

LETTER OF INTENT BETWEEN THE CITY OF LOS ANGELES AND
THE RATKOVICH COMPANY AND JERICO DEVELOPMENT, INC.
(LOS ANGELES WATERFRONT ALLIANCE) FOR THE
DEVELOPMENT OF PORTS O' CALL AT THE PORT OF LOS
ANGELES

THIS LETTER OF INTENT ("LOI") is made and entered into this _____ day of _____, 2015, by and between the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners ("Board") of the Harbor Department (collectively referred to as "City" or "Harbor Department") and THE RATKOVICH COMPANY AND JERICO DEVELOPMENT, INC. (LOS ANGELES WATERFRONT ALLIANCE) (collectively referred to as "Developer").

RECITALS

WHEREAS, the Harbor Department through its Board has possession, management, and control of the property, harbor, and port improvements at the Port of Los Angeles ("POLA") including the Ports O' Call redevelopment site as depicted in Exhibit A, which is attached hereto and incorporated by reference (the "Ports O' Call Redevelopment Site"); and

WHEREAS, City released a Request for Qualifications for a Unique Retail and Commercial Redevelopment Opportunity ("RFQ") in July 2012, and Developer's proposal submitted in response to the RFQ was selected based upon the criteria set forth in the RFQ; and

WHEREAS, City and Developer entered into an initial Exclusive Negotiating Agreement dated March 14, 2013 and subsequently amended (the Exclusive Negotiating Agreement as so amended, the "ENA"), which sets forth both parties' responsibilities and a framework and guidelines for negotiations resulting in an eventual term sheet and ground lease; and

WHEREAS, City and Developer entered into exclusive good faith negotiations during the term of the ENA, and acknowledge that progress was made towards accomplishing an eventual term sheet and ground lease; and

WHEREAS, Developer has undertaken the development of a comprehensive redevelopment vision for the Ports O' Call Redevelopment Site, conducted extensive public outreach and performed due diligence relating to the current condition and potential redevelopment of the site; and

WHEREAS, The Harbor Department has proposed to Developer its plans for the delivery and construction of certain infrastructure projects necessary for the redevelopment of the Ports O' Call Redevelopment Site, subject to Board approval; and

WHEREAS, The Harbor Department has conducted Phase I and Phase II environmental investigations of the Ports O' Call Redevelopment Site and the Harbor Department will conduct any required remediation of environmental conditions concurrently with the delivery of the infrastructure projects and the relocation of the Jankovich fuel dock and related facilities; and

WHEREAS, Developer acknowledges that any term sheet, ground lease, or other contractual document related to the Ports O' Call Redevelopment Site is subject to the State of California Tidelands Trust, Los Angeles City Charter, the 50-year lease term limitation, the RFQ, and the footprint of the Ports O' Call Redevelopment Site as set forth in Exhibit A hereto; and

WHEREAS, City and Developer desire to continue exclusive negotiations and to set forth in this LOI certain actions to be undertaken by them during the term of this LOI including completion of a mutually agreeable signed term sheet for the redevelopment of the Ports O' Call Redevelopment Site.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

Section 1. Term.

1.1 Term of LOI. The term of this LOI shall commence on March 10, 2015 ("Commencement Date") and terminate on July 9, 2015 (the "Term"); subject, however, to earlier termination as set forth in this LOI.

Section 2. Exclusive Right to Negotiate.

2.1 During the Term, (i) City and Developer shall negotiate diligently and in good faith to prepare and execute a term sheet for a ground lease for the Ports O' Call Redevelopment Site; and (ii) City shall not negotiate with any party other than Developer for the development of the Ports O' Call Redevelopment Site or any portion thereof, or approve any other development of the Ports O' Call Redevelopment Site or any portion thereof, or issue any request for proposal or request for qualifications in connection with Ports O' Call Redevelopment Site or any portion thereof. City and Developer acknowledge and agree that this LOI is not intended to be or to evidence any legally binding agreement regarding any possessory interest to the Ports O' Call Redevelopment Site on the part of either party.

Section 3. Obligations of Developer and City.

3.1 Activities to be Undertaken by the Parties. Developer and City agree to undertake in good faith the completion of the activities and milestones set forth in Exhibit B, which is attached hereto and incorporated by reference.

3.2 Developer.

3.2.1 Developer shall provide City periodic written reports regarding the status and/or completion of activities and milestones described in Exhibit B, which shall be due to City on or before the first day of each calendar month during the Term of the LOI. Developer may provide more frequent written reports as deemed necessary in the Developer's sole discretion to further the goals of the LOI or to assist in the completion of joint Developer/City activities and/or milestones described in Exhibit B.

