Belmont Park Request for Proposals

COST REIMBURSEMENT AND IMPREST ACCOUNT AGREEMENT

THIS AGREEMENT, dated as of _____, 2017 is entered into between the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") having an address at 633 Third Avenue, New York, New York 10017, acting on behalf of the New York State Franchise Oversight Board ("FOB") to seek the long-term lease and development of the Site, as defined in ESD's Request For Proposals for Belmont Park dated _____, 20__ (the "RFP") and the undersigned Respondent to the RFP ("Respondent"), which has delivered to ESD a submission in response to the RFP, seeking to develop the Belmont PARK Project (the "Project") as set forth in the submission. As used in this agreement, the term "Development" shall mean all development of the Site in connection with the RFP.

1. Respondent Obligation to Pay Costs. In the event that Respondent is designated to enter into negotiations with ESD for potential Development, Respondent agrees to pay the reasonable out-of-pocket fees, costs, and expenses (including, without limiting the foregoing, fees, costs, and expenses of legal counsel, consultants, architects, engineers, appraisers, surveyors, and others) that may be incurred, on or after _____ 2017, by ESD in connection with Respondent's submission, any negotiations and transactions that may result from such submission, and all or any portion of the Development (collectively, "Costs"), including, without limiting the foregoing, all Costs related to:

a) Review and analysis of and due diligence with respect to Respondent's submissions;

b) Drafting, reviewing, and negotiating: (i) a memorandum of understanding and/or agreement and/or term sheet between ESD and Respondent and all agreements and documents related thereto; and (ii) all agreements, documents, and instruments regarding or related to the Development, including, without limiting the foregoing, agreements, documents, financing, property rights disposition (*e.g.*, conveyances, leases, and easements), in connection with the development of Site (each such memorandum of understanding, agreement, term sheet, agreement, document, and instrument, a "Transaction Document" and collectively, the "Transaction Documents");

c) Environmental review, analysis, findings, and compliance pursuant to federal and State environmental law and regulations including environmental work conducted prior to the solicitation but in connection with the RFP;

d) Structuring, documenting, negotiating, and closing all aspects of the Development, including, without limiting the foregoing, the Transaction Documents and other matters (*e.g.*, permits, filing and recording fees, transfer taxes, *etc.*);

e) Surveys and appraisals, including, without limiting the foregoing, surveys and appraisals for leasehold interests and development rights;

f) Publication of notices of public hearings and public meetings, independent hearings officers, stenographers, electricians, transcripts, venues, equipment, and other costs related to noticing, conducting, and making the record of testimony at such hearings and meetings;

g) Preparation and distribution of all environmental review documents and all legally required planning documents (*e.g.* a General Project Plan ("GPP") and modifications to the GPP) as necessary;

h) Preparation of material for and attendance at Public Authorities Control Board ("PACB") meeting(s) for PACB's consideration of approval of the actions of ESD with respect to the Development, if necessary;

i) Engineering and architectural review work with respect to Respondent's RFP submission for the Development;

j) Engineering, architectural, and other work related to the coordination and integration of the Development with facilities owned by the FOB or the Metropolitan Transportation Authority ("MTA") collectively, "Stakeholders");

k) Stakeholders' meetings, negotiations, agreements and documentation related to the Development; and

l) All costs incurred by ESD in establishing and maintaining the Imprest Account (as defied below).

2. ESD Obligations. ESD has no obligation with respect to the Development until ESD has entered into with Respondent a mutually binding agreement in writing regarding the Development, and ESD's obligations shall be limited to those expressly set forth in such agreement. ESD shall not incur any obligations to Respondent as a result of or pursuant to this agreement except for the obligations, in accordance paragraph 3 of this agreement, to: (i) promptly return to Respondent the Respondent's $1,000,000, as described in Section 3 below, in the event that Respondent is not designated to enter into negotiations with ESD with respect to the Development; (ii) use the Imprest Account (as defined below) funds in accordance with this agreement; (iii) provide to Respondent statements describing in reasonable detail the use of Imprest Account funds and supporting documentation, to the extent received by ESD or

provided to ESD; and (iv) promptly return to Respondent, in accordance with this agreement, unspent Imprest Account funds, if any.

3. Imprest Account. In order to fund the obligation of Respondent to pay Costs, Respondent has delivered to ESD Respondent's check in the amount of $1,000,000. Upon ESD signing and transmitting to Respondent a counterpart of this agreement signed by ESD, ESD may deposit such check in an interest-bearing account (the "Imprest Account"). In the event that Respondent is not designated for a short list or to enter into negotiations with respect to the Development, ESD will promptly return to Respondent the $1,000,000 and any accrued interest. If the Respondent is designated for a short list or otherwise designated to enter into negotiations with respect to the Development, then the Imprest Account may be drawn on by ESD and used (both principal and interest) for payment of the Costs of ESD, including Costs incurred prior to the date of designation. ESD shall inform Respondent of the Costs so paid by written report within twenty (20) business days after written request from Respondent, but not more often than quarterly, and ESD shall provide to Respondent supporting documentation, to the extent that such supporting documentation is provided to ESD. ESD shall notify Respondent each time that the balance of the Imprest Account is $250,000 or less. Promptly after receipt of such notice, Respondent shall replenish the Imprest Account by depositing into that account the amount of funds that is necessary in order to increase to $550,000 the Imprest Account balance. All such payments to the Imprest Account shall be made by wire transfer pursuant to the instructions to be set forth in a written notice of ESD provided to Respondent. Promptly after (i) termination by ESD of Development transaction negotiations with Respondent and payment of all incurred Costs or (ii) completion of the Development by Respondent such that (x) ESD shall incur no further Costs and (y) all incurred Costs have paid in full, ESD shall return to Respondent all funds remaining in the Imprest Account (inclusive of any unspent interest) and provide to Respondent, to the extent received by ESD and not previously provided to Respondent, supporting documentation of Costs incurred,.

4. Indemnity. Respondent hereby indemnifies and holds ESD and FOB, individually and collectively, harmless from any and all suits, claims, and other liabilities (including fees, costs, and expenses of legal counsel) arising from the Development (except and unless arising primarily from willful and wanton misconduct or grossly negligent acts by ESD), and any amounts due to ESD, individually and/or collectively, as a result of such indemnification also shall be deemed "Costs" pursuant to this agreement. This section and, with respect to such Costs, sections 2 and 3 above, shall survive the expiration or earlier termination of this agreement.

5. Term. The term of this agreement shall commence as of the date first above written and shall continue until all Costs incurred or to be incurred have been paid in full.

6. Miscellaneous. This agreement constitutes the entire agreement among the parties concerning the subject matter hereof and all prior or contemporaneous understandings or oral agreements among the parties with respect to the subject matter hereof are hereby merged in this agreement. This agreement may be amended only by a written agreement

signed by ESD and Respondent. This agreement shall be governed and construed in accordance with the laws of the State of New York.

If the foregoing accurately sets forth our understandings, please sign each counterpart of this agreement in the space set forth below and return to us one fully executed counterpart.

AGREED AND ACCEPTED AS OF THE DATE FIRST ABOVE WRITTEN

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT

By: _____
Name:
Title:

[RESPONDENT]
[Address]

By: _____
Name:
Title: