



City of Long Beach  
Purchasing Division  
333 W Ocean Blvd/7<sup>th</sup> Floor  
Long Beach CA 90802

## City of Long Beach

### Request for Proposals Number CM14-040

to

### Develop, Design, Build, Finance, Operate and Maintain the New Long Beach Civic Center, Port Headquarters, and Potential Related Downtown Development

Release Date: February 28, 2014

Complete Clean Draft: May 29, 2014

Due Date: June 2, 2014, by 11:00am PDT

For additional information, please contact:

Anne Takii, **562-570-6362**

**See Section 4 for instructions on submitting proposals.**

Company Name \_\_\_\_\_ Respondent Representative \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone (\_\_\_\_) \_\_\_\_\_ Email \_\_\_\_\_ Federal Tax ID No. \_\_\_\_\_

I have read, understand, and agree to all terms and conditions herein.

Date \_\_\_\_\_ Signed \_\_\_\_\_

Print Name & Title \_\_\_\_\_

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## **1. BACKGROUND AND INTRODUCTION**

### **1.1 INTRODUCTION**

On October 22, 2013, the City of Long Beach, California (“City”), Department of Public Works presented findings of certain studies to the City Council, which identified significant seismic deficiencies in the existing Long Beach City Hall and Main Library. These studies concluded that retrofitting City Hall to address the seismic deficiencies — including tenant improvements, building code and Americans with Disabilities Act required upgrades, temporary relocation, and soft costs — would cost approximately \$194 million (in 2013 dollars) to retrofit and upgrade a building that is over 40 years old, is not adequately sized, and suffers from functional obsolescence. Accordingly, the consideration of development of a new civic center complex is warranted.

This Request for Proposals (RFP) is issued by the City seeking proposals (“Proposals”) to develop, design, build, finance, operate, and maintain a new civic center, which would include City Hall, the Main Library, Lincoln Park, and possibly a Port Headquarters for the Port of Long Beach (the “Port”) through a project agreement or agreements (the “Agreement”). The objective of the RFP is to evaluate and select a preferred proposer (“Preferred Proposer”), based on the Proposals, for exclusive and earnest negotiations to conclude a suitable Agreement for implementation of the Project.

Proposals must comply with all RFP Requirements.

Proposals will be considered from only those entities that the City short-listed (noted in Appendix J) on October 22, 2013, based on their responses to the Request for Qualifications for a New Long Beach Civic Center (RFQ) issued by the City on April 26, 2013, and due on July 26, 2013, as amended.

### **1.2 THE OPPORTUNITY**

The Project comprises two components — the Civic Center and the Private Development — which are outlined below. Only proposals that include both components shall be evaluated.

1. The City seeks a new civic center, including a new City Hall, Main Library, revitalized Lincoln Park, and possibly a new headquarters for the Port (“Civic Center”). The technical requirements of the City and Port are included in Appendix C.
2. The City is also seeking the development of any excess property for Private Development (all development other than the Civic Center) that the Proposer believes would contribute to the

revitalization of the downtown area, the Civic Center, and Lincoln Park. The Private Development will subsidize the City's share of a new Civic Center to the extent the Preferred Proposer deems required, if any. The technical requirements of the Private Development are included in Appendix C.

The City also seeks a variation on the new Civic Center without the Port, including only a new City Hall, Main Library, and revitalized Lincoln Park (together the "Civic Center without Port"). This variant is addressed throughout the requirements of this RFP. Proposed Private Development programs can vary between the Civic Center with Port and Civic Center without Port options.

Regarding all references in this RFP to discussions, negotiations, coordination, commitments, or execution of Agreements, intended or implied, between the City and the Preferred Proposer, if the Civic Center with Port is pursued, then it is inferred that City means City and Port.

### **1.3 PROJECT CONSIDERATIONS**

#### **1.3.1 PROJECT SITE**

The Project Site includes the current location of the Long Beach Civic Center megablock, which is bounded by Broadway, Pacific Avenue, Ocean Boulevard, and Magnolia Avenue that contains 14.89+/- gross acres created through the consolidation of six former traditionally scaled city blocks in the late 1960s, and a separate site at 3<sup>rd</sup> and Pacific Street. As currently designed, the megablock includes City Hall, the Main Library, the 4.8+/- acre Lincoln Park, the aboveground Broadway parking structure, the subterranean Lincoln Park parking structure, the Old Courthouse, and the Public Safety Building (not a part of the Project).

#### **1.3.2 LAND USE CONSIDERATIONS FOR PROJECT SITE**

The following are important land use considerations for each site involved in the Project:

1. Old Courthouse/Western Site: This is owned by the Successor Agency to the Long Beach Redevelopment Agency, and it is anticipated that the State will grant the City of Long Beach permission to develop the site in accordance with the City's Long Range Property Management Plan. The State Department of Finance has until January 1, 2015, to determine if any use restrictions will be placed on the property and approve the Long Range Property Management Plan. The Long Range Property Management

Plan categorizes the site as Government Use. The Proposer may propose Private Development on this parcel and the City and Successor Agency shall cooperate with the Proposer to facilitate proposed uses. All development must adhere to the Downtown Plan/PD-30 zoning code, except where otherwise noted in this RFP.

2. Mid-Block Site: This site may be developed as a single parcel, or there may be an opportunity to master plan the site as multiple parcels. Any subdivisions are subject to the City's standard entitlement process. All development must adhere to the Downtown Plan/PD-30 zoning code.
3. East Site (Lincoln Park): This site must remain park land by deed restriction. The Main Library may be located on this site after application for and approval of a conditional use permit. No roads are allowed on this site. However, promenades or paseos for pedestrian, non-motorized vehicles, and emergency vehicles that create effect of connecting the street grid are allowed. No private development can occur on this site.
4. Pacific and Third Street Site: This site may be developed with Private Development and/or Civic Center uses but must adhere to the Downtown Plan/PD-30 zoning code and be compatible with adjacent land uses (existing and proposed).
5. Chestnut and Cedar Avenues: The City favors reconnection of Chestnut Avenue and/or Cedar Avenue through the megablock to Ocean Boulevard and has allocated scoring points for this goal

### **1.3.3 LEGAL CONSIDERATIONS**

Section 1801 of the City's Charter requires the City to contract with the lowest responsible bidder, unless as otherwise authorized by general law. In order to foster Proposal flexibility and creativity, the City is willing to consider any Project procurement structure authorized by general law in California including, without limitation, a Design, Build, Finance, Operate & Maintain structure, a Lease/Lease-Back arrangement, or other available public-private structure. The City encourages each Proposer to propose a Project procurement structure which will deliver the Best Value to the City within general law authorities. The City will engage in a more detailed analysis of the proposed legal authority of each Proposal based on the specifics of the proposed Project. The City is willing to consider pursuing any

action which a Proposer may require to best establish legal authority for the Project, including specific Project authorization.

