

**REQUEST FOR PROPOSAL FOR THE  
CONSTRUCTION AND OPERATION OF THE  
APPOQUINIMINK NATATORIUM**

## OVERVIEW

The Appoquinimink School District ("District") hereby requests proposals from interested persons (each a "**Proposal**" and collectively the "**Proposals**") to lease certain property (the "**Premises**," as shown on the attached **Exhibit A and A.1**) at its Fairview Campus on Old State Road for 99 years at \$1/year and to construct and operate an indoor swimming pool facility (the "**Natatorium**") on such Premises subject to and in accordance with the terms of the Ground Lease (as defined below).

The District will conduct an optional pre-submission meeting for all interested persons on **March 25, 2020 at 10:00 a.m.** at the **Marion E. Profit Training Center**, 118 S. Sixth Street, Odessa, DE 19730. All questions concerning this Request For Proposal should be submitted in writing either before, during, or after said meeting and will be answered by the District in writing. No oral statements made by the District concerning this Request for Proposal shall be binding upon the District. Construction Projects Manager Robert Hershey will handle questions concerning submissions and procedures on behalf of the District and may be reached by email or written letter at: [Bob.Hershey@Appo.K12.DE.US](mailto:Bob.Hershey@Appo.K12.DE.US) or 118 S. Sixth Street, Odessa, DE 19730. All written communications should be by both email and written letter.

District reserves the right to reject any and all Proposals and/or to amend this Request for Proposal at any time prior to the submission of Proposals. All submissions shall become the property of the District. Consideration of any Proposals by the District is expressly subject to and contingent upon the District's ability to satisfy the Legislative Contingency set forth under Section 2.2 below.

By submitting a response to this request for a Proposal by the District, each proposing party (each a "**Proposer**") acknowledges, understands and agrees that its entire proposal may be deemed a "public record" for the purposes of the Delaware Freedom of Information Act under 29 Del. C. §10001-10006 et sq. ("**FOIA**").

**Proposals must be received in writing by 2:00 p.m. on April 22, 2020.**

### **RESPOND TO:**

Robert D. Hershey  
Appoquinimink School District  
118 S. Sixth Street  
Odessa, DE 19730

## **SECTION 1. INSPECTIONS AND DUE DILIGENCE**

1.1. **Inspection of Premises.** The Premises may be inspected during normal business hours from 9:00 a.m. to 3:00 p.m. local time, by advanced appointments scheduled through Robert D. Hershey. No soil samples or other tests of any kind, including environmental test or sampling, shall be conducted without a prior written request and written approval of the District.

1.2. **Premises Specific Due Diligence Information.** Certain plans and other physical and environmental information about the Premises will be available upon written request and upon execution and delivery of the attached Confidentiality Agreement.

## **SECTION 2. SUMMARY OF REQUEST**

2.1. **Form.** Proposals shall be submitted in the format contained in Section 3 of this Request for Proposals. Any questions concerning the format should be addressed to Robert Hershey.

2.2. **Lease Terms.** The general form of ground lease to be executed between the District and the successful Proposer shall be the form attached as **Exhibit B** as may be modified by the mutual agreement of the District and the successful Proposer (the “**Ground Lease**”). The ability of the District to enter into the Ground Lease with any Proposer is expressly contingent upon the District receiving legislative relief by July 2, 2019 from the requirements of 14 Del. C. §1057 to permit the execution and delivery of the Ground Lease to a Proposer without having to offer the Premises to other state agencies (the “**Legislative Contingency**”).

2.3. **Deposit.** All Proposers shall, in addition to the submission of the other requirements contained in Section 3 herein, submit in a separate sealed envelope a cashier's or certified check in an amount equal to \$50,000 made payable to the District. Said envelope shall clearly state on its face “**Initial Lease Deposit.**” In the event any Proposer is not selected to lease the Premises, the cashier's or certified check for the Initial Lease Deposit shall be returned to each such Proposer. However, if a Proposer is selected to lease the Premises, an additional \$50,000 deposit (the “**Additional Lease Deposit**” together with the Initial Lease Deposit is the “**Lease Deposit**”) shall be required to be paid to the District upon execution of the Ground Lease, which Lease Deposit shall be held to secure the successful Proposer’s compliance with all terms and conditions of the Ground Lease and/or returned to the Proposer in the event the Proposer and the District are unable to agree upon the terms of and execute the Ground Lease within thirty (30) days of being notified that Proposer’s proposal has been accepted by District.

