

AGREEMENT NO. __

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
BELLWETHER FINANCIAL GROUP, INC.

(ENVIRONMENTAL DOCUMENT REIMBURSEMENT AGREEMENT)

This Agreement (the "Agreement") is entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City" or "Harbor Department"), acting by and through its Board of Harbor Commissioners ("Board") and BELLWETHER FINANCIAL GROUP, Inc., a California corporation, 610 Newport Center Drive, Suite 490, Newport Beach, CA 92660 ("Applicant").

RECITALS

WHEREAS, Applicant has entered into an Exclusive Negotiating Agreement with the Harbor Department to develop and occupy Berth 44 and associated premises ("Project"); and

WHEREAS, Harbor Department, as the lead agency for purposes of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq. ("CEQA")), has determined that environmental review of the Project must be conducted in accordance with applicable environmental laws including but not limited to CEQA and National Environmental Policy Act (NEPA) prior to consideration of Project approval(s); and

WHEREAS, Applicant is responsible for all costs for preparation of Project Documents (as defined below) and/or costs incurred as a result of completing the required environmental review and legal defense (if necessary) of the Project, including but not limited to all costs for engaging the services of a consultant(s) to prepare such documents and reimbursement of all related Port staff and Port consultant(s) costs;

NOW, THEREFORE, in reliance on the foregoing recitals and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Applicant hereby agree as follows:

1. ENVIRONMENTAL REVIEW AND ENTITLEMENTS.

A. Harbor Department, as the CEQA lead agency, is providing oversight review of any Environmental Documents (including, but not limited to CEQA and NEPA evaluations) to be prepared for Applicant's proposed Project as required by law in order for the City to consider making discretionary decisions to grant entitlements for and approve the proposed Project ("Project Documents"). It is understood by Applicant that

Harbor Department, as the CEQA lead agency, has the principal responsibility for carrying out or approving any project which may have an impact on the environment; is responsible for the adequacy of any document required by CEQA/NEPA and environmental laws related to the Project, and must ensure that any such document reflects the independent judgment of the lead agency in terms of adequacy and objectivity.

B. Applicant is responsible for obtaining all necessary permits, including any federal permits that would be subject to federal lead agency review under NEPA.

2. NO APPROVAL; NO WAIVER OF CITY'S DISCRETIONARY AUTHORITY.
Applicant and City expressly acknowledge and agree that this Agreement does not grant Applicant or City any right or obligation to enter into any other binding agreement or amendment of agreement relative to the design, engineering, construction, development, operation, or lease related to the proposed Project, nor obligate City to take any action to adopt or approve the CEQA/NEPA document or to approve the proposed Project, or any lease, permit or entitlement related to the proposed Project. The proposed Project shall be subject to the discretionary review and approval of all underlying entitlements and approvals to the extent required by the law and by City's Charter, Administrative Code, policies, rules and regulations. City retains its sole and unfettered discretion to make decisions regarding the proposed Project, including but not limited to: determination of any Project Documents' compliance with CEQA/NEPA and environmental laws related to the Project; whether or not to approve the proposed Project; and whether or not to require modification of or select alternatives to the proposed Project, including the "no project" alternative in order to comply with CEQA/NEPA. Furthermore, Harbor Department retains its sole and unfettered discretion to undertake any studies, peer review or inquiries it deems necessary and/or appropriate to ensure preparation of legally adequate CEQA/NEPA document.

3. TERM AND TERMINATION.

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement ("Effective Date") shall be the date of its execution by the Executive Director following authorization of the Board. The term of this Agreement shall commence upon the Effective Date and, unless terminated earlier as provided herein, shall continue until Three (3) years have lapsed from the Effective Date of this Agreement and, as it relates to Applicant's obligations under Section 7 of this Agreement, upon the expiration of all periods of legal challenge, litigation and appeal under applicable law of the Project Documents approved by City's Board.

B. Prior to the expiration of this Agreement, either party may withdraw, in writing, from the preparation of the Project Documents as contemplated by this Agreement and cancel this Agreement upon giving the other party ten (10) days written notice of its election to terminate this Agreement. Additionally, for purposes of this Section 3, expiration of the Exclusive Negotiating Agreement dated October 8, 2019 (as extended) ("ENA") shall automatically constitute termination of this Agreement. Should the decision be made by either party to terminate this Agreement, City shall immediately

cease work and direct its Consultant to cease work on the Project Documents contemplated by this Agreement, and not incur any additional obligations, costs or expenses, except as may be reasonable and necessary to terminate its activities. Upon termination of the Agreement, City shall determine the services actually performed by Harbor Department staff and Consultant up to the date of termination of this Agreement and the amount owed to Harbor Department and Consultant. Except in the case of City's termination of this Agreement which meets both of the conditions described in Section 3.C, City shall allocate the portion of expenses due from Applicant and invoice Applicant according to the terms of this Agreement.

