

## **RFP issued for Harlem theater plan**

[Real Estate Weekly](#), [Oct 27, 2004](#)

Empire State Development Corp. and the Harlem Community Development Corp. have issued a request for proposal Empire State Development Corp. and the Harlem Community Development Corp. have issued a request for proposals (RFP) for redevelopment of the Victoria Theater at 235 W. 125th St., according to Empire State Development Chairman Charles A. Gargano.

The vacant Victoria Theater is a few doors from the Apollo Theater in Harlem. A copy of the RFP is available online at [www.nylovesbiz.com/rfp/victoria.htm](http://www.nylovesbiz.com/rfp/victoria.htm) or by calling 212-803-3609 or 212-803-3680.

"With the redevelopment of the Victoria Theater, our goal is to complement ongoing economic development activity along the 125th Street corridor, considered Harlem's entertainment and commercial hub, while finding a reuse for the property," Gargano said. "Whether preserving or adapting the site, a developer also should include a cultural or community component in the proposal."

Diane Phillpotts, president of Harlem Community Development Corp., a subsidiary of Empire State Development, said, "We are looking for a developer and proposal that will help to create jobs, showcase Harlem's assets and contribute to the economic vitality of the neighborhood."

The three-story theater, which includes approximately 43,000 square feet, is located in the Upper Manhattan Empowerment Zone. The theater, designed in 1917 as a Loew's Theater for vaudeville and movies, was converted into a multiplex movie theater with five theaters in the late 1980s. The building also has retail space and office space on the second and third floors.

## Empire State Development

### Press Office

(212) 803-3740

### FOR RELEASE: IMMEDIATE

10/12/2004

## GARGANO: DEVELOPER SOUGHT FOR VACANT VICTORIA THEATER

Empire State Development Corp. and the Harlem Community Development Corp. have issued a request for proposal

Empire State Development Corp. and the Harlem Community Development Corp. have issued a request for proposals (RFP) for redevelopment of the Victoria Theater at 235 W. 125<sup>th</sup> St., according to Empire State Development Chairman Charles A. Gargano.

The vacant Victoria Theater is a few doors from the Apollo Theater in Harlem. A copy of the RFP is available online at [www.nylovesbiz.com/rfp/victoria.htm](http://www.nylovesbiz.com/rfp/victoria.htm) or by calling 212-803-3609 or 212-803-3680.

"With the redevelopment of the Victoria Theater, our goal is to complement ongoing economic development activity along the 125<sup>th</sup> Street corridor, considered Harlem's entertainment and commercial hub, while finding a reuse for the property," Gargano said. "Whether preserving or adapting the site, a developer also should include a cultural or community component in the proposal."

Diane Phillpotts, president of Harlem Community Development Corp., a subsidiary of Empire State Development, said, "We are looking for a developer and proposal that will help to create jobs, showcase Harlem's assets and contribute to the economic vitality of the neighborhood."

The three-story theater, which includes approximately 43,000 square feet, is located in the Upper Manhattan Empowerment Zone. The theater, designed in 1917 as a Loew's Theater for vaudeville and movies, was converted into a multiplex movie theater with five theaters in the late 1980s. The building also has retail space and office space on the second and third floors.

The deadline for developers to submit a proposal for the theater property is Dec. 13.

