

**REQUEST FOR PROPOSALS FOR THE REDEVELOPMENT OF CERTAIN  
REAL PROPERTY LOCATED IN THE KIRBY AVENUE REDEVELOPMENT  
AREA IN THE BOROUGH OF SOMERVILLE IN SOMERSET COUNTY, NEW  
JERSEY**

**ISSUE DATE: August 6, 2008**

**DUE DATE: December 12, 2008**

**Issued by:**

**The Borough of Somerville  
25 West End Avenue  
Somerville, New Jersey 08876**

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## **LIST OF PROPOSAL FORMS**

- Form A-1 Proposer Information/Cover Letter
- Form A-3 Ownership Disclosure Statement
- Form A-4 Pay to Play Affidavit
- Form A-5 Non-Collusion Affidavit
- Form A-6 Consent to Investigation
- Form A-7 Acknowledgment of Receipt of Addenda
- Form A-2 not included in this package

## **ATTACHMENTS**

- Attachment One Kirby Avenue Area Redevelopment Zone Map
- Attachment Two Kirby Avenue Area Vision and Redevelopment Plan

## GLOSSARY

The following definitions shall apply to and are used in this Request for Qualification/Proposals. In addition, wherever used in the RFP documents, the following terms have the meaning indicated which are applicable to both the singular and plural thereof.

“Borough of Somerville” – means the Borough of Somerville, Somerset County, New Jersey, a municipal corporation of the State of New Jersey and the issuer of this Request for Proposal and the owner of some of the Redevelopment Properties.

“County” – means Somerset County, New Jersey.

“Day” – means a calendar day of twenty-four hours measured from midnight to the next midnight.

“Designated Contact Person” – means the individual(s) specified as the representative(s) of the Borough for all purposes of the RFP.

“Designated Proposer” - means any Proposer selected by the Borough to negotiate a Redevelopment Agreement for the all or part of the Redevelopment Area.

“Evaluation Criteria” – means the qualifications criteria described in Section 7 herein.

“Kirby Avenue Area Redevelopment & Vision Plan” – means the Borough’s Kirby Avenue Redevelopment Plan dated January 2008 and included as Attachment One.

“Proposal” – means the Proposal submitted by a Proposer in response to this RFP.

“Proposer/Respondent” – means the firm or individual who submits a Proposal in response to the RFP.

“Redevelopment Agreement” – means the contractual arrangement entered into between the Successful Proposer(s) and the Borough of Somerville to sell and undertake the redevelopment of properties located within the land pertaining to this Redevelopment Area.

“Redevelopment Area” – means the Kirby Avenue Redevelopment Area consisting of the Redevelopment Properties and more particularly described on Attachment One. The Borough Council designated the

Redevelopment Area as an area in need of redevelopment on July 17, 2006.

“Redevelopment Evaluation Committee or REC” - means the Borough Redevelopment Committee, Borough consultants and others responsible for the issuance and evaluation of this RFP.

“Redevelopment Law” – means the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

“Redevelopment Properties” – means the properties which are the subject of this Request for Proposals. These properties consist of a 26+/- acre area that are identified on the tax map of the Borough of Somerville as:

|          |           |
|----------|-----------|
| Block 1  | Lot 3     |
| Block 1  | Lots 4.01 |
| Block 1  | Lots 4.02 |
| Block 50 | Lots 1    |
| Block 50 | Lots 2    |
| Block 50 | Lot 3     |

“RFP” - means this Request for Proposals issued by the Borough, to solicit Proposals to undertake the redevelopment of the Redevelopment Area and to execute a Redevelopment Agreement with the Borough.

“Services” – means all of the duties, obligations, and services described herein that are to be provided by the Successful Proposer that are related to the development of the Redevelopment Area.

“State” – means the State of New Jersey.

“Successful Proposer(s)” – means the firm, individual, contractor or entity(s) selected by the Borough to execute a Redevelopment Agreement for the all or part of the Redevelopment Properties.

**(This notice supersedes any prior notice.)**

**NOTICE OF ISSUANCE OF A REQUEST FOR PROPOSALS FOR THE REDEVELOPMENT OF CERTAIN REAL PROPERTY LOCATED IN THE KIRBY AVENUE REDEVELOPMENT AREA IN THE BOROUGH OF SOMERVILLE IN SOMERSET COUNTY, NEW JERSEY**

Notice is hereby given that a Request for Proposals (“RFP”) has been issued by the Borough of Somerville (“Borough”) as of August 6, 2008. The Borough of Somerville is seeking proposals from qualified developers to redevelop the 26+/- acre Kirby Avenue Redevelopment Area made up of privately owned lands, into a vibrant Development consistent with the Kirby Avenue Area Redevelopment and Vision Plan (See Exhibit A) The Redevelopment Area is located in Somerville, New Jersey with frontage on Kirby Avenue and Fairview Avenue.

The Request for Proposals (“RFP”) may be examined at the Administrator’s Office, Municipal Building, 25 West End Avenue, New Jersey 08876. A copy may be obtained by prospective Proposers for a non-refundable handling fee of **\$75.00** payable to the “Borough of Somerville” during the weekday hours of 9:00am and 4:00 pm. The package will include a hard copy of the RFP and a CD version. Following receipt of the required fee and upon request, the RFP will be shipped overnight via Federal Express to the prospective Proposer.

The RFP sets forth relevant information regarding the area to be redeveloped, including applicable design standards and objectives, developer qualifications, proposal format and the process for developer selection.

A non-mandatory pre-submittal conference has been scheduled 9/5/08 at 10:30 am in the council meeting room of the Somerville Police Department, 24 South Bridge Street, Somerville New Jersey for the purpose of discussing the project.

For questions regarding the availability of the Request for Proposals (“RFP”) please contact:

Kevin Sluka  
Clerk/Administrator  
Borough of Somerville  
Municipal Building  
25 West End Avenue  
Somerville, NJ 08876  
Phone: (908) 725-2300

Qualifications and Proposals with a non-refundable application fee of **\$1000.00** must be submitted on or before 4:00 p.m. (prevailing time) on December 12, 2008 to:

Elia Pelios, Esq.  
c/o The Law Office of Kevin Kovacs  
PO Box 875  
10 East Cliff Street  
Somerville, NJ 08876

Application fee is to offset the Borough cost of professionals who will be reviewing proposals.

Proposals must be submitted in sealed envelopes or boxes. Proposers are advised to carefully review submission instructions contained in the RFP.

Pursuant to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.), the Borough will act as the redevelopment entity for the Redevelopment Area.

## SECTION 1

### INTRODUCTION AND BACKGROUND

#### 1.1 Introduction and Purpose.

##### 1.1.1 Introduction.

The Borough is issuing this Request for Proposals for the redevelopment of the Redevelopment Area by a qualified and experience private developer or consortium/joint venture of developers.

##### 1.1.2 Background; General.

In 2007, the Borough, conducted a comprehensive public visioning study for the area. The visioning study resulted in a Redevelopment and Vision Plan for the Redevelopment Area. The Redevelopment Plan incorporates the land use concepts, including design guidelines and open space requirements articulated in the Vision Plan. The Redevelopment Plan was adopted by the Borough Council on May 19, 2008 and any Proposal should comply with the requirements of the Redevelopment Plan.

The Kirby Avenue Redevelopment Area is defined as approximately 26+/- acres of land situated in Somerville, New Jersey (See Attachment One - Study Area Map). The area consists of six (6) contiguous lots known as and referred to herein as the Redevelopment Properties:

|          |           |
|----------|-----------|
| Block 1  | Lot 3     |
| Block 1  | Lots 4.01 |
| Block 1  | Lots 4.02 |
| Block 50 | Lots 1    |
| Block 50 | Lots 2    |
| Block 50 | Lot 3     |

The Redevelopment Area is bounded by, South Adamsville, Kirby Avenue, Fairview Avenue, Loeser Avenue and the NJ TRANSIT railway tracks.

##### 1.1.3 Property Ownership

|                  |                       |
|------------------|-----------------------|
| Block 1 Lot 3    | RJR Properties        |
| Block 1 Lot 4.01 | Kirby Avenue Realty.  |
| Block 1 Lot 4.02 | Mian Realty, LLC.     |
| Block 50 Lot 1   | Loeser Park, LLC.     |
| Block 50 Lot 2   | Truckform, Inc.       |
| Block 50 Lot 3   | Litgo New Jersey, Inc |

The Redevelopment Plan states; “the Redevelopment Plan does not propose the acquisition of any property through eminent domain at this time”.

The Redevelopment Plan encourages developers to acquire a proprietary interest in any property to be redeveloped. Proposals should include concept plans for the redevelopment of the total area, including detailed plans for acquisition of properties or details of how controlling interest in properties will be obtained.

#### **1.1.4 Existing Access/Traffic Circulation/Transportation**

Access to the Redevelopment Area is from Loeser Avenue to the west, South Adamsville Road to the east, and Fairview and Kirby Avenues to the north.

#### **1.1.5 Utilities and Existing Infrastructure**

Municipal water, sanitary sewer, storm water provisions, natural gas, electricity and voice and data transmission facilities are available adjacent to the Redevelopment Area. Each Proposer is responsible to independently confirm utility availability. Service providers are as follows:

Electric and Gas is provided by PSE&G

Sanitary Sewer is provided by the Raritan Valley Sewer Authority

Water supply is provided by New Jersey American Water Company

Voice and Data provided by Verizon and Cablevision

#### **1.1.6 Water**

There is an existing water system within the Redevelopment Area as all properties have had activity on site either current or in the recent past. Therefore, the design and construction of an updated water supply infrastructure will require coordination and approval of the appropriate governmental authorities, as well as the service provider. Such water supply infrastructure shall be designed and constructed to support the requirements for the build out of the Redevelopment Area in accordance with the Redevelopment Plan.

#### **1.1.7 Wastewater Facilities**

There is sanitary sewer collection system within the major portion of the Redevelopment Area. Therefore, the design and construction of an upgraded sanitary sewer collection infrastructure will require coordination and approval of the appropriate governmental authorities. Such infrastructure shall be designed and constructed to support the requirements for the build out of the Redevelopment Area in accordance with the Redevelopment Plan.

### **1.1.8 Storm Water Facilities**

There is an existing storm water management system within the Redevelopment Area in the existing street network and other improved areas. Therefore, the design and construction of an upgraded storm water management infrastructure will require coordination and approval of the appropriate governmental authorities. Such infrastructure shall be designed and constructed to support the requirements for the build out of the Redevelopment Area in accordance with the Redevelopment Plan. Consideration shall be given to the environmental constraints in the Redevelopment Area and the Borough's desire to encourage "green" development.

### **1.1.9 Electricity**

Electric service to the Redevelopment Area is provided by Public Service Electric and Gas Company (PSE&G). Service must be coordinated directly with the utility company.

### **1.1.10 Natural Gas**

Natural gas service to the Redevelopment Area is provided by Public Service Electric and Gas Company (PSE&G). Service must be coordinated directly with the utility company.

### **1.1.11 Other Transmission lines/pipelines**

The Borough is not aware of any transmission lines or pipelines within the Redevelopment Area, though this is subject to confirmation by title review of all Redevelopment Properties.

### **1.1.12 Voice and Data Transmission**

Voice, data transmission and cable television is provided by various vendors, including Verizon and Comcast.

### **1.1.13 Environmental Constraints**

There are no known environmental constraints other than those noted below in sections, 1.1.14.1 and 1.1.15.

### **1.1.14 Site Contamination**

With the exception of the Litgo site (Block 50, lot 3), environmental information regarding soil and/or groundwater contamination on each parcel is not currently available. Environmental information regarding the Litgo site is as follows:

#### **1.1.14.1 Litgo Site**

In the early 1980's hundred or thousands of 55 gallon drums were stored within buildings on the Litgo site (Block 50, lot 3). The drums contained hazardous and non-hazardous solids and liquids. Once local officials detected the drums, the NJDEP was notified and (the NJDEP) directly performed the cleanup of the facility. The NJDEP contracted an environmental contractor to perform the waste classification and subsequent disposal of the drums. Representatives from NJDEP directly oversaw the site work. In 1986, one of the buildings caught fire and the building burned to the ground. The remaining buildings were demolished in the late 1980's.

Shortly after NJDEP completed the cleanup of the site, a property transaction occurred which triggered ECRA (Environmental Cleanup Responsibility Act). NJDEP project number for this case is #E85647. The soil and groundwater investigation that ensued found soil and groundwater contamination at levels exceeding NJDEP standards. Soil remediation was conducted and groundwater remedial investigations to define the extent and source of the contamination were performed in the 1990's. NJDEP has issued a NFA (no further action status) for the soil and but is requiring additional groundwater investigation and remediation. The groundwater is contaminated with chlorinated solvents and volatile organics and two plumes exist. The plumes may involve multiple sources of contamination and active groundwater remediation (i.e. pump and treat) may be required by NJDEP.

It is envisioned that construction will require a vapor mitigation barrier be installed similar as used on buildings located in areas of high radon gas. The vapor barrier would prevent or safely channel as vapors originating from the contaminated groundwater away from the confined space of the building.

#### **1.1.15 Wetlands**

The entire Redevelopment Area is outside of the 100-year flood plain. In addition, based upon a cursory field investigation of the Redevelopment Area and review of available mapping (including NJDEP i-map) freshwater wetlands do not exist within the Redevelopment Area

### **1.3 Financial Incentives and Funding Programs**

The Borough understands that the financial impact of a project of this size and scope to the Successful Proposer is significant. Part of the evaluation criteria is the ability of the Proposers to finance such a project.

The State of New Jersey through various agencies has programs designed to assist in the redevelopment of urban areas, and brownfields. In addition, there are a number of other financing tools that have been utilized to support similar projects. The Borough will work with the Successful Proposer to secure grants and low interest loans to help offset some of the costs of this project. Some of the programs to be considered are, but not limited to:

Hazardous Site Discharge Remediation Fund (HDSRF) NJ DEP - The Borough can apply for grants from this fund to undertake additional detailed environmental remediation planning to assist the designated developer contain costs, once a site plan has been developed and approved.

Environmental Infrastructure Trust (EIT) NJDEP - Low interest loans, borrowers receive loans in two equal parts: Approximately one half to three quarters comes from a zero interest State Revolving Fund (SRF) maintained by the DEP. The other portion comes from proceeds of highly rated tax-exempt revenue bonds sold by the Trust. The combination of these two funding sources results in a loan that is 50 to 75% lower than traditional loan rates. The “Smart Growth Financing Program”, offers lower than traditional EIT loans for specific project elements that enhance the overall environmental quality of the project when complete.

Brownfield Reimbursement Program - NJ Department of Commerce/NJ Treasury Department - Eight state taxes, including sales, business use and corporate taxes are eligible to be used to reimburse the developer for remediation costs. The program also allows for the reimbursement of sales taxes associated with the purchase of building materials.

Five Year Tax Exemption (N.J.S.A. 40A:21-1 et seq.) and Abatement and Long Term Tax Exemption Laws (N.J.S.A. 40A:20-1 et seq.) – These laws permit the Borough to accept payments in lieu of taxes for improvements developed in accordance with the Redevelopment Plan and will be considered for use in the Redevelopment Area.

The Borough will consider other available programs when presented to them. Reference to the above referenced funds/programs does not constitute an affirmative duty of or commitment by the Borough to apply or a specific grant or to grant a particular abatement or exemption.

## SECTION 2

### THE VISION PLAN AND REDEVELOPMENT PLAN

#### **2.1.1 Introduction**

The Vision Plan is a detailed document, which reflects the community's expectations and visions for the redevelopment of the Redevelopment Area.

The Redevelopment Plan, prepared and adopted in accordance with the Redevelopment Law, is the articulation of the vision plan and defines the land use specifications, bulk standards and massing anticipated for this project.

#### **2.1.2 Relationship to Qualifications**

The Proposer's qualifications will be critical to the evaluation process. In broad terms, the Proposer must be able to demonstrate its financial soundness and ability to undertake a project of this size and duration. Additionally, proof of successful completion of projects of similar size and scope will be a decided advantage in the selection process. Should the Proposer consist of a "consortium or joint venture", the individual member companies of the consortium must be prepared to show qualifications, which in total meet the evaluation criteria.

#### **2.1.3 Relationship of Proposals to Vision Plan and Redevelopment Plan**

The Vision Plan and Redevelopment Plan articulate the various components of the project. The Plan requires new streets, and public spaces.

The Redevelopment Plan sets forth standards and guidelines for land use, circulation, open space, parking, and urban design. Some Plan elements are fixed, such as the location of certain new roads, other standards are flexible, and are to be used as a guideline for creating Proposals that meet the Plan's goals and objectives.

The Redevelopment Plan provides for a compact, walkable, moderate-density, and mixed-use area neighborhood enlivened by new residents. These areas will act as an extension of the surrounding neighborhoods.

A Redevelopment Plan is required to contain certain mandatory elements and allows for certain optional elements. Because of this, the Redevelopment Plan is more precise and prescriptive than the Vision Plan. The Redevelopment Plan is written to incorporate the major goals, objectives and concepts of the Vision Plan and Design Guidelines, but it allows greater flexibility in terms of street and building layout.

Proposers are encouraged to study the Redevelopment Plan and Vision Plan carefully and follow the suggested design and building configurations where possible. However, creative solutions in developing the character of the Redevelopment Area and solving the problems of street layout, parking, and building massing, are also encouraged.

#### **2.1.4 Project Elements**

The Redevelopment Plan aims to establish a mixed-use development with improvements to land use, circulation, open space, and community character that will enhance a largely underutilized and vacant portion of Somerville.

#### **2.1.5 Project Phasing**

Due to the size of the Redevelopment Area, considerations regarding environmental cleanup, and the fact that the existing road network does not reach interior areas of the site, it is acceptable for development to occur in phases.

It is anticipated that the extension of the street grid and the creation of any open space areas will be part of the first phase.

## SECTION 3.

### THE PROCUREMENT PROCESS

#### 3.1 Proposal Process

All communications concerning this RFP or the process in general shall be directed to Elia Pelios, Esq. c/o The Law Office of Kevin Kovacs at the address set forth below.

Other than as indicated above, firms or organizations interested in submitting a proposal in response to the RFP may not contact any Borough employees concerning the RFP. All communications are to be made to:

Elia Pelios, Esq. c/o The Law Office of Kevin Kovacs  
PO Box 875 10 East Cliff Street,  
Somerville, NJ 08876  
E-Mail: eliap@mac.com

Failure of a firm or organization to adhere to the foregoing may result in its disqualification from further participation in the RFP process.

**Proposals must be submitted to:**

**Elia Pelios, Esq. c/o The Law Office of Kevin Kovacs  
PO Box 875 10 East Cliff Street, Somerville, NJ 08876 ., on or before 5:00  
p.m. December 12, 2008.**

**NO COPIES SHALL BE SENT TO ANY OTHER PERSON.**

Proposers must submit an original and ten (10) copies of their proposal.

Proposals forwarded by facsimile or electronic transmission will not be accepted. The information contained in the Proposals will be held in confidence to the extent possible. Any agreements entered into between the Borough and a Successful Proposer will become a public document upon execution.

The Borough will conduct a non-mandatory, pre-submittal conference, and site tour on September 5, 2008. Please refer to Section 4.1.1 of this RFP for additional information regarding this conference.

### **3.2 Schedule.**

The Proposal process commences upon the issuance of this RFP. The remaining steps involved in the process, and the relevant dates, are set forth below. The Borough reserve the rights to, among other things, amend, modify, or alter the schedule set forth herein upon notice to all Proposers. The Borough may modify, supplement, or amend the provisions of this RFP, its Appendices or other relevant documents by issuing addenda to all entities that received the RFP.

#### **SCHEDULE**

| <b>ACTIVITY</b>                                                              | <b>DATE</b> |
|------------------------------------------------------------------------------|-------------|
| 1. Issuance of Request for Proposal                                          | 8/6/08      |
| 2. Non-Mandatory Pre-Submittal Conference                                    | 9/5/08      |
| 3. Receipt of Proposals                                                      | 12/12/08    |
| 4. Selection of Proposer(s)                                                  | 2/27/09     |
| 5. Designation of selected Proposer(s) by Borough                            | 3/16/09     |
| 6. Borough completes negotiation and approval of the Redevelopment Agreement | 7/31/09     |

### **3.3 Selection of Proposer, Notification, Negotiation and Agreement**

Once the Borough, has selected a proposal, the Successful Proposer will be notified of its selection. The Borough will formally designate the Successful Proposer as conditional redeveloper of the Redevelopment Area and begin negotiations on a Redevelopment Agreement.

The Selected Developer shall also be required to enter into a Redevelopment Agreement with the Borough. Execution of a Redevelopment Agreement as contemplated by the terms of this RFP is expressly conditioned upon the satisfaction of the terms and conditions set forth in this RFP, and approval by the Borough Council, acting as the redevelopment entity of the Borough. The Borough shall not be liable to any Proposer if the Borough Council, acting as the redevelopment entity for the Borough does not approve and authorize execution of a Redevelopment Agreement, notwithstanding completion of the process described in this RFP. The Redevelopment Agreement shall be negotiated in accordance with the Redevelopment Law and shall contain provisions as described in more detail in Section 7, herein.

### **3.4 General RFP Conditions**

Respondents to this RFP bear the responsibility of informing themselves of the requirements of the Borough and bear the responsibility of adhering to the requirements of this RFP. By responding to this RFP, a Respondent acknowledges and consents to the following conditions relative to the submission, review and consideration of its Proposal:

- a. The issuance of this RFP is not intended, and shall not be construed, to commit the Borough execute any agreements.
- b. The issuance of this RFP is not intended, nor shall be construed, to form any joint venture between the Borough and any Respondent to this RFP.
- c. Neither the Borough nor any of their officials, servants, employees, agents or consultants will be liable for any claims or damages resulting from the Borough's solicitation or collection of Proposals, nor will any respondent receive reimbursement from those parties for the cost of preparing the Proposal or for participating in the RFP process.
- d. All Proposals become the property of the Borough and will not be returned.
- e. A Respondent's failure to submit a Proposal that completely addresses the requirements of this RFP (including submittal of all documents required to be submitted under the terms of this RFP) at the times and in the manner

specified in this RFP may result in the Borough rejecting the Proposal in their sole discretion.

f. All activities related to the preparation of this RFP and to the performance of the Selected Proposer's obligations as a result of selection are subject to compliance with all applicable federal, state and local laws, environmental regulations and requirements, including the provisions of the New Jersey Law Against Discrimination.

g. The Borough, may return, unopened, any and all Proposals that the Borough has not received prior to the deadline for submission and may not consider such Proposals.

h. The RFP process is not intended for the benefit of Proposers and no rights are intended to be granted to Proposers by virtue of this solicitation or by virtue of any submission by any such Proposer.

i. The Borough reserves the right to amend or cancel this RFP at any time prior to execution of the MOU, developer agreement, Redeveloper Agreement or related documents. The Borough will not be responsible for the risks and costs that Proposers incur as a result of such an amendment or cancellation.

j. The Borough reserves the right to waive any irregularities in the completion of the forms and papers enclosed in the Proposals, to accept or reject any or all Proposals, and to re-advertise for Proposals.

**SECTION 4**  
**INSTRUCTIONS**  
**FOR SUBMISSION OF PROPOSALS**

**4.1 General Provisions.**

**4.1.1 Optional Pre-Submittal Conference.** On 9/5/08, an optional pre-submittal conference will be conducted, commencing at 10:30 a.m. at the Borough Council Meeting Room located at Police Headquarters, 24 South Bridge Street Somerville. Proposers must RSVP if attending a pre-submittal conference. Proposers may RSVP and obtain directions by telephoning Elia Pelios c/o The Law Office of Kevin Kovacs PO Box 875 10 East Cliff Street Somerville, NJ 08876

The purpose of this conference is to discuss the redevelopment of the Redevelopment Area and to clarify any issues regarding the RFP process. **This conference is not mandatory for Proposers interested in submitting a Proposal in response to the RFP, but it is strongly recommended.**

**4.1.2 Designated Contact Person.** All questions, requests for exceptions, clarifications, or modifications to this RFP must be submitted in writing marked "Personal and Confidential" either via facsimile, mail or e-mail to

Elia Pelios, Esq.  
c/o The Law Office of Kevin Kovacs  
PO Box 875  
10 East Cliff Street  
Somerville, NJ 08876  
Telephone, 908-526-7111  
E-mail, eliap@mac.com

**4.1.3 Clarifications to the RFP.** All such written questions and/or requests for clarifications shall be submitted no later than 11/7/08. All written questions which are received on or prior to this date will be considered. Questions and responses will be issued as addenda to this RFP and will be mailed to each known potential Proposer on or prior to 11/28/08

No oral interpretation, instruction or information concerning this RFP given by any employee or agent of the Borough (including Elia Pelios, Esq.), shall be binding on the Borough, and Proposers relying on such oral information risk having their Proposals deemed unresponsive by the Borough. The Borough will not be responsible for any explanation or interpretation of the RFP, unless such explanation or interpretation of the RFP is in accordance with the procedures outlined in this RFP.

**4.1.4 Addenda or Amendments to the RFP.** During the period provided for the preparation of Proposals, the Borough may issue addenda or amendments to this RFP. These addenda will be numbered consecutively and will be distributed to each potential Proposer. These addenda will be issued by, or on behalf of, the Borough, and will constitute a part of the RFP. Each Proposer is required to acknowledge receipt of all addenda at the time of submission of the Proposals by submitting an executed acknowledgment thereof as set forth in Proposal Form A-8. Such acknowledgment shall govern not only additions, which may be bound in and attached to the RFP at the same time that the RFP is delivered, but also all addenda, which may be distributed prior to the date established for submission of the Proposals. All responses to this RFP shall be prepared with full consideration of the addenda issued prior to the Proposal submittal date.

**4.1.5 Disclosure of Information in Proposals.** Prior to the negotiation phase of the RFP process, the Borough will review each Proposal submitted in response to this RFP in such a manner as to avoid disclosure of the contents of any Proposal to Proposers submitting competing Proposals. In conducting negotiations with Proposers, the Borough will not disclose information derived from Proposals submitted by competing Proposers.

In addition, if a Proposer chooses to include material of a proprietary nature in the Proposal, then the Borough will keep such material confidential to the extent permitted by applicable law. The Proposer must specifically identify each section of its Proposal that contains such information (referred to as the "marked data") by properly marking the applicable pages. Preferably, any sections which contain material of a proprietary nature shall be severable or removable from the Proposals to assist the Borough in protecting this information. Proposers who include such proprietary information in their Proposals shall also include the following notice in the Executive Summary of the Proposal:

"The data on pages \_\_\_ identified by \_\_\_ (symbol) and labeled 'Proprietary Information', contains information that is a trade secret and/or which, if disclosed, would cause substantial injury to (Proposers) competitive position. (Proposer) requests that such data be used only for the evaluation of the Proposal, and understands that disclosure will be limited only to the extent that the Borough determines it proper and to the extent that the Borough deems disclosure necessary under the provisions of applicable law. If a contract is awarded to (Proposer), the Borough will have the right to use or disclose the data as provided in the contracts."