C. If City terminates this Agreement pursuant to Section 3.8, and only in the case that the following conditions are both met, then City shall be responsible for the reimbursement of costs paid by Applicant to City under this Agreement prior to such termination. Thereafter, Applicant shall have no further claims or remedies against City.

1) City decides not to proceed with locating a boat and ship repair facility at the site substantially as described in the 844 Draft Term Sheet dated _____ during the term of this Agreement and,

2) City's decision is not related to approval of the Project Documents as contemplated by this Agreement.

D. Following approval of the final Project Documents by the Board, there shall be no termination of Applicant's indemnity and defense obligations described in Section 7, below.

4. REIMBURSEMENT. Applicant agrees to reimburse City for One Hundred Percent (100%) of all staff, consultant(s), and outside counsel costs for the preparation, review and legal defense (if necessary) of the Project Documents, as follows:

A. Consultant Selection: Harbor Department, as the lead agency for purposes of CEQA, has consulting agreements in place for as-needed CEQA and NEPA environmental services. In support of preparing the Project Documents, Harbor Department may, in its sole discretion, select a consultant to perform project management oversight and quality assurance/quality control services, the cost for which shall also be the responsibility of Applicant.

B. Scope of Work and Cost Estimate: An estimated scope of work and budget to complete the CEQA Environmental Assessment and NEPA Evaluation and the associated oversight review are set forth in the attached Exhibit "A". Consultants were selected from the Harbor Department's existing pool of as-needed consultants. The Harbor Department shall provide a modified estimated budget if any changes to the proposed environmental assessment or review work are required. The Scope of Work

and Cost Estimate does not impact Applicant's financial obligations under Section 7, below, which does not contemplate an estimated or a not to exceed amount.

C. Process for Cost Reimbursement: After selection of consultant(s), Harbor Department shall submit invoices on a periodic basis (not more frequently than monthly) to Applicant (the "Current Invoice"), listing the current charges generated for the ongoing oversight review and completion of the CEQA Environmental Assessment and NEPA Evaluation. The Current Invoice shall include a progress report describing the activities performed during the period covered, along with the charges associated with such activities. The invoice shall be due for payment to Harbor Department within thirty (30) days of its receipt by Applicant.

5. STANDARD OF CARE. Harbor Department hereby represents and warrants that the work performed to complete the CEQA Environmental Assessment and NEPA Evaluation shall be undertaken with the same standard of care and diligence as has been applied to its most recent environmental assessment work. As Harbor Department is the lead agency and its independent judgment must apply, as provided for in section 6 below, Harbor Department will determine whether the standard of care is the same as has been applied to its most recent environmental assessment work.

6. LEAD AGENCY'S INDEPENDENT JUDGMENT. The CEQA and NEPA Environmental review must reflect the lead agency's independent judgment (CEQA Section 21082.1(c) and 14 C.C.R. Section 15084). Accordingly, the final responsibility and final authority on all questions concerning the content and quality of the CEQA/NEPA review and related tasks lies in the sole discretion of Harbor Department. Applicant understands and agrees that any consultant(s) employed by Harbor Department to perform services hereunder only owes a duty to Harbor Department and said consultant(s) will be accountable to Harbor Department alone and not to Applicant or to any other third-person or entity.

7. DEFENSE AND INDEMNIFICATION.

7.1 Obligation to Defend, Indemnify, and Hold Harmless. Applicant undertakes and hereby agrees to defend, indemnify, and hold harmless City, and/or any of its Boards, officers, agents, employees, assigns and successors in interest ("Indemnitees") from and against any claim, action, or proceeding ("Proceeding") brought against the Indemnitees to attack, challenge, revise, amend, set aside, void or annul: (i) the approval of the Project Documents, including but not limited to any and all entitlements necessary for development of land or conditions of approval related to the Project Documents; and/or (ii) the validity or legality of the Project and its Project Documents which action is brought within the applicable time periods of the State Government Code and Public Resources Code, California Coastal Act and applicable rules or codes ("Claims"). City shall promptly notify the Applicant of any Claim and City shall not act unreasonably towards cooperating in the defense of such Claim. If City fails to promptly notify Applicant of any such Claim, or if City acts unreasonably towards its obligation to cooperate in the defense, Applicant shall not thereafter be responsible to defend,