3.2.2 Developer shall be responsible for any and all obligations of Developer under this LOI. Unless and until this LOI is assigned in accordance with Section 5.4.1, The Ratkovich Company and Jerico Development, Inc. shall be jointly and severally liable for all obligations of Developer under this LOI, and, thereafter, the assignee (taking assignment in accordance with Section 5.4.1) shall be solely responsible for the obligations of Developer. Wayne Ratkovich shall remain reasonably and significantly involved with the management and operation of The Ratkovich Company.

3.2.3 Developer acknowledges and agrees that all expenses and costs of Developer arising from this LOI or Developer's performance obligations in accordance with Exhibit B shall be the sole responsibility of Developer, with no reimbursement from City of any kind.

3.3 City.

3.3.1 Developer acknowledges this LOI shall not be construed as a direct or indirect commitment by City or any other entity to take or to not take any action under the California Environmental Quality Act ("CEQA"), the National Environmental Policy Act ("NEPA"), the California Coastal Act, or otherwise under the applicable law, and shall not guarantee final approval of the Ports O' Call Redevelopment Site or any other proposed project related to the site.

3.3.2 During the Term, City shall not enter into any agreement for a possessory interest in the Ports O' Call Redevelopment Site that cannot be terminated upon not more than six (6) months' notice and without the payment of any penalty or termination fee.

Section 4. Environmental Considerations.

4.1 2009 Environmental Impact Report/Environmental Impact Statement ("EIR/EIS"). Developer and City acknowledge that the Board certified the 2009 environmental impact report for the project commonly known as the "San Pedro Waterfront Project", which includes entitlements relating to the Ports O' Call Redevelopment Site.

4.2 Future Environmental Review. Developer and City further acknowledge that Developer's potential conceptual plans, construction plans, and any and all other related plans may require additional environmental review and analysis pursuant to the applicable law beyond that undertaken in the EIR/EIS discussed in Section 4, subsection 4.1.

4.3 Shared Cost. Upon the mutual agreement of City and Developer, City shall undertake CEQA and NEPA compliance, if any, required beyond the EIR/EIS in connection with the Ports O' Call Redevelopment Site and Developer's proposed plans. If in the Harbor Department's reasonable discretion, with Developer's prior written approval of the scope of work and estimated costs, and upon receipt and processing of Developer's Application for Permit ("APP") by the Harbor Department, or earlier if mutually agreed by parties, the Harbor Department shall engage the services of consultants ("Outside Consultants") to enable the Harbor Department to comply with CEQA/NEPA (including, without limitation, causing any environmental impact report, negative declaration or mitigated negative declaration to be prepared and issued) in connection with the Ports O' Call Redevelopment Site and Developer's proposed plans. Developer shall reimburse the Harbor Department within thirty (30) days after receipt of any written request (accompanied by invoice or other satisfactory back-up documentation) from the Harbor Department for seventy-five percent (75%) of the cost of the approved services provided by the Outside Consultants through the date of the request. If necessary, City and Developer shall in good faith negotiate and execute a separate agreement regarding reimbursement for CEQA/NEPA expenses ("CEQA/NEPA Cost Sharing Agreement") prior to City incurring additional CEQA/NEPA related expenses after such reasonable requests for information from the Outside Consultants. The CEQA/NEPA Cost Sharing Agreement shall only apply to Outside Consultants engaged by the City to assist City in its compliance with CEQA/NEPA for the Ports O' Call Redevelopment Project. Developer shall be solely responsible for costs and expenses of any CEQA/NEPA consultants it engages to assist Developer in its development process.

4.4 Pre-Existing Environmental Conditions. Environmental site characterization of the Ports O' Call Redevelopment Site performed prior to the effective date of the ground lease document, shall be undertaken by City and at its sole cost. Pre-existing environmental conditions at the Ports O' Call Redevelopment Site that pre-date the effective date of the ground lease document, shall be, as between City and Developer, the sole cost, expense, and responsibility of City.

Section 5. Additional Terms.

5.1 Rights to Additional Information. City and Developer may, during the term of this LOI, request additional information and data from one another. City and Developer shall provide such additional information or data, if reasonably available, in a timely manner.

5.2 No Commitment. Developer acknowledges that any undertaking of the Ports O' Call Redevelopment Site is uncertain and that the activities contemplated by this LOI do not suggest that such project may ever commence. Pursuit of the redevelopment of the Ports O' Call Redevelopment Site, including issuance of an option agreement and/or ground lease for the site to Developer, is expressly conditioned upon agreement on a term sheet for a ground lease document for the Ports O' Call Redevelopment Site and any other required documents, as well as procurement of all entitlements required by, and in compliance with, the applicable law. Except for City's obligations expressly set forth in this LOI, City shall not be obligated or deemed obligated to take or refrain from any action, including without limitation, further environmental assessment under CEQA and NEPA, specific project approval, the approval or certification of any environmental review of the Ports O' Call Redevelopment Site and/or issuance to Developer of an option agreement and/or ground lease or other required documents.

