

SUFFOLK COUNTY LANDBANK CORPORATION
TAX-DELINQUENT OPPORTUNITY SITE REQUEST FOR PROPOSALS – TERMS AND CONDITIONS



**Suffolk County Landbank Corporation
Request for Proposals (RFP)
Tax-Delinquent Opportunity Sites**

TERMS AND CONDITIONS

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SECTION 1
INTRODUCTION AND OBJECTIVE

Introduction

The Suffolk County Landbank Corporation (“SCLBC”) is soliciting proposals (“Proposal(s)”) from qualified organizations (“Proposer” or “Developer”) to acquire, remediate, and re-develop one or more tax-delinquent opportunity sites (“Site[s]” or “Property[-ies]”) as advertised on the website www.suffolkcountylandbank.org.

The successful response(s) to this request for proposals (“RFP”) will be for a project or projects that generate quality jobs and economic growth, while returning the property or properties to productive, tax paying use, in alignment with local land use goals, and in compliance with regulatory standards.

If you are interested in acquiring, remediating, and re-developing one or more of these sites, please submit a proposal in accordance with the procedure and schedule herein.

Contacts/Application Submission Requirements

All questions and communications regarding this RFP must be submitted via email to:

Matthew.Kapell@suffolkcountyny.gov

Proposals must be submitted to, and received by SCLBC, to the attention of Mathew Kapell, at the following address,

Please submit five (5) printed copies of the proposal as outlined in Appendix A – Tax Lien Purchase and Development Proposal Application. Please also include one electronic copy via e-mail or USB/thumb drive.

Proposals that do not adhere to the specifications of this section and Appendix A-Tax Lien Purchase and Development Proposal Application are subject to disqualification.

Suffolk County Landbank Corp.
H. Lee Dennison Building
100 Veterans Memorial Highway, Fl.2
PO Box 6100
Hauppauge, New York 11788

SCLBC may modify, supplement or amend the provisions of this RFP as deemed necessary or appropriate by and in the sole judgment of SCLBC.

Background

In 2013 the New York State Empire State Development Corporation approved Suffolk County’s application to establish a Land Bank, which is a not-for-profit entity that gives a municipality (i.e. Suffolk County) the ability to acquire, dispose of and/or redevelop tax foreclosed properties and tax liens located throughout Suffolk County, including sites previously deemed unsuitable for acquisition, such as brownfield and superfund sites, which had been previously denied for tax foreclosure by the County, due to potential environmental liability. The resulting organization, known as the Suffolk County Landbank Corp. is in the process of facilitating the return of these vacant, abandoned, underutilized,

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environmentally-challenged and tax-delinquent properties to productive, tax-paying uses consistent with the comprehensive plans of the jurisdictions in which they are located. It is anticipated that the redevelopment of these properties will result in an increase to the property values of surrounding parcels, stabilize the tax base, and improve quality of life for neighborhood residents.

Area Description

Suffolk County

Suffolk County, with a population of 1.5 million, is Long Island's eastern-most county, and covers an area of approximately 900 square miles, 20 miles at its widest part and approximately 86 miles in length.

According to the U.S. Bureau of Economic Analysis, total personal income of all County residents amounted to \$85.4 billion in 2013. The County's 2013 per capita personal income was \$56,940, ranking 5th highest out of the 62 counties in New York State and 160th (in the top 5%) out of all counties in the nation. According to the U. S. Census Bureau, the median household income in the County was \$86,266 in 2014, ranking it in the top 1% out of all counties in the nation and placing it 64% higher than the median household income in the nation as a whole. The average annual salary for County residents in 2014 amounted to \$54,603, 9% higher than in 2009, slightly less than inflation.

Assets – Suffolk County offers tremendous assets to businesses and residents of Suffolk County. The world renowned beaches and parks, Suffolk County Wine Country, vibrant downtowns and proximity to New York City improve the quality of life for residents and make it a desirable place to live. Businesses have access to a highly educated and skilled work force and can continually recruit from our award winning universities and schools. Furthermore, businesses can collaborate with our leaders in the tech and science industry including Brookhaven National Lab, Stony Brook University and Cold Spring Harbor Lab.

Future – The future for Suffolk County is bright under the leadership of County Executive Steve Bellone. The Connect Long Island Plan will provide more public transit options that link transit oriented developments to universities, research centers, job centers and parks and open space. This plan, in coordination with other initiatives is already spurring growth in Suffolk County's innovation economy and sustaining Suffolk County's status as a wonderful region to live and work.

Governmental Organization

In New York State, local governmental services are provided by counties, cities, towns, and villages. The County provides police and law enforcement services, economic assistance, health and nursing services, and preservation of open space along with numerous other services. Land use decisions are made by the towns and villages.

Organizations coordinating this transaction

Terms and conditions of a successful purchase agreement are subject to negotiations and approval via duly adopted resolution of:

- **The County of Suffolk**
 - Under the Suffolk County Tax Act, commercial real estate taxes which are unpaid for a year result in a lien, giving Suffolk County the right to issue a deed to a buyer of the lien.

