

DEPARTMENT OF VETERANS AFFAIRS



REQUEST FOR PROPOSALS No. VA101-16-R-0031

**LEXINGTON VA MEDICAL CENTER –
LEESTOWN DIVISION
ENHANCED-USE LEASE DEVELOPMENT PROJECTS
LEXINGTON, KENTUCKY**

20 November 2015

DATE AND TIME RESPONSES DUE: January 12, 2016, 8:00 am EDT

Questions are due before December 22, 2015

Site visit is scheduled for December 1, 2015 at 10 am with registration scheduled to start from 9:30 am

DISCLAIMER

The information presented in this Request for Proposals and all supplements, revisions, modifications, updates, and addenda thereto (collectively, the “**RFP**”), including (without limitation) narrative descriptions and information, is not represented to be all of the information that may be material to an Offeror’s decision to submit a response to this RFP or to develop, construct, manage, and maintain the Project (as defined below) on a portion of VA campus named in Attachment A.

Neither the United States Department of Veterans Affairs (“**VA**”), nor any of its contractors, subcontractors, officers, employees, counsel, advisors, or agents make any representation or warranty, whether express, implied, or created by operation of law, as to the accuracy or completeness of this RFP or any of its contents or materials referred to or provided pursuant to or in connection with this RFP, and no legal liability with respect thereto is assumed or may be implied. Any information or site description is merely provided to assist Offerors in their independent analysis of the decision to submit a response. The transactions contemplated by this RFP involve significant risks. Offerors and their advisors should review carefully all the information set forth in the RFP and any additional information available to them to evaluate such risks.

Except as expressly provided in the Transaction Agreements (as defined in Section 1.3) executed by VA, no additional representation or warranty, whether express, implied, or created by operation of law, will be made by VA. No person has been authorized to make or give on behalf of VA any other written or oral representation, warranty or assurance with respect to the Project or the accuracy or completeness of the information provided in this RFP or otherwise and, if any such representation, warranty, or assurance is made or given, it may not be relied upon by any Offeror as having been made by or on behalf of VA, and VA shall not have any liability for or with respect to such statements.

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REQUEST FOR RESPONSES
LEXINGTON VA MEDICAL CENTER – LEESTOWN DIVISION
ENHANCED-USE LEASE DEVELOPMENT
LEXINGTON, KENTUCKY (Leestown Division)

1. EXECUTIVE SUMMARY

- 1.1** The Department of Veterans Affairs (“**VA**”) is pleased to issue this Request for Proposals (“**RFP**” or “**Solicitation**”), seeking competitive responses from private, public, and/or not-for-profit entities interested in leasing and redeveloping certain properties described in Attachment A.
- 1.2** These Project (“**Projects**”) contemplate that under its enhanced-use leasing (“**Enhanced-Use Lease**” or “**EUL**”) authority, codified at 38 U.S.C. §§ 8161-8169), VA will lease the EUL Site to selected Offeror (“**Offeror**” or “**Lessee(s)**”) for a term of up to seventy-five (75) years. The Offeror/Lessee(s) under the EUL will, in part, be authorized and responsible for financing, designing, developing, occupying, operating, and maintaining the EUL Site in accordance with detailed development plan approved by VA (“**Development Plans**”) and applicable Federal, State, and local laws, codes, ordinances, and regulations. VA envisions that development of the EUL Site will entail well-planned and coordinated endeavor, which are compatible with the campuses’ ongoing mission-related activities and the surrounding non-VA community.
- 1.3** By submitting a response, each Offeror accepts all of the terms and conditions set forth in this RFP, and its Attachments, including but not limited to the Bid Terms Agreement (**Attachments C**, respectively). Any conflict (whether actual or perceived) between the terms of the Bid Terms Agreement, the EUL Agreement (collectively, the “**Transaction Agreements**”), this RFP, or provision therein shall be resolved at and in accordance with VA’s sole and absolute discretion, notwithstanding any provisions of the “Disclaimer” indicating otherwise, which is included and made part of this RFP, or any other document.
- 1.4** VA reserves the right, at any time, without notice, at its sole and absolute discretion, to (a) modify, suspend, or waive any terms and conditions of this RFP; (b) waive any deficiency or irregularity in any response submitted; (c) reject any or all responses; (d) extend any deadline set forth in this RFP; (e) terminate the RFP process, in whole or in part; (f) discuss any submission with the Offeror that submitted it and require the submission of additional

information regarding any aspect of the Offeror's response; (g) make an award to an Offeror which submits a response that is not the response that would provide VA with the highest value in terms of consideration to be paid under the EUL or otherwise; (h) initiate further discussions and/or negotiations directly with the Offeror (after VA selects it for award), if VA believes that the type of EUL consideration offered in the Offeror's response warrants further refinement and/or enhancement; and (i) award individual EUL Site to different Offerors.

2. PROPOSED DEVELOPMENT OF EUL SITE

2.1 Overview of Solicitation Structure

Through this RFP, VA is presenting an EUL Site available for redevelopment for an Offeror, EUL Offerors may submit a single response to this RFP to develop the EUL Site referenced in Attachment A. See Sections 4 and 5 of this RFP for required response content and evaluation criteria.

2.2 Location, Background and Description of EUL Site

Attachment A contains information regarding the location, background information, and description of the subject EUL Site. Attachment B includes directions on how to participate in the in-person tours of the EUL Site.

2.3 Development Considerations

In considering whether to submit a response to develop the EUL Site, the Offeror should consider certain factors.

2.3.1 National Historic Preservation Act

Prior to entering into a EUL with VA, the Offeror must fulfill the requirements of the National Historic Preservation Act, 16 U.S.C. §§ 470, et seq. ("**NHPA**") in conjunction with the development and finalization of the proposed Development Plans. NHPA requires the consideration of the effects of the Project on historic properties listed or eligible for listing in the National Historic Register and provides representatives of the local government and other interested consulting parties sufficient opportunity to comment on the Development Plan prior to execution of the EUL. Section 106 of the NHPA also requires the seeking of ways to avoid, minimize, or mitigate adverse effects (e.g., demolition) that the Development Plan might have on any historic properties during the execution stage of the EUL. Consummation of this effort will be accomplished by VA. VA will act in concert with the Offeror when necessary in the accomplishment of historical compliance. For guidelines related to historic preservation at VA and to determine whether any assets at the EUL Site are subject to historic preservation requirements, visit <http://www.cfm.va.gov/historic/>.

2.3.2 National Environmental Policy Act and Other Environmental Considerations

EUL and the Project will be subject to all applicable Federal, State, and local environmental laws, codes, ordinances, and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601-9675; the Resource Conservation and Recovery Act (“**RCRA**”), 42 U.S.C. §§ 6901, et seq; and the National Environmental Policy Act (“**NEPA**”), 42 U.S.C. §§ 4321-4347. NEPA requires that Federal agencies, including VA, identify and evaluate the potential environmental impacts of a major Federal action (e.g., an EUL) on the human environment. The NEPA analysis will be initiated upon VA’s selection of the Offeror. The Offeror will be required to provide development-specific information to support the analysis. The NEPA analysis must be completed prior to execution of the EUL. Offeror will be responsible for complying with mitigation requirements of the NEPA analysis, if required. In addition, the Offeror will be responsible for complying with regulatory requirements for the removal of any asbestos and/or lead-containing material, if required. Site required environmental studies, reports, site assessments, and any required or appropriate remediation or abatement, as well as compliance with all applicable environmental laws, will be the responsibility of the Offeror, unless and to the extent that VA otherwise agrees at its sole and absolute discretion.