###

## REQUEST FOR PROPOSALS

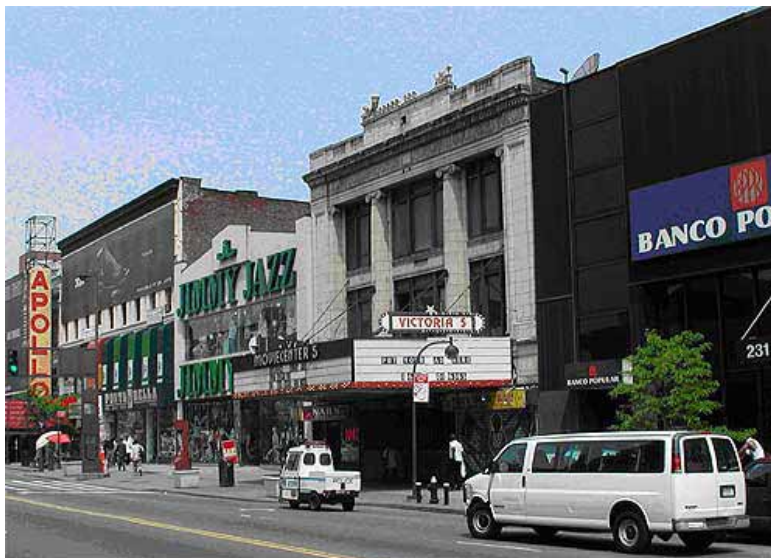
# VICTORIA THEATER

**235-237 WEST 125<sup>th</sup> STREET, NEW YORK, NEW YORK**

The Victoria Theater will be made available for additional site visits on November 9th and November 12, 2004 from 10AM to 1PM. Call Harlem CDC at 212-961-4100 to coordinate the visit.

### **October 26, 2004 meeting highlights:**

1. An information meeting was held on October 26, 2004 at the Apollo Theater, followed by a walk-through of the Victoria Theater. As a result of that meeting, we are posting these additions and/or amplifications to the RFP.
2. It was stressed that interesting proposals that will contribute to the street-life, cultural offerings and economic health of Harlem are greatly encouraged. Proposals must be able to withstand public scrutiny.
3. There were several previous redevelopment proposals; however, they did not succeed as a consequence of financial issues, not of the proposed program or building scheme. One project envisioned an overbuild, but structural studies, if they were done, are not available.
4. City-related issues, including zoning questions, should be addressed to the New York City Department of City Planning, whose contact name and telephone number are in the RFP.
5. As stated in the RFP, we will entertain proposals that envision either a lease or outright sale. If the site remains in State ownership, i.e., leased to the selected proposer, State procedures with respect to approvals, environmental review, including historic preservation issues, will have to be followed. A sale of the site to a private entity will put the Site under City aegis.
6. An existing conditions report is available from Francisco Guzman (212-961-4169) at HCDC for \$54.50. Copies of the eight (8) original Thomas Lamb drawings are available for at total of \$ 124.80 or \$15.60 each (note that these drawings cannot be published without permission from Columbia University). A set of seven (7) small drawing that shows the present condition (five theaters) costs \$12.60.



Addenda posted on [www.nylovesbiz.com/rfp/victoria.htm](http://www.nylovesbiz.com/rfp/victoria.htm)

## VICTORIA THEATER REQUEST FOR PROPOSALS

### I INTRODUCTION

### II GENERAL INFORMATION

- A. Project Goals
- B. Submission Due Date
- C. Information meeting/Site visit
- D. Clarifications and Addenda
- E. Review Process/Schedule
- F. Proposer Responsibilities
- G. Environmental Assessment/Historic Resources Issues
- H. Warranties and Representations

### III THE SITE

- A. Description
- B. Background
- C. Zoning

### IV SUBMISSION REQUIREMENTS

- A. Proposal
- B. Proposal Organization
  - Transaction Structure
  - Project Description
  - Drawings
  - Financing Plan
  - Development Schedule
  - Development Team Information
  - Zoning Calculation
  - Certification of Non-Collusion

### V EVALUATION /SELECTION CRITERIA

### VI TERMS AND CONDITIONS

- Not an offer
- General Conditions
- Taxes
- Permits and Approvals
- Expenses
- Brokers
- Affirmative Action

## EXHIBITS

- Exhibit A [Maps: A-1 Site Map; A-2 Neighborhood context; A-3 Zoning Map](#)
- Exhibit B [January 11 and April 30, 2002 letters from SHPO to ESDC](#)
- Exhibit C [Affidavit of Non-Collusion](#)
- Exhibit D [Existing Building Drawings](#)
- Exhibit E [Available Upper Manhattan Empowerment Zone \("UMEZ"\) Benefits](#)

## **I. INTRODUCTION**

The New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") and its subsidiary, the Harlem Community Development Corporation ("HCDC") (both the "Issuers"), in cooperation with the State of New York Mortgage Agency ("SONYMA"), the Upper Manhattan Empowerment Zone ("UMEZ"), and the City of New York (the "City") are seeking proposals for the disposition and development of the Victoria Theater (the "Site") at 233-237 West 125<sup>th</sup> Street, New York, New York. Located on the north side of West 125<sup>th</sup> Street between Adam Clayton Powell, Jr. and Frederick Douglass Boulevards, it is just a few doors east of the famed Apollo Theater.