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- It is expected that the tax liens for the Site will be transferred to the SCLBC via duly adopted resolution of the Suffolk County Legislature shortly after proposals are approved.
- Suffolk County will issue a tax sale certificate to the SCLBC which will then, in turn sell the lien to the selected Proposer. The selected Proposer, will in turn- take title to the property via tax deed and remediate and redevelop the property under existing local, state, and federal regulations and programs.
- **The Suffolk County Landbank Corporation**
 - As referenced earlier, the SCLBC is a not-for-profit public benefit corporation, separate from Suffolk County, charged with the mission of efficiently facilitating the return of distressed and underutilized properties within Suffolk County to productive uses consistent with the comprehensive plans of the jurisdictions in which they are located.
 - The SCLBC is the organization issuing this RFP, and may review and select a qualified proposer.
 - Any disposition of real property or interests thereof will require approval via duly adopted resolution of the SCLBC Board of Directors.
 - All properties provided through this process will be provided clear of back taxes from prior years, as well as NYS incurred cleanup costs (if applicable to the site)

RFP Objectives

It is the desire of the SCLBC to see the properties redeveloped in a responsible manner by a qualified organization(s) or business(es) for economic development purposes that benefit the surrounding community. A successful proposal will be one that seeks to create sustainable economic activity, improve the environmental condition of the property, and potentially improve surrounding property values. A successful proposal will propose an eventual land use / redevelopment plan, which aligns with community planning goals or current zoning regulations, and contains a bid amount satisfactory to the SCLBC and County.

END OF SECTION

SECTION 2
SELECTION/EVALUATION CRITERIA

The SCLBC will evaluate each proposal according to the selection criteria outlined below.

Proposer Qualifications

- Number, size, complexity and scale of recent development projects built and managed;
- Capacity for undertaking the proposed development within the timeframe proposed;
- Experience in the satisfactory remediation of other brownfield sites;
- Experience in proposed use – if applicable.

Program and Design

- The overall quality of the Proposal and the extent to which the Proposal contributes to the achievement of community land use goals;
- The extent to which the Proposal achieves design excellence. The following elements, among others, will be considered: site planning, street wall elevations, massing, building materials, amenities, and streetscape treatment;
- The extent to which structures complement and elevate the level of design in the neighborhood.

Feasibility

- Proposer's demonstrated financial condition to complete the proposed development, and the feasibility and availability of financing sources;
- Proposer's ability to support the financial assumptions contained within the Proposal including development costs, rents/sales prices, operating expenses, capital costs and debt service;
- The long term viability of operations.

Economic Impact

- The number of new jobs created related to construction and operations;
- The taxes the proposed development generates such as real property, sales and personal income taxes;

Brownfield Remediation

- The Proposer's proposed plans to address remediation of environmental contamination on the site in a manner which is in compliance with local, state, and federal statutes. This includes but is not limited to Suffolk County Sanitary Code, New York State Environmental Conservation Law, CERCLA, and/or RCRA;
- The Proposer's willingness, understanding of, and ability to enter the site into the New York Department of Environmental Conservation's Brownfield Cleanup Program.

Purchase Price

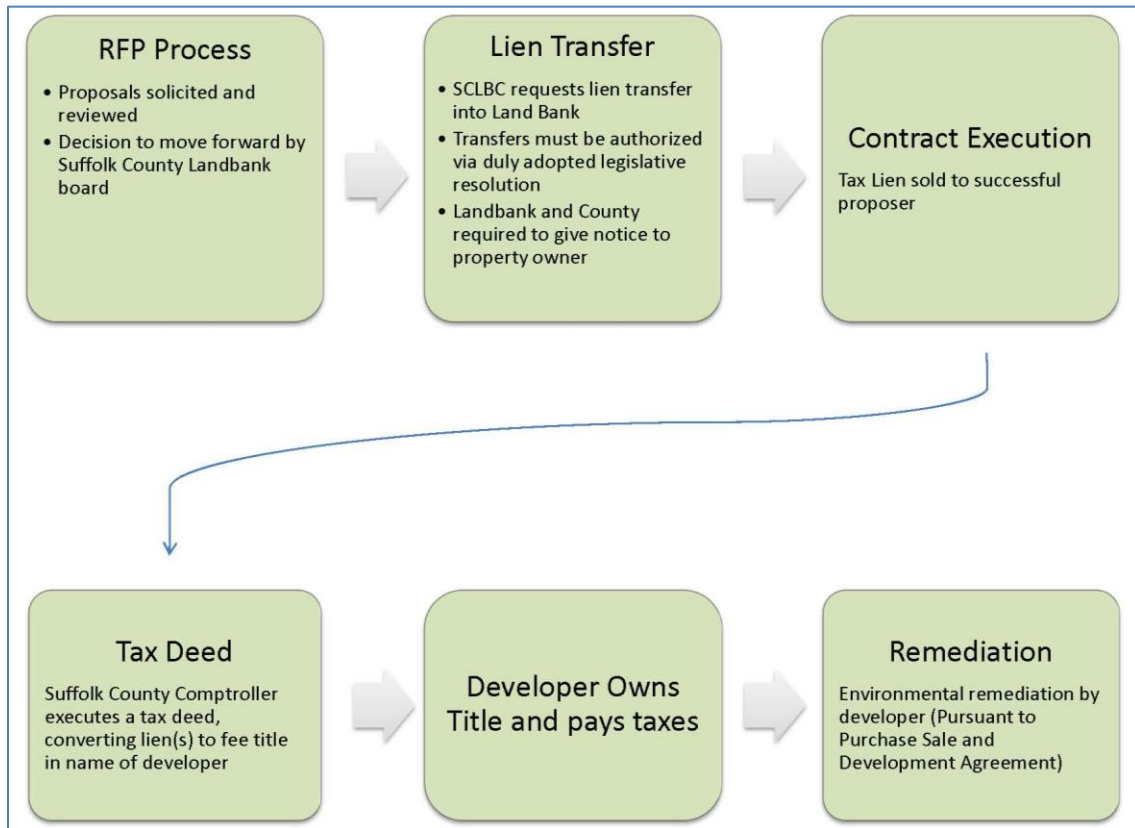
- The purchase price proposed. The SCLBC reserves the right to award proposals based on multiple criteria.