2.3.3 Infrastructure

Any available information about infrastructure at the EUL Site is included in Attachment A. It is the responsibility of the selected developer to pay utility providers for all utilities through separate metering.

2.3.4 Legal Considerations

A. Overview

The Offeror is responsible for conducting its own due diligence regarding the EUL Site including, without limitation, whether (a) the development of the EUL Site, as contemplated by the Response, can be accomplished in compliance with applicable Federal, State, and local requirements (including fire, life safety, accessibility, zoning, State and local building codes, and other local land use restrictions); (b) the condition of the EUL Site is suitable for the Offeror’s contemplated use; (c) the necessary permits, variances, special exceptions and other governmental actions or approvals required for the contemplated developments can be reasonably obtained (at no cost or expense to VA); and (d) the contemplated use(s) is otherwise practical and economically feasible.

B. Taxes

In accordance with the pertinent provisions of the EUL Statute (i.e., 38 U.S.C. § 8167), the Offeror during the EUL term will be subject to any and all applicable State and local taxes, fees, assessments, and special assessments legally chargeable to the EUL, the Offeror’s leasehold interest, and the Offeror’s underlying improvements. However, neither VA’s interest in the EUL nor the United States’ fee interest in the underlying

properties shall be subject, directly or indirectly, to any State or local laws relative to taxation, fees, assessments or special assessments.

C. Physical Security

The Offeror shall include in their response an overview of the physical security that will be provided based upon the individual space requirements and tenant mix of the proposed EUL Project.

D. Energy Conservation and Sustainable Design Requirements

The VA Sustainable Design Manual is the guidance that defines the methodology to incorporate sustainable design on every phase of this EUL project, from responses, goal setting, and preliminary planning, through design and construction. Offerors will be evaluated on their plan to meet the five "Guiding Principles" outlined in VA's Sustainable Design and Energy Reduction Manual: <http://www.cfm.va.gov/til/sustain.asp>. In previous projects, some developers have proposed more aggressive energy efficiency and sustainability milestones that made their responses, all other elements considered equal, more attractive.

To take advantage of existing sustainable work in the private sector that is well accepted by the construction industry, VA has determined that using a third-party rating system is the most efficient methodology for complying with the Federal mandates that comprise the Guiding Principles. The Offeror may propose using either the Leadership in Energy and Environmental Design (LEED) or the Green Globes rating system or any other certification system developed by an ANSI accredited organization. VA requires that the Project obtain a minimum of either LEED Silver or Two Green Globes certification or equivalent by their respective rating organizations. However, VA encourages innovative thinking in terms of sustainability over and above the standards found in the VA Sustainable Design Manual.

2.3.5 Prevailing Wages

Unless the Offeror can demonstrate to the satisfaction of VA in the form of a written determination or written correspondence from the U.S. Department of Labor that the Offeror or the Project are exempt therefrom, Offeror shall comply with the requirements of the Davis-Bacon Act, as amended, 40 U.S.C. § 3141, et seq. and the relevant rules, regulations, and orders of the Secretary of Labor applicable thereto.

2.3.6 Handicap Accessibility

The Offeror will be required to ensure that its design, development, construction, operation, and maintenance plan and activities on the EUL Site comply in all respects with the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq., and the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151, et seq., as amended.

2.3.7 EUL Statutory Requirements

RFPVA's EUL and statutory requirements are codified at 38 U.S.C. §§ 8161-8169.

2.3.8 EUL Site, VA's Goals and Objectives

VA has the following goals and objectives for the Projects:

- Reuse underutilized VA properties to create safe, affordable, housing for Veterans and their families and should have priority placement in any housing project created on the EUL Site.
- Provide with supportive housing and on-site supportive/resident services
- Develop a housing model geared towards enabling Veterans to achieve self-sufficiency and live independently.
- Avoid ongoing operating costs associated with the upkeep of vacant and/or underutilized assets.

2.3.9 Other Considerations

VA will not participate in, or allow its or the United States' interest in the EUL Site to be used as security for financing for the Projector otherwise, including without limitation, providing any kind of guaranty or act in any way as a beneficiary for a financing vehicle.

In regard to any proposed Project-related financing to be obtained by the Offeror, VA as a general rule will not approve any financing that includes requirements that operate to deny, restrict, or subordinate VA's right to terminate the EUL upon the Offeror's failure to cure an outstanding event of default thereunder. This includes any document, to include the EUL that would prevent VA from terminating the EUL due to "cross default" arising from one or more parcels on the Property. Any proposed Project financing that does not comply with this restriction must be explicitly identified in the RFP response for VA's unilateral review and evaluation.

The successful Offeror must establish and maintain positive relations and communications with State and local governmental authorities and the local communities during negotiations with VA and any of its representatives.

The successful Offeror must integrate development activities with cultural resources and historical and environmental policy management requirements in support of VA's mission and operations.

The Offeror will be responsible for coordinating the work schedule(s) with VA in order to minimize disruption to the campus' activities and operations. This coordination includes the work of any contractor or subcontractor that the Offeror retain in connection with the Project.

Although VA will have no obligation to lease any space on the EUL Site, the EUL will include a provision granting VA certain rights of first refusal for space that becomes available on the EUL Site, throughout the term of the EUL.

3. CONCEPTUAL DEVELOPMENT PLAN OUTLINE

Following its selection, the Offeror will be responsible for preparing a detailed Development Plan for the Project. The Development Plan must contain a description of the Project and address comprehensively all significant issues regarding its development, operation, management, and maintenance. The Development Plan must include, but should not be limited to, the following:

3.1 Project Overview

- (1) The specific type of Project contemplated by the Offeror and a comprehensive plan for the redevelopment of the EUL Site;
- (2) Project feasibility, including any anticipated barriers and a plan to overcome those barriers;
- (3) Plan to ensure proposed uses are compatible with VA's mission;
- (4) Development schedule;
- (5) Development team composition;
- (6) Community awareness strategies;
- (7) Using small and local businesses such as Services Disabled Veteran Owned Business (SDVOB) and 8A businesses and;
- (8) Plan to secure local approvals/concurrences for zoning, permits and other building and land use requirements, noting any expected obstacles and a strategy to overcome those obstacles.

3.2 Transaction Terms

- (1) Proposed entity of the Offeror that would serve as the lessee (on behalf of the Offeror) under the EUL, including all ownership structures associated with the lessee;
- (2) Proposed term of EUL (i.e., up to a maximum of 75 years); and,

3.3 Project Financing

- (1) Financing plan, including sources of funds and any proposed tax abatements;
- (2) Development budgets;
- (3) Pro forma statements for a minimum of the lease term;
- (4) Supportive/resident services budget;
- (5) Sources and uses of funds;
- (6) Plan to obtain Financing Commitment Letters that will provide written assurance(s) from the proposed funding sources that those sources will provide

the project financing proposed as part of the Offeror's financing structure at the EUL closing, with all conditions required for such funding clearly articulated; and,

- (7) Plan to execute a Performance bond that will provide a written commitment from a surety to provide a performance bond equal to the total development cost at the EUL closing.

3.4 Construction Plan

- (1) Conceptual drawings and site plans;
- (2) Analysis of existing land use restrictions governing the EUL Site, development and land use recommendations, variances required and plan for obtaining them;
- (3) Preliminary utilities, parking, site accessibility, traffic mitigation, and landscape plans;
- (4) Impact of proposed Development Plan on historic properties, including documentation required to comply or facilitate compliance with NHPA;
- (5) Plan for obtaining all necessary public/private entitlements; and,
- (6) Development and construction management plan.

3.5 Project Operations

- (1) Marketing and Leasing Plan, including an ongoing outreach plan to identify and screen potential residents to ensure that the facility is fully occupied;
- (2) Property and asset protection (e.g., security, police, and fire arrangements), management, and maintenance (e.g., a funded maintenance account to cover non-routine repairs), water, gas, electricity sources and arrangements with VA or utility companies;
- (3) Realistic on-site staffing plan for resident management, service needs and other operational considerations, qualifications for positions; and,
- (4) Supportive/resident services plan, which outlines how services appropriate for permanent housing will be coordinated and managed; the plan must:
 - i. Discuss how residents are to be involved in making facility decisions that affect their lives, including how they are to be involved in selecting supportive/resident services, establishing personal goals, and developing plan to achieve these goals so that they achieve greater self-determination;
 - ii. Include an employment plan designed to help the residents attain long-term employment;
 - iii. Include a plan to minimize legal substance use in Project (Note: Use of illegal substances is prohibited);
 - iv. Identify which supportive/resident services are to be provided on-site; and,

- v. Discuss how residents are to be assisted in assimilating into the community through access to neighborhood facilities, activities and services.

3.6 Energy Conservation and Sustainable Design

- (1) Discuss the building design, construction and other administrative work necessary to both 1) comply with the Guiding Principles outlined in VA's Sustainable Design and Energy Reduction Manual; and 2) apply for and receive a minimum of the Silver Certification for the Leadership in Energy and Environmental Design for Homes (LEED-H) of the U.S. Green Building Council's (USGBC) Green Building rating system for homes.

VA recognizes that formulation of the Development Plan will require the Offeror to work closely and cooperatively with VA. VA will provide final approval and cooperate with the Offeror during the drafting process to facilitate preparation of the final Development Plan. It is anticipated that the Offeror will provide VA with drafts of the Development Plan throughout the drafting process. The Development Plan will be subject to VA's review and approval and may be subject to review and comment by local government and other stakeholders.

The Offeror will be required to meet the timeframes set forth of this RFP and the proposed timeline provided by the Offeror in their response and agreed to in the Bid Terms Agreement (Attachment C), with any such extensions or modifications that VA agrees to at its discretion. If the Offeror fails to complete the Development Plan(s) or any other timeframe in a timely manner, VA shall have the right, at its discretion, to provide written notice terminating all future discussions with and rights of the Offeror under this RFP and the Bid Terms Agreement. Upon such termination, VA shall neither owe nor pay any fees, costs, expenses, or monetary penalties to the Offeror for any reason(s) regarding or stemming from this RFP and its process, and VA shall, at its discretion, be free to select another Offeror in order to further pursue the EUL and Project.

4. CONTENTS AND PROCESS FOR SUBMISSION OF RESPONSES

4.1 Submission of Responses

Offerors interested in the Project should submit their response in accordance with and meeting the following requirements:

4.1.1 Time and Date of Submission

Responses must be received by January 12, 2016 at 8:00 am EDT (the "Closing Time"). Responses received after the Closing Time will not be considered and will be returned to the Offeror

Questions regarding this RFP may be submitted in writing by emailing maina.gakure@va.gov before December 22, 2015. Questions received after this date

may not be considered. Responses will be provided by an amendment to the RFP. All Government communication regarding this RFP shall be from the Contracting Officer, Dr. Maina Gakure.

4.1.2 Place and Manner of Submission

Responses must be delivered to the following address:

Dr. Maina Gakure
Office of Construction & Facilities Management (CFM)
Department of Veterans Affairs
425 I Street, NW
Washington, D.C. 20001

Responses must be delivered by mail, courier, or hand delivery. Responses will not be accepted if delivered by electronic means only (including facsimile).

4.1.3 Packaging and Copies

Responses must be in a sealed envelope or package with the following information conspicuously and legibly written or typed on the outside:

- (1) Offeror's name;
- (2) Offeror's complete mailing address;
- (3) Name and contact information for Offeror's contact person (e.g., telephone, email and facsimile);
- (4) The following statement (to be completed upon delivery to VA):
"Response Received by VA as of _____(time) on _____
(date)"; and,

In order to be considered, Offerors must submit one (1) original and six (6) hard copies of its response plus one (1) electronic working copy of the response on a CD ROM to VA. The entire response must be included on the same CD ROM in PDF format. In addition, any Excel or other spreadsheets that allow data to be manipulated must be included in their native (i.e., Excel), unprotected and accessible format. Each hard copy of the response must be bound in a three-ring binder (to allow VA to easily remove parts for copying and/or circulation). Submissions must be formatted as described in Section 4.2.

4.2 Response Content

Each response must contain the following sections in the following order, with each section clearly labeled, beginning on a new page and not exceeding the applicable section page limit.

Section	Description	Page Limit
1.	Cover Letter	1 page
2.	Offeror's Background and Administrative Information	5 pages
3.	Relevant Offeror Qualifications, Experience, and Past Performance	10 pages
4.	Development Concept, Financial Feasibility, and Timeline	7 pages
5.	Property Management and Supportive/Resident Services Plan	5 pages
6.	Community Relations Experience and Strategy	3 pages

Pages submitted that are in excess of any page limit (including a section page limit) will, at VA's sole discretion, be discarded and not reviewed or evaluated by VA. Supporting data, such as resumes, explanations of any legal issues, and auditor's opinion letter, will not count against the page limits. Responses must be typewritten in Arial 11-point font size or greater. For purposes of the response, a "key team member" should be considered any member that will be responsible for approximately 20% or more of the services or fees under this proposed EUL.

4.2.1 Cover Letter

A cover letter (on the Offeror's letterhead) must state that the Offeror has read and agrees to comply with all of the terms, conditions, and instructions provided in this RFP. Any requests for waivers or exceptions must be clearly identified in the cover letter, and shall be subject to VA's review and approval.

4.2.2 Offeror's Background and Administrative Information

This section must contain the following general information about the Offeror and all key team members. In the case of an Offeror that is a special purpose entity (i.e., an entity that does not have or is not expected to have an ongoing business other than the development and operation of the Project), include information on each partner, member, or shareholder of the Offeror.