The following requirements must be met by any proposed structure for the Civic Center:

- Equity (or equity substitute) must be responsible for the performance of any work under the Agreements;
- The City must have remedies to enforce the contract directly with the special purpose entity formed for delivery of the requirements of the RFP, including the right to withhold/reduce payment and termination; and
- There can be no increase in payment by the City beyond the indexation outlined in this RFP unless otherwise stated explicitly in the RFP.

#### **1.3.4 RISK MATIRX**

The City intends the allocation of risks for the Civic Center in the Agreements to conform with the Risk Matrix in Appendix P and Proposers should prepare their Proposals accordingly. The Risk Matrix may be subject to change during finalization of the Project with the Preferred Proposer.

#### **1.3.5 OCCUPANCY TERM**

The City will consider proposals with up to 40 years for the term of occupancy (“Term”) of the Civic Center. Accordingly the Proposer’s design, construction, materials, operating and maintenance regime, as well as other considerations will factor into the City’s evaluation of Proposals.

#### **1.3.6 TRANSFER OF DEVELOPMENT RIGHTS**

The City will consider a ground lease up to 45 years for the Civic Center (both options) and conveyance or a ground lease (up to 55 years, plus extensions to 99 years) for the Private Development sites to the Preferred Proposer in order to achieve the City’s goals for the new Civic Center and Private Development.

#### **1.3.7 OTHER CONSIDERATIONS**

All other considerations outlined in this RFP and the RFQ remain in effect. If there is any conflict or doubt, considerations in this RFP take precedence over those in the RFQ.

## **1.4 AGREEMENTS**

Upon Selection of Preferred Proposer, the City will execute an Exclusive Negotiation Agreement (ENA) (see Appendix O) that will govern the roles and responsibilities of the Preferred Proposer and the City during the Negotiation Period.

The Project development rights for the Site shall be conveyed by the City to the Preferred Proposer through a Statutory Development Agreement (DA) that shall be executed concurrent with the satisfactory conclusion of the Project entitlement process. The DA will govern the overall development of the Civic Center and Private Development. All additional permits, agreements, or other requirements for the Private Development shall be the responsibility of the Preferred Proposer and are not discussed further in this RFP.

The Agreement(s) referenced throughout this RFP, with the exception of the DA and ENA, shall pertain to the Civic Center.

When appropriate, the City and the Port intend to execute an Interface Agreement that establishes the roles, responsibilities, and terms and conditions of the two parties.

## **2. GENERAL PROVISIONS**

### **2.1 DEFINITIONS**

Capitalized terms in this RFP that are not defined within the text are defined in Appendix A.

### **2.2 UPDATES**

The City may contact the Proposers by email to notify them of any updates or new documents made available.

## 2.3 PROCUREMENT SCHEDULE

The City currently anticipates the following procurement schedule:

Activity	Due Date and Time
Issued RFQ	April 26, 2013
RFQ submittal due date	July 26, 2013
Shortlisting announcement	October 22, 2013
Community outreach meeting	January 25, 2014
Pre-RFP one-on-one meetings with shortlisted Proposers	January 30, 2014
Community outreach meeting	February 1, 2014
Issue RFP	February 28, 2014
Site visits	March 15-16, 2014
One-on-one meetings with each Proposer for eight hours to discuss preliminary aspects of the Proposer's design concept, legal basis, and financial plan	March 17-19, 2014
Last day for Proposers to submit clarifying questions on RFP	March 20, 2014
Weekly one hour one-on-one meetings with each Proposer to discuss topics chosen by Proposers (every Wednesday)	April 2 – May 14, 2014
Issue Final RFP Addenda including response to RFP questions	April 7, 2014
One-on-one meetings with each Proposer for four hours to discuss preliminary aspects of the Proposer's design concept, legal basis, and financial plan	April 24, 2014
Last day for Proposers to submit clarification questions on RFP Addenda	April 29, 2014
Issue response questions on RFP Addenda	May 9, 2014
One-on-one meetings with each Proposer for two hours each to discuss final design questions	May 9, 2014
Proposal Due Date	June 2, 2014, 11:00am PDT
Presentations by Proposers (two hours each Proposer) to selection committee and advisors	June 10, 2014
Recommendation to City Council of Preferred Proposer	July 1, 2014
Recommendation to Board of Harbor Commissioners of Preferred Proposer	Within 7 days of City Council action
Selection of Preferred Proposer	July 1, 2014
Execution of Exclusive Negotiating Agreement	July 2, 2014
Negotiation of Development Agreement, Agreements, and Pursuit of entitlements	Up to 17 months from Selection of Preferred Proposer
Planning Commission and City Council Approval of Entitlements	Up to 17 months from Selection of Preferred Proposer
Execution of Agreement	Within 15 days of Commission and Council approval

All dates set forth above and in this RFP are subject to change at the City's sole discretion. To the extent such dates are changed, the City shall formally notify the Proposers.

## **2.4 GENERAL PROVISIONS REGARDING PROPOSALS**

### **2.4.1 PROPOSAL CONTENTS**

Proposals shall be composed of the Proposer's Administrative Information Submittals, Technical Proposal, and Financial Proposal. Detailed instructions regarding the Administrative Information Submittals, Technical Proposal, and Financial Proposal are provided in Appendices B through G. Forms required for inclusion in the Proposals are set forth in Appendix I. Each Proposal component shall be clearly titled and identified, and shall be submitted without reservations, qualifications, conditions, or assumptions. Any failure to provide all the information and all completed forms in the format specified by this RFP may result in City's rejection of the Proposal as Non-Responsive, depending on the nature of the omission. All blank spaces in the Proposal forms must be filled in as noted. No change(s) shall be made to the Proposal forms unless otherwise allowed by written instruction on the applicable form.

### **2.4.2 PROPERTY OF CITY**

All documents submitted by the Proposer in response to this RFP shall become the property of the City (subject to the provisions of Section 2.4.3) and will not be returned to the Proposer, except as provided for in Section 2.4.3.

### **2.4.3 CLAIMS OF CONFIDENTIAL OR EXEMPT INFORMATION**

As set forth in Section 2.4.2 above, all Proposals submitted by the Proposers shall become the property of the City. Notwithstanding the preceding sentence, any Exempt Information contained within any of the Proposals will continue to be owned by the Proposer submitting the Exempt Information in accordance with applicable federal or state laws, but the City shall have the right to use such information as with any other information in a Proposal.