5.3 Developer Right of Entry. During the term of this LOI, Developer may, subject to the issuance of a temporary permit or other document issued by City and the provision of insurance certificates in forms satisfactory to the Harbor Department's Risk Manager, enter onto the Ports O' Call Redevelopment Site to conduct tests and studies, at Developer's sole cost and expense, to determine the suitability of the site for the proposed development.

5.4 Assignments.

5.4.1 Limitation on Assignments. Developer acknowledges that City's consent to issue this LOI is based on the prior experience and qualifications of Developer. Therefore, Developer shall not assign, sell, or otherwise transfer any rights under this LOI without the prior written approval of the Board in its sole and absolute discretion; provided, however, that Developer may assign its rights under this LOI to an entity that Controls or is Controlled by or is under common Control with The Ratkovich Company's parent, RM Properties, LLC (a limited liability company of which Wayne Ratkovich is the majority owner), without the prior written approval of the Board so long as written notice of such assignment, along with sufficient documentation to the satisfaction of the City showing that the assignee qualifies under the Control requirement above, is delivered to the Harbor Department at least ten (10) business days prior to effective date of assignment.

5.4.2 Definition of Control. "Control", "Controlled by" or words of similar import mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a designated entity, whether through the direct or indirect ownership of voting securities, general or limited partnership interests, interests in a limited liability company, or by contract or other manner of control.

5.5 Conflicts of Interest. The parties to this LOI 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 the Harbor 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 LOI. Notwithstanding any other provision of this LOI, it is further understood and agreed that if such a financial interest does exist at the inception of this LOI, City may immediately terminate this LOI by giving written notice thereof.

Section 6. Limitation on Remedies for Breach or Default and Release of Claims.

6.1 Right and Remedy. City would not have agreed to any part of this LOI if it were to be potentially or actually liable to Developer for any amount of monetary damages or other remedies not expressly contemplated in this Section 6. Accordingly, Developer acknowledges and agrees that its exclusive right and remedy upon any breach or default of City of this LOI is to either (i) terminate this LOI, or (ii) enforce this LOI by specific performance or injunctive relief.

6.2 Assumption of Risk. Developer acknowledges that there is a risk that, subsequent to the execution of this LOI, it will discover, incur or suffer loss, damages or injuries in connection with this LOI which are unknown or unanticipated at the time that this LOI is executed. Developer hereby assumes this risk and understands that the limitations on remedies set forth in this LOI shall apply to all unknown or unanticipated losses, damages or injuries related to the matters released herein, as well as those known and anticipated.

6.2.1 Developer is familiar with Section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

6.2.2 Having the opportunity to consult with legal counsel, Developer expressly waives and relinquishes any and all rights and benefits which it may have under Section 1542 of the Civil Code to the full extent that such rights and benefits may be lawfully waived pertaining to the subject matter of this LOI. Developer understands and acknowledges the significance and consequence of this specific waiver of Section 1542.

6.3 Limitation on Remedies. Subject to the last sentence of this Section, Civil Code Section 1542 notwithstanding, it is the parties' intent to be bound by the limitation of remedies set forth in this Section, and as to any remedies not explicitly preserved in Section 6, Developer hereby releases City and City's former, present and future boards, elected and appointed officials, employees, officers, directors, representatives, agents, departments, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing (the "City Parties") from and against any and all rights, claims, demands, damages, debts, liabilities, accounts, liens, attorneys' fees, costs, expenses, actions and causes of action arising from or related to this LOI ("Released Claims"), whether or not such Released Claims were known or unknown to Developer as of its entry into this LOI. The releases given herein do not apply to future claims arising from the terms of separate agreements regarding the Ports O' Call Redevelopment that are executed by City/City Party and Developer after the date of this LOI, which separate agreements shall be governed by their own terms.

Section 7. Termination.

7.1 Termination by City or Developer. City or Developer may terminate this LOI, without cause, upon giving the other party thirty (30) days written notice. Developer may terminate this LOI upon delivery of written notice to City if City fails to execute this Agreement within forty-five (45) days of Developer's execution of this Agreement.

Section 8. Notices.

8.1 Communication. Any notice, request, approval or other communication 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 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.

8.2 Delivery. Any notice that is transmitted by electronic facsimile 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.