The Borough will use its best efforts to prevent the unauthorized disclosure of this information in applying the proprietary standard to marked data. However, the Borough will assume no liability for any loss, damage, or injury which may result from any disclosure or use of marked data or any disclosure of this or other

information during the review of the Proposals or the procurement process generally.

**4.1.6 Withdrawal.** A Proposer may withdraw a Proposal prior to the date and time set for the opening of the Proposals provided that a written request to withdraw the Proposal is hand delivered to Elia Pelios, Esq, by or on behalf of an authorized representative of the Proposer, or is delivered by certified U.S. mail prior to the time set for the opening of the Proposals, 5:00 p.m., prevailing time, on **December 12, 2008**. Once the opening of Proposals has commenced, Proposers may not withdraw their Proposals.

**4.1.7 Disposal.** Unless withdrawn in accordance with Section 4.1.6 all Proposals shall become the property of the Borough and will not be returned. At the conclusion of the procurement process, the Borough may dispose of any and all copies of Proposals received in an appropriate manner. However, prior to such disposal, the Borough will use its best efforts to prevent the unauthorized disclosure of proprietary information, provided same is properly identified in accordance with this RFP. In no event will the Borough assume liability for any loss, damage or injury which may result from any disclosure or use of marked data or other information contained in the Proposals.

## **4.2 Submission Requirements.**

**4.2.1 Proposal Submission.** One (1) copy of the Proposal documents must be clearly marked as the original and must contain the original signature forms, guarantees and other original documents and delivered to the Designated Contact Person. The remaining ten (10) copies of the Proposal may be reproductions. Proposers shall number each set of documents sequentially on the upper right hand corner of each cover.

All Proposals submitted will be dated and time-stamped by Designated Contact Person upon receipt but will remain unopened until the deadline for submission of Proposals has passed. At such time, all Proposals received will be opened and distributed to the Borough for review. Any Proposals received after the specified deadline will be marked "received late" and will be returned to the Proposer unopened.

The delivery of the Proposal to Designated Contact Person on or before the above date and prior to the time specified herein is solely and strictly the responsibility of the Proposer. Neither the Designated Contact Person, the Borough shall under any circumstances be responsible for delays caused by the United States Postal Service or any private delivery service, or for delays caused by any other occurrence.

**4.2.2 Cover Letter and Signature Requirements.** Together with each Proposal, a Proposer must submit one (1) original cover letter on the official

letterhead of the Proposer (Proposal Form A-1) acknowledging, among other things, that the Proposer has completely reviewed, and understands and agrees to be bound by, the requirements of this RFP and, that such letter commits the Proposer, if selected, to implementing the Proposal. Such cover letter must further state that (a) all information submitted in support of the Proposal is accurate and factual, (b) all representations made regarding the Proposers willingness to undertake the obligations set forth in the Proposal Forms, and the Proposers concurrence with the proposed business arrangements set forth therein are true, (c) the Proposal is provided fairly, without collusion or fraud, and (d) that the Proposer will, if chosen as the Proposer, carry out the obligations set forth in the Redevelopment Agreement . Finally, the cover letter must designate a contact person for receipt of all communications to and from the Borough with respect to this RFP. The letter must also designate the individuals who will be the Proposers key technical and business negotiators and who shall be available to respond in a timely fashion to inquiries submitted by the Borough or their consultants.

If the Proposal is being submitted by a joint venture or "team" of more than one Proposer, the cover letter must list the joint venture or "team" members and must designate a contact person for the joint venture or "team".

The cover letter must be signed by an officer of the Proposer who is empowered to sign such material and to commit the Proposer to the obligations contained in the Proposal. A certificate attesting to such authorization must be attached to the cover letter. If the Proposer is a partnership, the Proposal shall be signed in the name of each firm by one or more of the general partners. If the Proposer is a corporation, the authorized officer shall sign his/her name and his/her title beneath the full corporate name. The Proposal shall also bear the seal of the corporation. If the Proposer is a joint venture, the Proposal shall be signed by all of the joint venture partners or by one or more of such joint venture partners as are expressly authorized to execute such Proposal on behalf of the joint venture. Anyone signing the Proposal as agent must submit (with the Proposal) legal evidence of his or her authorization to execute the Proposal.

All forms which require signatures of the Proposer shall be signed by the same individual(s) signing the cover letter (Proposal Form A-1).

**4.2.3 Proposal Forms.** The Proposal Forms contained in this RFP specifically enumerate the requirements set forth herein. All Proposal Forms shall be submitted with each Proposal as part of the Executive Summary. Data from these forms will be used in the Proposal evaluation, and will be incorporated in the Redevelopment Agreement.

Each Proposer must fill out all of the forms completely. Use "N/A" to specify any items set forth in the Proposal Forms which are not applicable to a Proposer. It should be noted however, that the failure to fully complete all applicable Proposal

Forms by incorrectly providing that certain Proposal Forms (or portions thereof) are not applicable to a Proposer may result in a determination that the Proposal is non-responsive. To provide additional information, use separate sheets following the Proposal form format.

In cases the dollar amount of a Proposers written offer is not the same as the numeric amount of the offer, the written offer will govern. If a discrepancy exists between totals and itemized breakdowns, the higher dollar amount will prevail.

**4.2.4 Completeness.** The instructions set forth in this RFP must be followed in order for a Proposal to be responsive to the RFP. In all cases, the Borough reserves the right to determine, in its sole discretion, whether any aspect of a Proposal meets the submission requirements of the RFP. The Borough reserves the right to reject any Proposal which, in their sole judgment, does not comply with the Proposal submission guidelines.

**SECTION 5**  
**INSTRUCTIONS**  
**FOR PREPARATION OF PROPOSAL**

**5.1 Content and Form of Proposal Response.**

A Respondent should submit its Proposal in the format below, using dividing tabs that correspond to the outline below:

**Tab    Criteria**

- I.    Cover Letter – Use Proposal Form A-1
- II.   Executive Summary (maximum three pages)
- III.  Proposal
  - A.   Development Team
    - 1.   Team Composition, Structure, Roles
    - 2.   Financial Qualifications of Team
    - 3.   Experience of Team (including Case Study)
  - B.   Concept Plan
    - 1.   Narrative
    - 2.   Visuals (Site Plans, Elevations)
  - C.   Project Feasibility
    - 1.   Marketing Plan
    - 2.   Development Budget
    - 3.   Financing Plan
    - 4.   Project Schedule
    - 5.   Pro Forma Project Schedule
  - D.   Economic Proposal
    - 1.   Summary of Economic Benefits
- IV.  All Completed Procurement Forms

### **5.1.1 Section II: Executive Summary.**

**5.1.1.1 General Provisions.** Proposers should synthesize the information contained in all other parts of the Proposal with particular emphasis on the Proposers financial condition and its experience with similar projects. The Executive Summary should be drafted so that it may be easily understood by persons not having a property development, legal or financial background and should include summary information found in the Financial Information Section. The Executive Summary shall be limited to three (3) pages.

### **5.1.2 Section III: Proposal.**

#### **Part A – Development Team**

#### **1. Development Team Composition, Structure, Roles**

- a. Provide a description of the developer and ownership entity (i.e., partnership, sole owner, corporation, limited-liability corporation, joint venture etc.).
- b. Describe the contemplated development team structure, including design and other professionals.
- c. Provide an organizational chart.
- d. Identify key individuals and their associated firms responsible for major functions to be performed relative to designing, building, managing and operating the project.
- e. Describe the proposed property ownership and management structure for the development, including staffing and key personnel during development and operation, affirmative action plan, and community relations and outreach program.
- f. Describe past projects on which the team worked, and the official role of team members on those projects.

#### **2. Financial Qualifications of Team**

**To be deemed responsive to this RFP, the Proposer shall provide fully executed Proposal Forms and all financial data requested and described herein.**

**a. General.** For purposes of this Section 5, "Proposer" shall mean either (a) the firm submitting the Proposal, or (b) the Proposers parent corporation or other related entity, including the Guarantor, or (c) if the Proposal is submitted on

behalf of multiple parties (i.e. a joint venture, partnership or other similar organization or entity comprised of more than one participant), the firm or entity designated in the Proposal for such purpose from among the firms or entities participating in the Proposal. In completing Proposal Form A-1, the Proposer shall clearly identify which firm or entity will be responsible for complying with the provisions of this Section 5. The Borough will review and evaluate the financial statements of only the firm or entity designated.