The Proposals will be a matter of public record subject to the State of California Public Records Act, California Government Code Section 6250 et seq. (CPRA). Information in any Proposal submitted to the City is a public record and may be subject to disclosure if requested by a member of the public. Proposers should familiarize themselves with the CPRA, including consulting with legal counsel, regarding its requirements for disclosure of public records and applicable exemptions from such disclosure. Any Proposer claiming an exemption from

disclosure under the CPRA must identify the specific provision(s) of the CPRA providing an exemption from disclosure for each such item or portion of the Proposal claimed by the Proposer as exempt from disclosure. Proposers must also clearly identify, in writing and with specificity, all copyright, patent, or trademark materials; trade secrets; or proprietary or confidential commercial or financial information claimed as exempt from disclosure under the CPRA (collectively, “Exempt Information”) as required in Section 4.4.

Exempt Information shall remain the property of the claiming Proposer. If a request is made under CPRA for disclosure of Exempt Information, the City will endeavor to provide the affected Proposer with reasonably timely notice of that request, in order that said Proposer will have the opportunity, under the CPRA, to seek protection from disclosure by a court of competent jurisdiction. The City shall not be, under any circumstances, responsible or liable to any Proposer, or any other person, for the disclosure of Exempt Information, whether such disclosure is required by law, by an order of court, or as a result of inadvertence, mistake, or negligence on the part of the City or its elected or appointed officials, officers, employees, agents, contractors, representatives, or consultants.

Each Proposer submitting claimed Exempt Information in connection with its RFP, and by making such submittal of claimed Exempt Information, unconditionally agrees to indemnify, defend, and hold harmless the City and its elected or appointed officials, officers, employees, agents, contractors, representatives, and consultants, from and against any and all claims, damages, losses, liabilities, and expenses — including actual attorneys’ fees and costs, including in-house legal counsel, incurred by the City in good faith — that arise out of, relate to, or result from the City’s failure to disclose any claimed Exempt Information to any person making a request for such information. Any Proposer that fails to timely and diligently undertake this indemnification of the City shall be deemed to have waived that Proposer’s right to claim exemption from disclosure under the CPRA; and after reasonable notice to the Proposer, the City may release the requested information in accord with Applicable Law.

### **3. PROCUREMENT PROCESS**

#### **3.1 METHOD OF PROCUREMENT**

The City is issuing this RFP pursuant to City Council approval dated October 22, 2013. The City will select a Preferred Proposer (if at all) offering a Proposal that meets the standards set by the City and that is determined by the City, through evaluation based upon the criteria set forth in this RFP, to provide the Best Value to the City. The City's evaluation of Proposals will involve both pass/fail and scored evaluation criteria, as further detailed in the sections below and in the Appendices to this RFP.

#### **3.2 COMMUNICATIONS BETWEEN CITY AND PROPOSERS**

The City will make available to all Proposers a copy of this RFP, including Addenda, and other Project-related documents and materials in electronic format at no cost. All Proposers responding to this RFP will be required to acknowledge that they have received and reviewed all such documents and materials.

##### **3.2.1 DESIGNATED CONTACT OF THE CITY**

The City has designated the following individual to be its designated contact for the Project (the "Designated Contact"):

Anne Takii, Buyer

City of Long Beach

Purchasing Division

333 W. Ocean Blvd., 7<sup>th</sup> Floor

Long Beach, CA 90802

email: [RFPPurchasing@longbeach.gov](mailto:RFPPurchasing@longbeach.gov)

Designated City Representative:

City of Long Beach

Michael P. Conway

Director of Business & Property Development

333 W. Ocean Blvd., 13th Floor

Long Beach, CA 90802

email: [Michael.Conway@longbeach.gov](mailto:Michael.Conway@longbeach.gov)

From time to time during the procurement process or during the term of the Agreement, the City may designate another Designated Contact or other representatives to carry out some or all of City's obligations pertaining to the Project.

### **3.2.2 RESPONDENT'S REPRESENTATIVE**

In the RFQ, each Proposer named one individual to be its designated contact for the Project (the "Respondent's Representative"). Each Proposer is solely responsible to ensure that all contact information for the Respondent's Representative is accurate and updated at all times during the procurement. The Proposer may update or revise its Respondent's Representative's information by notifying the Designated Contact, in writing.

### **3.2.3 RULES OF CONTACT**

Unless specifically authorized elsewhere in this RFP, the Designated Contact and Designated City Representative are the City's only points of contact and source of information for this procurement.

The rules of contact set forth in this Section 3.2.3 shall apply during the Project procurement process. These rules are designed to promote a fair, unbiased, and legally defensible procurement process. Contact includes, but is not limited to, face-to-face, telephone, email, written communication, or any other type of communication.

The specific rules of contact are as follows:

1. No Proposer nor any of its team members may communicate with another Proposer or members of another Proposer's team with regard to this RFP or either team's Proposal. This prohibition does not apply to (1) Proposer communication with a contractor or financing source that is on both its team and another Proposer's team, provided that the contractor or financing source shall not act as a conduit of information between the two Proposers, and (2) public discussion regarding this RFP at City-sponsored informational meetings.

2. Unless otherwise specifically noted in this RFP or authorized by the Designated Contact, all Proposer communication with the City will be between the Respondent's Representative and the Designated Contact or Designated City Representative. All such communication that may be relied upon must be in writing (by mail or email).
3. Until the earliest of (1) execution and delivery of the Agreement, (2) the City's rejection of all Proposals, or (3) cancellation of the Project procurement, neither a Proposer nor its agents may have ex parte communications regarding the Project with City officials; City Council members; City employees, staff, or consultants; members of the Project Selection Committee; or any other person who will evaluate Proposals, except for communications expressly permitted in this RFP. The foregoing restriction shall not, however, preclude or restrict communications regarding matters unrelated to the Project or participation in public meetings or any public or Proposer workshop related to the Project. The City may, in its sole discretion, disqualify any Proposer engaging in such prohibited communications.
4. Any contact by a Proposer determined by the City to be improper may result in disqualification of the Proposer.
5. The City will disseminate written communications regarding the Project from the City on City letterhead. The Designated Contact or Designated City Representative will sign such communications. Alternatively, the Designated Contact may communicate via email originating from City's server.
6. The City will not be responsible for or bound by (1) any oral communication or (2) any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the Designated Contact.