A. Offeror Administrative Information

Name; Employer Identification Number; Dunn and Bradstreet (DUNS) number (if available); mailing address; telephone number; e-mail address; and facsimile number.

B. Authorized Representative

Name (and contact information) of the representative authorized to act on behalf of the Offeror.

C. Day-to-Day Point of Contact

Name (and contact information) of the individual designated by the Offeror as the person to whom questions and/or requests for information are to be directed.

D. Form of Business

Description of the form of business (whether a corporation, a nonprofit or charitable institution, a partnership, a limited liability company, a business association or a joint venture), the jurisdiction of organization and operation, and a brief history of the organization and its principals:

- (1) Articles of incorporation, partnership, joint venture, or limited liability company agreement (Note: For any Offeror or key team member, as applicable, that is a sole proprietorship, current mailing address, and a summary of current business activity);
- (2) Certificate of good standing;
- (3) By-laws; and,
- (4) Copy of corporate resolutions, certified by a corporate officer, authorizing the Offeror's submission of, or key team member's participation with the Offeror in the submission of, the response and the entity's authority to proceed with the Project (assuming an RFP award is made and VA's approval is obtained).

E. Start-Up Date of Operations of Offeror and Key Team Members

Date(s) that Offeror and key team members began operations.

4.2.3 Relevant Offeror Qualifications, Experience and Past Performance

The Offeror should include in this section, the relevant information necessary to allow VA to assess the Offeror and its team members' qualifications, experience and past performance. Specifically, this section must include the following for each Project:

A. Offeror / Developer

- (1) **Development Qualifications:** List and explain in sufficient detail the Offeror's relevant development qualifications, experience and past performance. The Offeror should describe past experience working with the selected team members; proposed teaming structure for the EUL Project; past experience working with VA and Federal, State and local governments and undertaking residential development, redevelopment and adaptive reuse. Provide an organizational chart showing the relationship between the Offeror and key team members. In addition, Offeror should provide the following information about key team members if they are different entities from the Offeror:
 - i. Property Management Firm: List and explain in sufficient detail the proposed property management firm's background and experience, location and number of employees.

- ii. Supportive/Resident Services Provider: List and explain in sufficient detail the proposed supportive/resident services provider's background and experience, location and number of employees.

(2) Financial Stability: Provide a general overview of the Offeror and its team members' financial stability. Provide a summary of the total sources and uses of funds for the Offeror and its team members and if available, attach as an appendix, which does not count against the page limit, the auditor's opinion letter(s) from the Offeror and its team members' most recent financial audit(s) of financial statements.

B. Comparable Projects and References

Description of up to five (5) Projects (past or current) that are comparable in magnitude and complexity to the proposed Project on which either the Offeror or a team member has acted as a prime Offeror. Each project described must have been completed within the past ten (10) years. For each project listed, provide sufficient information to allow VA to identify the project and confirm that the project is comparable in magnitude and complexity (development of the number of units, financing acquired (tax credits, operational funding, construction loans, etc.) needed to complete the Project. For each project, provide a reference who VA can contact regarding performance and client or stakeholder (as applicable) satisfaction. Provide the name, title (if any), project role (if any), mailing address, telephone number, facsimile number, and email address for each reference.

C. Development Key Personnel

Identify all key development personnel (i.e., persons considered critical to the performance of services), and for each such person provide a:

- (1) Description of their respective role in the Project;
- (2) Discussion of the extent to which key personnel have worked together on other Project similar to the Project; and,
- (3) One (1) page resume that includes a description of the person's duties and responsibilities, education, skills, expertise, and other qualifications relevant to the Project (Note: Resumes do not count against page limits).

D. Legal Past Performance

- (1) State whether the Offeror or key team member, as applicable, has ever been terminated for default, non-compliance, or non-performance on a contract or lease, or debarred from any Federal, State, or local government contracts and, if so, provide the date and a detailed description of the occurrence in an appendix (Note: this additional detail does not count against page limits);
- (2) List and explain in sufficient detail (include additional detail in an appendix as necessary – detail does not count against page limits) each instance within the past ten (10) years in which the Offeror, any key team member, or any principal, partner, director, or officer of the Offeror was:

- i. Convicted of or pleaded guilty or *nolo contendere* to a crime (other than a traffic offense);
- ii. Subject to an order, judgment, or decree (including as a result of a settlement), whether by a court, an administrative agency, or other governmental body, or an arbitral or other alternative dispute resolution tribunal, in any civil proceeding or action in which fraud, gross negligence, willful misconduct, misrepresentation, deceit, dishonesty, breach of any fiduciary duty, embezzlement, looting, conflict of interest, or any similar misdeed was alleged (regardless of whether any wrongdoing was admitted or proven);
- iii. Subject to an action or other proceeding, whether before a court, an administrative agency, governmental body, or an arbitral or other alternative dispute resolution tribunal, which, if decided in a manner adverse to the Offeror, team member, principal, partner, director, or officer (as applicable), would reasonably be expected to adversely affect the ability of the Offeror or team member to perform its obligations with respect to the Project (including the ability to obtain or repay financing);
- iv. Debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- v. Notified that it is in default of any Federal contract or grant, the reason for the default, and whether the default was cured;
- vi. Had one or more public transactions (Federal, State, or local) terminated for cause or default; and,
- vii. Party to litigation or a formal Alternative Dispute Resolution (ADR) process (e.g., binding arbitration) involving a claim in excess of \$50,000. For those matters involving a claim equal to or in excess of \$500,000, describe in detail the litigation or ADR process.

4.2.4 Development Concept, Financial Feasibility, and Timeline

The Offeror must provide narrative of the Development Concept of the proposed Project, the site construction and building design(s), the Offeror and its team members' financial stability, the financing plan for the Project, and timeline for accomplishing the Project. Specifically, the section should include:

A. Project Description(s)

Provide an overview of the proposed Project, including but not limited to the type of 'supportive housing' project (e.g., assisted living housing, independent living housing, single-room occupancy, permanent housing, transitional housing etc.), target populations, and estimated breakdown of units. However, Offeror may identify

additional populations to be served. Offerors should provide a justification that supports the proposed project size for the given target residents. Offerors should support the proposed project size and target population by citing available market demand data and local market knowledge. The Project developed on the EUL Site must be affordable to the applicable target population(s).

B. Site Construction and Building Design(s)

Describe any proposed development, demolition, relocation, refurbishment, or renovation of the Site and/or the facilities currently located on the Site (including any historic structures or properties).

- (1) Include a graphical depiction showing the conceptual layout of the Project on the EUL site. At the Offeror's discretion, such imagery could include conceptual drawings, site plans, and/or floor plans;
- (2) Describe the proposed A&E firm's background and experience, design philosophy, location, and,
- (3) Describe proposed construction firm's background and experience, location, number of employees, and bonding capacity.