The Issuers invite responses from proposers (each a "Proposer") to this Request for Proposals ("RFP") that provide a vision for this unique development opportunity: A vision that will complement and enhance this fabled thoroughfare in the heart of Harlem. The Issuers are committed to setting the stage for prompt and efficient development of the Site while taking into account the goals and needs of the local community and the benefits to New York City as a whole.

## **II. GENERAL INFORMATION**

### **A. Project Goals**

The goal of this RFP is the selection of a developer for the redevelopment of the Site in a manner satisfactory to the local community and the Issuers. To that end, Proposals should present a comprehensive, well-articulated program for the Site, complete with supporting documentation including design sketches, user commitments and local community support, that will:

Demonstrate how the Proposer's vision for the Site will create an economically viable destination that will complement recent economic development activity, create jobs, contribute to the vitality of the streetscape and retail environment, reinforce the 125<sup>th</sup> Street corridor, and enhance tourism;

Create and support a venue for local arts, entertainment and cultural uses;

Present a project of high-quality architectural design, sensitive to the surrounding area;

Consider preservation and/or adaptive reuse, to the extent practicable, of the Site in developing the program;

Provide an economic return to the public entities that have an interest in the Site; and

Present Proposer's experience, reputation and creditworthiness appropriate for the successful development of a project of this type.

### **B. Submission Due Date**

***Proposals must be received by 3:00 p.m., December 13, 2004, at the following address:***

Empire State Development Corporation  
633 Third Avenue  
New York, New York 10017  
Attention: Carol Berens or William H. Sherman

All Proposals must be submitted according to the instructions in Section IV, Submission Requirements, of this RFP. It is the sole responsibility of the Proposer to ensure that its Proposal is received before the submission

© 2006 EDMUND J. ENG., AD-ART AND GRAPHICS. PREPARED FOR PRIVATE PRESENTATION PURPOSES ONLY.

deadline. Proposers shall bear all risks associated with delays in mail, courier services or hand delivery. Proposals will not be publicly opened or publicly read.

### **C. Information Meeting/Site Visit**

An information meeting concerning this RFP will be held sometime in October, the time and date will be posted on the website, [www.nylovesbiz.com/rfp/victoria/htm](http://www.nylovesbiz.com/rfp/victoria/htm). The meeting will be followed by a walk-through of the Site. The Site will be made available by appointment through HCDC (Wayne Benjamin, (212) 961-4192) for more thorough inspection. Assessment of the Site's condition, including costs associated with its repairs, restoration or modification, are the sole responsibility of the Proposer.

Documents including existing conditions studies, project-related correspondence, drawings, etc. will be made available for reference at HCDC offices. Copies of these documents can be made at a cost of \$ 0.25 a page. To arrange to review the available documents, please contact Wayne Benjamin at (212) 961-4192.

To register for the information meeting please contact Carol Berens or William H. Sherman at (212) 803-3609 or (212) 803-3680, respectively.

### **D. Clarifications and Addenda**

All communications and requests for clarification with respect to this RFP must be submitted in writing by mail or fax to:

Empire State Development Corporation  
633 Third Avenue  
New York, New York 10017

Attention: Carol Berens/William H. Sherman  
Telephone: (212) 803-3609/212-803-3680  
Facsimile: (212) 803-3131

For HCDC information, please contact:

Wayne Benjamin  
Harlem Community Development Corporation  
163 W. 125<sup>th</sup> Street/17 Floor  
New York, New York 10027  
Telephone: (212) 961-4192

The Issuers may respond to these requests in their sole discretion. Responses to inquiries will be posted on the ESDC website for public viewing in the form of addenda at [www.nylovesbiz.com/rfp/victoria.htm](http://www.nylovesbiz.com/rfp/victoria.htm).