## **SECTION 3. FORMAT OF PROPOSAL**

Proposer(s) shall submit three (3) copies of the Proposal. The Proposal shall include the following and provide a table of contents indicating where the required information is located in the submission package:

3.1. Name, address, phone, fax and e-mail address of proposer including primary contact person.

3.2. Additional information regarding the proposer to include:

3.2.1. Location, size and description of the business entity.

3.2.2. Form of business entity (corporation, partnership, joint venture, LLC, etc.) date formed/incorporated, and state of formation/incorporation (if applicable), including name and contact information for all owners/stockholders/members/partners of the business entity/proposer and the names of owners/stockholders/members/partners of any entity owning any interest in the proposer.

3.2.3. Real estate ownership, management and development expertise.

3.2.4. Management, ownership and business experience in constructing, operating and managing pool facilities.

3.2.5. Contact information, including names, title, and telephone numbers of key personnel to be involved in the project.

3.2.6. Financial statement/balance sheet showing assets, liabilities and net equity.

3.2.7. Two credit references.

3.3. Detailed proposed terms, including the following:

3.3.1. **A general description of the proposed Natatorium to be constructed**, including approximate square footage of the facility to be constructed, the size and depth of the pool(s), number of swimming lanes, number and height of diving boards, the amount of spectator seating, the number and size of locker rooms and approximate number of lockers, the size of administrative offices, and the number of parking spaces provided for the facility. To the extent the Proposer proposes other rooms and facilities (training rooms, weight rooms, etc.) all such facilities should be included in the description. A detailed site plan is not required. A detailed floor plan of the proposed facility is not required, but a floor plan or sketch should be provided as part of the Proposal. Changes in the final building constructed and the site layout shall be permitted, so long as the final building is in substantial conformance to what is proposed and is otherwise in compliance with the Ground Lease.

**NOTE** – because a new subdivision and land development plan will be need to be approved by New Castle County (the “**County**”) for the Natatorium in the proposed location on **Exhibit A**, including the creation of a separate tax parcel for the Natatorium, the District recognizes that there may be some delay in the start of construction while the District and the successful Proposer go through the County land use and other associated governmental agencies review and approval process (collectively the “**Land Use Approvals**”). Landmark Engineering, the civil engineering firm that originally obtained the land development plan approval from New Castle County for the Campus shall be used to prepare and process the plans and associated documentation necessary or required to obtain the Land Use Approvals. The successful Proposer shall be responsible for all costs and expenses associated with obtaining such Land Use Approvals, including the commercially reasonable professional fees and costs charge by Landmark and the applicable fees and costs charged by the County and other applicable governmental

agencies, as well as the posting of any bonds or other surety provided, however, that upon obtaining all of the Land Use Approvals as evidenced by the recordation of the final subdivision and land development plans for the Natatorium and upon the expiration of all applicable appeal periods associated with the Land Use Approvals, the District shall reimburse the successful Proposer \$25,000 towards the documented costs and expenses incurred by the successful Proposer for obtaining such Land Use Approvals.

**3.3.2. General construction outline/timeline for construction of the Natatorium,** including estimated timetable, and estimated costs. The construction outline should include all calculations supporting the estimate of cost. Detailed construction drawings need not be provided with the Proposal, but the construction outline should include as part of its timeline the timeframe for the development of the construction drawings and an estimate for start of construction and completion of construction. The actual building and site plan shall be subject to the District's reasonable review and approval before construction as provided in and in accordance with the Ground Lease. It is not expected that construction would start before spring 2020, and is dependent on getting final Land Use Approvals from the County.

**3.3.3. Business plan for the proposed operation of the Natatorium,** which will include use of the Natatorium by the District's high school swim teams and the holding of swim meets by the District's high school teams during the high school swim season. Use of the Natatorium by the District during the high school swim team season (including any post-regular season meets) shall be at no charge, cost or expense to the District. Conference and statewide swim meets hosted by the District, including state championships, may also be held at the Natatorium at no charge, cost or expense to the District or other participants. Any ticket or "gate" money or similar charges by the District for entrance to meets shall be the sole property of the District. The foregoing basic terms as to the shared use of the Natatorium as well as other pertinent terms and conditions shall be memorialized in the Ground Lease.

**3.3.4. Finance plan for the construction and operation of the Natatorium,** including amount of construction cost to be financed, equity investment, source(s) of equity, etc. The Finance plan should include provision for a completion bond or other security (e.g., letter of credit) acceptable to the District to ensure that the Natatorium will be completed once construction commences.

**3.3.5. FOIA.** By submitting a response to this request for a Proposal by the District, each Proposer acknowledges, understands and agrees that its entire Proposal may be deemed a "public record" for the purposes of FOIA.

