

REQUEST FOR PROPOSALS

FOR THE REDEVELOPMENT OF THE NASSAU VETERANS MEMORIAL COLISEUM SITE

RFP# CE0311-1311

Issue Date: March 12, 2013

Nassau County
Long Island, New York



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A. INTRODUCTION

Nassau County, New York (the “County”) seeks proposals (“Proposals”) from qualified individuals and entities authorized to do business in the State of New York for the renovation or reconstruction of the existing Nassau Veterans Memorial Coliseum (the “Coliseum”) and surrounding site (collectively, the “Site”) into a first-class, state-of-the-art sports and entertainment destination center (the “Project”). While the Coliseum now attracts over one million visitors annually, creates and maintains employment opportunities and generates significant tax and other indirect revenue for the County, the County is concerned that the existing Coliseum is outdated and does not maximize the job creation and sales tax revenue a redeveloped state-of-the-art arena would generate. A renovation or rebuilding of the Coliseum would immediately create job opportunities for thousands of trades-people employed in the construction industry, and also create a significant number of additional, new permanent job opportunities, attract even more visitors and generate significant additional tax revenue for the County. The County now desires to achieve the goal of renovating or rebuilding a state-of-the-art arena for professional sports contests, concerts, entertainment and other events to replace the Coliseum.

The County contemplates remaining in title to the Coliseum and entering into a long-term lease of all portions of the Coliseum and the areas and improvements necessary for the proper operation and functioning of the Coliseum, including the necessary parking areas and ticket booths (such areas and improvements, the “Coliseum Improvements”).

The County is entering into this Request for Proposals (“RFP”) process to examine competitive opportunities for the financing, operation, and renovation or reconstruction of the Coliseum. The RFP seeks to identify and permit the evaluation of Proposals for the Project that are credible, timely and provide the most advantageous terms for the County.

The County intends to consider Proposals from one or more Proposers (“Proposer”) who desire to lease and develop the Project in a manner consistent with the Project Objectives set forth in Section B of this RFP. The County intends to award the redevelopment and operation of the Coliseum to one or more qualified entities (each, a “Selected Proposer”) that will fund the entire cost of the Coliseum renovations or reconstruction and will provide the County annual rental payments based upon a portion of its annual revenues for the right to operate the new facility. The Selected Proposer will provide the County with detailed plans and specifications that shall conform to a first class standard, which shall be reasonably acceptable to the County.

Nassau County is committed to policy of equal opportunity and does not discriminate against Proposers on the basis of age, sex, sexual orientation, race, color, creed, religion, ethnicity, national origin, disability, marital status, familial status, veteran status or any other basis protected under federal, state, and local laws, regulations, and ordinances.

B. PROJECT OBJECTIVES

Proposals shall address each of the Project Objectives set forth below. Such Proposals will be evaluated on their responsiveness to these objectives identified by the County.

- Provide for the renovation or reconstruction of the Coliseum into a first-class facility, with a minimum seating capacity of 8,000, to accommodate family entertainment, concerts, sporting and other events, and to provide attendees, concert-goers and other users of the Coliseum with a contemporary and sustainable entertainment experience.
- Provide for the operation of the Coliseum in a first-class manner after the expiration or sooner termination of the agreement with the present Coliseum operator, Spectacor Management Group (“SMG”).
- Pay the entire cost of renovation or reconstruction of the Coliseum.
- Enter into a long-term financeable lease for the Coliseum.
- Provide for rental payments to include a revenue sharing arrangement between the parties based on all events held at the Coliseum.
- Provide a programming and event plan for the Coliseum that may include, but not be limited to, planned family entertainment, professional and collegiate sporting events, concerts and similar experiences. Preference will be given to Proposals that demonstrate a commitment from a professional sports franchise(s) to play its home games at the Coliseum.
- Operate and manage the Coliseum in a first-class manner, meeting the highest standards consistent with premier arenas, and provide for all of the annual repairs and maintenance of the Coliseum.
- Selected Proposer shall have exclusive responsibility for all capital expenditures during the first five (5) years of operation of the Coliseum. County will consider potential capital expenditure cost sharing arrangements beginning in year 6 of operation.
- Potential development of portion of Site made available due to expected reduction in Coliseum seating capacity and corresponding reduction in parking spaces.
- County use of the Coliseum for Nassau County events for up to 10 days per year.
- Coliseum name must include the “Nassau County Veterans Memorial” moniker as part of any naming rights opportunities.

C. THE SITE

The Site consists of Section 44, Block F, Lots 403 and 351 on the Land and Tax Map of the County of Nassau as shown on the site map attached as Appendix A. The property is located in Uniondale, New York and consists of approximately 77 acres. The Coliseum was built in 1972.

The existing Coliseum and the entire Site (including all parking areas), although owned in fee by the County, are presently controlled by SMG and the New York Islanders under separate leases, which expire in July of 2015. The County has not entered into any final agreements with any of these entities to alter, amend or relinquish any of their present rights or obligations.

Proposer is expected to be familiar with the Coliseum and the Site, as well as any existing land use conditions, zoning restrictions, encumbrances, and other regulations affecting the development of the Site.

D. ANTICIPATED PROPOSAL SCHEDULE

RFP Issue Date	March 12, 2013
Deadline for submission of questions	March 29, 2013
Proposal Due Date	April 15, 2013

Dates and events indicated above are subject to change at the sole discretion of the County.

E. PROPOSAL SUBMISSION INSTRUCTIONS

1. Generally. Each Proposal shall be prepared simply and economically avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate, and reliable presentation. The County is not interested in receiving marketing brochures, generic narratives or lists of experience in the Proposals. For ease of review, the Proposals must follow the outline in Section G of this RFP titled “Submission Requirements.” Each response should be clearly numbered and the full question/requirement listed.

The Proposals must be signed by an individual who is authorized to bind the Proposer to all commitments made in the Proposal. The original and seven (7) bound (spiral or similar) copies of the Proposal, together with all attachments, as well as an electronic version of the Proposal and all attachments in PDF format on a CD or USB drive, must be submitted to the County in a sealed opaque package or box no later than 4:00 p.m. EDT on April 12, 2013. The package or box shall be clearly marked with the RFP number, the name and address of the Proposer, and the submittal due date and time. The Proposal shall be typed or printed on 8-1/2 inch by 11-inch paper, with a minimum font size of 12. No e-mail or facsimile Proposals will be accepted. Any late Proposals will be returned unopened. Proposals received after the above date and time will not be considered. The County is under no obligation to return Proposals.

It is each Proposer’s responsibility to carefully review all the requirements of this RFP, including the Project Objectives, the specifications and terms and conditions. It is further the Proposer’s responsibility to ask questions, request clarifications, or otherwise advise the County if any language, specifications or requirements of this RFP appear to be ambiguous, contradictory, or to inadvertently restrict or limit the Proposers that could meet the requirements of this RFP to a single source.