### **E. Review Process**

The Issuers shall 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 materials, clarification, confirmation, or modification of any submitted Proposal, including Proposals that are incomplete, or non-conforming as submitted. Except at the request or by the consent in writing of the Issuers (which consent shall be in the sole and absolute discretion of the Issuers), Proposers will not be entitled to change their Proposals once submitted unless requested to do so by the Issuers.

The Issuers intend to select a Proposer ("Preferred Proposer") whose Proposal most successfully fulfills the goals of this RFP, in their sole and absolute discretion,. The Issuers also reserve the right, at any time and in its sole and absolute discretion, to reject any or all Proposals, to withdraw the RFP without notice, to waive

compliance with and/or change any of the terms of this RFP, 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 Issuers may at any time exclude Proposals that, in its sole and absolute discretion, fail to demonstrate compliance with the Submission Requirements and goals set forth in this RFP. Issuance of this RFP does not obligate the Issuers to undertake any action.

#### Schedule

<u>Approximate Dates</u>	<u>Events</u>
September 2004	Issue RFP
October 2004	Information meeting/Site Visit
December 13, 2004	RFP responses due
March 2005	Selection of Preferred Proposer Environmental Review/Design Development & Review Contract Executed by Preferred Proposer
Spring 2006	Directors Authorization

#### **F. Proposer Responsibilities**

An assessment of the existing conditions, including utility access, underground conditions, environmental issues, structural integrity of the Site, as well as costs and issues relating to either its renovation or removal are the sole responsibility of the Proposer. Proposers are cautioned to verify independently any and all statements and facts contained in this RFP.

#### **G. Environmental Assessment and Historic Resources Issues**

An environmental assessment of the Preferred Proposer's proposed development and all related actions will be conducted according to the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation ("NYSDEC"). ESDC will be the lead agency for this review. The Preferred Proposer shall pay for all costs associated with conducting the required environmental studies.

The building has been determined to be eligible for listing on the National Register of Historic Places. In March 1985, prior to the conversion of the theater into a multiplex, the New York State Historic Preservation Office ("SHPO") required the main auditorium of the theater be documented prior to any conversion. Those drawings were submitted to the Historic American Building Survey ("HABS") on June 13, 1985 (Survey number HABS NY-6283; Call Number HABS, NY, 31-NEYO,109-) and can be accessed on the Library of Congress website.

The City Landmarks Preservation Commission has not calendared the building.

Any substantial change to the building will require consultation with SHPO to determine the effect of the change and the appropriate mitigation, if required. Exhibit B sets forth recent (2002) communications from

SHPO including its Resource Evaluation. Section III-B, Site Background, contains further information about the Site's history.

## **H. Warranties and Representations**

The Issuers intend to enter into an agreement with the Preferred Proposer. However, as stated elsewhere in this RFP, the Issuers reserve the right, without liability, to accept any or reject all Proposals submitted in response to this RFP and to develop the Site outside this solicitation process.

The Issuers make 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; site and environmental conditions; or the suitability of the Site for any specific uses or redevelopment. Proposers shall make their own analysis and evaluation of the income potential, profit potential and expenses of developing the Site; and Proposers shall not rely upon any statement or information given the Proposers including, without limitation, any information contained in this RFP. Proposers shall also make their own environmental investigation of the Site.

## **III. THE SITE**

### **A. Description**

The Site is located at 233-237 West 125<sup>th</sup> Street and 228-238 West 126<sup>th</sup> Street between Adam Clayton Powell, Jr. and Frederick Douglass Boulevards, identified as Block 1931, Lot 17 (Exhibit A-1). The frontage along the north side of 125<sup>th</sup> Street is 50 feet in length and on the south side of 126<sup>th</sup> Street, 150 feet in length. The total ground area of the Site is approximately 20,000 square feet, with the portion of the lot on 125<sup>th</sup> Street being approximately 5,000 square feet (50 feet wide by 100 feet deep). The Site is owned in fee simple by HCDC.

