, the intended number of permanent jobs that will be created, plans and/or potential for jobs or training for public housing residents, and a brief overview of the proposed financing plan.

3. Formation Documents

Provide a description of the nature of the legal entity for both the acquisition and ownership entity. Additionally, provide copies of the organization’s formation documents and evidence of its existence as well as the identity of all partners and each partner’s ownership status as applicable.

4. Financial Statement

The identity of all sources of financing and the estimated amount to be provided by each such source then considered probable in order to acquire, construct, cover any gap in financing, and

permanent financing of the business. The identity of each guarantor as well as evidence that each guarantor has the financial capability of performing its respective guaranty.

5. Proposed Schedule

Estimated schedule for the financial closing, commencement of the development project, construction period, commencement of operations and a statement as to how this satisfies the NHA's stated desire or goal.

6. Experience

Describe all relevant experience the applicant and/or entity has in running a successful business, including description of experience, length of experience, and location of business or businesses.

7. References

Submission must include a minimum of three references with appropriate contact information (one each in the following categories:

- A lending institution that has provided capital for your business in the past
- A supplier or material man
- A customer

In addition to the narrative descriptions detailed above, the submission should include all supporting documents necessary to substantiate the narrative such as but not limited to corporation bylaws, partnership agreements, organization charts, and financial statements.

Street Map Plus Report

For Property Located At

1883-1951 MCCARTER HWY, NEWARK, NJ 07104



CoreLogic

RealQuest Professional



728

Paterson, Newark & New York R.R. Co. - Main Line

724

727

Mc Carter

Highway

WHARF

LINE

Street

Grafton

SHEET 6

N 34 34'E - 520.00'

RFP CHECKLIST

DISPOSAL OF PUBLIC HOUSING LAND AT THE FORMER ARCHBISHOP THOMAS J. WALSH HOMES SOUTH

RFP #13-D-023

FIRM NAME: _____

STREET ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____

EMAIL: _____

CONTACT PERSON: _____

RFP CHECKLIST*	Submitted	
	YES	NO
SUBMISSION/PROPOSAL REVIEW FEE.		
EXECUTIVE SUMMARY.		
FORMATION DOCUMENTS.		
FINANCIAL STATEMENT		
PROPOSED SCHEDULE.		
EXPERIENCE.		
REFERENCES		

***One (1) original and three (3) copies of the entire package, along with one (1) electronic copy on disc or flashdrive are to be submitted.**

APPLICATION:

The submission must include a written proposal that covers all of the following elements. Failure to provide any of the information defined below at time of submission will result in the NHA considering your proposal invalid.

1. Application Fee

The NHA charges a non-refundable \$2,500 application or proposal review fee for all land transactions under its authority as a Redevelopment Agency. Fee must be presented at time of submission in the form of a certified check or bank draft. Failure to provide application fee at time of submittal will result in the NHA considering your proposal invalid.

2. Executive Summary/Introduction

The Executive Summary or Introduction should identify the property in which the applicant is interested and provide a description of the proposed use for the property, the intended number of permanent jobs that will be created, plans and/or potential for jobs or training for public housing residents, and a brief overview of the proposed financing plan. The executive summary must include a proposed price for the purchase of the land equal to or greater than the price listed on the website. The executive summary should also highlight similar experiences relative to business development, land acquisition and job creation that reflect the applicant's interest and experience.

3. Formation Documents

Provide a description of the nature of the legal entity for both the acquisition and ownership of the property. Additionally, provide copies of the organization's formation documents and evidence of its existence as well as the identity of all partners and each partner's ownership status as applicable.

4. Financial Statement

The identity of all proposed sources of financing and the estimated amount to be provided by each such source then considered probable in order to acquire, construct, cover any gap in financing, and permanent financing of the business. The identity of each guarantor as well as evidence that each guarantor has the financial capability of performing its respective guaranty.

5. Proposed Schedule

Estimated schedule for the financial closing, commencement of the development project, construction period, and commencement of operations.

6. References

Submission must include a minimum of three references with appropriate contact information one each in the following categories:

- A lending institution that has previously funded your business
- A supplier or material man
- A customer

7. Other Fees

- Commitment Fee – Commitment acceptance by the applicant shall have a non-refundable fee of \$5,000. This fee is due with the application.
- Commitment Escrow Deposit – 10% of the appraised value of the land with an unconditional and irrevocable letter of credit. This fee is due within 60 days of the application or at the time the NHA issue a development commitment.
- Pass Through Costs – Appraisal update, legal fees, and all costs, fees and charges associated with the commitment.

Newark Housing Authority Property Disposition Application

Introduction: The Newark Housing Authority ("NHA") is, pursuant to the Local Redevelopment and Housing Law, constituting Chapter 79 of the Pamphlet Laws of 1992 N.J.S.40A:12A, et seq., as amended and supplemented ("LRHL"), a "Redevelopment agency" as defined in LRHL 40A:12A-3. The NHA proposes under certain limited circumstances, in its sole discretion, to make available to program applicants ("Applicant") land and/or improvements for the purposes stated herein, including, without limitation, the development of housing and the development or relocation of commercial facilities and other development activities which in the sole discretion of the NHA will serve to create economic growth and development in the City of Newark.

Purpose of This Listing:

This listing represents NHA's current land holdings that it proposes to sell to individuals and/or entities. To be considered as an Applicant the individual and/or entity must meet the minimum criteria:

- 1) Complete the following application information, providing all information requested.
- 2) Submit the completed application plus three copies to: Ralph Waller, Manager of Housing Production, Newark Housing Authority, 500 Broad Street, 6th Floor, Newark, NJ 07102.
- 3) Application must be accompanied by a \$7,500 non-refundable certified check or bank draft.

Process

- 1) Within 45 days, the NHA will review the submittal materials and perform the necessary due diligence based upon the information submitted, including, but not limited to, reference and credit checks, assessment of project feasibility, and commission an appraisal of the property.
- 2) If appropriate, the NHA may request additional information regarding the proposed uses, the financials, the partnerships or any other materials submitted.
- 3) If the NHA finds all of the information satisfactory, within 60 days it will issue a Development Commitment which will, among other things set out provisions that the Applicant must meet within six (6) months or the Commitment will be deemed null and void.

The Applicant must know and agree that the land to be transferred by the NHA to the Applicant is in its "as is", "where is" and "with all faults" conditions, without warranty or representation by the NHA including, without limitation, warranties or representations regarding title, environmental conditions, hazardous substances, zoning, suitability for intended purposes, or any other matter addressed in this Agreement.

SELLER'S STATEMENT

Sale of this land will be through the submission of a proposal and non-refundable deposit. The Seller proposes under certain limited circumstances, in its sole discretion, to make available to program applicants, land and/or improvements for the development of housing and the development of commercial facilities, or other development activities that will serve to enhance communities create economic growth and development in the city of Newark.

**DEVELOPMENT, REDEVELOPMENT
AND
PROPERTY DISPOSITION

PROGRAM GUIDELINES**

**NEWARK HOUSING AUTHORITY
500 BROAD STREET
NEWARK, NEW JERSEY 07102**

Keith Kinard, Executive Director

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A. INTRODUCTORY STATEMENT

The Newark Housing Authority (“NHA”) is, pursuant to the Local Redevelopment and Housing Law, constituting Chapter 79 of the Pamphlet Laws of 1992 N.J.S. 40A:12A, et seq., as amended and supplemented (“LRHL”), a “Redevelopment agency” as defined in LRHL 40A:12A-3.

The NHA hereby establishes and enacts these Development, Redevelopment and Property Disposition Program Guidelines (“Guidelines”) to facilitate the NHA’s exercise of its responsibilities, obligations, accountability and functioning as a Redevelopment agency pursuant to and in accordance with the LRHL and the exercise by the Authority of its powers thereunder.

B. NHA REDEVELOPMENT POWERS

The NHA, as a Redevelopment agency, through its redevelopment powers, is authorized to exercise all of those public and essential governmental functions necessary or convenient to effectuate the purposes of the LRHL, including, without limitation, the following powers:

- a) Issue bonds, bond anticipation notes;
- b) Acquire property (inclusive of land and/or improvements) by condemnation, or otherwise;
- c) Collect revenue to defray its costs;
- d) Extend credit, or make loans to facilitate a development;
- e) Invest funds held in reserve or sinking funds or funds not required for immediate disbursement;
- f) Borrow money and receive grants and loans, and
- g) Exercise all of those public and essential governmental functions necessary or convenient to carry out all powers given the Authority under the LRHL.