8.3 Addresses.

If to Department:

Los Angeles Harbor Department
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Michael Galvin

With a copy to:
Los Angeles City Attorney's Office
425 South Palos Verdes Street
San Pedro, CA 90731
Attn: Helen Sok

If to Developer:

The Ratkovich Company
700 South Flower Street, Suite 2600
Los Angeles, CA 90017
Attn: Brian Saenger

and

Jerico Development, Inc.
461 W. Sixth Street, Suite 300
San Pedro, CA 90731
Attn: Eric Johnson

Section 9. No Warranty as to Site/Improvement Conditions.

9.1 No Warranty or Representation. Except as may be expressly set forth in a separate, definitive document executed by City in connection with the Ports O' Call Redevelopment Site, if any, no warranty or representation of any kind is made by City with respect to the condition of the Ports O' Call Redevelopment Site or any improvements thereon.

Section 10. Miscellaneous Provisions.

10.1 No Third Party Beneficiaries. This LOI shall not benefit any persons or entities not signatory to this LOI including, without limitation, any brokers, agents or finders. Neither City nor Developer shall be liable for any real estate commissions or brokerage fees which may arise herefrom. City and Developer represent and warrant that neither has engaged a broker, agent or finder in connection with the Ports O' Call Redevelopment Site and project.

10.2 Indemnity. Developer undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Developer's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions (where there is a duty to act) or willful misconduct incident to the performance of this LOI by Developer, its principals, employees, or agents. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this LOI and those allowed under the laws of the United States, the State of California, and the City. Developer's obligation to indemnify shall apply even if City is alleged to have contributed to the otherwise indemnified claim. If City's negligence, error, omission or willful misconduct is finally determined by a court of competent jurisdiction to have contributed to an indemnified claim, Developer's indemnification obligation shall be reduced by the percentage of City responsibility.

10.3 Governing Law. This LOI 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 LOI 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.

10.4 Modification in Writing. This LOI 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.

10.5 Construction of LOI. This LOI 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 LOI and it shall be deemed their joint work product; each and every provision of this LOI 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.

10.6 Integrated LOI. This LOI 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 LOI by reference shall be deemed in any way, to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the LOI and has not executed the LOI in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the LOI. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.

10.7 State Tidelands Grant. This LOI is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this LOI 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 LOI and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

10.8 Counterparts. This LOI 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 LOI on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by
its Board of Harbor Commissioners

Dated: _____

By _____
Executive Director

Attest: _____
Board Secretary

THE RATKOVICH COMPANY

Dated: _____

By _____


(Print/type Name and Title)

Attest: _____

(Print/type Name and Title)

JERICO DEVELOPMENT, INC.

Dated: 2/18/15

By 
ERIC JOHNSON, PRESIDENT

(Print/type Name and Title)

Attest: 
John S. Peterson, Secretary

(Print/type Name and Title)

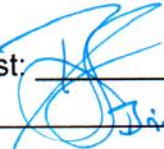
APPROVED AS TO FORM
_____, 20____
MICHAEL N. FEUER, City Attorney

By _____
HELEN J. SOK, Deputy City Attorney

THE RATKOVICH COMPANY

Dated: 2/18/15

By 
Wayne Ratkovich, President
(Print/type Name and Title)

Attest: 
Brian Seeger, VP
(Print/type Name and Title)

JERICO DEVELOPMENT, INC.

Dated: _____

By _____

(Print/type Name and Title)

Attest: _____

(Print/type Name and Title)

APPROVED AS TO FORM
_____, 20_____
MICHAEL N. FEUER, City Attorney

By _____
HELEN J. SOK, Deputy City Attorney

EXHIBIT B

DEVELOPER ACTIVITIES AND MILESTONES

- Prepare Development Plan:
 - For Approximately 50,000 – 150,000 Square Feet of New Retail Dining and Entertainment Improvements and Park Space
 - Consistent with Current CEQA Entitlements
- Develop Site Plan
- Develop Financial Model
- Solicit Equity and Debt Financing Input
- Gauge Tenant Market Interest
- Solicit Selected Existing Tenants
 - Develop Plan(s) for Continuous Operations

JOINT DEVELOPER/PORT/CITY ACTIVITIES

- Negotiate Ground Lease Terms
 - Prepare Term Sheet for City and Developer Execution
 - Execute Term Sheet
- Engage with Community Stakeholders
 - Conduct Community Outreach and Solicit Input & Feedback on Proposed Development Plan
 - Develop Community Stakeholder Support
- Prepare Project Schedule and Phasing Plan
 - Consistent and Coordinated with the Harbor Department's Infrastructure Commitments
- Coordinate CEQA Work and any Required Findings