The 43,770-square-foot building consists of a 3-story entrance wing on 125<sup>th</sup> Street and movie theaters in the 126<sup>th</sup> Street wing. The 125<sup>th</sup> Street portion of the building contains a ticket booth, theater lobby, two (2) retail spaces of 700 square feet each and office space on the second and third floors. The northern portion of the Site contains five (5) movie theaters totaling 36,872 square feet. The theatres have been dark since 1997. The Site, with the exception of one retail space, has been vacant for over five years.

The Site is easily accessible by public transportation. It is one and one-half blocks from the #2 and #3 subway trains at 125<sup>th</sup> Street and Malcolm X Boulevard and one and one-half blocks from the A, B, C, and D subway trains at 125<sup>th</sup> and St. Nicholas Avenue (Exhibit A-2). Several bus routes pass by the Site.

Traditionally the commercial and entertainment heart of Harlem, 125<sup>th</sup> Street has recently seen increased cultural and retail activity. In addition to the nearby Apollo Theatre, Harlem USA, a 275,000 square foot shopping and entertainment center containing several nationally-known stores such as Nine West, Modell's Sporting Goods, Old Navy, NY Sports Club and a nine-screen Loews Magic Johnson movie theater complex opened in 2000. The Studio Museum in Harlem, located about one block east of the Site, was recently renovated. The renovation of the Dwyer Warehouse at 122<sup>nd</sup> Street and St. Nicholas Avenue, which will include a performance space, is scheduled to begin soon.

### **B. Background**

The Victoria Theater was designed in 1917 by Thomas W. Lamb, a notable and prolific theater architect of the era, for the Loew's Corporation. Starting in 1908, Lamb was responsible for creating the buildings of Loew's

chain of more than 300 theaters throughout the United States as well as England, Australia, India, South Africa and Egypt. In addition, he was the architect for numerous Broadway theaters in the Times Square area.

The Loew's Victoria Theater, as it was known until 1977, opened as a 2,394-seat, luxury vaudeville and motion picture theater. Typical of movie palaces of its era, it contained a stage and backstage dressing rooms and provisions for live music, including an organ. It cost \$250,000 to build and was hailed "as one of the largest and most beautiful theaters in greater N.Y." by a contemporary publication. According to the Historic American Buildings Survey, the 1910's and 1920's were the heyday of theater construction in New York City. When the Victoria was built, it joined many other Harlem theaters including the Proctor, Hammerstein Opera House, the Alhambra as well as the near-by Apollo, then the Hurtig & Seamon's New (Burlesque) Theater.

Loew's leased the land on which the Victoria Theater was located from Arthur Brisbane, and then later from his estate, among others. In 1977, the Harlem Urban Development Corporation, a precursor of HCDC, acquired the fee as well as the building.

The Victoria has experienced numerous changes since its opening, the most radical being its conversion to a multi-screen movie theater in the mid-1980's. In 1987, five movie theaters were created from the large auditorium, mezzanine and stage areas. That work was done under a Memorandum of Agreement signed by the City of New York, SHPO and the Advisory Council on Historic Preservation permitting certain work to be done. Also as a result of that agreement, a permanent record of the appearance of the main auditorium and lobby areas was created for HABS and filed with the Library of Congress, as indicated in Section G., Environmental Assessment and Historic Resources Issues.

### C. Zoning

The 125<sup>th</sup> Street portion of the Site is zoned C 4-7 and the 126<sup>th</sup> Street portion, C 4-4 (Exhibit A-3). The New York City Department of City Planning ("City Planning") is undertaking a long-range study of 125<sup>th</sup> Street to evaluate recent developments, traffic patterns, urban design issues, among other things, in order to improve and enhance the cultural offerings, streetscape and economic development potential of the thoroughfare. Although the study has not been finalized, City Planning is amenable to talking with potential Proposers about their Proposals. The Issuers can work with the Preferred Proposer and City Planning to facilitate changes to the Zoning Resolution that facilitate development.