C. Project Financing

Offerors are requested to submit a preliminary description of the following items for the proposed project:

- (1) Development Budget(s): Development budget must show (1) total development costs, including hard and soft costs (including legal fees); (2) financing costs, including types, anticipated debt and equity amounts, and underlying amortization period; and (3) ownership structure, including percentage of ownership by the Offeror (or in the case of a special purpose entity, each team member);
- (2) Annual Operating Budget(s): Offeror should list all expected annual revenues, including expected monthly rents by unit type. Offeror should specify what percentage of unit rents will be set at no more than 30% of tenants' adjusted gross incomes, and what percentage of units (if any) will be set at market rate or other rent levels. In addition, Offeror should list all expected annual operating expenses associated with the Project;
- (3) Annual Supportive/Resident Services Budget(s): Offeror should list all expected annual supportive/resident services expenses; and,
- (4) Sources and Uses: The response must provide list(s) of all capital, operating and supportive/resident services funding sources (e.g., Low Income Housing Tax Credit equity, equity provided by the Offeror, Federal, State and local government funding, grant proceeds, loan proceeds, net operating income generated from tenant rent contributions, rental vouchers, etc.) used to finance the Project. The discussion should include a description and/or documentation demonstrating the Offeror's strategy to obtain financing for the

Project, including contingency plan(s) in the event one or more sources of funding are not available.

D. Project Timeline(s)

The Offeror must provide a timetable for the project containing the following key dates:

- (1)** Project financing sources: Anticipated application, award and closing dates;
- (2)** Schematic design and construction documents: Completion dates;
- (3)** Construction: Start and completion dates; and,
- (4)** Occupancy: Date the facility(s) are open for operation.

4.2.5 Property Management and Supportive/Resident Services Plan

The Offeror will be responsible for ensuring the proper operation, management, and maintenance of the Project during the term of the EUL. This section must contain the following:

A. Property Management Approach and Key Personnel

Describe Offeror's approach to operation, management, and maintenance of the Project in accordance with private sector standards. The Offeror should include detailed information (i.e., entity name, resumes, headquarters and principal places of business, etc.) on any personnel that are proposed to be responsible for management of the Project (Note: Resumes do not count against the page limits).

B. Supportive/Resident Services Offered and Key Personnel

Identify which supportive/resident services are to be provided on-site, as well as who is going to provide them. Offeror must also provide detailed information about the following topics: needs assessment and outreach strategy; service delivery strategy; coordination with other programs and service providers; and performance objectives. The Offeror should include detailed information (i.e., entity name, resumes, headquarters and principal places of business, etc.) on any personnel that are proposed to be responsible for supportive/resident services at the Project (Note: Resumes do not count against the page limits).

4.2.6 Community Relations Experience and Strategy

This section should include an explanation of the Offeror's experience and approach to managing community relations and interacting with State and local government officials (i.e., zoning, environmental, SHPO, local community, etc.). Specifically, this section must contain the following:

A. Community Relations Experience

Describe any experience in managing relations with the surrounding community.

B. Community Relations Strategy

Describe Offeror's approach to establishing constructive dialogue and maintaining proactive contact with key public officials, private stakeholders, working with small and

local businesses and SDVOB and 8A businesses. Offerors should also provide an outline describing strategies to overcome any potential challenges.

5. EVALUATION CRITERIA

5.1 Initial Review

Following the RFP submission deadline, VA will initially review all submissions for completeness and adherence to the requirements and conditions set out in this RFP.

5.2 Formal Presentations

5.3 Complete and acceptable submissions will be further reviewed and evaluated by VA, ranked order based on the completeness and adherence to the requirements and conditions set out in this RFP; and a “competitive range” established. Offerors whose submissions are found to be within the competitive range may be given the opportunity, at VA’s sole discretion, to make a formal presentation to VA and receive questions regarding their response. If a presentation is required, notice will be provided to those Offerors asked to make a presentation and the details regarding that presentation (i.e., length of presentation, etc.) will be provided in the notice. Selection Process

The Government intends to review all factors for award in making a best value selection. After the final evaluation of the responses, VA will select the Offeror whose response offer the **best overall value**. Selection will be based on an integrated assessment of the factors set forth below. Upon selection of the selected developer, the developer will commence work on the Development Plan, as outlined in Section 3 of this RFP, with the intent to execute the EUL.

5.4 Evaluation Criteria

The responses will be evaluated on the basis of the following factors that are equally weighted. The evaluation factors are as follows and as related to the other considerations discussed in Section 2.3.9 of this RFP:

5.4.1 Relevant Offeror Experience, and Past Performance

VA will review the extent to which the Offeror and its team members have demonstrated expertise and a proven track record in developing and operating multifamily, permanent, affordable housing projects. Offerors should show that they have experience with Project of similar size and scope to the proposed Project and have completed or placed in service at least one comparable, currently-operating housing project of a size comparable to or larger than the Project contemplated in this RFP. Offerors should possess a strong, positive reputation for reliability, service, and a commitment to serving Veterans and their families. VA will assess the financial stability of the Offeror and its

team members. VA will also review the Offeror and its team members' history of complying with agreements and not defaulting on financial responsibilities.

5.4.2 Development Concept, Financial Feasibility, and Timeline

VA will evaluate the feasibility of the Offeror's development concept and proposed site construction/building design. VA will assess the viability of the proposed financing plan for the Project. The development concept should reflect VA's goals and objectives, (see Sections 2.3.8 of this RFP). Offerors should provide a realistic project development timeline for VA's review.

5.4.3 Property Management and Supportive/Resident Services

VA will evaluate the Offeror's approach to delivering property management and supportive/resident services to the Project and ensuring the long-term viability of the Project. VA will review the qualifications of the proposed key personnel to determine their ability to deliver the proposed property management and supportive/resident services to the Project. Both the property management and supportive/resident services plan should be customized to the proposed product type and the Offeror should be familiar with and have developed strong working relationships with local community organizations.

5.4.4 Community Relations Experience and Strategy

Although community approval is not required for this Project, VA intends to evaluate the Offeror and its team members' experience with and strategy for managing community relations. Offerors should demonstrate local market knowledge and a community relations strategy that accounts for potential community opposition to the Project.

6. MISCELLANEOUS TERMS AND CONDITIONS APPLICABLE TO THIS RFP

6.1 Questions and Information

Questions, requests for clarifications, and general information requests must be sent by email to maina.gakure@va.gov before December 22. VA, in its sole and absolute discretion, reserves the right to provide all prospective Offerors with copies of any Offeror questions it receives and any answers, clarifications, and/or information it provides in response thereto, if it determines that doing so may be of general interest to potential Offerors.

6.2 Authorizations by Submission of Response

Any and all information provided by an Offeror and its team members may be used by VA to conduct credit and background checks.

6.3 Teaming Arrangements and Special Purpose Entities

Multiple Offerors may form a joint venture for the purpose of submitting a response in response to this RFP. A special purpose entity may also be created for the purpose of submitting a response. VA may require that financial and performance guarantees be provided by these and other Offerors as well as team members. Supportive housing development and management can be a complex and challenging process and may require substantial expertise. Potential Offerors who do not have strong experience or skills in these areas may consider submitting responses jointly with entities whose experience can complement their own. (Note: VA will not be involved in facilitating partnering or teaming arrangements.)