**b. Required Financial Information.** Each Proposal must include the following:

(i) A copy of Proposers most recent Form 10-K filed with the U.S. Securities and Exchange Commission ("SEC") and all 10-Q's since the last 10-K or, if a Form 10-K is not filed with the SEC, (i) financial statements for the past three fiscal years, including, at a minimum, income statements, balance sheets, statements of changes in financial position, notes to financial statements, and the reports of certified public accountants, and (ii) copies of the latest quarterly financial reports. Such financial statements shall be prepared by a certified public accountant. A governmental entity submitting a proposal must provide its last three years audited budget.

If a Proposer submits the combined financial statements of two (2) or more commonly owned (but otherwise unrelated) business entities, such combined financial statements must be prepared and presented in accordance with GAAP. In that event, such Proposer shall also submit evidence (in form and content reasonably satisfactory to the Borough) of the legal power of the majority owner to legally bind and commit such unrelated business entities to performance of (or the guarantee of) the obligations of the Proposer.

Where a Proposer is a subsidiary company whose financial statements are reported on a consolidated basis with the parent company's financial statements, and the financial statements of the subsidiary are not separately prepared, the Proposer must submit the financial statements of the reporting parent, including the notes and supplemental information attached and all supplemental information relating to the subsidiary which is included. Financial statements of the parent and all information contained therein relating to the subsidiary Proposer must be submitted in order to determine if the subsidiary Proposer constitutes a "material subsidiary" of the parent company. The Borough's Review Team will review the financial statements of the parent company (including the supplemental information relating to the subsidiary) to determine if such financial statements can be considered to be the equivalent of financial statements of the subsidiary so as to comply with the requirements of this RFP.

In the event that the financial statements prepared on behalf of the parent company are determined (based upon the above-described review) not to be the

equivalent of financial statements of the subsidiary Proposer, the subsidiary Proposer may nonetheless utilize such financial statements for purposes of the RFP if the parent company agrees to guarantee the performance of the subsidiary Proposer under the terms of the Redevelopment Agreement.

In such event, the parent company shall be required to execute a Guarantor Agreement in the form set forth in Proposal Form A-8. If the Proposer qualifies through the financial qualifications of its parent and the Guarantor Agreement will be required to be submitted as part of the RFP, the terms of the Redevelopment Agreement will be conformed to include appropriate provisions relating to the Guarantor.

(ii) A copy of the latest annual report, if any.

(iii) Full information shall be provided concerning any material changes in the mode of conducting business, bankruptcy proceedings, and mergers or acquisitions within the past three years, including comparable information for related companies and principals of companies, and any actual, threatened or pending litigation which may have a material adverse impact on the Proposers ability to perform pursuant to its proposal.

(iv) Copies of the latest prospectus or offering statements for financing in which the Proposer has been a financial participant.

(v) If the Proposal is submitted by an existing partnership and/or joint venture, provide full information concerning the nature and structure of the partnership and/or joint venture, including:

- (1) An executed copy of the partnership and/or joint venture contract;
- (2) The date of the creation and expiration of the joint venture or partnership;
- (3) The name of the entity that will be guaranteeing contract performance; and
- (4) A statement as to whether the members comprising the partnership or joint venture are jointly and severally liable for the partnership's or joint ventures contractual obligations.

(vi) If the Proposal is submitted by firms that intend to form a partnership or joint venture, the Proposal shall describe (1) the nature and structure of the proposed partnership or joint venture, (2) the entity or entities that will be guaranteeing performance of the contract, (3) 10 days after selection, the

creation and expiration of the partnership or joint venture and (4) whether the proposed partnership or joint venture contract will provide for joint and several liability for the contractual obligations of the members of the partnership or joint venture.

(vii) A description of any claims or litigation in excess of \$500,000 threatened, pending or completed within the last five (5) years, or any governmental investigation against the Proposer or any principal, joint venture or partnership or any of their officers related to any facility or business activity owned, managed or operated by the Proposer within the last five (5) years.

(viii) A statement as to whether any officer, principal or partner in the past five (5) years has been an officer, principal or partner in an organization found by a court of competent jurisdiction to have failed to perform any material contractual obligations relating to the purchase or development of real property.

(ix) Executed authorization to the Borough to perform the appropriate credit and background investigations concerning the Proposer.

### **C. Historical Information.**

(i) Proposer shall have been in the business of mixed use property development for at least five years, or shall demonstrate equivalent experience. Proposer shall identify when it was organized, and if it is a corporation, where incorporated and how many years it has been engaged in providing equivalent experience under that name.

(ii) Proposer shall state whether it has ever been terminated for cause on any contract in which it undertook development or redevelopment of real property. Respondents are required to comply with the State of New Jersey, Division of Revenue, Business Registration Certificate requirements (P.L. 2004, c.57). Respondents shall not engage in the performance of any work, unless the firm and any of its subcontractors or vendors are registered with the New Jersey Department of Labor and Department of Treasury, Division of Revenue, as required. The Business Registration Certificate must be submitted prior to award for the developer and any potential subcontractors.

### **3. Experience of Team (including Case Study)**

Provide information that clearly demonstrates that the development team has the experience to design, secure governmental approvals for, build, market, and operate the development that you propose.

In addition, submit one case study showing proven success in the development of a mixed-use project, completed within the past 10 years, on a complex site that met or exceeded the financial expectations of its owners and/or investors

and met or exceeded municipal design guidelines. Therefore, the case study should address the following questions in describing a successful project that the Proposer has developed.

- a. What is the completed project that you are describing (name, location, size, type of uses, etc.)?
- b. What private and/or public entities participated in the project? What was the legal and financial relationship between your firm and the public entity?
- c. What was your firm's financial role in the development project? What stake did your firm have in its financial performance? Were you an equity partner, and at what level? How has the project performed financially?
- d. What were the major challenges of the project, e.g., difficult natural or structural features of the site, environmental conditions, operational requirements, historic-preservation requirements, zoning, design guidelines, economic conditions, market changes, regulatory reviews, municipal approvals, community sentiment, security requirements, changes in the property owner's/site occupants' business operations, etc. -- and how did you address them? How did the project evolve from the original concept plans to completion?
- e. What additional information about the project would give Somerville a sense of your ability to address the characteristics of the redevelopment area?
- f. Please provide a list of at least two references (including at least one public-entity representative, if applicable) who can speak about your direct involvement in the completed project.

## **Part B – Concept Plan**

### **1. Project Narrative**

In narrative fashion, describe the proposed development, including the:

- developer's approach to development,
- conceptual framework, including a detailed description of proposed facilities, including types and sizes of building(s), building materials and architectural treatments, ancillary facilities and amenities (e.g., open space, artwork) proposed,
- proposed mix of uses and density for the overall project, including a general description of planned building densities, including building massing, heights, affordable housing and open spaces,

- Means by which the development addresses the principles of smart growth.
- Sustainable – Means by which developers will implement sustainable development
  - Why this development will be a unique, interesting place and achieve success
  - Special components such as artwork, green space

## **2. Visual Depiction of Project**

Please supplement the project narrative by providing illustrations (e.g., aerial photos, maps, site plans, massing plans, elevations, line drawings, artists' renderings, etc.) that clearly explain the location and appearance of the proposed improvements. Models are *not* required for the initial response to the RFP. During the evaluation phase, the Borough may decide to ask those Proposers who fall within a competitive range to submit models.

## **Part C - Project Feasibility**

### **1. Marketing Study**

Provide an analysis of the market for various uses of the Redevelopment Area, including, but not limited to, commercial, cultural, entertainment, hospitality, office, residential and retail uses. Provide timely information as to the feasibility of any potential development opportunities. Take into consideration such factors as the regional and local business climate, Site characteristics, location and access, market competition, the labor market and community desires.

Quantify the potential market for all identified potential land uses within the Redevelopment Area. Identify the amount, timing, density, configuration and supportable lease rates or sales price for each alternative. Analysis will include general real-estate market trends.

Include an estimate of rental rates per square foot by respective types of commercial floor space and the anticipated rental/purchase prices of completed units.

### **2. Development Budget and Sources and Uses of Funds**

Submit a total development budget for the project that describes, in detail, all hard and soft costs, including, but not limited to, construction costs, demolition, and infrastructure costs, design, engineering, consultant and legal fees, development fees, permit fees, financing transaction fees, interest, reserves and commissions. Data must be cross-referenced with the pro forma (Paragraph 5 below) to fully explain how the data were derived.

Submit a detailed statement of sources and uses of funds for the project. This information should be cross-referenced with the pro forma cash flow statement (Paragraph 5 below).

### **3. Financing Plan**

Describe how each project component will be financed, including assumptions for the amount of equity committed and debt required, sources of project funds and financing, source and strength of payment and performance guarantees, the anticipated preferred return, and payments to the Borough. In addition, specify anticipated pre-regulatory-approval costs and the dollar limit of respondent's responsibility for those costs. Please describe the assumptions used in determining the amount of the private debt including interest rates, amortization schedules, and debt service coverage ratio requirements. This should be cross-referenced with the pro forma cash flow statement. (Paragraph 5 below).