SECTION 3
DISPOSITION PROCESS

Under existing laws, Suffolk County is prohibited from disposing of a tax lien for less than the amount of the lien. This, combined with Suffolk County’s mandate that only the County purchase such tax liens as well as the desire to avoid the potential for liability for environmental cleanup costs, has prevented the County from acquiring title to potentially contaminated properties and disposing of those properties. Recognizing this as a recurring issue throughout the State, and its consequent drain on local economies, in 2011 the New York State Legislature adopted, Article 16 of the Not-For-Profit Corporation Law (otherwise known as and hereinafter referred to as the “the Land Bank Act”), to specifically address the need to revitalize tax delinquent and abandoned properties to restore them to productive use. See N.Y. Not-For-Profit Corp. Law Section 1600.

Section 1608 of the Land Bank Act provides, “[N]otwithstanding any other provision of law to the contrary, any municipality may convey to a land bank real property and interests in real property on such terms and conditions, form and substance of consideration, and procedures, all as determined by the transferring municipality in its discretion.” N.Y. Not-For-Profit Corp. Law §1608. Pursuant to section 1616 of the Land Bank Act, a municipality may enter into a contract to sell delinquent tax liens to a land bank for consideration that may be more or less than the face amount of the tax lien. N.Y. Not-For-Profit Corp. Law §1616(a).

Disposition process



SECTION 4
TERMS AND CONDITIONS OF RFP**Environmental Conditions**

The SCLBC does not make any representation regarding the presence or absence of hazardous materials or any other environmental conditions that may impact the value of the site, environmental liability or any future development thereon, however, the SCLBC will make available environmental reports as highlighted in the individual property description documents at www.suffolkcountylandbank.org . The SCLBC also encourages the proposer to request environmental reports from regulatory authorities such as the New York State Department of Environmental Conservation as may be appropriate.

Closing contingencies related to environmental conditions will not be permitted. The SCLBC requires that the Developer take the Site “as-is” and assume the obligation to remediate any environmental contamination, indemnify the SCLBC and the County for any claims that may be made against them in the future, and release the SCLBC and the County from any claims that Developer may have in the future arising out of the condition of the Site.

NYS Freedom of Information Law (FOIL)

All submissions for the SCLBC’s consideration will be held in confidence pending final execution of the contract(s) unless disclosure is required by law or judicial order. However, fully executed contracts are subject to the New York State Freedom of Information Law (FOIL), codified at Public Officers Law Article 6. Therefore, if a Proposer believes that any information in its submission constitutes a trade secret or is otherwise information which, if disclosed would cause substantial injury to the competitive position of the Proposer’s enterprise, and the Proposer wishes such information to be withheld if requested pursuant to FOIL, the Proposer shall submit with its Proposal a separate letter addressed to the primary contact referenced in this RFP, specifically identifying the page number(s), line(s) or other appropriate designation(s) of the Proposal containing such information, explaining in detail why such information is a trade secret or is other information which if disclosed would cause substantial injury to the competitive position of the Proposer’s enterprise, and formally requesting that such information be kept confidential. Failure by a Proposer to submit such a letter with its submission will constitute a waiver by the Proposer of any interest in seeking exemption of this information under Article 6 of the Public Officers’ Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Proposer may be subject to disclosure if it is requested and the SCLBC deems it subject to disclosure or if ordered by a court of competent jurisdiction. A request that an entire Proposal be kept confidential may not be considered reasonable since a submission cannot reasonably consist of all data exempt from FOIL.