6.4 Hold Harmless

By participating in the RFP process, each Offeror agrees to indemnify and hold harmless VA and the United States and each of their respective officers, employees, contractors, and advisors from and against any and all real estate and other brokerage fees or commissions, finder's fees, and other forms of compensation related in any way to activities undertaken by any person as a result of such person's efforts towards and/or participation in this RFP process or the submission by such person of a response, and liabilities, losses, costs, and expenses (including reasonable attorney's fees and expenses) incurred by any indemnified party (including VA) as a result of, or in connection with, any claim asserted or arising as a result of, or in connection with, this RFP process.

6.5 Ineligibility

The following persons (including entities) are ineligible to be an Offeror or a team member of an Offeror or otherwise participate in the Project (including as a contractor, subcontractor, or professional): (a) any person that has been debarred or suspended from doing business with VA; (b) any person who poses a security or safety risk, as determined by the Secretary of State, including but not limited to any person who either represents a country, or is a member of or provides political, financial, or military support to a group, that is listed in the most current "Country Reports on Terrorism" report, issued by the Secretary of State in compliance with 22 U.S.C. § 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at: <http://www.state.gov/j/ct/rls/crt/>; and (d) any person who is subject to a criminal indictment or information for a felony in any U.S. court. VA reserves the right to require any participant in the Project to confirm that it is not ineligible under the foregoing criteria.

6.6 Additional Information

All of the information required to be provided in each response pursuant to Section 4 of this RFP is important to VA's analysis and evaluation of the response. VA may utilize all information provided in a response in evaluating the response. Neither VA nor any of its contractors, subcontractors, officers, employees, counsel, advisors, or agents, make any representation or warranty, whether express, implied, or created by operation of law, as to the accuracy or completeness of this RFP or any of its contents or materials referred to therein, and no legal liability with respect thereto is assumed or may be implied.

In no event shall VA be liable for any fees, costs, or expenses associated with any of the Offeror's (or their brokers, if any) activities (e.g., preparation, discussions, clarifications, submissions, or negotiations), relating directly or indirectly to this Solicitation. Accordingly, as a condition of submitting its response, each Offeror hereby agrees to indemnify and hold VA harmless for any and all such fees, claims, liabilities, and costs arising in connection with this RFP and its underlying process.

Any relationship between VA and an Offeror arising from the Solicitation is subject to the specific limitations, terms, conditions, and representations expressed in this RFP. Any substantive questions or concerns to include conflicts, apparent conflicts, or any other substantive matters regarding this RFP which may arise during preparation of an Offeror's response should be addressed, in writing, via the dedicated email address: maina.gakure@va.gov

ATTACHMENT A – EUL SITE INFORMATION

The following information includes site information for the EUL Site listed in this RFP.

EUL Site Information

Lexington VA Medical Center – Leestown Division
Lexington, Kentucky

Background & Description of EUL Site

Campus Background	<ul style="list-style-type: none">See http://www.lexington.va.gov/ for information on the subject campus
EUL Site	<p><u>Buildings Available</u></p> <ul style="list-style-type: none">Building 5: 24,003 GSFBuilding 6: 5,082 GSFBuilding 7: 5,082 GSFBuilding 8: 4,164 GSF <p><u>Vacant Land Available</u> 6 Acre Parcel adjacent to the 4 buildings.</p> <p>The buildings will require extensive renovations, to include hazardous materials abatements (asbestos and potential lead paint) to meet the proposed use. The finishes, mechanical, and electrical systems are deteriorated and beyond their useful life. The buildings and adjacent land are higher in elevation than the surrounding areas so drainage is good. Drives to the buildings and parking will need to be repaired and/or widened to meet the intended use. No entitlements are present on the proposed approximately 6 acres. Utilities and services are already present to the buildings; however, it may be prudent due to age and condition to replace service lines.</p>

ATTACHMENT B – INFORMATION ON SITE TOURS

The site tours will provide Offerors with an opportunity to see the EUL Site, enter existing improvements (if possible), and understand how the EUL Site relates to the rest of the VA campus and community.

Site Visit Information

Lexington VA MEDICAL CENTER SITE VISIT

Date: December 1, 2015

Location: 2200 Leestown Road, Lexington, KY 40511

If you are interested in attending the site visit, please call (859)-608-6860 or email douglas.morgan3@va.gov or DeCarol.Smith@va.gov to confirm your attendance. When emailing, please note in the subject, "Leestown EUL Site Visit Registration".

ATTACHMENT C – BID TERMS AGREEMENT

Lexington VA Medical Center – Leestown Division

The United States Department of Veterans Affairs (“VA”), through the Request for Proposals No. VA101-16-R-0031, dated_____, solicitation for

Lexington VA Medical Center – Leestown Division, respectively, as supplemented or amended (the “RFP”), has solicited offers from the undersigned (the “Developer”) and others to lease and develop the Site (as defined in the RFP) and design, finance, construct, operate, maintain, and manage the Project (as defined in the RFP) on the Site pursuant to an EUL and any other documents to be executed in connection with the transaction either by VA or VA and the Developer (collectively, the “Transaction Documents”). The Developer has submitted a response to VA in response to the RFP (the “Response”) and is submitting this Bid Terms Agreement (this “Agreement”) with and as a required part of the Response. Capitalized terms used and not otherwise defined in this Agreement have the meanings given in the RFP. In consideration of the foregoing and being allowed to compete for an award with respect to the RFP, the Developer acknowledges and agrees as follows:

1. The Response becomes irrevocable on the Closing Time, at which time the Developer is legally bound by this Agreement and the terms of the Response, including without limitation the development concept (the “Development Concept”) and the type and value of the consideration proposed to be provided to VA as part of the EUL. The Response remains irrevocable for one hundred eighty (180) days after the Closing Time. After the one hundred eighty (180) day period has expired and prior to the issuance by VA of a Selection Notice (as defined below), the Developer may revoke its Response by delivering to VA written notice of revocation. Upon receipt by VA of such a revocation notice, the Response shall be deemed to be revoked.
2. VA may, in its sole and absolute discretion: (i) modify, suspend, or waive any terms and conditions of the RFP; (ii) reject any or all responses (including the Response); (iii) waive any deficiency or irregularity in any response submitted; (iv) terminate, extend, or delay the RFP process, in whole or in part, at any time, including after a response is accepted; (v) discuss any submission with the offeror that submitted it and require the submission of additional or clarifying information regarding any aspect of the offeror’s response; (vi) conduct one or more “best and final” rounds of bidding; and (vii) make an award to an offeror whose response is not the response that would provide VA with the highest value in terms of consideration to VA under the EUL or otherwise.