## **SECTION 4. RATING CRITERIA**

4.1. The below listed rating criteria will be utilized in evaluating each Request For Proposal:

1. Size and quality of proposed Natatorium and related improvements;
2. Experience and reputation related to Proposer's ability to perform and operate the Natatorium;

3. Capacity of Proposer to meet requirements of the Request For Proposal (size, financial resources, etc.);
4. Demonstrated ability to successfully manage and operate similar facilities or operations.

## **SECTION 5. CONTRACTING PROCESS**

5.1. Based upon the criteria established by this Request for Proposal as discussed above and subject to the District's ability to satisfy the Legislative Contingency, the District shall rank, in order of preference, the applicants deemed to be qualified to lease the Premises.

5.1.1. Beginning with the qualified Person designated first on a preference list, the District may then undertake (but need not) negotiations with such qualified Person regarding the terms of the Ground Lease of the Premises. In the event the parties are able to enter into the Ground Lease, then such qualified Person shall remit to the District, with the executed Ground Lease, the Additional Lease Deposit. However, should District and such qualified Person be unable to enter into the Ground Lease upon terms the District determines to be fair and reasonable for any reason or no reason, then negotiations with that Person may be formally terminated by the District within thirty (30) days of the date that the District notified the Proposer that it's proposal had been accepted by District, whereupon the Initial Lease Deposit shall be returned to such qualified Person as provided in Section 2.3 above.

5.1.2. Upon such termination of such negotiations as provided in Section 5.1.1 above, the District may then either (i) undertake negotiations with the second qualified Person (if applicable) on the preference list regarding the terms of the Ground Lease of the Premises upon receipt of the Initial Lease Deposit or (ii) abandon the negotiations and consideration of any and all request for proposals if in the sole judgment of the District it's best interests will be served and/or promoted thereby. In the event the District elects to commence negotiations and the parties are able to enter into the Ground Lease, then such qualified Person shall remit to the District, with the executed Ground Lease, the Additional Lease Deposit. However, should District and such qualified Person be unable to enter into the Ground Lease upon terms the District determines to be fair and reasonable for any reason or no reason, then negotiations with that Person may be formally terminated by the District within thirty (30) days of the date that the District notified the Proposer that it's proposal had been accepted by District, whereupon the Initial Lease Deposit shall be returned to such qualified Person as provided in Section 2.3 above.

5.1.3. Upon such termination of such negotiations as provided in Section 5.1.2 above, the District may then either (i) undertake negotiations with one or more of the remaining qualified Person (if applicable) on the preference list regarding the terms of the Ground Lease of the Premises upon receipt of the Initial Lease Deposit or (ii) abandon the negotiations and consideration of any and all request for proposals if in the sole judgment of the District it's best interests will be served and/or promoted thereby. In the event the District elects to commence negotiations with one or more of the remaining qualified Persons and the parties are able to enter into the Ground Lease, then such qualified Person shall remit to the District, with the executed Ground Lease, the Additional Lease Deposit. However, should District and such qualified Person be unable to enter into the Ground Lease upon terms the District determines to be fair and

reasonable for any reason or no reason, including, but not limited to the District's inability to satisfy the Legislative Contingency, then negotiations with that Person may be formally terminated by the District within thirty (30) days of the date that the District notified the Proposer that its proposal had been accepted by District, whereupon the Initial Lease Deposit shall be returned to such qualified Person as provided in Section 2.3 above.

5.1.4. Notwithstanding the foregoing, any qualified Person may be rejected by District, if, in the opinion of District or its delegated representative, it is not in the interest of District to lease the Premises to such Person. In addition, District reserves the right to refuse to negotiate with any and all qualified Persons, or to abandon the request for proposals or negotiations of the Ground Lease if in the judgment of District its best interests will be promoted thereby. The successful Proposer may not assign any rights hereunder or under the any executed Ground Lease without the consent of District, which consent may be granted or denied in the sole and absolute discretion of the District. A "Person" for purposes of this Request for Proposals means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

## **SECTION 6. DISCLAIMER**

6.1. District reserves the right to reject any and all Proposals, for any reason and/or for no reason and/or to accept any Proposal, even though it may not be the highest ranked Proposal. All submissions become the property of District. No Proposals shall be considered unless and until the Legislative Contingency is satisfied by the District.

## **SECTION 7. SETTLEMENT**

7.1. Execution of the Ground Lease shall be completed, if at all, within thirty (30) days of the notification to the successful Proposer that its Proposal has been accepted and the satisfaction of the Legislative Contingency by the District.

## **SECTION 8. PREMISES BEING OFFERED "AS-IS"**

8.1. Proposers are responsible for performing their own due diligence with respect to the Premises. The Premises shall be leased in an "as-is, where-is" condition without any representations or warranties of any kind or nature.