For more information on the 125<sup>th</sup> Street study, Proposers can contact City Planning:

Nicole				Ogg
Department	of		City	Planning
22		Reade		Street
New	York,		NY	10007
212-720-3548				

[nogg@planning.nyc.gov](mailto:nogg@planning.nyc.gov)

The Site is within the Upper Manhattan Empowerment Zone ("UMEZ"), which was established by Federal and State law to provide certain "as of right" incentives for business development including Wage Tax Credits, Tax Exempt Bond Financing and Increased Section 179 Expensing. A list of UMEZ benefits are attached as Exhibit E. All Proposers are strongly advised to contact the UMEZ offices for further information.

Ms.		Hope		Knight
Upper	Manhattan		Empowerment	Zone
290		Lenox		Avenue

#### **IV. SUBMISSION REQUIREMENTS**

##### **A. Proposal**

Submissions must include one (1) bound and signed original and eight (8) bound copies of each Proposal, including all forms and attachments. Each Proposal must be signed by a representative of the Proposer authorized to bind the Proposer and must provide names, addresses and telephone numbers of individuals who have authority to bind the Proposer and who may be contacted during the period of Proposal evaluation.

##### **B. Proposal Organization**

The Proposal should be organized as follows:

###### ***Transaction Structure***

The Proposal should set forth the proposed transaction structure, i.e., lease, ground lease or purchase, specifying the financial structure of the deal, such as lease payments, purchase price, etc., to be expanded in the Financing Plan required below.

###### ***Project Description***

A description of the Proposal should include at least the following:

A description of the proposed use and/or program concept, including a detailed breakdown of the uses for the Site, including public areas and amenities.

Detailed description of public and cultural amenities and programs, including the provisions for their continual support throughout the life of the project. Identify potential cultural/arts group that will be part of the Proposer team.

Indicate whether demolition or renovation, or a combination of both, will be undertaken. If the building is proposed to be restored, indicate proposed preservation consultants and written narrative of design approach. If the building is proposed to be demolished (partially or completely), indicate design and economic rationale for doing so as well as proposed actions or design concepts to address the historic nature of the building.

Relationship of proposed project to the surrounding properties and neighborhood, including transportation, parking, infrastructure and streetscape

Estimate of square footage of uses

Brief marketing plan

Sustainable/renewable energy components, in compliance with Executive Order 111

###### ***Drawings***

The following drawings are to be provided in an appropriate scale and with as much detail as required to convey the Proposer's project's character and quality:

Site Plan showing proposed street amenities such as tree planting, public open space (if any), curb cuts and street walls

Ground floor plans indicating proposed type of uses at ground floor, entrances and building(s)

Massing diagram giving a clear indication of relationship of proposed buildings to surrounding buildings and neighborhood; include zoning chart, with assumptions

Proposal drawings may be presented in a public forum and/or exhibited in a public place at the Issuers' discretion.

### ***Financing Plan***

The financing plan should include the following:

Project budget--Breakdown of costs required to implement project including approvals, professional fees, construction (exterior, interior, fixtures and furniture), marketing, etc.

Sources, amounts, terms and conditions of financing and Proposer's equity consistent with the project budget. If financing is not completely in place (for project or one or more of its components), Proposal must provide letters of interest from financing sources. If necessary indicate status of fund-raising efforts and schedule .

Pro-forma cash-flow statements, with documentation of assumptions for a 15-year period

Evidence of financing consistent with project budget

Evidence of financial capacity of lenders and equity sources

Any Public funding assistance required

The Issuers may request Proposers to submit revised, updated or more detailed financing plan setting forth such information as they deem, in their sole discretion, helpful or relevant in evaluating the Proposer or any aspect of its Proposal.

### ***Development Schedule***

A detailed schedule from the execution date of an agreement through project occupancy must be provided. The development schedule should include, but not be limited to, the following:

Review and approval of design and construction documents (Issuers retain the right to review and approve design through all phases.)