Confidentiality/Nondisclosure

Proposers to this RFP, and their representatives and agents and consultants, shall treat their proposals, applications, and all information obtained from the SCLBC in connection with this RFP (the “Confidential Information”) confidentially, and shall not discuss, publish, divulge, disclose or allow to be disclosed the Confidential Information to the press or other media, without the SCLBC’s prior written approval. In addition, upon submission of a proposal or application to this RFP, proposers, and their representatives and agents and consultants shall not discuss, publish, divulge, disclose or allow to be disclosed the Confidential Information to any other proposers or any other person, firm or entity, including press or other media, without the SCLBC’s prior written approval. If either provision is breached by a respondent, the SCLBC may disqualify that respondent from the RFP as non-compliant and

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seek any other remedy available at law or in equity, including but not limited to injunctive relief and/or damages.

Other Terms and Conditions

Your submission of the qualification statement is deemed to be consent to the following:

- This RFP is not intended, and shall not be construed, to commit SCLBC to pay any costs incurred in connection with responding to this RFP or to procure or contract for any services or disposition of real property or interest thereof.
- The contract will be subject to final contract negotiations.
- All costs incurred by you in connection with responding to this RFP shall be borne solely by you.
- As a preliminary step, each Proposal will be examined to determine whether it is responsive to the requirements of the RFP. After such preliminary review, all responsive proposals will be evaluated.
- SCLBC reserves the right (in its sole judgment) to reject for any reason any and all responses and components thereof.
- All proposals shall become the property of SCLBC and will not be returned.
- All proposals will be made available to the public in accordance with law.
- SCLBC reserves the right to conduct in-person interviews of any, or all, proposers.
- Neither SCLBC, nor its respective staff, consultants, or advisors shall be liable for any claims or damages arising out of or in connection with the solicitation or preparation of the proposal.
- The award of any contract will be made as judged to be in the best interest of the SCLBC and Suffolk County.

Reservation of Rights

The SCLBC expressly reserves the right to:

- Reject or cancel any or all proposals or any part thereof submitted in response to this RFP;
- Withdraw the RFP at any time, at the SCLBC's sole discretion;
- Disqualify any Proposer whose conduct and/or Proposal fails to conform to the requirements of the RFP;
- Disqualify any Proposer with a family or business relation to the current or former owner of the site being proposed;
- Use Proposal information obtained through site visits, management interviews, and the SCLBC's investigation of a Proposer's qualifications, experience, ability or financial standing, and any

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material or information submitted by the Proposer in response to the SCLBC's request for clarifying information in the course of evaluation and/or selection under this RFP;

- Prior to submission due date, amend the RFP specifications to correct errors, or oversights, or to supply additional information as shall become available;
- Prior to submission due date, direct Proposers to submit Proposal modifications addressing subsequent RFP amendments;
- Change any of the dates concerning the RFP award schedule;
- Eliminate any mandatory, not-material specification that cannot be complied with by all of the prospective Proposers;
- Waive any requirements that are not material;
- Award negotiated contracts to one or more Proposers;
- Negotiate with the successful Proposer(s) within the scope of the RFP, in the best interest of the SCLBC;
- Conduct contract negotiations with the next responsible Proposer should the SCLBC be unsuccessful in negotiations with the selected Proposer;
- Require clarification at any time during the RFP process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a proposal and/or to determine a Proposer's compliance with the requirements of the RFP.

SECTION 5
CONTRACT REQUIREMENTS AND MODEL AGREEMENT

Any contract or agreement pursuant to this RFP will be subject to approval via duly adopted resolution of the SCLBC Board of Directors. Any transfer of tax lien to the Suffolk County Landbank will be subject to approval via duly adopted resolution of the Suffolk County Legislature.

Although specific contract terms may vary depending on end use, environmental condition, and other specifics of the approved proposal, contracts will generally require the following broad terms:

- Assignment of tax lien from the Suffolk County Landbank to the successful proposer
- Successful proposer to, within 30 days, perfect its lien interest and obtain fee simple absolute title to the Premises utilizing Suffolk County Treasurer’s administrative process pursuant to Suffolk County Tax Act §53
- Successful proposer to agree to undertake remediation activities with oversight from NYSDEC and/or Suffolk County (if remediation is needed on the site) within a definitive timeframe
- Enforcement measures to ensure contract compliance, including, but not limited to a performance bond or letter of credit in the amount of the estimated remediation cost on the property.

Included below is a model agreement provided for informational purposes only. The actual agreement provided to the developer may include different provisions depending on the site and development being proposed.

PURCHASE, SALES AND DEVELOPMENT AGREEMENT

THIS PURCHASE SALES AND DEVELOPMENT AGREEMENT (this “Agreement”), dated _____, is made by and between SUFFOLK COUNTY LANDBANK CORPORATION, a New York not-for-profit corporation with its principal place of business located at H. Lee Dennison Building, 2nd Floor, 100 Veterans Memorial Highway, Hauppauge, New York 11788 (“SELLER”), and _____, a _____ corporation with its principal place of business located at _____ (“BUYER”).