If a Proposer takes exception to any requirement of this RFP, the Proposer must clearly set forth the exception in its Proposal, referencing the affected RFP section, paragraph

and page. The Proposer must set forth the reason(s) for the exception and indicate what (if any) alternative is being offered by the Proposer. The County shall determine (in its sole discretion) the acceptability of any proposed exception(s). Where the County rejects a proposed exception, the County may offer the Proposer an opportunity to withdraw its exception and propose an alternative. However, even where the County does not reject a proposed exception to the RFP prior to selecting a Proposer, the County reserves the right to negotiate with the Proposer regarding any such exceptions. Regardless of whether or not the County rejects proposed exceptions to the RFP, such exceptions will be considered by the County in evaluating the completeness and adequacy of the Proposal. Proposers shall be deemed to have accepted all requirements of this RFP to which they have not specifically and clearly stated an exception in their Proposal.

The County is under no obligation to respond to any question, inquiry or assertion that is not received in writing. Interested parties may contact the authorized contact person listed below by email for any and all questions related to this RFP. Violation of these provisions may result in immediate disqualification. Proposers will submit all Proposals and direct all responses, questions, and any other communications to the following authorized contact person:

Mr. Frank Intagliata
Office of Purchasing
1 West Street
Mineola, New York 11501
fintagliata@nassaucountyny.gov

No contact with any other County personnel other than the authorized contact person is allowed until such times as an award (or awards) has (have) been made.

2. Expenses of Proposal Preparation. Each Proposer will prepare all required materials and submittals and participate in the Proposal and negotiation process at its own risk and expense, without reimbursement from the County.

3. Confidential Information. The New York State Freedom of Information Law, Public Officers Law, Article 6, Sections 84-90 provide for public access to government records. Proposals may, however, contain trade secrets and other technical, financial, or administrative data public disclosure of which could cause substantial injury to the Proposer's competitive position. Proposer must specifically identify and mark the pages of its Proposal that contains such information and insert the following notice in the front of its Proposal:

NOTICE

The data on pages _____ of this Proposal identified by an asterisk (*) contain technical or financial information, which are trade secrets and/or whose disclosure would cause substantial injury to [Proposer's] competitive position. [Proposer] requests that such data be used only for the evaluation of the Proposal, but understands that the disclosure will be limited to the extent that the County

considers proper under the law. If an agreement is entered into with [Proposer], the County shall have the right to use or disclose the data as provided in the Agreement, unless otherwise obligated by law.

The County does not assume any responsibility for disclosure or use of marked data for any purpose. In the event properly marked data are requested pursuant to the State Freedom of Information Law, the Proposer will be advised of the request and may expeditiously submit to the County a detailed statement indicating the reasons it has for believing that the information is exempt from disclosure under the law. This statement will be used by the County in making its determination as to whether disclosure is proper under the law.

4. Proposer Inspection and Acceptance of Conditions. The submission of a Proposal in response to this RFP shall be considered a representation that the Proposer has carefully inspected all conditions which affect or may, at some future date, affect the performance covered by the Proposal, and that the Proposer is fully informed concerning the County, the conditions to be encountered, and the character, quality and quantity of work to be performed. **Proposers may arrange a site visit of the Coliseum with the County's authorized contact person set forth above.** In addition, the Proposal shall indicate that the Proposer is familiar with all federal, state, and local laws which in any way affect the performance of the services requested herein.

5. Continuing Obligation. Any Proposer that is selected to negotiate with the County has a continuing obligation during such negotiation period to provide the County with any information that was requested in this RFP which requires updating due to circumstances that have changed or occurred since the submission of its Proposal.

F. SPECIAL TERMS AND CONDITIONS

1. Not an Offer. This RFP does not constitute an offer to lease the Site or any portion thereof, nor a solicitation of offers to lease the Site or any portion thereof. The County shall not incur any obligation or liability on account of any submission made in connection with this RFP (nor shall any Proposal be deemed accepted) unless and until an agreement setting forth all the terms and conditions of a transaction has been fully negotiated and a written agreement incorporating such terms and conditions has been fully executed and unconditionally delivered by all the parties thereto and all necessary consents and approvals have been obtained including, without limitation, approval of such written agreement by the Nassau County Legislature.

2. Taxes. The Site is currently owned by the County and is exempt from real estate taxation. There is no guaranty that this exemption will continue and the Selected Proposer may be required to pay any and all real estate taxes on the Site, including any taxes on improvements thereon. In addition, the Selected Proposer may also be required to pay the County-portion of any real estate taxes on the Coliseum. Proposers may wish to seek financial assistance from the Nassau County Industrial Development Agency in this regard.

3. Permits and Approvals. The Selected Proposer will be required, at its sole cost and expense, to comply with all applicable federal, state, and local laws and regulations, and to obtain from all appropriate government authorities, including, without limitation, the Town of Hempstead, all construction and ancillary approvals in connection with the Project, including but not limited to, all required building permits and approvals. All costs associated with potential rezoning of the Site will be borne fully by the Selected Proposer.

4. Expenses. Under no circumstances shall the County be liable for any of the costs of any Proposer or the Selected Proposer in connection with preparing a Proposal in response to this RFP, negotiating with the County, or otherwise participating in this RFP process. The Selected Proposer shall be solely responsible for the following costs and expenses: (i) to the extent applicable, New York State real property transfer and conveyance taxes; (ii) recordation fees with respect to any recordable instruments contemplated by the documents, such as a lease, which shall govern the disposition of the Site (any such document is referred to herein as the “Disposition Contract”); and (iii) the cost of any surveys desired by the Selected Proposer. The Selected Proposer shall also be responsible, unless waived, for payment of the following costs and expenses of the County in connection with this Project and this RFP, the negotiation and drafting of the Disposition Contract and related documents, and the closing of any transactions relating to the disposition of the Site: fees and disbursements of outside counsel, engineers, appraisers, consultants, and financial and real estate advisors retained by the County. Commencing upon notice to the Selected Proposer on the selection date that it is the Selected Proposer, such Selected Proposer shall be liable for all of the County’s costs described in this section, unless waived, regardless of whether the Disposition Contract is completed or there are any closings related to the disposition(s).

5. Environmental Issues. Disposition of the Site will trigger the need for an environmental review(s), including review under the State Environmental Quality Review Act (“SEQRA”), and related laws and regulations. The Selected Proposer will fully compensate the responsible governmental unit(s) for all costs and expenses associated with compliance with applicable environmental laws and regulations, including but not limited to the cost and expenses of preparing any and all reports, analysis, and documentation; public notifications, outreach, meetings, and hearings; and the procurement of environmental consultants and counsel as may be required.

The Selected Proposer shall be responsible for remediation of all environmental conditions at the Site arising from or connected with (a) any act or omission in connection with site investigations, site excavation and construction and all associated activities conducted by or on behalf of the Selected Proposer; (b) the release or threatened release of hazardous or regulated substances at any location where the Selected Proposer has caused materials removed from the Site to be transported and disposed; (c) the negligent use and occupancy of the Site and related property by the Selected Proposer or the failure of the foregoing to exercise due care in its operations; (d) the utilization of the Site by the Selected Proposer for non-permitted uses; or (e) the breach by Selected Proposer of any of the terms of the Disposition Contract. The Selected Proposer shall indemnify and hold the County harmless from any and all environmental claims,

environmental clean-up liabilities, and other actions, causes of action, suits, proceedings, administrative orders, costs, charges, and damages directly or indirectly arising therefrom.