### **3.2.4 LANGUAGE**

All correspondence regarding this RFP and the Proposal is to be in the English language. If any original documents required for the Proposal are in any other language, the Proposer shall provide an English translation, certified by an individual

authorized as a translator by one of the superior courts of California, which shall take precedence in the event of conflict with the original language.

### **3.3 QUESTIONS AND RESPONSES REGARDING THIS RFP**

Proposers shall be responsible for reviewing this RFP and any Addenda issued by City prior to the Proposal Due Date and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that the Proposer fails to understand. Proposers shall submit, and the City may respond to, such requests in accordance with the times specified in Section 2.3. Any written responses by the City to these requests will be considered part of this RFP.

#### **3.3.1 FORM OF REQUESTS**

Proposers shall deliver any requests to the Designated Contact via email or US mail. The City will consider only requests made by the Respondent's Representative and will not consider telephone or other oral requests. Proposers are responsible for ensuring that requests clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. Requests must include the requestor's name, address, telephone and fax numbers, and the Proposer he/she represents. Such comments/questions shall (a) be sequentially numbered; (b) identify the specific document in question; (c) identify the relevant section number and page number (e.g., Technical Requirements Section XX, page XX) or, if it is a general question, indicate so; and (d) not identify the Proposer's identity in the body of the question or contain proprietary or confidential information. If the Proposer advises the City that any question is confidential, the City will consider whether the subject matter is indeed confidential and, if deemed so, will respond to the Proposer separately from the combined responses to all Proposers. By submitting any question to the City, Proposers agree to whatever decision the City makes with respect to such determination of subject matter confidentiality.

#### **3.3.2 TIMING AND LIMITS OF REQUESTS**

Proposers must submit any requests under this RFP prior to the deadlines for such requests as specified in Section 2.3. Each Proposer is limited to submitting no more than

- 150 specific individual comments on this RFP (the last of which is due on March 20, 2014) and

- 75 specific individual clarification questions on Addenda (the last of which is due on April 29, 2014).

The City will determine if any comment or question contains more than one such comment or clarification and will answer only the first 150 or 75 such items listed in order from any such Proposer.

### **3.3.3 RESPONSES AND CONFIDENTIAL INFORMATION**

The City's responses to questions submitted will be in writing, and the City will make available these responses electronically to all Proposers, except that the City may in its discretion respond individually to those questions identified by a Proposer or deemed by the City as containing confidential or proprietary information. The City reserves the right to disagree with a Proposer's characterization of the confidentiality of any information it may provide. The City may rephrase or consolidate questions as it deems appropriate. The City does not commit to answer any questions submitted by the Proposers after the last deadline for submitting questions.

### **3.4 ADDENDA**

The City may modify conditions or requirements of this RFP at any time after its formal issuance by issuing addenda ("Addenda"). The City will provide all Proposers access to a copy of all Addenda in electronic format at no cost. If the City finds it necessary to issue Addenda, any relevant processes or response times necessitated by the Addenda will be set forth in a cover letter to that specific addendum.

The City will not be bound by, and the Proposer shall not rely on, any oral communication or representation regarding this RFP documents, or any written communication except to the extent that it is contained in this RFP or in Addenda to this RFP and is not superseded by later Addenda to this RFP.

### **3.5 ONE-ON-ONE MEETINGS**

The City anticipates conducting one-on-one meetings with each Proposer on the dates specified in Section 2.3 and may hold additional one-on-one meetings. Any such meetings may include any advisors to the City and/or other third-party stakeholders, at the City's sole discretion. Participation at such meetings by Proposers shall be mandatory, and each one-on-one meeting shall be attended by the Respondent's Representative and Project Manager, and any members of the Proposer's team appropriate to the subject matter of the meeting, subject to total attendance limitations that the City may direct.

### **3.5.1 SUBJECT MATTER OF ONE-ON-ONE MEETINGS**

The purpose of the one-on-one meetings with Proposers is for the City to discuss issues and clarifications regarding this RFP and aspects of the Proposers' development of their Proposals. No negotiation or decision-making shall take place during the one-on-one meetings. The City reserves the right to hold one-on-one meetings on matters it deems appropriate in its sole discretion. The one-on-one meetings are subject to the following rules:

- The meetings are intended to provide Proposers with a better understanding of this RFP and periodic feedback on development of their Proposals.
- The City will not discuss with any Proposer any Proposal other than its own.
- Proposers shall not seek to obtain commitments from the City in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

### **3.5.2 MEETING NOTICE, CONFIRMATION, AND AGREEMENT**

The City shall notify each Proposer in writing of the scheduled time, place, date, and duration of any one-on-one meeting. This notice may also include procedural details regarding allowed contact with the City's representatives and any identification the Proposers will be required to bring. The notice may also request that the Proposer provide a proposed agenda for the one-on-one meeting. By attending any such meeting, the Proposer agrees to any rules that may be defined by the City regarding the one-on-one meeting and a waiver of protest rights related to these meetings. In order to qualify to attend these meetings, Proposers are required to confirm their attendance at this meeting within five days of receiving notice of such meeting.

### **3.5.3 STATEMENTS AT ONE-ON-ONE MEETINGS**

During one-on-one meetings, Proposers may ask questions and responses may be provided. However, any responses during

one-on-one meetings may not be relied upon unless questions are submitted in writing or the City notes the questions in writing, and the City has provided written responses. The questions and the City's responses will be provided in writing to all Proposers, except to the extent such questions are deemed by the City to contain confidential or proprietary information relating to a particular Proposer's Proposal.

#### **3.5.4 USE OF ONE-ON-ONE MEETING INFORMATION**

The City reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that the City determines, in its sole discretion, such disclosure would reveal confidential or proprietary information.

### **3.6 EXAMINATION OF THIS RFP PACKAGE AND WORK SITE**

Proposers are expected to carefully examine the Project site and the complete RFP package, including documents contained therein or thereafter delivered to Proposers, before submitting a Proposal. At their request, Proposers will be permitted at least one visit of portions of the Project site that are not open to the public during the time specified in Section 2.3. The City will notify Proposers in writing of the date for the visit and specific parameters related to the visit.

Proposers must satisfy themselves, by personal investigation and any other means they deem necessary, as to the conditions affecting the proposed Project and services and the cost thereof. Proposers are solely responsible for conducting their own independent research and due diligence for the preparation of Proposals. Information derived from any part of this RFP or from the City or its advisors does not relieve the Proposers from any risk associated with meeting the requirements of this RFP. The City is not responsible for the completeness or accuracy of any information presented in this RFP or otherwise distributed or made available during the procurement process.

### **3.7 USE OF INFORMATION**

Information offered with respect to this RFP from sources other than the Designated Contact is not official, may be inaccurate, and should not be relied on in any way, by any person, for any purpose.

The City is not liable for any information or advice, or any errors or omissions, that may be contained in this RFP or related Addenda, Appendices, data, materials, or documents (electronic or otherwise). The City makes no representations, and there are no warranties or conditions, either express or implied, statutory or otherwise, in fact or in law, with respect to the accuracy or completeness of this RFP or related Addenda,

Appendices, data, materials, or documents. The City will not be responsible for any claim, damage, liability, loss, or cost (including attorney fees and costs) whatsoever arising from the Proposer's reliance on or use of this RFP or any other technical or historical Appendices, data, materials, or documents provided by the City.

Each Proposer is responsible for ensuring that it has all of the information necessary to respond to this RFP and for independently informing and satisfying itself with respect to the information contained in this RFP and any conditions that may in any way affect its Proposal. Each Proposer is responsible for obtaining its own independent financial, legal, accounting, engineering, environmental, architectural, and other technical and professional advice with respect to the Project and any Addenda, attachments, Appendices, data, manuals, or documents provided, made available, or required by the City.

#### **4. PROPOSAL CONTENT AND SUBMITTAL REQUIREMENTS**

##### **4.1 REQUIREMENTS**

Project requirements are described in Appendices B, C, and D. The Proposer's submittal requirements are specified in Appendices E, F, and G.

##### **4.2 FORMAT**

To facilitate the evaluation of Proposals and to help protect the confidentiality of proprietary information, the Proposal submittal described below shall be submitted in a sealed package.

Unless otherwise specified in this RFP, all written submittals must be prepared on 8-1/2" x 11" white paper. All written submittals, regardless of paper size, must be prepared on white paper and included in the applicable binder. Any submittal requested on paper larger than 8-1/2" x 11" will be considered 1 page. Each section within a volume shall have sequentially numbered pages (e.g., "Vol. 2 – Section 2, p.2," for page 2 of Section 2 in Volume 2), shall be separated by a divider with a tab as appropriate, and shall be prepared using no smaller than 12-point font size, except for tables, which may be prepared using 10-point font size. Some of the required documents may have specified page limitations, and the City may disregard documents not complying with these page limitations. Proposers shall not include standard corporate brochures, awards, licenses, and marketing materials, and the City will not evaluate such materials.

The Proposal should be presented in a format that corresponds to and references sections outlined in this RFP and should be presented in the same order. Responses to each section and subsection should be

labeled so as to indicate which item is being addressed. For ease of evaluation, proposals should be presented in the format described within this RFP.

Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of responses to this RFP. Expensive bindings, colored displays, promotional materials, etc. are not necessary or desired. Emphasis should be concentrated on conformance to this RFP instructions, responsiveness to this RFP requirements, and completeness and clarity of content.

#### **4.3 CONTENTS AND ORGANIZATION**

Proposers shall clearly index their Proposals using pages with tabs and organize them in the order set forth in this section. The Proposal shall contain three separately bound and labeled volumes, each in a separate loose-leaf three-ring binder, including the information described in this section. Proposers may subdivide each volume as needed. The electronic submittals (CDs and/or DVDs) shall follow equivalent organizational standards and shall use a searchable format with appropriate bookmarks.

##### **4.3.1 VOLUME 1 – ADMINISTRATIVE INFORMATION**

Volume 1 of the Proposal will contain the administrative information the Proposer is required to submit under Appendix E, separated and labeled appropriately and organized in accordance with Appendix M.

##### **4.3.2 VOLUME 2 – TECHNICAL PROPOSAL**

###### Section 1A - Civic Center

Volume 2, Section 1A of the Proposal will contain the Technical Proposal for the Civic Center. Any information the Proposer believes is confidential or proprietary should be clearly noted as such, pursuant to Section 4.4. Each Technical Proposal will contain the components described in Appendix F1 and F2 separated, labeled appropriately, and organized in accordance with Appendix M.

###### Section 1B - Civic Center without Port

Volume 2, Section 1B of the Proposal will contain the Technical Proposal for the Civic Center, without a new Port headquarters. Any information the Proposer believes is confidential or proprietary should be clearly noted as such, pursuant to Section 4.4. Each Technical Proposal will contain the components

described in Appendix F1 and F2, separated, labeled appropriately, and organized in accordance with Appendix M.

#### Section 2A - Private Development (corresponds to Civic Center)

Volume 2, Section 2A of the Proposal will contain the Technical Proposal for Private Development based on a Civic Center that includes a new Port headquarters. Any information the Proposer believes is confidential or proprietary should be clearly noted as such, pursuant to Section 4.4. Each Technical Proposal will contain the components described in Appendix F3, separated, labeled appropriately, and organized in accordance with Appendix M.

#### Section 2B - Private Development (corresponds to Civic Center without Port)

Volume 2, Section 2B of the Proposal will contain the Technical Proposal for Private Development based on a Civic Center, excluding a new Port headquarters. Any information the Proposer believes is confidential or proprietary should be clearly noted as such, pursuant to Section 4.4. Each Technical Proposal will contain the components described in Appendix F3, separated, labeled appropriately, and organized in accordance with Appendix M.

### **4.3.3 VOLUME 3 – FINANCIAL PROPOSAL**

#### Section 1A - Civic Center

Volume 3, Section 1A of the Proposal will contain the Financial Proposal for the Civic Center that includes a new Port headquarters. Any information the Proposer believes is confidential or proprietary should be clearly noted as such, pursuant to Section 4.4. Each Financial Proposal will contain the components described in Appendix G1, separated, labeled appropriately, and organized in accordance with Appendix M.

#### Section 1A - Civic Center without Port

Volume 3, Section 1B of the Proposal will contain the Financial Proposal for the Civic Center without a new Port headquarters. Any information the Proposer believes is confidential or proprietary should be clearly noted as such, pursuant to Section 4.4. Each Financial Proposal will contain the components described in Appendix G1, separated, labeled appropriately, and organized in accordance with Appendix M.

Section 2A – Private Development (corresponds to Civic Center with Port)

Volume 3, Section 2A of the Proposal will contain the Financial Proposal for Private Development based on a Civic Center that includes a new Port headquarters. Any information the Proposer believes is confidential or proprietary should be clearly noted as such, pursuant to Section 4.4. Each Financial Proposal will contain the components described in Appendix G2, separated, labeled appropriately, and organized in accordance with Appendix M.