WHEREAS, pursuant to and in accordance with the Suffolk County Tax Act, the County of Suffolk (“County”) has assigned its interest in certain Tax Lien Certificates to the Suffolk County Landbank Corporation. Said Tax Lien Certificates are more particularly described in EXHIBIT A attached hereto (“Tax Lien Certificates”); and

WHEREAS, SELLER is a land bank not-for-profit corporation established in accordance with Article 16 of New York State Not-For-Profit Corporation Law that is empowered to acquire such Tax Lien Certificates from the County and to take discretionary action with regard to vacant, abandoned, tax-delinquent and/or tax-foreclosed properties that could not otherwise be disposed of and to facilitate the return of such properties to productive use; and

WHEREAS, SELLER issued a Request for Proposals (“RFP”), attached as EXHIBIT B, seeking a qualified organization to acquire, remediate and re-develop the vacant, abandoned tax-delinquent and/or tax-foreclosed properties that are encumbered by the Tax Lien Certificates as are more particularly described in EXHIBIT C attached hereto (the “Premises”); and

WHEREAS, BUYER in response to the RFP submitted a proposal attached hereto as EXHIBIT D (the “Proposal”) for the environmental remediation and re-development of the Premises, which was selected by SELLER; and

NOW, THEREFORE, in consideration of the representations herein made, the parties agree as follows:

1. Sufficiency of Funds. Upon full execution of this Agreement by the parties hereto and in reliance upon the BUYER’s promises to (i) purchase the Tax Lien Certificates on the Premises from SELLER and (ii) perform the Project, as defined below, BUYER shall deliver documents satisfactory to the SELLER evidencing a sufficiency of funds committed by BUYER to complete the Project.

2. Sale of Tax Lien Certificates. SELLER agrees to sell and BUYER agrees to purchase, subject to the terms and conditions of this Agreement, all rights, title and interest in and to certain liens or encumbrances on the Premise arising from unpaid tax, special ad valorem levy, special assessment or other charge imposed on the Premises that became a lien or encumbrance on the Premises, plus all interest, penalties, charges and surcharges imposed pursuant to law prior to the ___/___ tax year, as more particularly described on the attached Tax Lien Certificates.

3. Consideration. The total consideration is as follows:

A. Purchase Price. The Purchase Price is _____ (\$_____), payable as follows:

(i) Deposit. Ten percent (10%) of the Purchase Price shall be delivered to the SELLER together with this Agreement executed by BUYER as a good faith deposit (“Deposit”).

(ii) SELLER shall hold the Deposit until Closing (as defined herein) or termination of this Agreement as provided herein. The Deposit shall be applied as a credit to the Purchase Price at Closing.

B. At Closing the BUYER shall pay SELLER the Purchase Price less the Deposit by cashier’s check, certified check or wire transfer in the amount of \$ _____.

4. Closing. This Agreement shall be closed in the following manner:

A. Closing Date. The “Closing” shall be on or about _____. The Closing will take place at the SELLER’s offices or may be completed by delivery of executed closing documents by mail or overnight delivery service. In the event the BUYER is in default hereunder and the transaction does not close, as liquidated damages in full satisfaction of all claims for damages hereunder (i) SELLER shall retain the Deposit and (ii) BUYER shall also be responsible to SELLER for the costs incurred by SELLER to acquire the Tax Lien Certificates from the County.

B. SELLER’s Instruments. At or prior to the Closing, SELLER shall deliver to the BUYER a duly executed Assignment and Assumption Agreement, in a form acceptable to the Suffolk County Comptroller substantially similar to the form attached hereto as EXHIBIT E, assigning all rights, title and interest in the Tax Lien Certificates to BUYER (the “Assignment and Assumption Agreement”).

C. Costs. BUYER shall be responsible for all costs associated with state and local conveyance taxes and recording fees, if any.

D. “As Is.” BUYER shall accept the Premises in “as is” condition subject to all liens, encumbrances and any other conditions that a title examination and survey would indicate other than the tax liens represented by the Tax Lien Certificates in accordance with the Suffolk County Tax Act, any taxes that have accrued up to the date of the closing and, consistent with the terms and conditions contained herein and the policies and procedures of the SELLER, BUYER shall assume and undertake any and all liability and expense resulting from the presence of hazardous substances or pollutants of any kind in, on, or beneath the Premises, and/or removal or other remediation of any such hazardous substances or pollutants, except to the extent that the presence or release of any such hazardous substances or pollutants has resulted from or arisen out of actions of the SELLER, its employees, agents, or contractors.

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E. “Letter of Credit” or “Bond”. BUYER covenants, warrants and represents that it shall, at BUYER’s sole cost, expense and effort, at Closing, furnish an irrevocable letter of standby credit (the “Letter of Credit”) issued by a New York bank or bond “Bond” for the benefit of the Seller, to ensure that, in the event BUYER fails to undertake and/or complete the environmental remediation obligations to be undertaken herein and pursuant to EXHIBIT D, sufficient financial resources are available to complete the environmental remediation required on the property. The Letter of Credit or Bond shall remain in effect until a No Further Action letter or Certificate of Completion via a remedial program approved by the New York State Department of Environmental Conservation is provided to SELLER or a similar letter is issued by the New York State Department of Environmental Conservation. The Letter of Credit or Bond shall be in form and substance wording satisfactory to, and in an amount requested by SELLER, said amount not to exceed \$_____. Without limiting the generality of the foregoing sentence, the Letter of Credit shall be effective for a period of one (1) year, and shall renew annually as follows:

This Instrument shall be automatically extended for successive one (1) year periods from the present or any future expiration date unless you have received notice from us, in writing, not less than ninety (90) days before such expiration date, that we have elected not to extend the date of expiration. Our notice of such election shall be sent by Certified Mail, Return Receipt Requested, to your above address. Upon your receipt of any such notification, you shall have the right to draw against this Letter of Credit at any time prior to the expiration date without regard to a default under the agreement for which this Instrument was issued.