C. PROGRAM GENERALLY

The NHA proposes under certain limited circumstances, in its sole discretion, to make available to program applicants (“Applicant”) land and/or improvements for the purposes stated herein, including, without limitation, the development of housing and the development or relocation of commercial facilities and other development activities which in the sole discretion of the NHA will serve to create economic growth and development in the City of Newark. Any land controlled by the NHA, from time to time, deemed suitable by the NHA for housing development may be developed as such by the NHA. These lands shall be made available through a Request for Proposals (“RFP”) which shall be advertised.

The NHA’s at its sole discretion, may select consultants, co-participants, partners or developers solely or in conjunction with the NHA, to further the NHA’s intentions to develop housing units (rental and/or homeownership), and enhance the communities within which such are located.

An objective of the NHA, among others, is to replace, when determined appropriate by the NHA, the NHA's older, functionally obsolete public housing communities, with self-sustaining housing. Development projects may include, without limitation, the redevelopment and/or renovation of existing housing and/or commercial facilities, new construction of housing and commercial facilities, the addition of community facilities and other amenities, disposition of the NHA's land by deed, lease or other manner of transfer, to the extent the NHA deems appropriate, in the exercise of its powers and its designation as a Redevelopment agency under the LRHL ("Development Project").

The NHA shall, without limiting the exercise of its sole discretion in matters addressed herein, consider the impact of any one or more of the following in the exercise of its judgment:

- a) the land is vacant or poses a threat to the health and safety of the residents and/or businesses within the surrounding area and/or the improvements thereon are substandard, dilapidated, or are in such a state as to render them not conducive to wholesome living or working conditions; or
- b) the land disposition will quicken a revitalization of the surrounding areas; or
- c) the location of the land is either within the boundaries of a City urban renewal area, designated a redevelopment area, or designated a rehabilitation area, or an area similarly designated by the Authority; or
- d) the primary use of the land will be to insure the development of adequate and appropriate housing for the elderly and/or those persons with disabilities.

D. DEVELOPMENTAL PROJECT PROPOSAL REQUIREMENTS

All Development Project Applicants shall submit a Project Proposal ("Project Proposal") which shall include, in a format to be determined by the NHA, in its sole discretion, at a minimum, the following information:

1. The legal identity of the Applicant, the key individual at the Applicant for contact purposes, together with such individual's position with the Applicant, address, telephone number, facsimile number and email address and, if the Applicant is a
 - a) Corporation, the articles, bylaws and a certificate of existence for the corporation and, if not publicly traded, identity of all stockholders, or
 - b) Limited liability company, the certificate of organization, the operating agreement and a certificate of existence for the limited liability company and identity of all members, or
 - c) Limited or general partnership, the partnership agreement, and identity of all partners and each partner's status as "general" or "limited" partner, as applicable, or
 - d) Legal entity not described above, the organizational documents and evidence of its existence and, to the extent applicable, all of the information referred to above in regard to Applicant;

2. A legal description of the proposed Development Project site (“**Development Site**”), together with its location by reference to the public streets or other property bordering it, accompanied by a preliminary title report;
3. A narrative of some detail as to the type of the Development Project proposed, including, as applicable, residential unit count, bedroom count or type of commercial or community facility;
4. The nature of the Applicant’s own equity participation in the Development Project, the timing such equity will be invested in the Development Project by the Applicant, the identity of all sources of financing and the estimated amount to be provided by each such source then considered probable by the Applicant to acquire, construct, cover any gap in financing, and permanently finance the Development Project, the nature of guaranties to be provided in connection with the Development Project, the identity of each guarantor, evidence that each guarantor has the financial capability of performing its respective guaranty, and an estimated schedule for the financial closing, commencement of Development Project, construction period and commencement of leasing, unit sales or, if a commercial or community facility, commencement of operations and a statement as to how the Development Project satisfies the purpose of the Guidelines;
5. The offered benefit to the NHA (e.g., participation in cash flow, ownership or other participation, income targeted, number of set aside units for public housing eligible persons, elderly or disabled, etc.) of the Development Project;
6. The Applicant’s financial statement, and
7. A fully completed, accurate and signed application for the Development Project in the form then utilized by the NHA for such purpose (“Application”).