Section 2B – Private Development (corresponds to Civic Center without Port)

Volume 3, Section 2B of the Proposal will contain the Financial Proposal for Private Development based on a Civic Center, excluding a new Port headquarters. Any information the Proposer believes is confidential or proprietary should be clearly noted as such, pursuant to Section 4.4. Each Financial Proposal will contain the components described in Appendix G2, separated, labeled appropriately, and organized in accordance with Appendix M.

#### **4.4 CONFIDENTIAL AND PROPRIETARY INFORMATION**

Each Proposer shall provide a list of all items and materials in its Proposal that it deems to be confidential and proprietary and, therefore, exempt or protected from public disclosure under the CPRA. Each page of the materials identified in the list shall be individually stamped or labeled as “confidential and proprietary.” Each entry on the list shall identify the specific statute within the CPRA that the Proposer believes exempts or protects that item from public disclosure. Items listed without an accompanying statutory reference will be treated as public information. Blanket designations that do not identify specific information or statutes will not be acceptable and may be cause for the City to treat the entire Proposal as public information subject to public disclosure. The list required under this section is intended to provide input to the City as to the confidential nature of a Proposal, but in no event shall such list and identification be binding on the City or determinative of any matter relating to confidentiality. The City will consider the Proposer to have waived any claim of confidentiality and exemption from the public disclosure with respect to materials not listed and stamped as confidential.

## **4.5 SUBMISSION OF PROPOSALS**

### **4.5.1 SUBMITTAL LOCATION AND COPIES**

Proposers shall submit by mail or in person one hard copy original proposal marked "ORIGINAL" and one digital copy on each of four CDs or DVDs in original format, i.e., four digital copies altogether, to the following address:

City of Long Beach

Attn: City Clerk C/O Anne Takii  
333 West Ocean Blvd., Plaza Level  
Long Beach, CA 90802

Proposals shall be submitted in a sealed envelope or box, clearly labeled on the outside as follows:

Request for Proposal No. CM14-040

Title: Develop, Design, Build, Finance, Operate and Maintain the New Long Beach Civic Center, Port Headquarters and Potential Related Downtown Development

### **4.5.2 PROPOSAL DUE DATE**

Proposals must be received by the City by June 2, 2014, at 11:00am PDT (Proposal Due Date). Upon timely delivery of each Proposal, the City will provide the Proposer with a written receipt. Proposals that do not arrive by the Proposal Due Date and time WILL NOT BE ACCEPTED OR CONSIDERED. Proposers may submit their proposal any time prior to the Proposal Due Date, but the City will not accept any Proposals delivered after the Proposal Due Date. Facsimile or telephone proposals will NOT be considered unless otherwise authorized; however, proposals may be modified by email or written notice provided such notice is received prior to the Proposal Due Date. Proposers are solely responsible for assuring that the City receives their Proposals by the Proposal Due Date at the address listed above. The City shall not be responsible for delays in delivery caused by weather; difficulties experienced by couriers or delivery services; misrouting of packages by courier or delivery services; improper, incorrect, or incomplete addressing of deliveries; and other occurrences beyond the control of the City.

## **4.6 SIGNATURES**

The Proposal must be signed by the individual(s) legally authorized to bind the Proposer. The Preferred Proposer, if any, will be the sole point of contract responsibility. The City will look solely to the Preferred Proposer, if any, for the performance of all contractual obligations that may be entered into in relation to the Project, and the Preferred Proposer, if any, shall not be relieved for the nonperformance of any or all Subcontractors.

## **4.7 WITHDRAWALS AND CHANGES**

### **4.7.1 CHANGES TO PROPOSALS**

Proposals may be modified by fax or written notice provided such fax or written notice is received at the designated submittal location prior to the Proposal Due Date.

### **4.7.2 WITHDRAWAL OF PROPOSALS**

Any Proposal may be withdrawn by written notice received by the Designated Contact or Designated City Representative prior to the Proposal Due Date via email or mail. Afterward the Proposal is considered valid for the Proposal Validity Period prescribed in this RFP (Section 4.8). Any attempt by a Proposer to withdraw a Proposal after the Proposal Due Date shall be null and void and of no effect.

## **4.8 VALIDITY OF PROPOSALS**

Proposals submitted and not withdrawn as of the Proposal Due Date shall be valid for a period of 180 days commencing on the Proposal Due Date. The City and any of the Proposers may agree to extend the validity period on mutually agreeable terms.

## **4.9 COST OF PREPARING PROPOSAL**

Except for the Stipend, as described in Appendix L, Proposers assume any and all costs for submitting a response to this RFP, as well as for the costs associated with conducting any studies or obtaining any necessary development approvals and permits for the Project.

## **4.10 DISQUALIFICATION**

Each Proposer shall be solely responsible for any consequences, including disqualification of its Proposal, which may result from the Proposer's failure to follow the instructions in this RFP. The Proposer is also responsible for ensuring its Proposal is received as required by this

RFP. A Proposer's failure to respond to all information requested in this RFP or to provide any requested information may result in a determination by the City, in its sole discretion, that a Proposer is Non-Responsive and, therefore, disqualified from further consideration.

In addition to the evaluation process described in Section 5, the City may consider Proposals Non-Responsive and the Proposer disqualified for the following reasons:

1. The Proposal is not submitted in the format specified in this RFP or is illegible
2. The Proposal contains any omission, erasures, alterations, unauthorized additions, or other irregularities of any kind
3. Any mandatory portion of the Proposal is conditioned
4. The Proposer is in arrears in the payment of any obligation due and owing the City, including the payment of taxes and/or employee benefits
5. The Proposer, or any member of the Proposer team is in litigation or pending litigation with the City or the Port.

## **5. EVALUATION PROCESS AND CRITERIA**

Upon the City's receipt of the Proposals, the City will review Proposals for completeness before proceeding to review the Proposals using the criteria set forth in Appendix H. In order to help in the evaluation process, the City may, in its sole discretion, request clarifications of one or more of the Proposers in order to clarify aspects of a Proposal. Once the City has scored the Proposals, the City will determine which Proposal is the apparent Best Value Proposal.

If there are any discrepancies between the hard copy and the electronic copy of any information provided in the Proposal, the hard copy version will prevail. If there are any differences between the sum of individual line amounts and totals, the individual line amounts will prevail.

Proposers understand and acknowledge that the representations made in their Proposal are material and important, and will be relied on by the Project Selection Committee (PSC) in evaluation of the Proposal. Any Proposer misrepresentation shall be treated as fraudulent concealment from the PSC of the true facts relating to the Proposal, and the PSC may disqualify such Proposer's Proposal.