3. Any and all risks of error or mistake (including any omission) in the completion or submission of the Response, including this Agreement, or any other documentation submitted by the Developer shall, as between VA and the Developer, be borne solely by the Developer. No error or mistake in the completion or submission of the Response, this Agreement or any other documentation shall relieve the Developer of any of its obligations hereunder or under the RFP.
4. The Developer is responsible for conducting, and represents and warrants that, to the extent the Developer deems it necessary or appropriate, it has conducted, its own due diligence regarding the Site, including, without limitation, whether (i) the development of the Site, as contemplated by the Response, can be accomplished in compliance with applicable Federal, state and local laws (including zoning and other local land use restrictions); (ii) the condition of the Site is suitable for the Developer's contemplated use; (iii) the necessary permits, variances, special exceptions, and other governmental actions or approvals required for the contemplated development reasonably can be obtained (at no cost or expense to VA); and (iv) the contemplated use is otherwise practical and economically feasible.
5. If the Developer is chosen by VA to prepare a Development Plan and enter into an EUL for the Site, VA will provide the Developer with a written notification to that effect (the "Selection Notice"). The Selection Notice will be accompanied by the duplicate original of this Agreement executed by the Developer (submitted with the Response) and a copy of the Milestone Timetable agreed to by the Developer and VA (the "Agreed Milestone Timetable"). VA may issue a Selection Notice that is conditional (a "Conditional Selection Notice") upon the Developer and VA reaching agreement, within a timeframe specified in the Conditional Selection Notice, on certain matters regarding the Response that are not acceptable to VA or with respect to which it requests clarification. If VA issues a Conditional Selection Notice and the conditions set forth therein are met, VA will then issue a Selection Notice. If VA issues a Conditional Selection Notice and the conditions are not met, as determined by VA in its sole and absolute discretion, then the conditional selection of the Developer may be revoked by VA (which revocation may operate automatically and without any action on the part of VA if the Conditional Selection Notice so provides) and the Developer shall have no rights or recourse against VA with respect thereto. The Agreed Milestone Timetable, to be attached as Schedule 1 hereto, and the Response, including, without limitation, the Development Concept, as the same may be amended or revised at the request of VA prior to the issuance of a

Selection Notice, are incorporated into and made a part of this Agreement.

6. Following receipt of a Selection Notice, the Developer shall prepare a Development Plan in accordance with the Development Concept contained in the Response. The Development Plan shall comply with the requirements, terms, and conditions regarding a Development Plan as set forth in the RFP, including, without limitation, the provisions of Parts 2.3 and 3 of the RFP. No material deviation from the Development Concept, including, without limitation, the value of consideration proposed therein to be provided to VA, shall be permitted or effective unless approved in writing by VA. Following the receipt of a Selection Notice, the Developer shall complete the Development Plan and meet the other milestones contained in the Agreed Milestone Timetable in a timely manner.
7. Within five (5) Business Days of receipt from VA of the execution form of the EUL and any other Transaction Documents, the Developer (and/or any other party thereto) shall execute and deliver the same to VA (or its counsel, as directed by VA).
8. The Developer understands that time is of the essence to VA in accomplishing the milestones set forth on the Agreed Milestone Timetable and in otherwise complying with the Developer's obligations under this Agreement. If the Developer fails in any material respect to meet in a timely manner any milestone contained in the Agreed Milestone Timetable or fails to execute and deliver any of the Transaction Documents as and within the timeframe required by the preceding paragraph or otherwise fails to comply with or breaches any provision of this Agreement, VA will have the right to declare the Developer in default under this Agreement and, upon any such default, VA shall have the right to (i) terminate the Developer's rights under this Agreement (and all further discussions with the Developer); and (ii) in VA's sole and absolute discretion, if it so chooses, make an award to another developer.
9. Except for such representations and warranties of VA as are expressly set forth in the EUL or any other Transaction Document to which VA is a party, VA makes no representations or warranties of any kind (whether express, implied, or arising by operation of law). Without limiting the foregoing, VA makes no representation or warranty regarding the suitability of the Site for use of any kind.

10. Each of the Response and this Agreement has been, and any and all amendments, additions, and clarifications thereto and any other documents submitted to VA in connection with the Response or the RFP have been or, if submitted hereafter, will be executed and delivered by a duly authorized representative of the Developer. The Developer has all requisite corporate or other authority necessary to submit the Response (including this Agreement) to VA, to agree to any amendments, additions, and clarifications made thereto by the Developer, and to submit such other documents as the Developer has submitted or hereafter submits to VA in connection with the RFP, the Response, or the contemplated transaction, and to be legally bound by the terms and conditions thereof and the RFP. This Agreement constitutes a valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the enforcement of the rights of creditors generally and the application of equitable principles in any proceeding, whether at law or in equity).
11. Without limiting the indemnification and hold harmless obligation of the Developer set forth in the RFP, the Developer hereby indemnifies and holds harmless VA and the United States and each of their respective officers, employees, contractors, and advisors and their respective successors and assigns (the "Indemnified Parties") from and against (i) any and all claims asserted against any Indemnified Party arising from or relating in any way to any act or omission of the Developer or any person acting on behalf of or in conjunction with the Developer in connection with or as a result of the Developer's or such other person's participation or efforts to participate in the RFP process or in anticipation thereof, including without limitation the preparation or submission of the Response and this Agreement, and including without limitation any claim of any real estate or other broker, agent or finder (other than any such person retained by VA), and any and all liabilities, losses, costs, and expenses (including reasonable attorneys' fees and expenses) incurred as a result or in defense of any such claim; and (ii) any and all liabilities, losses, costs, and expenses (including reasonable attorneys' fees and expenses) incurred by VA in connection with any action taken by VA to defend or enforce any of its rights and/or remedies under this Agreement or otherwise in connection with the RFP process, the Response, or this Agreement.
12. It is understood and agreed by the Developer that VA is not obligated, and may not have the authority, to agree to any substantive change to the form of EUL or any other Transaction Documents included as part of the RFP or the structure of any transaction contemplated thereby. In addition, the

Developer agrees that VA may require financial security (such as a letter of credit or a performance guaranty) by a financially sound entity (in each case acceptable to VA) to back the Developer's obligations under the EUL and other Transaction Documents, and the Developer is willing and able (at no cost or expense to VA) to provide appropriate security at VA's request.

13. The Developer represents, warrants, and covenants to VA as follows:
- (a) the Developer has read, and has had an opportunity to review with its legal counsel, the RFP (including, without limitation, all supplements thereto) and fully understands and is fully capable of complying with all of its terms and conditions and the obligations of the Developer set forth therein, including without limitation the Disclaimer that is a part thereof, and the Developer has had an opportunity to ask and has received satisfactory responses from VA regarding the RFP;
 - (b) without limiting the foregoing, the Developer has read, and has had the opportunity to review with its legal counsel, this Agreement and the form of the EUL and other Transaction Documents included in the RFP and understands and is fully capable of complying with all of the terms, conditions, and obligations of the Developer set forth therein, including any and all time frames specified for performance in the Agreed Milestone Timetable;
 - (c) the information provided in the Response is true and correct in all material respects as of the date of the Response and, in the event any of such information ceases at any time to be true and correct in all material respects, the Developer promptly shall so inform VA in writing (specifically identifying such information);
 - (d) (i) neither the Developer nor any of its partners, members, or principal stockholders (as defined below) is debarred or suspended from doing business with VA or any other federal government agency; (ii) if at any time the Developer or any of its partners, members, or principal stockholders is proposed to be debarred or suspended from doing business with VA or any other federal government agency, the Developer will immediately so advise VA in writing; (iii) neither the Developer nor any of its partners, members, or stockholders is listed on the most current "System for Award Management" published by the U.S. General Services Administration at <https://www.sam.gov/portal/public/SAM>, as updated from time to time; (iv) neither the Developer nor any of its partners, members, or stockholders is a person who poses a

security or safety risk as determined by the Secretary of State including, but not limited to, any person who either represents a country, or is a member of or provides political, financial, or military support to a group, that is listed in the most current "Country Reports on Terrorism" report, issued by the Secretary of State in compliance with 22 U.S.C. § 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at: <http://www.state.gov/s/ct/rls/crt/2010/index.htm>;