E. AUTHORITY REVIEW OF PROJECT PROPOSAL

Upon receipt by the NHA of the Project Proposal and Application, the NHA shall:

- a) Review the Project Proposal to determine, among other things, compliance with the NHA’s purposes, as a Redevelopment agency, and the Guideline, the financial feasibility of the Development Project, and the financial capability of the Applicant and each guarantor and to the extent that NHA deems appropriate, the NHA may use the services a consultant to make any one or more of the foregoing determinations;
- b) An approval by the NHA’s Board of Commissioners of a Resolution Interest;
- c) Commission an appraiser selected by the NHA to determine the value for the Development Site, which appraisal shall be paid for by the Applicant and shall be based upon the fair market value of the Development Site in its as is condition;
- d) Establish any unique or special terms and conditions to be contained the agreements, leases, deeds or other instruments associated with transfer, including development agreements, financing, use restrictions, etc. necessitated by the

particulars of the Development Project as described in the Project Proposal and the Application, and

- e) Issue a Development Commitment (“Commitment”), which will provide for, among other conditions, that the Applicant within six months of the Applicant’s acceptance of the Commitment satisfies strictly all terms, provisions and conditions of the Commitment, as determined by the NHA, in the NHA’s sole discretion. The Commitment is not in effect until such time as the Applicant signs a Commitment Letter and pays a fee of \$5,000.00. Should the Applicant fail to do so fully and in strict accordance with the terms, provisions and conditions of the Commitment within such six month period, the Commitment may without further documentation or notice, be null and void, and of no further force or effect. Thereupon, the NHA shall have no liability, responsibility or obligation to the Applicant with respect to the Project Proposal, the Application, the Commitment, the Development Project and any other matter arising out of or in connection with any of the foregoing. Concurrently therewith, the Applicant shall automatically and without further documentation or notice be deemed conclusively and irrevocably to have released the NHA from such liability, responsibility or obligation, if any. The Applicant agrees that it has received sufficient consideration from the NHA for the Applicant’s foregoing release of the NHA.

F. POST-COMMITMENT DELIVERIES

The Applicant shall provide the NHA within forty-five (45) days following the date of the issuance by the Authority of the Commitment (provided the following, or any one or more of them, have not been delivered with the Project Proposal, the Commitment and, provided further the Commitment has not terminated pursuant to Section E above) a detailed:

- a) Sources and uses budget;
- b) Construction schedule;
- c) Updated project description;
- d) Financial commitments;
- e) Application, verification or intention of seeking a low income tax credit award;
- f) Approved preliminary site plan, and
- g) The identity of each guarantor who or which will unconditionally guaranty the performance by the Applicant of all obligations, responsibilities, agreements and liabilities of the Applicant in connection with the Development Project, including without limitation, the construction, gap and/or permanent financing, Development Project completion, indemnifications of the Authority and the performance by the Applicant of any contract, subcontracts or other agreements entered into by the Applicant and the NHA, or by any affiliates.

G. DOCUMENTS COVENANTS, PROVISIONS AND OBLIGATIONS

Within six months following the acceptance by the Applicant of the Commitment, the Applicant shall enter into:

1. A development agreement and/or other agreement(s) (“Development Agreement”) with the NHA upon terms, covenants and conditions satisfactory to the NHA, in the NHA’s sole discretion, evidencing the mutual obligations of the Applicant and the Authority in regard to the Development Project. Unless the NHA advises the Applicant to the contrary in writing and, notwithstanding anything which may be construed to the contrary in the Project Proposal and/or the Application, the Development Agreement shall, among other terms, covenants and conditions, provide for the following:
 - a) The land to be transferred by the NHA to the Applicant in its “as is”, “where is”, and “with all faults” condition, without warranty or representation by the Authority including, without limitation, warranties or representations regarding title, environmental conditions, hazardous substances, zoning, suitability for intended purpose, or any other matter addressed in the Development Agreement or associated with the Project Development or otherwise, etc.;
 - b) Performance milestones and the dates within which each milestone shall be satisfied;
 - c) An approval right by the NHA of the plans and specifications and general construction contract for the Development Project;
 - d) A requirement to provide for minority business participation, in order to assist the NHA in satisfying the NHA’s Section 3 program compliance requirements;
 - e) An obligation to pay all costs, fees, monies in connection with the Development Project, including without limitation, review fees, inspection fees, all legal fees and costs (including fees and costs of preparing and negotiating documents for the Development Project) to the actual extent incurred by the NHA;
 - f) Payment and Performance bonds, U.S. Treasury Rated;
 - g) Restrictions on the future use of the Development Project;
 - h) A right of first offer and first refusal in favor of the NHA or the NHA’s designee upon transfer of the Development Project, whether such transfer is direct or indirect;
 - i) An indemnification of the Authority from any and all claims, suits, costs, fees, monies, damages (direct and indirect), reasonable attorneys’ fees and, if applicable, all costs in connection with any default by the Applicant under any contract or agreement associated with the Development Project, including, without limitation, reasonable attorneys’ fees and other costs incurred by the NHA in any enforcement action by the Authority of the Development Agreement and/or any guaranty agreement, subject to the condition that the Authority shall not have (solely and directly) caused the foregoing;
 - j) A termination for convenience provision;

- k) The reasonable prior written approval of the NHA to transfer of the Development Project or interests in the Applicant, and
- l) Guaranties and guarantors satisfactory to the NHA, in its sole discretion.
- m) Payment of an escrow deposit as determined by the NHA.