Respondents may determine that it is in their best interests to utilize various types of public and/or public-private financial options, including tax-exempt financing and direct grants, as well as other programs, including, but not limited to those identified in Section 1.3 of this RFP. These options may be available at the federal, state, county and/or local levels through Somerville, Somerset County, the New Jersey Economic Development Authority, New Jersey Housing and Mortgage Financing Agency and other agencies. If the respondent decides to use such financing, it should identify them and describe them as part of the economic pro forma (see below). For information regarding such financing through the NJEDA, respondents may contact NJEDA Customer Care, New Jersey Economic Development Authority, P.O. Box 990, 36 West State Street, Trenton, NJ 08625, at 609-777-4898. For information regarding such financing through the NJHMFA, respondents may contact the agency at 637 South Clinton Avenue, P.O. Box 18550, Trenton, NJ 08650-2085 or 609-278-7400.

### **4. Project Schedule**

Provide a project completion schedule for the full development of the Site from developer selection to issuance of certificate of occupancy for the final component of the development. Identify each component or building that will be constructed, time intervals for approvals, marketing, construction and placing into revenue service. Specifically identify important trigger dates or hurdles that control the development progression. Illustrate phasing of the project.

### **5. Pro Forma Cash Flow Statement**

Provide a *pro forma* cash flow statement for each project component with documentation of assumptions for the development period and for an operating

period of 10 years. Recognizing that different components of the project may go into service at different times, provide a 25-year *pro forma* that specifies the estimated dates on which various components go into revenue service. Include an elaboration of all operating assumptions. Include payments to the Borough and rateables to the Borough. For the purpose of stating, the Borough's return and real estate taxes or payments in lieu of taxes to Somerville, assume that all project components are sold in Year 10 of the *pro forma*. Include a "total" column that shows cumulative totals for appropriate items.

Include annual gross revenue, total development costs, absorption analysis, operations costs, net revenue, financing enhancements (e.g., tax abatements and payments in lieu of taxes) and cash flow. The analysis also should consider financing options, ownership structures and revenue-sharing options.

Respondents should specify what financing, if any, they will seek from various government entities for infrastructure improvements related to the project. The amounts must be included in the *pro forma*. Respondents should assume paying prevailing wage rates for all labor required for construction.

Provide your assumptions regarding revenue, amounts, terms and conditions of financing, and the developer's equity; and a breakdown of uses of funds, including an itemized list of all costs associated with the improvements of the Site. Please note any assumptions necessary for clearly understanding the *pro forma*. Prepare the *pro forma* as a self-explaining document capable of being understood without reference to additional material. Financial *pro forma* data shall be submitted in electronic format on CD ROM and shall include formulae so that the submitted information can be effectively evaluated. All financial spreadsheets shall be submitted in a format compatible with Microsoft Excel 2003; also, 10 hard copies of the financial *pro forma* data shall be provided.

## **Part D - Economic Proposal**

### **1. Economic Return to the Borough of Somerville**

Proposers shall prepare and submit with the Proposal a fiscal impact analysis, which should provide a preliminary assessment of the anticipated economic, demographic and financial implications related to the redevelopment of the Redevelopment Properties.

This should include expected employment during both construction and built out stages with payroll and disposable expenditure included.

Proposers should address the economic benefits that the Borough of Somerville will receive in the form of property taxes or payments in lieu of taxes, if the Proposer is requesting consideration of same.

## SECTION 6

### EVALUATION CRITERIA

#### 6.1 General.

**THIS SECTION OF THE RFP DESCRIBES SOME OF THE CRITERIA THAT WILL BE USED BY THE BOROUGH TO EVALUATE PROPOSALS. THE BOROUGH WILL NOT BE BOUND TO RELY ONLY UPON THE CRITERIA SET FORTH IN THIS SECTION OF THE RFP NOR UPON ANY SPECIFIC CRITERIA THEREIN.**

The objective of the Borough in seeking responses to the RFP is to enable it to select a developer who they deem best able to effect the redevelopment of the Redevelopment Area consistent with the Redevelopment Plan and the Vision Plan of the Borough. The Borough will consider only the responses of Proposers that have demonstrated the capability and willingness to redevelop the Redevelopment Area consistent with the Redevelopment Plan and the Vision Plan of the Borough.

The Borough will establish a Project Team of professionals to assist it in evaluating the responses to the RFP and to make recommendations as to the ability of each Proposer to address the Borough's requirements concerning the redevelopment of Redevelopment Area. The Borough may select one (1) or more of the Proposers as Designated Proposers for the purpose of conducting negotiations with respect to the redevelopment of all the Redevelopment Area.

#### 6.2 Evaluation Criteria

##### 6.2.1 Procedure

Upon receipt of proposals The Borough will provide a copy of the response to each member of a Redevelopment Evaluation Committee ("REC"). Duties of the REC will include:

- Review and evaluation of written proposals,
- Participation at and evaluation of oral presentations, and
- Recommending selection of a developer.

The REC, with representatives from The Borough of Somerville, Somerset County, AND Borough professionals will review, evaluate and rate the written proposals based on the quality and substance of the proposal. The REC may solicit and share reference information (whether supplied by the respondent or others) and may obtain and share technical advice from The Borough of Somerville staff and/or consultants concerning any proposal, respondent, technology or financial arrangement and incorporate this information into the

evaluation. The REC will evaluate proposals against the criteria enumerated below, in items A-F, in descending order of importance.

### **6.2.2 Evaluation Criteria**

#### **A. Experience of Team (including Case Study)**

- Demonstrated success in designing, constructing, leasing and managing a mixed-use development project similar in scope to the project.

#### **B. Concept Plan**

- Extent to which the proposed development promotes the project goals described in – **The Vision Plan and Redevelopment Plan**.

#### **C. Economic Proposal**

- Economic benefit to The Borough of Somerville

#### **D. Project Feasibility**

- Feasibility of implementing the proposed development in its entirety (design, construction and leasing).

#### **E. Financial Qualifications of Team**

- Financial strength of the respondent.

#### **F. Project References -- Not Ranked**

- The REC may perform reference checks of the respondent's firms and personnel. The REC will use the reference-check information to confirm the REC's understanding of the respondent's qualifications and experience.

### **6.2.3 Interviews (Optional)**

The Borough reserve the right to meet with Proposers at any time to discuss details of their proposal and/or to request written clarification or additional details necessary to clearly understand the proposal. The REC may consider all such additional, supplemental, or clarifying information as part of its evaluation of proposals. The Borough may require oral presentations from those Proposers within a competitive range, or the Borough at its discretion, may waive oral presentations. Oral presentations, if necessary, will provide an opportunity for

the respondent to clarify or elaborate on its proposal. If the REC deems oral presentations necessary, the REC will use the oral presentations to further inform its understanding of the proposals, will reevaluate the proposals based on the totality of information provided and will develop a new competitive range.

#### **6.2.4 Further Discussions and Evaluation**

The Borough will enter into further discussions with all Respondents that they deem to be in the competitive range. All elements of each proposal are subject to negotiation. In written or oral discussions with these Respondents, the Borough will make and receive offers and counteroffers until satisfactory Proposals are received. The Borough at this point may request best and final offers (BAFOs) from all firms in the competitive range but reserves the right to select a developer based upon the original submission and results of oral interviews, if necessary, prior to negotiations. Should the Borough request a BAFO, the REC may reassess all BAFOs received, using the original evaluation criteria, to reflect proposal clarifications, modifications or adjustments made by respondents as a result of negotiations. This final evaluation will form the basis of an award recommendation.

#### **6.2.5 Evaluation Synopsis**

- The Redevelopment Evaluation Committee (REC) evaluates initial written proposals.
- The REC may request clarification of proposals at any time.
- The REC identifies Proposers whose written proposal places the respondent within a competitive range and, the REC, if advisable, schedules oral interviews. If oral presentations are not required, the REC may invite those Proposers within a competitive range to participate in discussions and negotiations.
- The REC may request clarification of proposals.
- If the REC requires oral presentations, the REC may invite those Proposers whose combined written proposal places the respondent within a competitive range to participate in discussions and negotiations.
- The REC re-evaluates proposals as a result of discussions and negotiations, if any.
- The REC selects the Proposer who offers the most advantageous proposal to the Borough and makes recommendation to Borough Council.

## SECTION 7

### CONTRACTUAL ARRANGEMENTS

#### 7.1 General Terms and Conditions of the Redevelopment Agreement.

Following successful negotiations with a Successful Proposer, the Borough, and the Proposer will enter into a Redevelopment Agreement,

**No Proposer will be permitted to enter the Redevelopment Properties to conduct due diligence without the prior written authorization of the Borough and/or property owner.**

The following provisions are anticipated to be included in a Redevelopment Agreement between the Borough and the Successful Proposer. The Redevelopment Law requires specific provisions to be included in every redevelopment agreement. The provisions set forth herein are not inclusive of all provisions that can/will be included in a redevelopment agreement and are provided for informational purposes only. Each redevelopment project has its own “unique” issues that may require the inclusion of specific provisions in the redevelopment agreement. Additional terms and conditions are likely to arise during the review process and negotiations with the Successful Proposer.

