

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

THIS EXCLUSIVE NEGOTIATING AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 (“Developer”).

**RECITALS**

WHEREAS, in July 2018, City’s Harbor Department posted a Request for Proposals (“RFP”) inviting the submittal of proposals to develop vacant land located at Berth 44 in the Port of Los Angeles (the “Site”) (as delineated on the map attached hereto as Exhibit A and incorporated herein by this reference) for a boat and ship maintenance and repair facility (the “Boatyard”) with the successful respondent having the right to enter into exclusive negotiations for a long term lease or permit with the City. (Unless otherwise stated, the term City includes its Harbor Department);

WHEREAS, City, following completion of the RFP process, selected Developer based on the response to the RFP;

WHEREAS, City and Developer now desire to enter into this Agreement for the exclusive negotiation to enter into a ground lease or permit for the Site for the development of a Boatyard, on the terms herein; and

WHEREAS, this Agreement shall not be construed as a direct or indirect commitment by City or any other entity or agent of or by the City to take or to not take any action with respect to a lease, permit, entitlement or any permit, development and/or any action under the California Environmental Quality Act (“CEQA”), and shall not guarantee final approval of any lease, permit, entitlement or agreement, the development of the Site, or any action or proposed project related to the Site.

**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 regarding a possible ground lease or permit for the Site for the development of a Boatyard for a period of twelve months ("Exclusivity Period"). City's Executive Director, in his sole discretion, without any obligation to do so, may grant up to four six-month extensions for a total potential Exclusivity Period of up to three (3) years. The deliverables expected by each party during the initial twelve-month Exclusivity Period are referenced in Exhibit B. Additionally, satisfaction of the deliverables referenced in Exhibit B in no way guarantees that any of the Exclusivity Period extensions will be granted by the Executive Director.

B. During the Exclusivity Period, City shall not negotiate for a lease, permit 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 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 Agreement may not result in a final lease, permit or entitlement of any type. Issuance of a lease or permit 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 including without limitation

the California Environmental Quality Act ("CEQA"), the National Environmental Policy Act ("NEPA") and the California Coastal Act ("Coastal Act") City (including Board) shall not be obligated or deemed obligated to take or refrain from any action, including without limitation, the approval or certification of any environmental review of the proposed Site development and/or the issuance to Developer of a lease, permit, or entitlement.

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 Agreement or relating to the potential Site development, including but not limited to a ground lease, permit, 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. 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 Agreement and/or the Site

E. No Assignment. Developer acknowledges that City's consent to issue this Agreement is based on the RFP response including the prior experience and qualifications provided in the response. Therefore, Developer shall not assign, sell or otherwise transfer the Agreement or any rights under this Agreement.

F. Conflicts of Interest. The parties to this 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 Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed

that if such a financial interest does exist at the inception of this Agreement, City may immediately terminate this 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](mailto: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](mailto:ebraaf@portla.org)

D. If to Developer:

Bellwether Financial Group

610 Newport Center Drive, Suite 490

Newport Beach, CA 92660

Attention: Joe Ueberroth

Email: [jueberroth@bellwetherfinancialgroup.com](mailto:jueberroth@bellwetherfinancialgroup.com)

With a copy to:

Joseph McCarthy

Email: [jmccarthy@bellwetherfinancialgroup.com](mailto:jmccarthy@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 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 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 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 Agreement, and it shall be deemed their joint work product; each and every provision of this 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 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 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 Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.

#### 9. STATE TIDELANDS GRANT

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this 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. PLD and City agree that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

#### 10. COUNTERPARTS

This 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.

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

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

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
EUGENE D. SEROKA  
Executive Director

Attest: \_\_\_\_\_  
AMBER M. KLESGES  
Board Secretary

BELLWETHER FINANCIAL GROUP INC., a California corporation

Dated: SEPTEMBER 5, 2019

By: \_\_\_\_\_  
JOSEPH V. UEBERROTH, President  
(Print/type Name and Title)

Attest: \_\_\_\_\_  
JOSEPH M. CARTHY, Vice President  
(Print/type Name and Title)

APPROVED AS TO FORM AND LEGALITY

9/26, 2019  
MICHAEL N. FEUER, City Attorney  
JANNA B. SIDLEY, General Counsel

By: \_\_\_\_\_  
Estelle M. Braaf, Deputy



## EXHIBIT B – SCOPE OF NEGOTIATIONS

Developer understands and agrees that City's award to Developer of the Berth 44 Boatyard Development Opportunity Exclusive Negotiating Rights is conditioned upon meeting the required deliverables described below within the initial twelve-month Exclusivity Period. Additionally, satisfaction of the deliverables in no way guarantees that any or all of the Exclusivity Period extensions will be granted by the Executive Director. All deliverables referenced below are subject to applicable law including but not limited to CEQA and NEPA assessments and determinations.

The phases, time periods, duties and responsibilities, and required deliverable(s) for City and Developer are as follows:

- 1) Phase One
  - a) The time period for Phase One is three (3) months.
  - b) During Phase One, the general duties and responsibilities are as follows:
    - i) City and Developer will negotiate towards agreement of a Draft Term Sheet (to be prepared by City) for the proposed Lease or Permit.
    - ii) City and Developer will negotiate towards agreement of a Draft CEQA Reimbursement Agreement (to be prepared by City) for the proposed Lease or Permit.
    - iii) Developer will refine the conceptual design development, project scope, and revised Site Plan.
  - c) The required deliverables to complete Phase One and begin Phase Two are as follows:
    - i) Term Sheet signed by Developer for City consideration.
    - ii) CEQA Reimbursement Agreement is signed by Developer and presented to the Board for consideration.
- 2) Phase Two
  - a) The time period for Phase Two is nine (9) months.
  - b) During Phase Two, the general duties and responsibilities are as follows:
    - i) City will initiate and prepare CEQA/NEPA analysis and document preparation.
    - ii) City and Developer will negotiate towards agreement on a form of a draft Lease or Permit (to be prepared by City) for Board of Harbor Commissioner consideration.
    - iii) Developer will complete initial Project physical and engineering due diligence in connection with the Site, including but not limited to, final Site configuration, utility capacity analysis, structural analysis, and construction schedule.
    - iv) Developer will perform legal and risk due diligence including, but not limited to, entitlement and permitting requirements.

- v) Developer will complete a final Project Business Plan, which will include a timeline, capital funding plan, construction cost estimates, revenue and expense analysis, and operational plans.
  - vi) Developer will complete an anticipated schedule for development, operations commencement and stabilization.
- c) The required deliverables for Phase Two are as follows:
- i) City will deliver form of draft Lease or Permit to Developer within three (3) months of initiation of Phase Two.
  - ii) Developer will agree on form of draft Lease or Permit within nine (9) months of initiation of Phase Two.
  - iii) Developer will deliver final Project Business Plan to City within nine (9) months of the initiation of Phase Two.
  - iv) Developer will deliver anticipated schedule to City within nine (9) months of the initiation of Phase Two.