indemnify, or hold harmless City. However, if Applicant has actual written notice of the Proceeding, it shall not be relieved of the obligations imposed hereunder, notwithstanding the failure of City to provide prompt written notice of the Proceeding. City shall be considered to have failed to give prompt written notification of a Proceeding if City, after being served with a lawsuit or other legal process challenging the approvals, unreasonably delays in providing written notice thereof to Applicant. As used herein, "unreasonably delays" shall mean any delay that materially adversely impacts Applicant's ability to defend the Proceeding. The obligations imposed in this section 7 shall apply notwithstanding any allegation or determination in the Proceedings that City acted contrary to applicable laws. Upon demand, Applicant shall, within thirty (30) days, reimburse City for any court and attorney's fees which City may be required to pay, including counsel, as a result of any Claim. City shall make all decisions with respect to its representation in any legal proceeding regarding the Claims, including, but not limited to, the selection of attorneys and the content and procedure of the defense of the Claims. Although Applicant may be a defendant or the real party in interest in the Claim, City may, at its sole discretion, participate at its own expense in the defense of the Claim, but such participation shall not relieve Applicant of any obligation under this condition. Nothing in this Section shall be construed to mean that Applicant shall hold City harmless and/or defend it from any claims arising from its intentional misconduct or sole negligence in the performance of this Agreement by City or Indemnitees. City shall have the right to approve any settlement or compromise of any Claim. Rights and remedies available to City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and City.

7.2 Defending the Project Documents and Project Approvals. Applicant shall have the obligation to timely retain legal counsel to defend against any Proceeding to set aside, void or annul, all or any part of any Project Documents and/or Project Approval. City shall have the right, if it so chooses, to defend the Proceeding utilizing in-house legal staff, in which case Applicant shall be liable for all legal costs and fees reasonably incurred by City, including charges for staff time. In the event of a conflict of interest which prevents Applicant's legal counsel from representing City, and in the event City does not have the in-house legal resources to defend against the Proceeding, City shall also have the right to retain outside legal counsel provided that retaining outside legal counsel causes no delays, in which case Applicant shall be liable for all legal costs and fees reasonably incurred by City. Provided that Applicant is not in breach of the terms of this Section, City shall not enter into any settlement of the Proceeding which involves modification to any Project Approval or otherwise results in Applicant incurring liabilities or other obligations, without the consent of Applicant.

7.3 Breach of Obligations. Actions constituting a breach of the obligations imposed in this Section 7 shall include, but not be limited to (i) the failure to timely retain qualified legal counsel to defend against the Proceedings; (ii) the failure to pay City, within thirty (30) days, for any attorney's fees or other legal costs for which City is liable pursuant to a judgment or settlement agreement in the Proceeding seeking to set aside, void or annul all or part of any Project Approval; or (iii) the breach of any other obligation imposed in this Section 7. In each case, it shall be deemed a breach of the

obligations imposed in this Section 7 after written notice from City and a reasonable period of time in which to cure the failure, not to exceed thirty (30) days. For purposes of this Section 7, Applicant shall be considered to have failed to timely retain qualified legal counsel if such counsel is not retained within thirty (30) days following City's provision of the notice of Proceedings to Applicant required hereunder. In the event that Applicant breaches the obligations imposed in this Section 7, City shall have no obligation to defend against the Proceedings, and by not defending against the Proceedings, City shall not be considered to have waived any rights in this Section 7. Further, in the event of breach, City shall have the option to hire counsel to defend itself at Applicant's reasonable expense.

7.4 Cooperation. City shall cooperate with Applicant in the defense of the Proceeding, provided, however, that such obligation of City to cooperate in its defense shall not require City to (i) assert a position in its defense of the Proceeding which it has determined, in its sole discretion, has no substantial merit; (ii) advocate in its defense of the Proceeding legal theories which it has determined, in its sole discretion, lack substantial merit; or (iii) advocate in its defense of the Proceeding legal theories which it has determined, in its sole discretion, are contrary to its best interests or to public policy. Nothing contained in this Section shall require Applicant to refrain from asserting in its defense of the Proceeding positions or legal theories that do not satisfy the foregoing requirements.

7.5 Waiver of Right to Challenge. Applicant hereby waives the right to challenge the validity of the obligations imposed in this Section 7; provided that such waiver shall not include a waiver by Applicant of the right to contest whether any particular claim for indemnification by City falls within the scope of Applicant's obligations under this Section 7.

7.6 Survival. The obligations imposed in this Section 7 shall survive any decision invalidating the Project Approvals, including, but not limited to, decisions by any governmental agency or judicial decision.

7.7 Preparation of Administrative Record. Applicant and City acknowledge that, upon the commencement of legal Proceedings, the administrative record of proceedings relating to the Project Documents and Project Approvals must be prepared. Those documents must also be certified as complete and accurate by City. Applicant, as part of its defense obligation imposed in this Section 7, shall prepare at its sole cost and expense the record of Proceedings in a manner which complies with all applicable laws; in accordance with reasonable procedures established by City; and subject to City's obligation to certify the administrative record of Proceedings and City's right to reasonably oversee the preparation of such administrative record. Applicant agrees that its failure to prepare the administrative record as set forth herein, and in compliance with all time deadlines imposed by law, shall constitute a breach of its obligation to defend City. In the event that Applicant fails to prepare the administrative record, City may do so. If City prepares the administrative record, City shall be entitled

to be reimbursed by Applicant for all reasonable costs associated with preparation of the administrative record, including reasonable charges for staff time.