The County recognizes that the Selected Proposer may desire to undertake further environmental investigation before being bound as described above, and the County will work with the Selected Proposer to establish a process to allow for such further investigation before the Selected Proposer is so bound. Such a process may include a requirement that the Selected Proposer enter into an entry permit with the County in which, among other things, the Selected Proposer would agree to indemnify and hold the County harmless from liabilities that may arise from the discovery of hazardous or regulated substances in, on or under the Site by the Selected Proposer or the Selected Proposer's consultants.

6. Development Rights. As a result of the expected reduction in seating capacity for the Coliseum and the corresponding reduction of parking spaces required to service the Coliseum, the County will develop, in its sole discretion, in conjunction with the Selected Proposer and/or the County's designee, the acreage that is made available from said reduction for purposes of economic development that is complimentary to or compatible with the operation of the Coliseum, subject to the approval of the County Legislature.

G. SUBMISSION REQUIREMENTS

All Proposals must state the period for which the Proposal shall remain in effect (i.e., how much time does the County have to accept or reject the Proposal under the terms proposed). Such period shall not be less than 180 (one hundred eighty) days from the Proposal date.

All Proposals must contain the following:

1. Non-Collusive Proposal Certificate attached as Appendix B.
2. Proposed approach to the Project Objectives as stated in Section B of this RFP, including a complete written description of Project to be set forth in Appendix C.
3. A duly completed and verified Business History Form attached as Appendix D, together with a current certified or verified financial statement and/or other commercially reliable written evidence of the Proposer's credit, financial standing and capacity to perform in accordance with the terms of the Contract.
4. All officers and any individuals who hold a ten percent (10%) or greater ownership interest in the Proposer shall complete and verify the Principal Questionnaire attached as Appendix E.
5. Living Wage Law Certificate of Compliance, attached as Appendix L.
6. The Proposer's exceptions to the RFP Requirements, if any.

7. All submissions must be signed on the designated signature line by an officer or authorized agent of Proposer.

8. Additional information that you believe pertinent to the County's requirements.

Organization of Proposal. The Proposal should be organized as follows:

1. Cover Letter and Executive Summary. The cover letter is the Proposer's official letter transmitting the complete Proposal to the County. The cover letter must include the full name and address of your organization, the state in which it is incorporated or licensed to operate, and whether it operates as an individual, partnership, corporation or any other business form. The cover letter should also include the name and contact information for your organization or team for this engagement.

The cover letter will designate the individuals who will be the authorized key business negotiators. This letter is to be typed on the Proposer's letterhead and is to be signed by an officer of the Proposer who is authorized to sign such material and to commit the Proposer to the obligations contained in the Proposal. If the Proposer consists of a team or joint venture, an authorized representative of each of the participating firms is required to sign the letter.

The executive summary must be presented as a separate document summarizing in clear and concise language, the information contained in all other parts of the Proposal and shall include an introduction and overview section and a conclusion. The executive summary should be drafted so that it may be easily understood by persons not having a technical background. In addition, the executive summary shall be limited to three (3) pages, including tables and graphs. The County may distribute the executive summary to public officials, representatives of public interest groups, and other major Project participants; therefore, the Proposer should not include any data in the executive summary that the Proposer judges to be confidential. The executive summary should not contain any price, cost, or economic data. The County assumes no liability for disclosure or use of any data presented in the executive summary.

2. Proposer Team Information. To enable the County to assess a Proposer's ability and resources to carry out the Project, the Proposer must submit with its Proposal information regarding the following in a section clearly designated "**PROPOSER TEAM**" in Appendix C.

- a. Description of Proposer, including a description of its organization, its history, its ownership and its organizational structure;
- b. Description of development team (including the design team) structure and all relevant experience, including resumes for all principal team members; and
- c. Complete disclosure of financial information of the Proposer, including credit information regarding the Proposer, credit references, and relevant financial statements, including, without limitation, net worth statements.

3. Narrative. A narrative description of the Proposal must be provided in Appendix C in a section clearly designated “**NARRATIVE DESCRIPTION.**” The narrative description should address the Project Objectives set forth in Section B of this RFP. It should include but not be limited to the following items:

- a. Description of proposed renovation or reconstruction plan including a detailed development and building plan that places an emphasis on creating a family entertainment/sports and other event facility. A responsive Proposal must describe your plan to create a first-class, state-of-the-art facility to provide attendees, concert-goers and other users of the Coliseum with a contemporary and sustainable entertainment experience, while incorporating environmentally sustainable features. Please describe any unique architectural features to be incorporated into the plan. Please identify the total acreage needed for your proposed renovated or rebuilt Coliseum, including the required parking, based on the existing zoning requirements.
- b. Description of proposed programming event plan for the Coliseum that may include, but not be limited to, planned family entertainment, professional sporting events, concerts and similar experiences. Preference will be given to Proposals that demonstrate a commitment from a professional sports franchise to play its home games at the Coliseum, as well as additional commitments obtained for all other events at the facility.
- c. The Selected Proposer shall be responsible for the performance of all repairs and maintenance of the Coliseum at its sole cost and expense. A responsive Proposal must acknowledge this requirement and discuss and describe any considerations associated therewith.
- d. The Selected Proposer shall have exclusive responsibility for all capital expenditures during the first five (5) years of operation of the Coliseum. A responsive Proposal must discuss and describe any proposed capital expenditure cost sharing arrangements between the County and the Selected Proposer beginning in the sixth year of operation.
- e. Description of proposed property management of the Coliseum to ensure that it is operated in a first-class manner. The Selected Proposer shall operate and manage the Coliseum in a first-class manner meeting the highest standards consistent with premier arenas. A responsive Proposal must describe your proposed operation and management plan for the Project.
- f. The Selected Proposer shall provide the County with use of the Coliseum for Nassau County events for up to 10 days per year, subject to availability and at no charge to the County except the County shall pay the Selected Proposer for costs and expenses in connection with such use. A responsive Proposal must acknowledge this requirement and discuss and describe any considerations associated therewith.

- g. Quantification of economic impact, including taxes, direct construction and permanent jobs (broken out separately) associated with the Project, and other direct and multiplier effects on the economic activity of the County. This analysis must state all assumptions and describe in detail and set forth all quantitative methods and calculations used. The analysis must also provide a description of net new revenues to the County.
- h. Proposer to address and acknowledge any other issues and considerations in connection with the Project Objectives set forth in Section B of this RFP not otherwise described herein.

4. Disposition of Site. The Proposal must set forth in Appendix C in a section clearly designated “**PAYMENT TERMS**” the payments to be made to the County in connection with the disposition of the Site. The County anticipates that the Selected Proposer will pay an annual rental payment based upon a percentage of revenues from all sources and events at the Coliseum, less governmental taxes, excise fees and similar items (collectively, the “County Revenue Share”). Such sources and revenues shall include, without limitation, revenues from ticket sales, luxury boxes, personal seat licenses, club seats, concessions, food and beverage sales, parking rights, advertising sponsorships, text messaging, ticket arbitrage, ticket advertising, the exclusive right to sell tickets, and other intellectual property and other sources, whether such revenue source exists on the date hereof or not. The County Revenue Share shall be in addition to all applicable sales, excise and other taxes and fees payable under then applicable law. It should include but not be limited to the following items:

- a. The proposed initial term, not to exceed 30 years, and proposed renewal options.
- b. The amount and timing of rent payments, including any pre-development rent or rent abatements. Please provide the percentage of revenues used to determine the County Revenue Share, and discuss and describe any considerations associated therewith.
- c. The guaranteed base rent to be paid to the County, as appropriate, throughout the term of the lease, including escalations. The description of escalations must include the method used to calculate escalations, their timing, and the projected amount of each escalation.