Such automatic renewals of the Letter of Credit or Bond shall continue until such time as BUYER has received a No Further Action Letter or Certificate of Completion via a remedial program approved by the New York State Department of Environmental Conservation, as provided to the SELLER, or a similar letter issued by New York State indicating that the Premises have been remediated. The expiration of the Letter of Credit or Bond prior to such time shall constitute a default under the Letter of Credit and under this Agreement.

5. Term. The term of this Agreement shall commence upon execution by both parties and shall terminate upon the later of (i) the date on which the Project is issued a certificate of occupancy for its intended use, (ii) the date on which the Project is issued a No Further Action letter or Certificate of Completion via a remedial program approved by the New York State Department of Environmental Conservation and (iii) the date on which the Total Purchase Price has been paid to SELLER.

6. Post-Closing Activities/BUYER’S Obligations and Covenants

A. Within thirty (30) calendar days from Closing, the BUYER covenants to perfect its lien interest by virtue of the Tax Lien Certificates and obtain fee simple absolute title

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to the Premises utilizing Suffolk County Comptroller's administrative process pursuant to Suffolk County Tax Act §53 (the "Deed").

B. BUYER covenants to have the deed to the Premises recorded in the Suffolk County Clerk's office and to hold and maintain the Premises in adherence to applicable laws and codes.

C. BUYER covenants to timely pay all taxes related to the Premises and the Project for as long as BUYER is the owner of the Premises and/or the Project for all taxes accruing after the BUYER receives the Deed duly filed in its name. This Paragraph C of Section 6 herein shall survive Termination.

D. BUYER covenants to not sell or otherwise convey the Premises until the terms and conditions of this Agreement have been fulfilled by the BUYER.

E. BUYER covenants to not knowingly sell or otherwise convey the Premises to any previous owners, tenants or potentially responsible parties defined under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). 42 U.S.C. §1906 et seq.

F. BUYER covenants to undertake the Project in substantial adherence to the schedule outlined in Exhibit D, but to begin no later than 30 days after BUYER takes title to the Premises to the extent no permits or municipal approvals create delay. The costs incurred by the BUYER in furtherance of the Project shall be 100% borne by the BUYER.

G. BUYER covenants to complete the environmental remediation of the Premises considering the use(s) to be made of the Premises to the satisfaction of the New York State Department of Environmental Conservation and shall obtain a Certificate of Completion or similar closure letter. Upon receipt, BUYER shall provide a copy of such certificate or letter to the SELLER.

H. BUYER covenants that it will use all commercially reasonable good-faith efforts to develop the Project consistent with the representations contained in the Proposal.

I. BUYER covenants that it will aim in good faith to complete the Project within 36 months, however it is duly acknowledged by the parties that delays may be occasioned by the nature and extent of environmental remediation, permitting, construction issues and government and/or municipal agencies over which BUYER has no control.

J. Upon five (5) business calendar day written notice to BUYER by SELLER, BUYER agrees to make all reasonable requests for records pertaining to the Project available for inspection by SELLER, including but not limited to the Project's financials.

K. Upon five (5) business calendar day written notice to BUYER by SELLER, BUYER agrees to make the Premises available for inspection by SELLER.

L. During the Term of this Agreement, the BUYER agrees to provide SELLER a report on the progress of the Project every 90 days (“Project Progress Report”) with the first Project Progress Report due 90 days after the Closing.

7. Failure to Perform.

A. If SELLER fails to perform as required under this Agreement, then BUYER may either (i) seek to enforce specific performance of SELLER’s obligations to execute the documents required to convey the Tax Lien Certificate to BUYER, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of SELLER hereunder, and BUYER expressly waives its rights to seek damages in the event of SELLER’s default hereunder; or (ii) terminate this Agreement and release SELLER from any and all liability hereunder upon return of the Deposit.

B. If BUYER fails to perfect its lien interest and obtain fee title to the Premises as set forth in Paragraph A of Section 6 above, this Agreement shall terminate and the Assignment and Assumption Agreement shall be null and void.