Phasing plan, if applicable

Construction Commencement date/Substantial Completion date

Occupancy date

### ***Development Team Information***

Proposer must submit information regarding:

Description of Proposer and development team members including design team;

Description of development team structure and all relevant experience;

Identification of cultural/community/ arts component

Description of relevant financial information of the Proposer, including credit information, credit references, and proof of Proposer's ability to carry out the project. Provide audited financial statements or tax returns (for past three years) of key members of the development team

### ***Zoning Calculations***

Preliminary zoning analysis showing all calculations, including proposed use groups, required and proposed parking (if any), and identifying all required permits and authorizations. If a project is not as-of-right (i.e., in accordance with the New York City Zoning Resolution), Proposal must clearly indicate the proposed modifications/variances required as a contingency.

### ***Affidavit of Non-Collusion***

Proposers must submit a signed and notarized affidavit Exhibit C affirming that its Proposal was arrived at without collusion, consultation, communication or agreement for the purpose of restricting competition and that no attempt was made or will be made by Proposer to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

## **V. EVALUATION AND SELECTION CRITERIA**

The following selection criteria will be used to evaluate Proposals (these criteria are not listed in their order of priority):

Fulfillment of project goals; quality and sensitivity of design and compatibility with the neighborhood and immediate surroundings

Experience and capability of the Development Team and experience with projects of similar scale and complexity

Financial capability of the Proposer

Feasibility of the financing plan and realistic ability to complete project within proposed schedule and with the fewest financial contingencies

## **VI. TERMS AND CONDITIONS**

### **Not an Offer**

This RFP does not constitute an offer to enter into an Agreement. The Issuers 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 has been fully executed and unconditionally delivered by all the parties thereto and all necessary consents and approvals have been obtained.

### **General Conditions**

The following terms and conditions apply with respect to this RFP, and by responding to this RFP, the Proposer agrees to be bound thereby.

The Issuers reserve the unqualified right in their sole and absolute discretion to choose or reject any or all Proposals, to negotiate an Agreement with anyone submitting a Proposal, or to waive any informalities or irregularities. Issuance of this RFP does not obligate the Issuers to undertake any action. This RFP can be reissued, amended or withdrawn.

Neither the submission of a Proposal and any documents or other information, nor any correspondence, discussion, meetings, or other communications between a Proposer and the Issuers shall impose any obligation on the Issuers to include a Proposer in any further procedures which may be implemented prior to the designation of a Preferred Proposer. No such actions shall be deemed to impose any obligation whatsoever on the Issuers to select a Preferred Proposer, to discuss any Proposals, or to enter into negotiations with a Proposer.

Unless and until an Agreement is executed, the Issuers may withdraw from any discussion or negotiations with any Proposers, including the Preferred Proposer. The Issuers may consult references of any Proposer and each of the persons, firms, or entities forming part of the proposed development team. Submission of a Proposal shall constitute permission for the Issuers to make such inquiries and authorization to third parties to respond thereto.

The Issuers and its subsidiaries are State public benefit corporations and, as such, work and materials submitted to them are subject to the Freedom of Information Law ("FOIL"). If a Proposer must provide material of a confidential nature not intended for disclosure to third parties, the Proposer should clearly indicate the specific information it deems to be confidential by separating such material in an envelope marked "Confidential." The Issuers assume no responsibility for any loss or damage which may result from any determination requiring the disclosure of information pursuant to FOIL. The Issuers may use any information submitted in negotiating with any entity without assuming any liability whatsoever or paying any compensation.

No Proposer will be selected if, in the determination of the Issuers, any principal of the Proposer or any member of the Proposer's development team is in arrears or in default on any debt, contract, or obligation to or with the State, the City, ESDC, HCDC, or any of their respective affiliates, subsidiaries, agencies, or instrumentalities.

Proposers will be rejected 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 Issuers, to have been convicted of, or pled 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 Preferred Proposer may be required to complete a background questionnaire to verify that it is in full compliance with these requirements. Proposers are advised that there is no legal obligation on the part of the Issuers to sell the Site through a competitive bid process and that the Issuers reserve the right to use the Proposals submitted as a basis for negotiation with Proposers or other parties as deemed appropriate.

Neither ESDC or HCDC, nor any affiliate or subsidiary of any of the foregoing, shall incur any obligation or liability on account of any submission made in connection with this RFP.