8. NO CONFIDENTIALITY. The parties may reveal all or part of this Agreement to others as required by law.

9. ASSIGNMENTS. Applicant may not assign its rights or obligations under this Agreement to any third party but may assign the entire Agreement to any subsidiary or affiliate of Applicant approved by City. Any assignment by Applicant shall not relieve Applicant from its duties hereunder. Any prohibited assignment or purported assignment shall be null and void, and Applicant shall bear sole responsibility for any consequences resulting from such prohibited or purported assignment. Harbor Department may not assign its rights or obligations under this Agreement.

10. APPLICABLE LAW. This Agreement shall be governed by and constructed under the laws of the State of California without regard to conflicts of laws principles. 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.

11. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same document, which shall be binding and effective as to each of the parties hereto. A facsimile shall be deemed to be an original.

12. LEGAL CAPACITY. Each individual executing this Agreement hereby represents and warrants that he has the capacity set forth on the signature pages hereof with the full power and authority to bind the party on whose behalf he is executing this Agreement to the terms hereof.

13. NOTICES. Any notice or correspondence 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 or courier service or by U.S. Postal Service). A notice shall be deemed to have been given, (i) in the case of first class, registered or certified mail, when delivered or the first attempted delivery on a business day, or (ii) in the case of expedited prepaid delivery and facsimile, upon the first attempted delivery on a business day. The following addresses shall serve as the locations to which notices and other correspondences relating to this Agreement between Applicant and Harbor Department shall be sent:

To Applicant: Bellwether Financial Group
610 Newport Center Drive, Suite 490
Newport Beach, CA 92660
Attn: Joe Ueberroth, President

With a copy to: City of Los Angeles Harbor Department
425 S. Palos Verdes Street
San Pedro, CA 90733-0151
Attn: Director, Environmental Management

With a copy to: Office of the City Attorney
425 S. Palos Verdes Street
San Pedro, CA 90733-0151
Attn: General Counsel

14. MODIFICATION. This Agreement may be modified only by a 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.

(Signature Page Follows)

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 its Board of Harbor Commissioners

Dated: _____, 2021

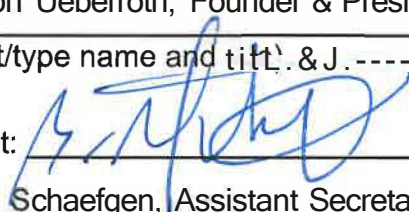
By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

BELLWETHER FINANCIAL GROUP

Dated: Mar 19, 2021

By: _____
Joseph Ueberroth, Founder & President
(Print/type name and title) & J. -----

Attest: 
Brian Schaeffgen, Assistant Secretary
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

March 25, 2021

MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: _____
JOHN T. DRISCOLL, City

JTD
Attachment

EXHIBIT A

SCOPE OF WORK AND ESTIMATED BUDGET

Consultant Scope and Cost

Port Consultant(s) to prepare/oversee an environmental document, in compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), associated with the Berth 44 Boatyard Development Opportunity. Tasks include, but are not limited to, report writing; technical research and analysis, including transportation, air quality, greenhouse gas, and energy; scheduling; meetings; responses to public comments; and Board of Harbor Commission materials.

Note: costs related to discussion of contaminated soil/water impacts and historical buildings onsite will be invoiced from the Consultant separately and paid by the Harbor Department.

Estimated amount: **\$325,000**

Port Staff Scope and Cost

Port staff to review and provide oversight of the Berth 44 Boatyard Development Opportunity CEQA/NEPA environmental document.

Estimated amount: **\$35,000**

US Army Corps of Engineers (USACE) Scope and Cost

USACE staff to prepare/oversee a NEPA environmental document associated with the Berth 44 Boatyard Development Opportunity.

Estimated amount: **\$7,500**

Project Fees

County Clerk Filing Fees
Estimated fee is \$2,500.

Metropolitan News Advertising Fees

Estimated fee is \$5,000

Estimated Amount: **\$7,500**

Total Estimated Cost: \$375,000

Note: The amount and/or allocation of costs between the Consultant and Port staff and other estimated fees are subject to change. This estimate does not include legal defense costs given the uncertainty of their nature and/or necessity as of the Effective Date. Should legal defense costs and fees become necessary, an estimate will be made available upon request.