C. If BUYER fails to complete the Project as required under this Agreement or otherwise materially defaults hereunder, then the SELLER, in addition to any other remedies of law or contained in this Agreement, may (i) terminate this Agreement and release BUYER from any and all liability hereunder, (ii) seek to enforce specific performance of BUYER’s obligations hereunder, and (iii) draw on the Performance Bond for the completion of the environmental remediation component of the Project

8. Representations and Warranties.

A. SELLER represents and warrants that (i) it has the corporate power and authority to enter into and perform the transactions contemplated by and described in this Agreement, (ii) it has taken all necessary corporate action to authorize and approve the execution and delivery of this Agreement and the performance of its respective obligations hereunder, including without limitation obtaining the consent and approval of its Board of Directors, and (iii) this Agreement constitutes a valid and binding agreement of it, enforceable against it in accordance with the terms hereof, except to the extent that such enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles.

B. BUYER represents and warrants that (i) it has the requisite capacity and power to enter into and perform the transactions contemplated by and described in this Agreement, (ii) this Agreement constitutes a valid and binding agreement of BUYER, enforceable against it in accordance with the terms hereof, except to the extent that such enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles, (iii) the Project related activities of the BUYER will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, (iv) BUYER has not previously failed to perform in a prior transaction with the

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SELLER, and (v) the BUYER shall defend, indemnify and hold the SELLER harmless from any liability or expenses resulting from any failure by the BUYER to comply with the provisions of this subsection (B).

C. BUYER further represents and warrants that BUYER, its affiliates and owners: (i) individually or collectively is/are not the previous owner(s) of the Premises; (ii) have not engaged in fraudulent activity in connection with the sale of County-owned or Suffolk County Landbank Corporation owned property; (iii) have not lost real property through County tax foreclosure proceedings within the previous five (5) years; (iv) does not own property within Suffolk County for which taxes are not current; (v) have not had a sale cancelled for cause by Suffolk County within the previous three (3) years; (vi) have not been held in contempt of a court order for failure to abate code violations within the previous five (5) years; (vii) does not have unsatisfied judgments as a result of code enforcement actions in any town; (viii) does not own property within Suffolk County that is in violation of town codes; (ix) does not currently hold (or previously held) a position (employed or appointed) with Suffolk County, or Suffolk County Landbank Corporation employment, within the preceding two (2) year period; or (x) does not currently (or formerly) serve as an officer of a political party.

9. Non-Discrimination.

Each of the Parties, covenants and agrees, for itself and on behalf of each of its affiliates, successors and assigns, lessees, agents, contractors and subcontractors and every successor in interest to the Premises, or any part thereof, to be bound by the following covenants, which shall be binding for the benefit of the SELLER and enforceable by the SELLER to the fullest extent permitted by law and equity:

- A. Non-Discrimination in Employment and Affirmative Action. In connection with the performance of this Agreement there shall be no discrimination against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status, and the Parties will undertake or continue existing programs of affirmative action to ensure that women and minority group members are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation any of which shall be intended to overcome the effects of intentional or unintentional discrimination.
- B. Non-Discrimination in Services. No agreement, lease, conveyance, or other instrument concerning the Premises or any improvements erected or to be erected thereon, or any part thereof, shall have the effect of discrimination because of race, creed, national origin, sex, age, disability, sexual orientation, alienage, citizenship or marital status, nor utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, creed, national origin, sex, age, disability, sexual orientation, alienage, citizenship or

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marital status or have the effect of defeating or substantially impairing accomplishment of the objectives of the program in respect to individuals of a particular race, creed, national origin, sex, age, disability, sexual orientation, alienage, citizenship or marital status. Further, during the performance of this Agreement:

- (i) The Parties shall not, on the grounds of race, creed, color, national origin, sex, age disability, sexual orientation, military status or marital status:
 - a. deny any individual any services or other benefits provided pursuant to this Agreement; or
 - b. provide any services or other benefits to an individual that are different, or are provided in a different manner, from those provided to others pursuant to this Agreement; or
 - c. subject an individual to segregation or separate treatment in any matter related to the individual's receipt of any service(s) or other benefits provided pursuant to this Agreement; or
 - d. restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any services or other benefits provided pursuant to this Agreement; or
 - e. treat an individual differently from others in determining whether or not the individual satisfies any eligibility or other requirements or condition which individuals must meet in order to receive any aid, care, service(s) or other benefits provided pursuant to this Agreement.
- (ii) The Parties shall not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status, or have the effect of defeating or substantially impairing accomplishment of the objectives of this Agreement in respect to individuals of a particular race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status in determining:
 - a. the types of service(s) or other benefits to be provided; or
 - b. the class of individuals to whom, or the situations in which, such service(s) or other benefits will be provided; or
 - c. the class of individuals to be afforded an opportunity to receive service(s).

- C. The covenants of Paragraphs 10 (A) and (B), as applicable, shall be included in any agreement, lease, conveyance, or other instrument with respect to the sale, lease, or occupancy of the Premises or any improvements erected or to be erected thereon, or any part thereof.

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- D. Compliance with this Section 9 constitutes a material term of this Agreement, and that it is binding upon the Parties and their affiliates, successors, transferees, and assignees for the period of this Agreement. The Parties also agree that the Seller may, at its discretion, seek a court order requiring compliance with the terms of this Section 9 or seek other appropriate judicial relief.