## **5.1 ORGANIZATION OF THE EVALUATION COMMITTEE**

Evaluation of Proposals will be conducted by the PSC, which will be composed of representatives from the City and Port, and will be chaired by individuals designated by the City. In addition to City and Port voting members, the PSC may also be assisted by advisors, including City representatives and outside consultants, who will offer advice on the technical, financial, and legal aspects of each Proposal. The primary responsibility of these advisors will be to assist the PSC in making the educated and informed assessment of the individual strengths and weaknesses of the Proposals. All evaluators and outside consultants and observers will be required to sign confidentiality statements and will be subject to City conflict of interest control requirements. The PSC will evaluate Proposals by application of the Scoring Criteria to select the Proposer using a Best Value analysis and judging the Proposals on a comparative basis.

## **5.2 EVALUATION GUIDELINES AND PROCEDURE**

Proposals will first be reviewed for completeness. Once deemed complete, the Proposal will then be evaluated against Pass/Fail Criteria.

### **5.2.1 PASS/FAIL CRITERIA EVALUATION**

A Proposal that provides all the information required by this RFP and achieves a pass rating on all of Pass/Fail Criteria will be deemed a Responsive Proposal.

Failure to achieve a pass rating on any Pass/Fail Criteria may result in the City declaring the Proposal Non-Responsive and the Proposal being disqualified. Prior to making a disqualification declaration, the City may offer a Proposer the opportunity to clarify its Proposal, as described in Section 5.4. If the PSC deems a Proposal to be Non-Responsive, the PSC will not evaluate the Scoring Criteria and will not score the Proposal.

Pass/Fail criteria related to a new Port headquarters will only be scored for the Civic Center with Port variant. Pass/Fail criteria related exclusively to the Port will not be scored under the Civic Center without Port variant.

### **5.2.2 SCORING CRITERIA AND POINTS**

The Scoring Criteria are set forth in Appendix H. Maximum points achievable are indicated for each Scoring Criterion. Minimum points for each Scoring Criterion are zero. The order in which the Scoring Criteria appear within each category is not an indication of importance.

Scoring may vary between the Civic Center with Port and Civic Center without Port options. Appendix H illustrates the maximum points achievable under each option.

### **5.2.3 PROPOSAL SCORING**

The PSC will evaluate and score each Responsive Proposal. Each Scoring Criterion will receive a score between zero and the maximum number of points based on the impartial judgment of the PSC.

The PSC will determine the Total Proposal Score for each Responsive Proposal by adding the scores from all evaluated Scoring Criteria under both Civic Center options.

## **5.3 BASIS FOR DETERMINATION OF PREFERRED PROPOSER**

Based on the evaluation of the Responsive Proposals, the Port will make a decision whether to continue in the Project (Port in or Port out). The PSC's selection of the Preferred Proposer will be based on an evaluation of those Proposals that have not been disqualified as a result of the pass/fail criteria and which has the highest Total Proposal Score for the one Civic Center option, either with Port in or Port out, depending on whether the Port has decided to continue (Port in) or not (Port out).

## **5.4 REQUESTS FOR CLARIFICATION**

The City may at any time issue one or more requests for additional information or clarification to the individual Proposers, or may request that a Proposer verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within two Business Days (or such other time as is specified by the City) from receipt of the request. The scope, length, and topics to be addressed in clarifications shall be prescribed by and subject to the discretion of the City.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be reevaluated to factor in the clarifications and additional information.

## **5.5 PROPOSAL REVISIONS**

### **5.5.1 MINOR PROPOSAL REVISIONS**

The City may request Proposers to correct any minor irregularities or errors in their Proposals as identified by the City following initial evaluation of the Proposals. The evaluation process will consider any revised information and reevaluate and revise scores as appropriate. In the event that a Proposer

fails to comply with a request by the City to correct such minor irregularities or errors, or fails to do so within the time period designated by the City, the City shall have the right to consider as valid such Proposer's initial Proposal and to select a Preferred Proposer based on its initial Proposal.

## **6. SELECTION OF PREFERRED PROPOSER AND EXCLUSIVE NEGOTIATIONS**

### **6.1 SELECTION OF PREFERRED PROPOSER**

The PSC will recommend a Preferred Proposer to the City Council and Harbor Commission at the conclusion of the proposal evaluation process. The anticipated dates for these recommendations are indicated in Section 2.3.

### **6.2 NO OBLIGATION TO SELECT PREFERRED PROPOSER**

The City shall be under no obligation to select a Preferred Proposer submitting the Best Value Proposal or to subsequently enter into the ENA or any agreements whatsoever.

### **6.3 EXCLUSIVE NEGOTIATION AGREEMENT**

Immediately after Board of Harbor Commissioners action and assuming the City Council and the Harbor Commissioners approve the selection of the Preferred Proposer, the City and the Preferred Proposer shall enter into the ENA. Appendix O contains the Draft ENA.

The ENA establishes the time and performance benchmark parameters for negotiation, including provisions for extensions and termination for non-performance by the negotiating parties. The City, by approving the ENA is not approving the Project, nor committing either party to the Project. As outlined in the RFP, numerous policy actions must be taken for the Project.

### **6.4 EXCLUSIVE NEGOTIATIONS WITH PREFERRED PROPOSER**

#### **6.4.1 NEGOTIATIONS OF DEVELOPMENT AGREEMENT**

Immediately after execution of the ENA, the City plans to commence negotiations with the Preferred Proposer to attempt to negotiate the Development Agreement (DA) during the Negotiating Period. The DA will ultimately include, but is not limited to, a Site Master Plan, CEQA certification, and Agreement(s).

During the Negotiating Period, the following events are anticipated to occur:

- a) The Preferred Proposer will commence its due diligence review of the site.
- b) The City and the Preferred Proposer will advance the development of the Site Master Plan and Civic Center.
- c) The Preferred Proposer will complete the Project entitlement approval processes, public outreach, and any required environmental review.
- d) The Preferred Proposer will complete schematic design of and financial projections for the Civic Center.
- e) The Preferred Proposer and City will negotiate the DA, and related documents for the development of the Project incorporating specific terms, including the City's and Developer's respective responsibilities, the economic parameters, development standards and requirements, and a performance schedule.
- f) The City and the Preferred Proposer will negotiate the terms of the Agreements.
- g) Obtain City Council and/or Port Commission approval of the Project, as detailed in the DA, following environmental certification.