5. Drawings and Plans. The following drawings must be provided in Appendix C in a section clearly designated “**DRAWINGS AND PLANS**”:

- a. General site plan.
- b. Renderings of proposed Coliseum renovation or reconstruction.

6. Financing Plan. Each Proposer must submit a financing plan satisfactory to the County as part of its Proposal in Appendix C in a section clearly designated “**FINANCIAL PLAN.**” This financing plan should include all information required to

provide the County sufficient data to evidence that the proposed development can be financed, constructed, and delivered in a timely fashion. The County reserves the right to reject or approve any level of funding for development of the Project. To that end, the County considers a key characteristic of a Proposer to be its financial capacity to complete the Project. The financial strength of the Proposer and its ability to bring equity or to create alternative financing structures will be carefully assessed. Proposer is expected to demonstrate that it has the capability to arrange for the financing for the development of the Project. The financing plan should contain the following:

- a. Sources and uses statement;
 - Total cost of renovation or reconstruction of the Coliseum;
 - Sources, amounts, terms and conditions of financing and the Proposer's equity; and
 - Detailed breakdown of uses of funds in the Project, including an itemized list of all costs associated with the renovation or reconstruction of the Coliseum.
- b. Financing schedule;
- c. Evidence of financing consistent with sources and uses statement;
- d. Evidence of financial capacity of lenders and equity sources;
- e. Identity and financial capacity of guarantor to guaranty lien-free completion of the Project.

At the County's request, the Proposer will submit a supplemental financing plan setting forth such information as the County (in consultation with its advisors) deems, in the exercise of its sole discretion, helpful or relevant in evaluating the Proposer or any aspect of its Proposal and indicating any and all changes from any initial financing plan.

7. Coliseum Schedule. Detailed schedule from the execution date of the Disposition Contract through substantial completion of the Coliseum renovation or reconstruction, including parking, must be provided in Appendix C in a section clearly designated "**CONSTRUCTION SCHEDULE.**" The renovation or reconstruction of the Coliseum should be performed in such manner as to minimize the complete closure of the Coliseum. The schedule should show estimated dates of commencement and completion of the renovation or reconstruction. The schedule should include but not be limited to the following:

- a. Preliminary design (such work should commence promptly after the occurrence of the selection of the Proposer);
- b. Construction documents;
- c. Reviews and approvals;

- d. Construction; and
- e. Substantial completion date.

H. SELECTION PROCESS

1. General. The County may at any time exclude Proposals that, in the sole and absolute discretion of the County, fail to comply with the requirements of this RFP.

The County will review all Proposals for completeness and compliance with the terms and conditions of this RFP, and may request from any or all of the Proposers additional material, clarification, confirmation, or modification of any submitted Proposal, including Proposals that are incomplete or nonconforming as submitted. Except at the request or by the consent of the County (which consent shall be in the sole and absolute discretion of the County), Proposers will not be entitled to change their Proposals once submitted. The County may solicit a Best and Final Offer (BAFO) from any or all Proposers.

This RFP does not commit the County to award a contract. Notwithstanding any other provisions of this RFP, the County reserves the right to award this contract to the Proposer(s) that best meet the requirements of the RFP, and not necessarily to the lowest Proposer. The County reserves the right, at any time and in its sole and absolute discretion, to reject any or all Proposals, to amend or withdraw the RFP without notice, and to use the Proposals as a basis for negotiation with one or more Proposers and/or with parties other than those responding to this RFP and/or on terms other than those set forth herein. The County reserves the right to waive compliance with and/or change any of the terms of this RFP. The County may require the Proposers to participate in negotiations and to submit additional price, technical, or other revisions, as may result from negotiations. All materials submitted in response to this RFP will become the property of the County.

Amendments to this RFP may be necessary prior to the closing date and will be furnished to all prospective Proposers who have requested these materials.

2. Criteria. In evaluating the Proposals for the County, the evaluation committee will consider such criteria that, in its sole and absolute discretion, are in the best interests of the County. The criteria listed below are of significant concern to the County:

- a. Quantity and certainty of the financial return to the County based on proposed lease payments and revenues generated by the Project;
- b. Financial viability of the Proposal and Proposer;
- c. Overall economic development benefit of the Proposal, including job creation and taxes generated;
- d. Quality of the proposed Project including the proposed use and design;

- e. Proposed operation and management plan, including the proposed programming and event plan for family entertainment, concerts, sporting and other events, as well as commitments related thereto;
- f. Proposer's experience in the development, management, marketing and design of projects of a scale, complexity and quality similar to that required by the RFP, and its ability to implement its Proposal;
- g. Proposer's financial qualifications (including its proven ability to obtain financing for projects of similar size, experience with institutional lenders, and evidence of the willingness of such lenders to finance the proposed development), and the amount of equity or personal risk the Proposer proposes for the Project;
- h. Proposed schedule, including timeframe for commencement and completion of the renovation or reconstruction of the Coliseum;
- i. Proposer's previous record of performance in business dealings with any municipal, state, or federal agencies, including the County; and
- j. Overall compliance with the requirements of this RFP.

I. BROKERS

Proposals shall be accepted from principals only. No brokerage fees, finder's fees, commissions, or other compensation will be payable by the County in connection with the selection of the Selected Proposer or the disposition of the Site. Submission of a Proposal by a Proposer in response to this RFP will constitute an undertaking by the Proposer to hold harmless and indemnify and defend the County from and against any and all expenses, damages, or liability (including, without limitation, attorneys' fees and disbursements) arising out of any claim for such fees, commissions, or other compensation made in connection with such Proposer's response to this RFP, selection or nonselection thereunder, or negotiation and execution (or nonexecution) of a Disposition Contract.

J. GENERAL CONDITIONS

The County reserves, holds without limitation, and may exercise, at its sole discretion, the following rights and conditions with regard to this RFP. The County makes no representations or warranties whatsoever with respect to this RFP and the Site, including, without limitation, representations or warranties as to the accuracy of any information or assumptions contained in this RFP or otherwise furnished to Proposers; the use or progress of development of the Site, or any portion thereof; and site and environmental conditions or the suitability of the Site for any specific uses or development. Proposers shall make their own analysis and evaluation of the income potential and profits and expense of the Site, as well as the physical condition, operation, layout, size, building systems or structural integrity, and Proposers shall not rely upon any statement or information given to Proposers by the County, including without limitation, any information contained in this RFP or in any other documents cited in this RFP. The County reserves the right to dispose of the Site outside of this solicitation process.