10. License. Upon taking fee title to the Premises pursuant to Paragraph 3(B) above and in the event BUYER fails to undertake and/or complete the environmental remediation obligations to be undertaken herein and pursuant to Exhibit D, BUYER hereby authorizes SELLER to access the Premises in order to complete such environmental remediation. This license shall remain in effect until a No Further Action letter or Certificate of Completion via a remedial program approved by the New York State Department of Environmental Conservation is obtained for the Premises by either the BUYER or SELLER.

11. No Joint Venture Created. The parties hereto mutually agree that by entering into this Agreement the parties hereto are not entering into a joint venture.

12. Survival of Obligations. This Agreement shall survive beyond the Closing. All indemnities contained herein and inuring to the SELLER and its respective assigns shall survive any termination or expiration of this Agreement.

13. BUYER Indemnification of SELLER and Hold Harmless. Notwithstanding any other provision contained herein or within any other agreement by and among the parties hereto, the BUYER hereby releases the SELLER and its assigns from, agrees that the SELLER, and its assigns shall not be liable for, and agrees to indemnify, defend and hold the SELLER and its assigns and their executive director, officers, members, directors and employees, and their respective successors, assigns or personal representatives, harmless from and against any and all liability, damages, expenses, fees, penalties, actions, causes of action, suits, costs, claims or judgments of any kind or nature in connection with any act or omission of the BUYER related to the BUYER's performance or failure to perform under this Agreement. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the SELLER or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party to the extent that such an indemnity would be prohibited by law. The above-described indemnifications shall survive Termination.

14. Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, acts of God, war, insurrection, terrorism, material and/or labor shortages, municipal government time lags, natural disasters or epidemics proximate to the Project. As a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost

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due to any delay so caused. The party claiming the force majeure event shall at all times take all reasonable steps within its power to prevent Force Majeure Events affecting the performance of the obligations under this Agreement; mitigate the effect of any Force Majeure Event; and comply with its obligations under this Agreement.

15. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

16. No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

17. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between SELLER and BUYER relating to the subject matter hereof, and supersedes all prior understandings and agreements relating to the subject matter hereof. This Agreement may not be amended, modified, supplemented or otherwise altered, except by a writing signed by each party hereto. Any failure or delay on the part of either party hereto in exercising its respective rights shall not operate as a waiver of such rights, nor shall a single or partial exercise preclude any further exercise of any right, power or privilege by either party hereto.

18. Assignment. Neither party hereto may assign or transfer its respective rights or obligations arising under this Agreement without the prior written consent of the other. Notwithstanding the foregoing, this Agreement shall inure to the benefit of and be binding upon SELLER and BUYER and their respective heirs, beneficiaries, legal representatives, successors and assigns.

19. Notices. All notices given pursuant to this Agreement shall be in writing and shall be delivered by hand or sent by registered mail or certified mail, return receipt requested, postage prepaid, addressed to the party for whom it is intended at its address as set forth below. Such notice shall be deemed to have been given at the time of personal delivery or first attempted delivery at the address and in the manner provided herein. Unless changed in accordance with this section, the address for notices given pursuant to this Agreement shall be as follows:

For BUYER:

For SELLER:

Suffolk County Landbank Corporation

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H. Lee Dennison Building, 2nd Floor
100 Veterans Memorial Highway
Hauppauge, New York 11788
Attention: _____

20. Governing Law. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of New York.

21. Jurisdiction. The Supreme Court of New York State will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by a duly authorized representative as of the day and year first written above.

SELLER
SUFFOLK COUNTY LANDBANK CORPORATION

By: _____
Title: _____

BUYER

By: _____
Title: _____

MODEL AGREEMENT
NOT FOR EXECUTION

SUFFOLK COUNTY LANDBANK CORPORATION
TAX-DELINQUENT OPPORTUNITY SITE REQUEST FOR PROPOSALS – TERMS AND CONDITIONS

State of New York)
County of Suffolk) ss:

On the ___ day of July in the year 2016 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

State of New York)
County of Suffolk) ss:

On the ___ day of July in the year 2016 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MODEL AGREEMENT
NOT FOR EXECUTION

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EXHIBIT A
TAX LIEN CERTIFICATE(S)

MODEL AGREEMENT
NOT FOR EXECUTION

MODEL AGREEMENT
NOT FOR EXECUTION

EXHIBIT B
REQUEST FOR PROPOSALS

MODEL AGREEMENT
NOT FOR EXECUTION

MODEL AGREEMENT
NOT FOR EXECUTION

EXHIBIT C
LEGAL DESCRIPTION OF PREMISES

MODEL AGREEMENT
NOT FOR EXECUTION

**MODEL AGREEMENT
NOT FOR EXECUTION**

**EXHIBIT D
PROPOSAL SUBMITTED BY BUYER**

**MODEL AGREEMENT
NOT FOR EXECUTION**

EXHIBIT E
ASSIGNMENT AND ASSUMPTION AGREEMENT

MODEL AGREEMENT
NOT FOR EXECUTION

MODEL AGREEMENT
NOT FOR EXECUTION