#### Redevelopment Law Mandatory Provisions

- The redeveloper must agree to construct the uses specified in the redevelopment plan.
- The agreement must include a date or schedule by which construction of improvements will commence and be completed.
- The redeveloper shall not sell, lease, or transfer all or any part of the development rights to a redevelopment area or redevelopment project without the consent of the redevelopment entity.
- A certificate of completion must be issued by the redevelopment entity upon its determination that a redevelopment project is completed.

#### Standard or Typical Provisions

- A project description and list of improvements to be constructed by the redeveloper in furtherance of the project;
- A due diligence period for the redeveloper to conduct studies on the condition of redevelopment properties for redevelopment i.e. environmental, geo-technical, title, etc.;
- Procedures for acquisition and/or control of redevelopment properties;
- An outline and schedule for obtaining governmental approvals necessary to construct the project;
- Identification and allocation of liability for any environmental remediation

- necessary for redevelopment project properties;
- Requirement for proof of project impacts in the form of traffic and economic impact reports;
- Terms for project oversight including the designation of a “project team” and the requirement for status reports and progress meetings;
- A “force majeure” clause that protects the redeveloper should an unanticipated and/or uncontrollable event occur;
- A reverter clause that transfers property back to the original owner in the event that the redeveloper defaults under the agreement;
- A stipulation to provide offsite improvements, development fees or other contributions to the redevelopment entity, including meeting the affordable housing requirements as outlined in the Redevelopment Plan;
- Financial guarantees of performance by the redeveloper to ensure that the project is completed or that other obligations of the redeveloper are met;
- The availability/requirement for tax abatements, tax increment financing or other public funding;
- Indemnification provisions whereby a redeveloper holds the redevelopment entity harmless for errors or omissions of the redeveloper related to the project;
- Insurance requirements for the redeveloper;
- Rights of a redeveloper to pursue mortgage financing;
- Provisions for the redeveloper’s reimbursement of costs incurred by a municipality or redevelopment entity in implementing the plan;
- Requirements for affirmative action, job training, and other similar assistance to the neighborhood or community;
- Default and termination clauses that specify remedies if a redeveloper or redevelopment entity fails to meet its obligation under the terms of the agreement;
- Terms for dispute resolution and arbitration;
- Any other covenant or provision required by or deemed necessary to effectuate the purposes of LRHL.

## **B. Insurance**

The Selected Proposer must procure and maintain upon occupancy of the property the following types of insurance, as the developer agreement will describe in detail: commercial general liability insurance, automobile liability insurance, fire insurance and extended coverage (builder’s risk) insurance, workers compensation insurance, contractor’s public liability and property damage insurance, professional liability insurance, and all-risk insurance for the improvements on the Redevelopment Area.

### **C. Indemnification**

The Selected Proposer must agree to defend, indemnify and hold harmless the Borough of Somerville, their respective agents, officials, officers or employees from any and all claims brought against them for any reason whatsoever, regardless of the developer's fault, including but not limited to claims of negligence, personal injury or property damage noise.

### **D. Non-Discrimination/Affirmative Action**

The Borough will require the Selected Proposer to be an equal opportunity employer. In keeping with this policy, the Selected Proposer will recruit, hire, train and promote into all of the developer's job levels the most qualified persons without regard to age, race, creed, religion, color, national origin, sex, or affectional or sexual orientation. Similarly, the developer will continue to administer all other personnel matters (such as compensation, benefits, transfers, lay-offs and training) in accordance with the requirements of federal, state and local law. In addition, the developer will use its reasonable efforts to recruit well-qualified minorities for its work force, and the developer's representatives will meet, where appropriate, with the Borough from time to time to identify appropriate techniques for such recruitment. The developer shall also ensure that each of its construction contractors or subcontractors are also equal opportunity employers and that they extend the same policies as set forth in this section to their respective personnel.

**7.3 Assistance to Proposers.** Proposers will be solely responsible for commissions or other incentives required by any person or entity assisting them in any way in connection with a Proposal in response to this RFP, in the negotiations of a Redevelopment Agreement, the purchase or lease of any Redevelopment Properties and the redevelopment of the Redevelopment Area. Under no circumstance, will the Borough offer financial reimbursement for any such costs incurred by Proposers.

## **LIST OF PROPOSAL FORMS**

- Form A-1 Proposer Information/Cover Letter
- Form A-3 Ownership Disclosure Statement
- Form A-4 No Pay-to-Play Affidavit
- Form A-5 Non-Collusion Affidavit
- Form A-6 Consent to Investigation
- Form A-7 Acknowledgment of Receipt of Addenda
- Form A-2 not included in this package.

**Borough of Somerville**

**PROPOSAL FORM A-1**

**PROPOSER INFORMATION/COVER LETTER**  
[TO BE PREPARED ON PROPOSER'S LETTERHEAD]

Date:

Proposer:

Address:

Telephone: \_\_\_\_\_

Contact Person:

Type of Business Entity (Corporation, Partnership, Joint Venture, Other)<sup>[1]</sup>:

**GUARANTOR** (If Applicable) (Form A-8)

In submitting this Proposal, the Proposer warrants and represents that:<sup>[2]</sup>

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<sup>[1]</sup> If a joint venture, partnership or other formal organization of entities submits a Proposal, each of its members shall provide a Form A-1.

<sup>[2]</sup> Capitalized words and terms shall have the meanings ascribed to such terms in the Request for Proposals issued October 22, 2007 ("RFP").

**FORM A-1**  
**Page 2 of 6**

1. A. The Proposer has reviewed and understands the requirements of the Request for Proposals dated August 6, 2008 (the "RFP") issued by the Borough of Somerville (the "Borough"), in connection with the redevelopment certain properties within the Redevelopment Area, if selected, the Proposer will carry out all of the provisions of an award of a Redevelopment Agreement to the Proposer.
- B. All information submitted in support of the Proposal is accurate and factual and all representations made regarding the Proposers willingness and ability to carry out its obligations under the Redevelopment Agreement and the Deed are true and correct.
- C. The name and title of the individuals who served as the Proposers key employees or representatives responsible for preparing the Proposal and who will be responding to questions on behalf of the Proposer are set forth below:
- D. If Applicable: If the Proposal is being submitted by a joint venture of more than one firm and/or organizations, list the joint venture members and designate a sole Contact Person for the joint venture below.
- E. The name and title of the individuals who will serve as the Proposers representatives in negotiations (to the extent required) in connection with the Redevelopment Agreement are set forth below:

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**FORM A-1**  
**Page 3 of 6**

2. The Proposer shall not share or disclose any information contained in its Proposal with any third party without first obtaining the written consent and approval of the Borough.
3. Except to the extent expressly disclosed in the Proposal, there have been no material changes in the financial status of the Proposer (as such term is defined in Section 4 of the RFP) since the date of the most recent financial data (including SEC Forms 10-K and 10-Q) submitted as part of the response to this RFP.
4. The Proposal has been duly authorized by any corporate or other action of the Proposer, and is in all respects binding upon, the Proposer. The Proposal is authorized to be prepared and submitted under and in accordance with the provisions of the documents and/or agreements, which govern the Proposer's business activities.
5. The Proposer acknowledges that the Proposal Forms comprise its Proposal and that information from the Proposal Forms will be utilized in the Redevelopment Agreement.
6. There is no action, suit or proceeding, at law or in equity, before or by any court or similar governmental body against the Proposer or, if applicable, its Guarantor, wherein any unfavorable decision, ruling or finding would adversely affect the ability of the Proposer and/or the Guarantor to carry out the duties and obligations imposed upon it in the Redevelopment Agreement.

7. The Proposer is duly organized and validly existing in good standing and is duly qualified to transact business in each and every jurisdiction where such qualification is required to enable the Proposer to perform its obligations under this RFP and the Redevelopment Agreement . Execution of the Redevelopment Agreement , and the performance of all obligations thereunder have been authorized by all required action of the Proposer, including any action required by any charter, by-laws, and/or agreement, as the case may be, and any applicable laws which regulate the conduct of the Proposers affairs. Submittal of the Proposal and execution of the Redevelopment Agreement and the performance of all obligations set forth therein do not conflict with and do not constitute a breach of or event of default under any charter, by-laws and/or agreement, as the case may be, of the Proposer or any agreement, indenture, mortgage, contract or instrument to which the Proposer is a party or by which it is bound so that, upon execution hereof and upon satisfaction of the conditions therein contained, the Redevelopment Agreement will constitute the valid, legally binding obligations of the Proposer, enforceable in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.
  
8. There is no action, suit or proceeding, at law or in equity, before or by any court or similar governmental body against the Proposer and/or, if applicable, the Guarantor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Proposer and/or, if applicable, the Guarantor, of its obligations under the RFP, the Redevelopment Agreement or the other transactions contemplated by the RFP, or which, in any way, would materially adversely affect the validity or enforceability of the Redevelopment Agreement , or any other agreement or instrument entered into by Proposer and/or the Guarantor in connection with the transaction contemplated by the RFP.