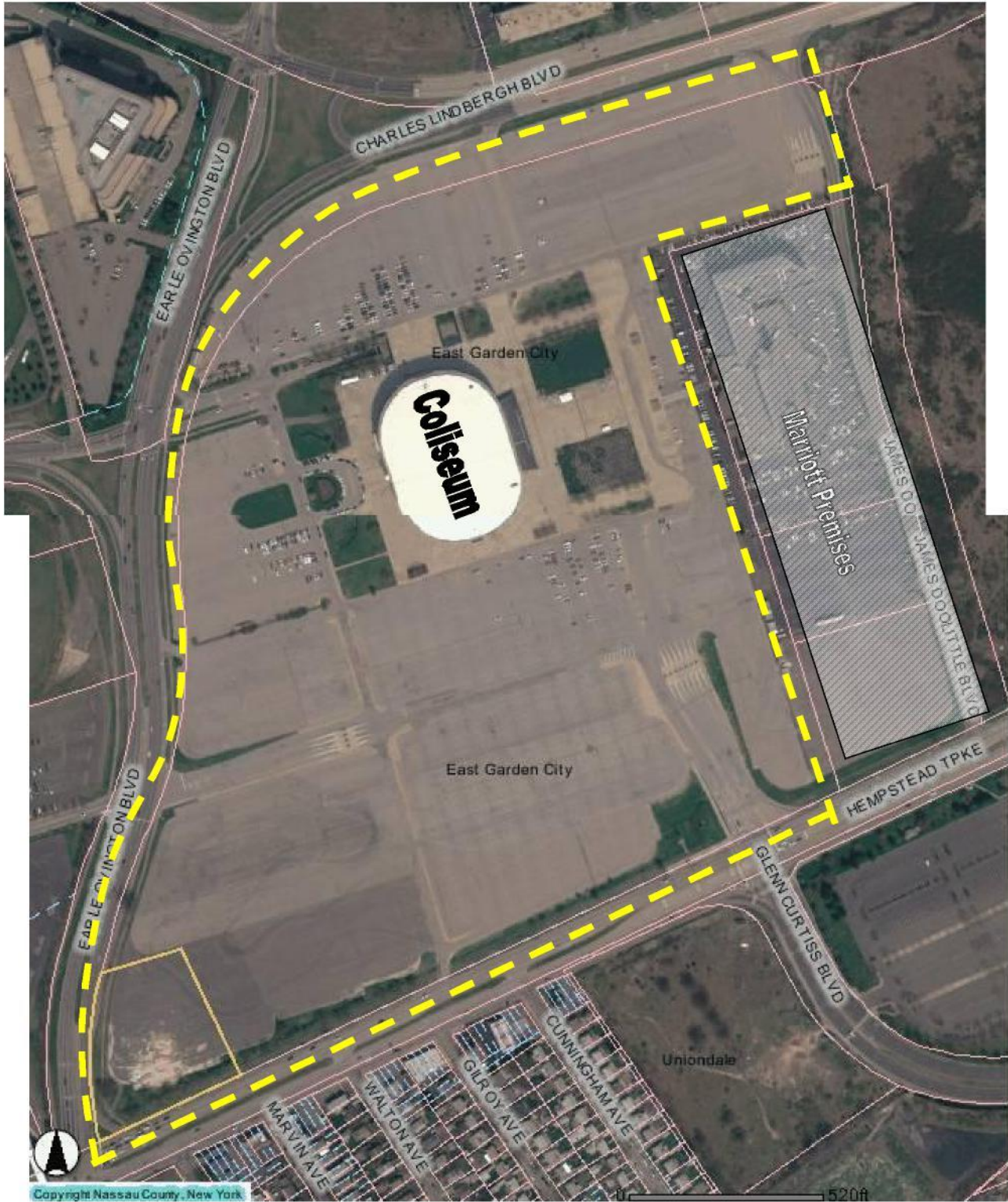
In addition to those stated elsewhere, this RFP is subject to the specific conditions, terms, and limitations stated below. By responding to this RFP, Proposers acknowledge and consent to the following rights and conditions:

- a) The Selected Proposer will be required to comply with all applicable federal, state, and local laws and regulations.
- b) The Proposers will be required to pay its employees a “living wage” in compliance with Nassau County Local Law No. 1-2006 (the “Living Wage Law”), if applicable, and also to pay the prevailing wage rate as published by the New York State Department of Labor, if applicable, and comply with all applicable New York State Labor Law. The Proposers will also be required to use reasonable efforts to enter into project labor agreements with the various labor organizations that may be hired to provide services in connection with the renovation or reconstruction of the Coliseum, the construction of other improvements on the Site or other construction.
- c) Proposer is bound by and shall comply with the terms of Appendix EE which is attached hereto and hereby made a part hereof.
- d) The Selected Proposer will accept the Site in its “Where Is, As Is” condition on the date of disposition.
- e) Any construction activities at the Site related to this Proposal are to be performed at the sole cost and expense of the Selected Proposer.
- f) Prior to commencing any work, the Selected Proposer shall obtain valid permits and approvals, as required by the County, the Town of Hempstead, and by any other applicable State, federal and local laws, regulations, or agencies.
- g) The County will not pay for or refund any costs and expenses incurred by a Proposer in responding to this RFP or by the Selected Proposer following selection or designation.
- h) All determinations as to the completeness or compliance of any Proposal, or as to the eligibility or qualification of any Proposer, will be within the sole and absolute discretion of the County.
- i) Acceptance of a Proposer’s Proposal or selection of the Selected Proposer pursuant to this RFP will not create any rights on the Proposer’s or Selected Proposer’s part, including without limitation rights of enforcement, equity, or reimbursement. After execution and delivery of the Disposition Contract, the terms thereof will thereafter govern the relationship between the County and the Selected Proposer. In the event of any variance between the terms of this RFP and the Disposition Contract, the Disposition Contract will govern.
- j) The County may enter into a Disposition Contract with one or more Selected Proposers for any of the services contemplated herein.

- l) The County advises all Proposers that there is no legal obligation on part of the County to have a disposition of the Site through a competitive bid or competitive negotiation process, that this RFP does not constitute an offer or request for bids, and that the County reserves the right to use the Proposals submitted as a basis for negotiation with Proposers or other parties as the County deems appropriate.
- m) This RFP may be reissued, amended, or withdrawn if it is deemed in the best interest of the County to do so, or if, in the sole and absolute judgment of the County (in consultation with its advisors), all the responses are unacceptable. Issuance of this RFP does not obligate the County to undertake any action.
- n) Proposers will be rejected by the County if such Proposers, or any principal, partner, officer, director or principal shareholder of the Proposer's firm is determined, in the sole discretion of the County, to have been convicted of or, pleaded guilty or nolo contendere to a felony or crime of moral turpitude, to be an "organized crime figure", to be under indictment or criminal investigation, or to be in arrears or in default on any debt, contract, or obligation to or with a New York State or local government entity. The Selected Proposer may be required to complete a background questionnaire to verify that it is in full compliance with these requirements.
- o) If for any reason the County decides not to proceed with the disposition of the Site or decides to dispose of the Site outside this solicitation process, the County will not be liable for any costs and expenses associated with the preparation, clarification, submission, or negotiation of Proposals submitted in response to this Request.
- p) The County reserves the right to waive any defect, technicality or any other minor informality or irregularity in any Proposal.
- q) The County reserves the right, at any time, to determine that any or all Proposers will not be qualified for further consideration and to notify such Proposers of the County's determination.
- r) Neither the County, its legislative members, staff, agents, employees, representatives, nor consultants will be liable for any claims or damages resulting from any aspect of this procurement process.
- s) The Disposition Contract shall provide that in the event of any material misrepresentation by the Proposer contained in its Proposal, County shall have the right to immediately terminate the agreement. It shall also provide that in the event the Proposer or any of its principals are convicted of a misdemeanor or felony during the term of the agreement, that the County shall also have the right to terminate the agreement.

