

**SUCCESSOR EXCLUSIVE NEGOTIATING AGREEMENT
BETWEEN CITY OF LOS ANGELES
AND BELLWETHER FINANCIAL GROUP
FOR BERTH 44 BOATYARD DEVELOPMENT OPPORTUNITY**

THIS SUCCESSOR EXCLUSIVE NEGOTIATING AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2024, by and between THE CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Board") and BELLWETHER FINANCIAL GROUP, Inc. ("Developer"). (Board and Developer are sometimes collectively referred to herein as the "Parties.")

RECITALS

WHEREAS, on or about October 8, 2019, City and Developer entered into an Exclusive Negotiating Agreement ("initial ENA") for the exclusive negotiation to enter into a ground lease for the vacant land at Berth 44 in the Port of Los Angeles (the "Site") for the development of a Boatyard;

WHEREAS, the initial ENA expired on April 7, 2022; and

WHEREAS, the parties desire to enter into a Successor ENA ("Successor ENA" or "Successor Agreement") in order to, among other things, complete negotiations of a long-term lease for the Site and allow for the continuation and completion of the California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA) assessment which includes an Environmental Impact Report (EIR).

NOW, THEREFORE, City and Developer agree as follows:

AGREEMENT

1. EXCLUSIVE RIGHT TO NEGOTIATE

A. City hereby grants to Developer and Developer hereby accepts a grant of the exclusive right to negotiate ("Exclusivity Period") regarding a possible ground lease for the Site for the development of a boatyard for an initial period of six months. At the Executive

Director's sole discretion, up to three six-month extensions may be granted for a total potential Exclusivity Period of two (2) years.

1. The following are deliverables planned under this Successor ENA:
 - a. Period 1. City shall deliver final draft of the proposed lease to Developer.
 - b. Period 2. Developer will deliver the final project business plan and anticipated schedule to City.
 - c. Period 3. City will submit complete CEQA/NEPA document and final negotiated lease to Board for its consideration.
 - d. Phase 4. City will submit final negotiated lease to LA City Council.

Satisfaction of deliverables in no way guarantees that any or all of the Exclusivity Period extensions will be granted by the Executive Director; failure of delivering deliverables, as planned, shall not constitute a breach of this Agreement and/or the basis of any claims. All deliverables are subject to applicable law including but not limited to CEQA/NEPA assessments

B. During the Exclusivity Period, City shall not negotiate for a permit, lease or any other entitlement, or for the development of the Site or any portion thereof, with any party other than Developer, or approve or conduct a public hearing for any other development of the Site or any portion thereof, or issue any request for proposal (RFP) in connection with the Site or any portion thereof.

C. No Commitment. City and Developer acknowledge that any development, permitting or other activities pertaining to the Site are uncertain and that the negotiations

contemplated by this Successor Agreement may not result in a final lease. Issuance of a lease is subject to the approval of the Board and any and all other City approvals, in their respective sole discretion, and subject to the procurement of all entitlements required by and in compliance with, applicable law. City (including Board) shall not be obligated or deemed obligated to take or refrain from any action, including without limitation, environmental assessment under CEQA or NEPA, specific project approval, the approval or certification of any environmental review of the proposed Site development and/or the issuance to Developer of a lease,

D. Developer Responsible for Own Costs. No Reliance. Developer acknowledges and agrees that all expenses and costs of Developer arising from or out of this Successor Agreement or relating to the potential Site development, including but not limited to a ground lease or any other matter, shall be the sole responsibility of Developer with no reimbursement from or financial contribution by City of any kind except as may be provided in the CEQA Reimbursement Agreement, as amended. Developer specifically acknowledges that it is not entitled to any damages (nor any other relief or compensation), including but not limited to reliance damages for any actions it takes in connection with or relating to this Successor Agreement, the original ENA and/or the Site including but not limited to the termination of this Successor Agreement

E. No Assignment. Developer shall not assign, sell or otherwise transfer the Successor Agreement or any rights under this Successor Agreement.

F. Conflicts of Interest. The parties to this Successor Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as

the Conflict of Interest Code of Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Successor Agreement. Notwithstanding any other provision of this Successor Agreement, it is further understood and agreed that if such a financial interest does exist at the inception of this Successor Agreement, City may immediately terminate this Successor Agreement by giving written notice thereof.

2. NOTICES

A. Any notice, request, approval to be provided by either party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return-receipt requested, or by electronic facsimile or email transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Department and Developer set forth below. Such written notices, requests, approvals or other communication may be sent in the same manner to such other addresses as either party may from time to time designate.

B. Any notice that is transmitted by electronic facsimile or email transmission, followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice personally delivered, (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return-receipt requested shall be deemed received on the date of receipt thereof.

C. If to City:

Port of Los Angeles

425 South Palos Verdes Street

San Pedro, CA 90731

Attn: Director of Waterfront and Commercial Real Estate

Fax: 310-547-1725

Email: mgalvin@portla.org

With a copy to:

Los Angeles City Attorney's Office

425 South Palos Verdes Street

San Pedro, CA 90731

Attn: Estelle Braaf, Deputy City Attorney

Fax: 310-831-9778

Email: ebraaf@portla.org

D. If to Developer:

Bellwether Financial Group, Inc.

610 Newport Center Drive, Suite 490

Newport Beach, CA 92660

Attention: Joe Ueberroth

Email: jueberroth@bellwetherfinancialgroup.com

With a copy to:

Will Ueberroth

Email: wueberroth@bellwetherfinancialgroup.com

3. NO WARRANTY AS TO SITE/IMPROVEMENT CONDITIONS

Except as may be expressly set forth in writing in a separate, definitive document executed by City's Director of Real Estate in connection with the Site, if any, the Site is available on a "As Is, Where Is" basis, with no warranty or representation of any kind made by City with respect to the condition of the Site or any improvements thereon.

4. NO THIRD PARTY BENEFICIARIES

City shall not be liable for any real estate commissions or brokerage fees which may arise here from. City represents and warrants that it has not engaged a broker, agent or finder in connection with the Site.

5. GOVERNING LAW

This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules. Any action or proceeding arising out of or related to this Successor Agreement shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California, in the judicial district mandated by applicable court rules.

6. MODIFICATION IN WRITING

This Successor Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

7. CONSTRUCTION OF AGREEMENT

This Successor Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Successor Agreement, and it shall

be deemed their joint work product; each and every provision of this Successor Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

8. INTEGRATED AGREEMENT

This Successor Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Successor Agreement by reference shall be deemed in any way to bind any of the parties. Each party acknowledges that it has not been induced to enter into the Successor Agreement and has not executed the Successor Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Successor Agreement. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.

9. STATE TIDELANDS GRANT

This Successor Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Successor Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City", approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Developer and City agree that any interpretation of this Successor Agreement and the terms

contained herein must be consistent with such limitations, conditions, restrictions and reservations.

10. COUNTERPARTS

This Successor Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one agreement to be effective on the date first above written.

11. This Successor Agreement shall not be construed as a direct or indirect commitment by City or any other entity to take or to not take any action with respect to a lease or any permit, development and/or any action under the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA) and shall not guarantee final approval of any lease or agreement, the development of the Site, or any action or proposed project related to the Site

IN WITNESS WHEREOF, the Parties hereto have executed this Successor Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES by and
through its Board of Harbor
Commissioners

Dated: _____, 2024

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

BELLWETHER FINANCIAL GROUP,
INC., a California corporation

Dated: July 23, 2024

By: 

Joseph Ueberroth, President
(Print/type Name and Title)

Attest: 

Will Ueberroth, Business Development Manager
(Print/type Name and Title)

APPROVED AS TO FORM

July 26, 2024
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

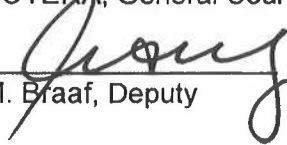
By: 
Estelle M. Braaf, Deputy

EXHIBIT A - Preliminary Site Map