(v) neither the Developer nor any of its partners, members, or principal stockholders is subject to a criminal indictment or information for a felony in any court in the United States; and (vi), in conjunction with any proposed assignment of this Lease, the assignment would, as determined pursuant to an opinion of VA's Office of General Counsel, not cause or result in a violation of any federal ethics law or regulation to include, but not be limited to, the "Standards of Ethical Conduct For Employees of the Executive Branch," 5 C.F.R. 2635, 2637 and 2641. For purposes of this Lease, the term "principal stockholder" shall mean any person who is a beneficial owner (as defined for purposes of Rule 13d-3 promulgated by the Securities and Exchange Commission) of ten percent (10%) or more of the outstanding stock or other equity of the Lessee. For purposes of this Agreement, the term "principal stockholder" shall mean any person who is a beneficial owner (as defined for purposes of Rule 13d-3 promulgated by the Securities and Exchange Commission) of ten percent (10%) or more of the outstanding stock or other equity of the Developer.

- (e) Neither the Developer, nor any of its affiliates, nor any of their respective officers, directors, partners, principals, agents, employees, or parties in interest has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other offeror, firm, or person to submit a collusive or sham response in connection with this RFP, or to take (or not take) any other action designed, or the effect of which is reasonably likely to be, to limit or curtail competition among prospective offerors with respect to the RFP.

14. Except as is otherwise set forth in the EUL and other Transaction Documents, each of the Developer and VA shall pay its own expenses (including legal, accounting investment banker, broker, or finders fees) incurred in connection with the RFP, the Response, this Agreement, and any transaction contemplated thereby, (including without limitation the preparation and submission of the Response and related documentation and review and execution of this Agreement by the Developer and the

preparation and dissemination of the RFP and review and evaluation of RFP responses by VA).

15. This Agreement may be amended or modified, and the terms hereof waived, only by a written instrument signed by VA and the Developer. No failure or delay on the part of VA to exercise any right, power, or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of VA of any such right, power, or privilege, or any single or partial exercise of any such right, power, or privilege, preclude any other or further exercise thereof or the exercise of any other or subsequent right, power, or privilege.
16. To the maximum extent permitted by law, all disputes arising under or relating to this Agreement shall be resolved under the provisions of the Contract Disputes Act, 41 U.S.C. § 601 *et seq.* (the "Disputes Act") and applicable regulations. For purposes of implementing this subsection, VA will designate the person (the "Designated VA Representative") authorized to act on its behalf under and in connection with administration of this Agreement. The Designated VA Representative shall be considered the "contracting officer" for purposes of the Disputes Act. The Designated VA Representative's decision shall be final unless a party appeals or files suit as provided in the Disputes Act. The parties shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to this Agreement, and comply with any decision of the Designated VA Representative.
17. The Developer shall not assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement or with respect to the RFP or the Response without the prior written consent of VA (which consent may be granted or withheld in the sole and absolute discretion of VA), and any attempted transfer or assignment in violation of this provision shall (i) be void and of no force or effect, and (ii) constitute a material default under this Agreement and entitle VA to exercise its rights and remedies hereunder with respect thereto.
18. The Developer shall not be liable for any failure to perform under this Agreement or any delay in performing under this Agreement (including any failure to meet a milestone set forth in the Agreed Milestone Timetable) if such failure is due directly to any of the following causes or circumstances and such cause or circumstance is beyond the Developer's control (and such event, an event of Force Majeure): war, fire, riot, terrorist act, flood, or other extreme weather, accident, change (hereafter) in any

law or regulation, labor strike or lockout, or failure of VA to take an action required to be taken by it. If an event of Force Majeure occurs and the Developer is delayed in its performance as a result thereof, the Developer shall be entitled to an extension of time equal to the period of delay caused by the Force Majeure event, provided that the Developer notifies VA in writing of the event of Force Majeure and the anticipated resultant delay within five (5) days after the occurrence of the event of Force Majeure.

19. This Agreement shall be binding on and inure to the benefit of VA (and its successors and assigns) and the Developer (and its permitted successors and assigns), and there shall be no third party beneficiaries. This Agreement shall be binding upon the Developer as of the Closing Time, and shall remain binding on the Developer even if the Response is revoked in accordance with this Agreement. Neither VA's execution nor delivery of this Agreement shall be required in order for VA to be entitled to enforce this Agreement against the Developer. VA shall execute and deliver this Agreement only if a Selection Notice is issued to the Developer and only for the purpose of confirming its agreement with the Agreed Milestone Schedule and the other provisions of this Agreement relating to the performance by the Developer of its obligations arising upon receipt of a Selection Notice.
20. If the Developer receives a Selection Notice, unless otherwise specified by VA, the Developer shall provide VA with six (6) hard copies and one (1) electronic copy of the Development Plan and each other item submitted to VA (whether required by the Agreed Milestone Timetable or submitted voluntarily by the Developer). The electronic copy of a submission must be included on a single diskette or CD ROM in PDF format. In addition, any Excel or other spreadsheets that allow data to be manipulated must be included in their native (i.e., Excel) format.
21. Any and all notices, demands, requests and other communications given or delivered under or by reason of or in connection with the provisions of this Agreement shall be in writing, and shall be given by certified or registered mail, postage prepaid, by delivery by hand or by nationally recognized air courier service, or by facsimile transmission directed, in the case of the Developer, to the address or facsimile transmission number set forth on the signature page hereof and, in the case of VA, to the address or facsimile transmission number set forth below:

Department of Veterans Affairs

Office of Asset Enterprise Management (044C)
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Attention: Designated VA Representative
Facsimile No.: 202-273-9374

Items directed to VA must also be clearly labeled with the Developer's full name and the following subject heading: Lexington VA Medical Center- Leestown Division RFP, Bid Terms Agreement Matter".

Notices shall become effective when received (or refused) by the addressee, provided that any notice or communication that is received (or refused) other than during regular business hours of the recipient on a business day shall be deemed to have been given at the opening of business on the next business day. From time to time, either party may designate a new address or telecopy number for purposes of notice hereunder by notice hereunder to such effect to the other party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the Closing Time by a duly authorized officer or representative of the Developer.

Developer: _____

Name: _____

Title: _____

Address for notice:

Attention: _____

Facsimile No.: _____

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the date of the Selection Notice by a duly authorized officer or representative of VA solely for the purposes set forth herein.

VA: United States Department of Veterans Affairs

Name: _____

Title: _____