APPENDIX A

NASSAU VETERANS MEMORIAL COLISEUM SITE MAP



APPENDIX B

NON-COLLUSIVE PROPOSAL CERTIFICATION

The undersigned hereby certifies his or her compliance with the following:

By submission of this Proposal, each Proposer and each person signing on behalf of any other Proposer certifies, and in the case of a joint Proposal, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

- A. The financial and payment information set forth in this Proposal has been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such financial and payment information with any other Proposer or with any competitor; and
- B. Unless otherwise required by law, the financial and payment information which has been quoted in this Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor; and
- C. No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restricting competition.
- D. The undersigned has carefully examined the Proposal and agrees to provide all services, labor, material and equipment necessary as indicated in Proposal if selected.

SUBMITTED BY: _____
(Signature)

PRINT NAME: _____

DATE: _____

APPENDIX C

PROJECT DESCRIPTION

Please provide the following requested information as set forth in Section G of this RFP titled "Submission Requirements":

- a. Proposer Team
- b. Narrative Description
- c. Payments Terms
- d. Drawing and Plans
- e. Financial Plan
- f. Construction Schedule

APPROVED AND SUBMITTED BY: _____
(Signature)

PRINT NAME: _____ **DATE:** _____

APPENDIX D

BUSINESS HISTORY FORM

The contract shall be awarded to the responsible Proposer who, at the discretion of the County, taking into consideration the reliability of the Proposer and the capacity of the Proposer to perform the services required by the County, offers the best value to the County and who will best promote the public interest.

In addition to the submission of Proposals, each Proposer shall complete and submit this questionnaire. The questionnaire shall be filled out by the owner of a sole proprietorship or by an authorized representative of the firm, corporation or partnership submitting the Proposal.

(USE ADDITIONAL SHEETS IF NECESSARY TO FULLY ANSWER THE FOLLOWING QUESTIONS).

Date: _____

1) Proposer's Legal Name: _____

2) Address of Place of Business: _____

List all other business addresses used within last five years:

3) Mailing Address (if different): _____

Phone : _____

Does the business own or rent its facilities? _____

4) Dun and Bradstreet number: _____

5) Federal I.D. Number: _____

6) The Proposer is a (check one): Sole Proprietorship Partnership Corporation
 Other (Describe) _____

7) Does this business share office space, staff, or equipment expenses with any other business?
Yes No If Yes, please provide details: _____

8) Does this business control one or more other businesses? Yes No If Yes, please
provide details: _____

9) Does this business have one or more affiliates, and/or is it a subsidiary of, or controlled by, any other business? Yes ___ No ___ If Yes, provide details. _____

10) Has the Proposer ever had a bond or surety cancelled or forfeited, or a contract with Nassau County or any other government entity terminated? Yes ___ No ___ If Yes, state the name of bonding agency, (if a bond), date, amount of bond and reason for such cancellation or forfeiture: or details regarding the termination (if a contract). _____

11) Has the Proposer, during the past seven years, been declared bankrupt? Yes ___ No ___ If Yes, state date, court jurisdiction, amount of liabilities and amount of assets _____

12) In the past five years, has this business and/or any of its owners and/or officers and/or any affiliated business, been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency? And/or, in the past 5 years, have any owner and/or officer of any affiliated business been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, where such investigation was related to activities performed at, for, or on behalf of an affiliated business.
Yes ___ No ___ If Yes, provide details for each such investigation. _____

13) In the past 5 years, has this business and/or any of its owners and/or officers and/or any affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies? And/or, in the past 5 years, has any owner and/or officer of an affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies, for matters pertaining to that individual's position at or relationship to an affiliated business.
Yes ___ No ___ If Yes, provide details for each such investigation. _____

14) Has any current or former director, owner or officer or managerial employee of this business had, either before or during such person's employment, or since such employment if the charges pertained to events that allegedly occurred during the time of employment by the submitting business, and allegedly related to the conduct of that business:

a) Any felony charge pending? No ___ Yes ___ If Yes, provide details for each such charge. _____

b) Any misdemeanor charge pending? No ___ Yes ___ If Yes, provide details for each such charge. _____

c) In the past 10 years, you been convicted, after trial or by plea, of any felony and/or any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business? No ___ Yes ___ If Yes, provide details for each such conviction _____

d) In the past 5 years, been convicted, after trial or by plea, of a misdemeanor? No ___ Yes ___ If Yes, provide details for each such conviction. _____

e) In the past 5 years, been found in violation of any administrative, statutory, or regulatory provisions? No ___ Yes ___ If Yes, provide details for each such occurrence. _____

15) In the past (5) years, has this business or any of its owners or officers, or any other affiliated business had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? No ___ Yes ___; If Yes, provide details for each such instance. _____

For the past (5) tax years, has this business failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges? No ___ Yes ___ If Yes, provide details for each such year. Provide a detailed response to all questions checked 'YES'. If you need more space, photocopy the appropriate page and attach it to the questionnaire. _____

Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

16) Conflict of Interest:

- a) Please disclose:
 - (i) Any material financial relationships that your firm or any firm employee has that may create a conflict of interest or the appearance of a conflict of interest in acting as collection agent on behalf of Nassau County.

- (ii) Any family relationship that any employee of your firm has with any County public servant that may create a conflict of interest or the appearance of a conflict of interest in acting as collection agent on behalf of Nassau County.
 - (iii) Any other matter that your firm believes may create a conflict of interest or the appearance of a conflict of interest in acting as a collection agent on behalf of Nassau County.
- b) Please describe any procedures your firm has, or would adopt, to assure the County that a conflict of interest would not exist for your firm in the future.

Attachments to Business History Form

Please provide any other information which would be appropriate and helpful in determining the Proposer's capacity and reliability to perform these services.

- A. Include a resume or detailed description of the Proposer's professional qualifications, demonstrating extensive experience in your profession. Any prior similar experiences, and the results of these experiences, must be identified.

Should the Proposer be other than an individual, the Proposal should include:

- i) Date of formation;
 - ii) Name, addresses, and position of all persons having a financial interest in the company, including shareholders, members, general or limited partner;
 - iii) Name, address and position of all officers and directors of the company;
 - iv) State of incorporation (if applicable);
 - v) The number of employees in the firm;
 - vi) Annual revenue of firm;
 - vii) Summary of relevant accomplishments
 - viii) Copies of all state and local licenses and permits.
- B. Indicate number of years in business.
- C. Provide any other information which would be appropriate and helpful in determining the Proposer's capacity and reliability to perform these services.
- D. Provide names and addresses for no fewer than two (2) references for whom the Proposer has provided similar services or who are qualified to evaluate the Proposer's capability to perform this work.

Company _____

Contact Person _____

Address _____

City/State _____

Telephone _____

Fax # _____

E-Mail Address _____



Company _____

Contact Person _____

Address _____

City/State _____

Telephone _____

Fax # _____

E-Mail Address _____

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I, _____, being duly sworn, state that I have read and understand all the items contained in the foregoing pages of this questionnaire and the following pages of attachments; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this questionnaire and before the execution of the contract; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this questionnaire as additional inducement to enter into a contract with the submitting business entity.

Sworn to before me this ____ day of _____, 2013.

Notary Public

Name of submitting business: _____

By: _____
Print name

Signature

Title

_____/_____/_____
Date

APPENDIX E

PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered and the answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD

1. Principal Name _____
Date of birth ____/____/____
Home address _____
City/state/zip _____
Business address _____
City/state/zip _____
Telephone _____
Other present address(es) _____
City/state/zip _____
Telephone _____
List of other addresses and telephone numbers attached
2. Positions held in submitting business and starting date of each (check all applicable)
President ____/____/____ Treasurer ____/____/____
Chairman of Board ____/____/____ Shareholder ____/____/____
Chief Exec. Officer ____/____/____ Secretary ____/____/____
Chief Financial Officer ____/____/____ Partner ____/____/____
Vice President ____/____/____ _____/____/____ (Other)
3. Do you have an equity interest in the business submitting the questionnaire?
NO ___ YES ___ If Yes, provide details.
4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire? NO ___ YES ___ If Yes, provide details.

5. Within the past 3 years, have you been a principal owner or officer of any business or not-for-profit organization other than the one submitting the questionnaire? NO ___ YES ___; If Yes, provide details.
6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer? NO ___ YES ___; If Yes, provide details.

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency. Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:
 - a. Been debarred by any government agency from entering into contracts with that agency? NO ___ YES ___ If Yes, provide details for each such instance.
 - b. Been declared in default and/or terminated for cause on any contract, and/or had any contract cancelled for cause? NO ___ YES ___ If Yes, provide details for each such instance.
 - c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards? NO ___ YES ___ If Yes, provide details for each such instance.
 - d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contract? NO ___ YES ___ If Yes, provide details for each such instance.
8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated? If 'Yes', provide details for each such instance. (Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.)
 - a) Is there any felony charge pending against you? NO ___ YES ___ If Yes, provide details for each such charge.
 - b) Is there any misdemeanor charge pending against you? NO ___ YES ___ If Yes, provide details for each such charge.

- c) Is there any administrative charge pending against you? NO ____ YES ____ If Yes, provide details for each such charge.
 - d) In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business? NO ____ YES ____ If Yes, provide details for each such conviction.
 - e) In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor? NO ____ YES ____ If Yes, provide details for each such conviction.
 - f) In the past 5 years, have you been found in violation of any administrative or statutory charges? NO ____ YES ____ If Yes, provide details for each such occurrence.
9. In addition to the information provided in response to the previous questions, in the past 5 years, have you been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5? NO ____ YES ____ If Yes, provide details for each such investigation.
10. In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer? NO ____ YES ____ If Yes; provide details for each such investigation.
11. In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? NO ____ YES ____ If Yes; provide details for each such instance.
12. For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges? NO ____ YES ____ If Yes, provide details for each such year.

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I, _____, being duly sworn, state that I have read and understand all the items contained in the foregoing pages of this questionnaire and the following pages of attachments; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this questionnaire and before the execution of the contract; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this questionnaire as additional inducement to enter into a contract with the submitting business entity.

Sworn to before me this ____ day of _____, 2013.

Notary Public

Name of submitting business

Print name

Signature

Title

_____/_____/_____
Date

APPENDIX EE

EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN

The provisions of this Appendix EE are hereby made a part of the document to which it is attached.

The Contractor shall comply with all federal, State and local statutory and constitutional anti-discrimination provisions. In addition, Local Law No. 14-2002, entitled "Participation by Minority Group Members and Women in Nassau County Contracts," governs all County Contracts as defined herein and solicitations for bids or proposals for County Contracts. In accordance with Local Law 14-2002:

- (a) The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status in recruitment, employment, job assignments, promotions, upgradings, demotions, transfers, layoffs, terminations, and rates of pay or other forms of compensation. The Contractor will undertake or continue existing programs related to recruitment, employment, job assignments, promotions, upgradings, transfers, and rates of pay or other forms of compensation to ensure that minority group members and women are afforded equal employment opportunities without discrimination.
- (b) At the request of the County contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such employment agency, labor union, or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- (c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the County Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (d) The Contractor shall make best efforts to solicit active participation by certified minority or women-owned business enterprises ("Certified M/WBEs") as defined in Section 101 of Local Law No. 14-2002, for the purpose of granting of Subcontracts.
- (e) The Contractor shall, in its advertisements and solicitations for Subcontractors, indicate its interest in receiving bids from Certified M/WBEs and the requirement that Subcontractors must be equal opportunity employers.

- (f) Contractors must notify and receive approval from the respective Department Head prior to issuing any Subcontracts and, at the time of requesting such authorization, must submit a signed Best Efforts Checklist.
- (g) Contractors for projects under the supervision of the County's Department of Public Works shall also submit a utilization plan listing all proposed Subcontractors so that, to the greatest extent feasible, all Subcontractors will be approved prior to commencement of work. Any additions or changes to the list of subcontractors under the utilization plan shall be approved by the Commissioner of the Department of Public Works when made. A copy of the utilization plan any additions or changes thereto shall be submitted by the Contractor to the Office of Minority Affairs simultaneously with the submission to the Department of Public Works.
- (h) At any time after Subcontractor approval has been requested and prior to being granted, the contracting agency may require the Contractor to submit Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises. In addition, the contracting agency may require the Contractor to submit such documentation at any time after Subcontractor approval when the contracting agency has reasonable cause to believe that the existing Best Efforts Checklist may be inaccurate. Within ten working days (10) of any such request by the contracting agency, the Contractor must submit Documentation.
- (i) In the case where a request is made by the contracting agency or a Deputy County Executive acting on behalf of the contracting agency, the Contractor must, within two (2) working days of such request, submit evidence to demonstrate that it employed Best Efforts to obtain Certified M/WBE participation through proper documentation.
- (j) Award of a County Contract alone shall not be deemed or interpreted as approval of all Contractor's Subcontracts and Contractor's fulfillment of Best Efforts to obtain participation by Certified M/WBEs.
- (k) A Contractor shall maintain Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises for a period of six (6) years. Failure to maintain such records shall be deemed failure to make Best Efforts to comply with this Appendix EE, evidence of false certification as M/WBE compliant or considered breach of the County Contract.
- (l) The Contractor shall be bound by the provisions of Section 109 of Local Law No. 14-2002 providing for enforcement of violations as follows:
 - 1) Upon receipt by the Executive Director of a complaint from a contracting agency that a County Contractor has failed to comply with the provisions of Local Law No. 14-2002, this Appendix EE or any other contractual provisions

included in furtherance of Local Law No. 14-2002, the Executive Director will try to resolve the matter.