**FORM A-1**  
**Page 5 of 6**

- 9 . No corporation, partnership, individual or association, officer, director, employee, manager, parent, subsidiary, affiliate or principal shareholder of the Proposer and/or, if applicable, the Guarantor has been adjudicated to be in violation of any state or federal law, or charged with or convicted of bribery, fraud, collusion, or any violation of any state or federal anti-trust or similar statute within the preceding five (5) years, or previously adjudged in contempt of any court order enforcing such laws.
10. In the event that a joint venture or other relationship has been formed for purposes of submittal of a Proposal, the Contact Person identified in Paragraph 1(D) above shall serve as the sole Contact Person for the joint venture or entity. As such, the Borough shall be obligated to provide information, Addenda to the RFP and other documentation only to such Contact Person.
11. The Proposer agrees to participate in good faith in the procurement process described in the RFP (including, without limitation, the negotiation of the Redevelopment Agreement, if required and as permitted by applicable laws) and to adhere to the Borough's procurement schedule. The Proposer acknowledges and agrees that submittal of its Proposal constitutes a waiver of any challenge or contest that the Proposer might have with respect to the Borough's actions under and furtherance of the transactions contemplated by this RFP, the Redevelopment Agreement.
12. The Proposer acknowledges that all costs incurred by it in connection with the preparation and submission of the Proposal, and any negotiation which results there from (if required and as permitted by applicable law), shall be borne exclusively by the Proposer.
13. The Proposer hereby declares that the only persons or firms participating as Principals are named in the Proposal and that no person or firm other than those named in the Proposal will have any participation as Principals in the Proposal or the Redevelopment Agreement, if executed. Additional persons or firms may subsequently be included as participating Principals upon the provision of written notice to the Borough.

**FORM A-1**  
**Page 6 of 6**

14. The Proposer acknowledges and agrees that the Borough may modify, amend, suspend and/or terminate the procurement process (in its sole judgment). The Borough shall not have any liability to the Proposer for any costs incurred by the Proposer with respect to the procurement activities described in this RFP.
15. The Proposer acknowledges and agrees that any contract executed with respect to the transactions contemplated by this RFP (including specifically and without limitation, the Redevelopment Agreement) must comply with all applicable affirmative action and similar laws. Proposer hereby agrees to take such actions as are required in order to comply with such applicable laws.
16. The Proposer has executed proposal Form A-6 and, as such, the Borough Review Team (and/or its designees and agents) shall have the right to contact any person and/or review any documentation (subject to reasonable agreements as to maintenance of confidentiality) as may be required by the Borough to conduct any due diligence activities relating to the Proposer.

**[NAME OF PROPOSER]**

By:

Name:

Title:

**Borough of Somerville**

**PROPOSAL FORM A-3**

**OWNERSHIP DISCLOSURE STATEMENT**

Proposers that are organized as a corporation or as a partnership (or a joint venture or other entity which joint venture participants are corporations or partnerships) must submit a statement of the names and addresses of all stockholders in the corporation owning 10% or more of its stock of any class, or of all individual partners in the partnership who own a 10% or greater interest in the partnership, as the case may be. If one or more such stockholder, partner or joint venture is itself a corporation or partnership, the names and addresses of stockholders holding 10% or more of that corporation's stock or of individual partners owning 10% or greater interest in that partnership, as the case may be, shall also be listed. Such disclosure shall continue until names and addresses of every known corporate stockholder and individual partner, exceeding the 10% ownership criteria is listed. If the Proposer is neither a corporation nor a partnership, same shall be so attested in the space provided below:

**NAME**

**ADDRESS**

**FORM A-3**  
**Page 2 of 2**

Name of Partnership or Corporation

Signature of President or duly authorized officer,

Date

Address

(Print Name and Title)

\_\_\_\_\_  
\_\_\_\_\_

(SEAL)

ATTEST:

(Print Name and Title)

\_\_\_\_\_  
(Signature of Secretary or Assistant-Secretary)

NOTE: Submit Similar Statement for Each Member of Joint Venture or other entity.

If the Proposer is neither a corporation nor a partnership, please sign below.

\_\_\_\_\_  
Signature of Owner, \_\_\_\_\_ Date)

**BOROUGH OF SOMERVILLE**

**PROPOSAL FORM A-4**

**PAY TO PLAY AFFIDAVIT**

AFFIDAVIT OF COMPLIANCE WITH SECTION 19:44A-20.4, 20.5, ET SEQ OF THE STATE STATUTE

State of \_\_\_\_\_

County of \_\_\_\_\_

I \_\_\_\_\_ (Name of Professional Business Entity is if a corporation name of officer making affidavit) being duly sworn affirm that I am aware of the provisions of section 19:44a-20.4, 20.5, et seq. of the state statutes, and adhered to by the Borough of Somerville.

I further declare that neither the professional business entity with which I am associated nor I have made any contribution of money or anything of value including in kind contributions at anytime within the past year to any Borough of Somerville candidate for Mayor or Borough Council or Borough of Somerville political party committee or their intermediaries including but not limited to a Somerset County political party committee

I further declare that I am aware that if it is determined that such contributions have been made that it will be deemed as a material breach of any professional services agreement that I have entered into with the Borough of Somerville and that I may be subject to penalties as may be provided by law.

Signature of Person Making Affidavit \_\_\_\_\_

Sworn and subscribed to before me this day of \_\_/\_\_/2008

My Commission expires on \_\_/\_\_/2008

**Borough of Somerville**

**PROPOSAL FORM A-5**

**NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_)

:SS

COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_, of \_\_\_\_\_ [name of municipality where Proposer is located] in the County of \_\_\_\_\_, and the State of \_\_\_\_\_, of full age, being duly sworn according to law on my oath, depose and say that I am \_\_\_\_\_ [TITLE] of \_\_\_\_\_ [NAME OF PROPOSER], the Proposer making the proposal to the Borough of Somerville (the "Borough") in connection with the development by the Proposer of certain real property in Borough of Somerville, Somerset County, New Jersey, as such terms are defined in the Request for Proposals, dated August 6, 2008 issued by the Borough and that:

1. I executed the Proposal with full authority to do so.
2. The Proposer has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competition in connection with the Proposal for the development of certain real property in Borough of Somerville, Somerset County, New Jersey.
3. All statements contained in the Proposal and in this Affidavit are true and correct, and made with full knowledge that the Borough relies upon the truth of the statements contained in the Proposal and in the statements contained in this Affidavit in awarding a Redevelopment Agreement for the development of certain real property in Borough of Somerville, Somerset County, New Jersey.

**FORM A-5**  
**Page 2 of 2**

4. No person or selling agency has been employed or retained to solicit or secure agreement by the Borough to award a Redevelopment Agreement to the Proposer, upon an agreement or understanding, for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Proposer for the purpose of securing business.

\_\_\_\_\_ <sup>1</sup>  
(Name of Proposer)

By: \_\_\_\_\_  
(Signature of Duly Authorized Representative)

Name: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200

\_\_\_\_\_  
(Notary Public of New Jersey)

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
<sup>1</sup> If a joint venture, partnership or other formal organization of entities submits a Proposal, each member shall be listed and shall execute this Proposal Form.

**Borough of Somerville**

**PROPOSAL FORM A-6**

**CONSENT TO INVESTIGATION**

The Proposer (including its principals and partners) hereby gives its consent to the Borough of Somerville (the "Borough"), and its authorized representatives, to investigate and verify all information contained in the Proposal submitted herewith in response to the Request for Proposals, dated August 6, 2008 (the "RFP") issued by the Borough, with respect to the Proposers eventual purchase and development of certain real property in Borough of Somerville, Somerset County, New Jersey, as provided in the RFP and the Redevelopment Agreement , as such terms are defined in the RFP. Such consent shall include information concerning the Proposer (including its principals and partners) maintained by state and/or federal regulatory agencies, including financial and law enforcement agencies. The Proposer (including its principals and partners) agrees that all financial institutions, law enforcement agencies, and regulatory agencies are authorized to release information verifying those representations and/or submissions made by the Proposer (including its principals and partners). The Proposer (including its principals and partners) further gives its consent to the Borough and/or its authorized representatives to inspect all premises or facilities owned and/or operated by the Proposer (including its principals and partners) and relevant records of the Proposer (including its principals and partners) in order to verify information contained in the Proposal.

The Proposer (including its principals and partners) agrees that a photocopy of this Consent to Investigation may be accepted by any agency or institution in lieu of the original.

**[NAME OF PROPOSER]<sup>1</sup>**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

<sup>1</sup> If a joint venture, partnership or other formal organization of entities submits a Proposal, each member shall be listed and shall execute this Proposal Form.

**Borough of Somerville**

**PROPOSAL FORM A-7**

**ACKNOWLEDGMENT OF RECEIPT OF ADDENDA**

We hereby acknowledge receipt of the Request for Proposals, dated August 6, 2008 and Addenda Nos. 1-\_\_, inclusive.

**[NAME OF PROPOSER]<sup>3</sup>**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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<sup>3</sup> If a joint venture, partnership or other formal organization of entities submits a Proposal, each member shall be listed and shall execute this Proposal Form.

# Kirby Avenue Redevelopment Area

Map 2 - Block 50



Map 3 - Block 1