## **Taxes**

The Site is currently exempt from property taxes. The current tax-exempt status ceases to exist upon its conveyance to a taxable entity. All assumptions regarding property taxes will be the responsibility of the Proposer.

## **Permits and Approvals**

The Preferred 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 all construction and ancillary approvals for the Site including, but not limited to all required building permits and approvals.

### **Expenses**

Each Proposer shall pay its own costs and expenses in connection with its responses to this RFP and any subsequent Agreement and the consummation thereof.

The Preferred Proposer shall be required to pay all ESDC's non-staff expenses including, but not limited to, any costs associated with outside consultants and attorneys, for work related to this project.

If for any reason the Issuers decide not to proceed with the project pursuant to this RFP or decides to dispose of the Site outside this solicitation process, they will not be liable for any costs and expenses associated with the preparation, clarification, submission, or negotiation of proposals submitted in response to this RFP.

### **Brokers**

Proposals shall be accepted from principals only. No brokerage fees, finder's fees, commissions, or other compensation will be payable by the Issuers in connection with the selection of the Preferred Proposer. 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 Issuers 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 an Agreement.

### **Affirmative Action**

The Issuers' Non-Discrimination policy and Affirmative Action program will apply in the disposition of the Site. The purchaser and every successor in interest to the Site shall not discriminate because of race, creed, color, national origin, ancestry, sex, age, disability or marital status in the sale, lease or rental or in the use or occupancy of the Site or any improvements erected or to be erected thereon or any part thereof. This covenant shall run with the land in perpetuity.

EXHIBIT C

**AFFIDAVIT OF NON-COLLUSION**

The undersigned, \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ hereby affirms that its proposal for the development of the Victoria Theater (the "Site") at 233-237 West 125<sup>th</sup> Street, New York, New York as further described in this Request for Proposals ("RFP") issued by the New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") and Harlem Community Development Corporation ("HCDC"), was arrived at without collusion, consultation, communication, or agreement with any other person, partnership, or corporate entity for the purpose of restricting competition. No attempt has been made or will be made by the undersigned to induce any other person, partnership or corporation to submit or not to submit a Proposal.

The undersigned hereby authorizes the Issuers to contact its banks and credit references and any other references identified in the attached Proposal in order to verify information provided therein.

\_\_\_\_\_

Signature

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_

Notary Public

## EXHIBIT E

Summary of  
Empowerment Zone Business (EZ Business)  
Tax Incentives

The Empowerment Zone offers a variety of tax incentives to encourage new and existing businesses to establish operations in the Empowerment Zone. To qualify for these incentives, a business must be an EZ Business as defined in the Internal Revenue Code. (Please refer to Internal Revenue Service Publication 954 for further information.)

Incentive	Explanation
Wage Credits	Provides a credit to employers who hire Empowerment Zone residents to work within the Empowerment Zone. Employers can receive a credit for 20% of an employee's salary, up to a maximum credit of \$3,000.
Expanded § 179 Deductions	Rather than deducting the cost of certain qualifying purchases over the life of the asset, EZ Businesses may claim up to \$35,000 of the property in the same year of purchase. Renovated property may qualify so long as, within 24 months of purchase, there have been substantial renovations of more than: <ul style="list-style-type: none"> <li>i. 100% of the adjusted basis at purchase, or</li> <li>ii. \$5,000.</li> </ul>
Rollover of Gain from Sale of Assets	EZ Businesses may qualify for a tax-free rollover of gains from the sale of certain qualifying empowerment zone assets. To qualify, a business must: <ul style="list-style-type: none"> <li>i. hold the asset for more than one year, and</li> <li>ii. have the sale generate a capital gain, and</li> <li>iii. purchase a replacement qualifying empowerment zone asset within 60 days of sale.</li> </ul>
Higher Exclusions for Gains from Small Business Stock	Taxpayers may be eligible to exclude from their income 60% of their gain from the sale of qualified Empowerment Zone small business stock held more than five years.
Tax-Exempt Bond Financing	The Empowerment Zone may approve tax-exempt bonds issued by the New York City IDA. These bonds are sold to investors, and the proceeds are used to make loans to EZ Businesses.