- 2) If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Executive Director shall refer the matter, within thirty days (30) of receipt of the complaint, to the American Arbitration Association for proceeding thereon.
 - 3) Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Executive Director his recommendations regarding the imposition of sanctions, fines or penalties. The Executive Director shall either (i) adopt the recommendation of the arbitrator (ii) determine that no sanctions, fines or penalties should be imposed or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty. The Executive Director, within ten days (10) of receipt of the arbitrators award and recommendations, shall file a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator, and the fines and penalties imposed by the Executive Director, shall be final determinations and may only be vacated or modified as provided in the civil practice law and rules (“CPLR”).
- (m) The contractor shall provide contracting agency with information regarding all subcontracts awarded under any County Contract, including the amount of compensation paid to each Subcontractor and shall complete all forms provided by the Executive Director or the Department Head relating to subcontractor utilization and efforts to obtain M/WBE participation.

Failure to comply with provisions (a) through (m) above, as ultimately determined by the Executive Director, shall be a material breach of the contract constituting grounds for immediate termination. Once a final determination of failure to comply has been reached by the Executive Director, the determination of whether to terminate a contract shall rest with the Deputy County Executive with oversight responsibility for the contracting agency.

Provisions (a), (b) and (c) shall not be binding upon Contractors or Subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate, or distinct from the County Contract as expressed by its terms.

The requirements of the provisions (a), (b) and (c) shall not apply to any employment or application for employment outside of this County or solicitations or advertisements therefor or any existing programs of affirmative action regarding employment outside of this County and the effect of contract provisions required by these provisions (a), (b) and (c) shall be so limited.

The Contractor shall include provisions (a), (b) and (c) in every Subcontract in such a manner that these provisions shall be binding upon each Subcontractor as to work in connection with the County Contract.

As used in this Appendix EE the term “Best Efforts Checklist” shall mean a list signed by the Contractor, listing the procedures it has undertaken to procure Subcontractors in accordance with this Appendix EE.

As used in this Appendix EE the term “County Contract” shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby a County contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the County; or (ii) a written agreement in excess of one hundred thousand dollars (\$100,000), whereby a County contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. However, the term “County Contract” does not include agreements or orders for the following services: banking services, insurance policies or contracts, or contracts with a County contracting agency for the sale of bonds, notes or other securities.

As used in this Appendix EE the term “County Contractor” means an individual, business enterprise, including sole proprietorship, partnership, corporation, not-for-profit corporation, or any other person or entity other than the County, whether a contractor, licensor, licensee or any other party, that is (i) a party to a County Contract, (ii) a bidder in connection with the award of a County Contract, or (iii) a proposed party to a County Contract, but shall not include any Subcontractor.

As used in this Appendix EE the term “County Contractor” shall mean a person or firm who will manage and be responsible for an entire contracted project.

As used in this Appendix EE “Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises” shall include, but is not limited to the following:

- a. Proof of having advertised for bids, where appropriate, in minority publications, trade newspapers/notices and magazines, trade and union publications, and publications of general circulation in Nassau County and surrounding areas or having verbally solicited M/WBEs whom the County Contractor reasonably believed might have the qualifications to do the work. A copy of the advertisement, if used, shall be included to demonstrate that it contained language indicating that the County Contractor welcomed bids and quotes from M/WBE Subcontractors. In addition, proof of the date(s) any such advertisements appeared must be included in the Best Effort Documentation. If verbal solicitation is used, a County Contractor’s affidavit with a notary’s signature and stamp shall be required as part of the documentation.

- b. Proof of having provided reasonable time for M/WBE Subcontractors to respond to bid opportunities according to industry norms and standards. A chart outlining the schedule/time frame used to obtain bids from M/WBEs is suggested to be included with the Best Effort Documentation
- c. Proof or affidavit of follow-up of telephone calls with potential M/WBE subcontractors encouraging their participation. Telephone logs indicating such action can be included with the Best Effort Documentation
- d. Proof or affidavit that M/WBE Subcontractors were allowed to review bid specifications, blue prints and all other bid/RFP related items at no charge to the M/WBEs, other than reasonable documentation costs incurred by the County Contractor that are passed onto the M/WBE.
- e. Proof or affidavit that sufficient time prior to making award was allowed for M/WBEs to participate effectively, to the extent practicable given the timeframe of the County Contract.
- f. Proof or affidavit that negotiations were held in good faith with interested M/WBEs, and that M/WBEs were not rejected as unqualified or unacceptable without sound business reasons based on (1) a thorough investigation of M/WBE qualifications and capabilities reviewed against industry custom and standards and (2) cost of performance The basis for rejecting any M/WBE deemed unqualified by the County Contractor shall be included in the Best Effort Documentation
- g. If an M/WBE is rejected based on cost, the County Contractor must submit a list of all sub-bidders for each item of work solicited and their bid prices for the work.
- h. The conditions of performance expected of Subcontractors by the County Contractor must also be included with the Best Effort Documentation.
- i. County Contractors may include any other type of documentation they feel necessary to further demonstrate their Best Efforts regarding their bid documents.

As used in this Appendix EE the term “Executive Director” shall mean the Executive Director of the Nassau County Office of Minority Affairs; provided, however, that Executive Director shall include a designee of the Executive Director except in the case of final determinations issued pursuant to Section (a) through (l) of these rules.

As used in this Appendix EE the term “Subcontract” shall mean an agreement consisting of part or parts of the contracted work of the County Contractor.

As used in this Appendix EE, the term “Subcontractor” shall mean a person or firm who performs part or parts of the contracted work of a prime contractor providing services, including

construction services, to the County pursuant to a county contract. Subcontractor shall include a person or firm that provides labor, professional or other services, materials or supplies to a prime contractor that are necessary for the prime contractor to fulfill its obligations to provide services to the County pursuant to a county contract. Subcontractor shall not include a supplier of materials to a contractor who has contracted to provide goods but no services to the County, nor a supplier of incidental materials to a contractor, such as office supplies, tools and other items of nominal cost that are utilized in the performance of a service contract.

Provisions requiring contractors to retain or submit documentation of best efforts to utilize certified subcontractors and requiring Department head approval prior to subcontracting shall not apply to inter-governmental agreements. In addition, the tracking of expenditures of County dollars by not-for-profit corporations, other municipalities, States, or the federal government is not required.

APPENDIX L

CERTIFICATE OF COMPLIANCE

In compliance with Local Law 1-2006, as amended, the Proposer hereby certifies the following:

1. The chief executive officer of the Proposer is:

_____ (Name)

_____ (Address)

_____ (Telephone Number)

2. The Proposer agrees to comply with the requirements of the Nassau County Living Wage Law, and with all applicable federal, state and local laws.

3. In the past five years, Proposer _____ has _____ has not been found by a court or a government agency to have violated federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If a violation has been assessed by the Proposer, describe below:

4. In the past five years, an administrative proceeding, investigation, or government body-initiated judicial action _____ has _____ has not been commenced against or relating to the Proposer in connection with federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If such a proceeding, action, or investigation has been commenced, describe below:

5. Proposer agrees to permit access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with the Living Wage Law and investigating employee complaints of noncompliance.

I hereby certify that I have read the foregoing statement and, to the best of my knowledge and belief, it is true, correct and complete. Any statement or representation made herein shall be accurate and true as of the date stated below.

Dated

Signature of Chief Executive Officer

Name of Chief Executive Officer

Sworn to before me this

_____ day of _____, 2013.

Notary Public