If the NHA and the Applicant fail for any reason whatsoever to enter into the Development Agreement within such established period, the NHA shall be entitled, which entitlement shall continue up to the time on which the Authority and the Applicant enter into the Development Agreement, to terminate all negotiations with the Applicant in regard to the same and, concurrently therewith, the Authority shall have no liability, responsibility or obligation to the Applicant with respect to the Project Proposal, the Application, the Commitment, the Development Agreement, the Development Project or any other matter arising out of or in connection with any of the foregoing. Thereupon, the relationship between the Authority and the Applicant shall terminate, and the Applicant shall automatically and without further documentation or notice be deemed conclusively and irrevocably to have released the NHA from such liability, responsibility or obligation, if any. The Applicant agrees that the NHA has given sufficient consideration to the Applicant in connection with the Project Proposal, the Application, the Development Project and any other matter arising out of or in connection with any of the foregoing, the Applicant not only acknowledges its receipt of the foregoing consideration from the NHA, but also represents and warrants that the foregoing consideration is a sufficient benefit to the Applicant for the Applicant's foregoing release of the NHA.

- 2. All ground leases shall be triple net leases.
- 3. All other contracts, agreements, financing documents, if any, title transfer documents (whether by deed or long-term ground lease or otherwise) and other instruments shall have terms, covenants and provisions satisfactory to the NHA in the NHA's sole discretion.

H. FEES AND CHARGES

Submission/Proposal Fee Proposal shall be accompanied by a non-refundable fee of \$2,500 (**certified check or bank draft**).

Commitment Fee Commitment acceptance by the Applicant shall be accompanied by a non-refundable commitment fee of \$5,000 ("**Commitment Fee**").

Commitment Escrow Deposit Commitment acceptance by the Applicant which provides an Option to Purchase or a sale by the NHA of land, shall be accompanied by a non-refundable option or sale deposit in an amount equal to 10% of the fair market value of the land established by the appraisal (which shall be updated every 180 days). This deposit is in addition to the Commitment Fee and shall be paid in cash or delivery to the NHA of an unconditional and irrevocable letter of

credit in a form and from an institution acceptable to the Authority.

Pass Through Costs

All costs, charges and fees associated with the Commitment shall be paid by the Applicant. These costs will at a minimum include the cost of the appraisal, any required updated appraisal, and legal fees and costs.

Notwithstanding the amounts and characterization of the foregoing fees and charges, the NHA may, from time to time, increase such fees and charges and/or include additional fees and charges, as deemed appropriate by the NHA.

I. MISCELLANEOUS

- a) All communications with the NHA by the Applicant shall be in writing via electronic mail to: contractingofficer@newarkha.org, or delivered to NHA at the following address:

Newark Housing Authority
500 Broad Street, 5th Floor
Newark, New Jersey 07102
Attn: Contracting Officer

- b) Without the approval of the NHA, to be exercised in the NHAs sole discretion, no document associated with a Development Project, including the Project Proposal, the Application, the Development Agreement, any lease agreement, or other document, instrument, agreement or other writing shall be recorded among the land records of Essex County, New Jersey, or any public records, until the financing closing occurs for the Development Project, at which time, those documents which are which are customarily recorded and either transfer or encumber a Development Site shall be recorded among the land records of Essex County, New Jersey, and/or all other appropriate public records.
- c) The Development Project documents, including the Development Agreement, the Application, the Project Proposal, all financing documents, and any other documents, agreements, instruments, encumbrances, and other writings arising under, pursuant to, or in connection with, the Development project shall be given effect and construed by application of the laws of the state of New Jersey, and any action or proceeding arising thereunder shall be brought in the courts of the state Constitution, laws or treaties of the United States of America or, if there is a diversity of citizenship between the parties, so that it is to be brought or may be brought in a United States District Court, it shall be brought in the United States District Court covering the jurisdiction in which the Development Project is located.