If the DA cannot be negotiated with the Preferred Proposer that is satisfactory to the City after the parties have negotiated in good faith, the City, at any time and in its sole discretion during the Negotiating Period, may formally end discussions with the Preferred Proposer and:

- (a) reject all Proposals;
- (b) issue a request for revisions to Proposals;
- (c) extend the period for negotiations; or,
- (d) move to proceed with negotiations with the next Preferred Proposer that has the second highest Total Proposal Score based upon the Scoring Criteria.

A party shall be deemed to lack good faith in finalizing the DA if the party does not attend or actively participate in reasonably

scheduled telephone conferences and meetings or insists on terms or conditions that conflict with the terms of this RFP.

#### **6.4.2 FURTHER STUDIES AND ANALYSIS**

The City anticipates that further studies and analysis will be required to further define the Project during the Negotiating Period. Completion of such studies and analyses are the responsibility of the Preferred Proposer.

### **6.5 ENTITLEMENTS, PERMITS, AND APPROVALS**

The Preferred Proposer will be responsible for obtaining all entitlements, permits, and approvals necessary for the development of the Civic Center and any related Private Development. This section outlines the necessary steps that the Preferred Proposer has sole responsibility to undertake in order to obtain final development approval. Obtaining all entitlements, permits, and approvals necessary for the development of the Civic Center and any related Private Development does not have to occur before the signing of the Agreement.

In reviewing and approving development plans and discretionary permits in the downtown area, the City shall be guided by the goals and policies of the General Plan for the City of Long Beach, the development and use standards set forth by the Downtown Plan (Plan), and the procedures, development, and use standards set forth in Title 21 and other applicable sections of the LBMC.

The City's Site Plan Review Committee (Committee) shall have the authority to consider alternative configurations and compliances with certain development standards set forth in the Downtown Plan, as noted throughout the Plan document, provided that these alternatives meet the fundamental intent of the Plan and further said goals of the Plan.

Specific steps include but are not limited to the following:

1. Citywide Public Outreach – The Preferred Proposer is expected to conduct independent Citywide community outreach commensurate with a development project of similar size, scale, and density. The City may elect to participate in this community outreach as it relates to civic uses. Materials collected by the City during its pre-RFP outreach efforts, including results of community surveys and comments, will be available to the Preferred Proposer to assist in its efforts.
2. Additional Studies – The Preferred Proposer will be responsible for procuring any additional studies necessary for the development of the site in conjunction with its proposal, including

but not limited to structural assessments of the parking garage(s), environmental, and geotechnical surveys. If the City and the Preferred Proposer do not reach a signed Agreement, the City may purchase these studies in an amount to be negotiated, but is not obligated to do so. If the City and the Preferred Proposer reach a signed Agreement, the City will not reimburse the cost of any of these or additional studies.

3. Development Agreement – The Preferred Proposer will initiate an application for a Development Agreement in accordance with the Municipal Code. All fees associated with the cost of preparing said application — including but not limited to the preparation of conceptual plans, elevations, renderings, material boards, and (Vesting) Tentative Tract Maps — shall be the responsibility of the Preferred Proposer. It is the City’s expectation that the Preferred Proposer and the City will negotiate a Development Agreement consisting of a unified Master Plan for the entire build-out of the Civic Center and any Private Development sites. The Development Agreement will provide the land use entitlements for both the public and private development. Each individual building will be subject to design review by the Planning Commission to ensure the building meets the design standards established in the Development Agreement. The Development Agreement may include the dedication of new public rights-of-way, consideration of a (Vesting) Tentative Tract Map, or other entitlement requests.
4. California Environmental Quality Act (CEQA) – The Downtown Plan was completed in conjunction with a Program Environmental Impact Report (Program EIR). See [http://lbds.info/planning/advance\\_planning/downtown\\_community\\_plan/](http://lbds.info/planning/advance_planning/downtown_community_plan/) to view the EIR. The Program EIR identifies physical changes in the environment that may result from development in accordance with the regulations within the Plan. In addition, the Program EIR identifies mitigation measures that are available to avoid or minimize the effects of identified environmental impacts. These mitigation measures are also identified in the Mitigation and Monitoring Reporting Plan, which accompanies the Final Program EIR. These mitigation measures include actions that are to be carried out as part of specific future developments. The Program EIR provides a first-tier analysis of the environmental effects of the Downtown Plan. Subsequent activities, e.g., when specific development projects are proposed, must be examined in light of the Program EIR to determine whether additional environmental documentation must be prepared. If a subsequent project would have effects that were not examined in the Program EIR or were not examined at an appropriate level, an Initial Study would need to be prepared.

5. Concurrent with the Development Agreement negotiations, the City will prepare the Initial Study. All costs to conduct environmental clearance under CEQA, including any independent technical studies, will be the responsibility of the Preferred Proposer. It is the intention of the City to utilize the certified Program EIR for the Downtown Plan to conduct its environmental review of the proposed project. The City will determine, in its sole discretion, the level of additional analysis, if any, necessary, as well as the application of additional mitigation measures, as necessary, to comply with the Downtown Plan and CEQA.
6. Once negotiations are complete, City staff will present the Development Agreement with a recommendation to the Planning Commission, CEQA clearance as may be required, and any other entitlement actions necessary (e.g., signage program, (Vesting) Tentative Tract Map). After Planning Commission review, the Development Agreement and all other associated approvals will be presented to the City Council for final action.
7. General – For all specific procedures not modified or otherwise specified within the Downtown Plan, all planning entitlement and permitting processes for projects requiring said permits within the Plan area shall be carried out in accordance with the procedures set forth in Chapter 21.25 of the Long Beach Municipal Code.

## **6.6 AGREEMENT EXECUTION**

Upon finalization of the Agreement as described in Section 6.4 and securing of entitlements as described in Section 6.5, the City will deliver five sets of execution copies of the Agreement to the Preferred Proposer, along with a number of sets of execution copies as reasonably requested by Preferred Proposer. The Preferred Proposer shall obtain all required signatures and deliver all of the execution sets to the City, together with the documents described in this Section 6, no later than 10 calendar days after receiving the execution sets from the City.

If the Preferred Proposer is a joint venture or a partnership, the Agreement must be executed by all joint venture members or general partners, as applicable. Within 30 Business Days of the City's receipt of all required and compliant documents from the Preferred Proposer, the City Council will consider a recommended action to execute the Agreement. If so executed, the City will retain four sets of the Agreement, and deliver the other executed sets to the Preferred Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to the Preferred Proposer.

The Preferred Proposer shall deliver the following items to the City concurrently with the executed Agreement by the date specified in this Section 6:

1. The name and address of the Preferred Proposer's agent for service of legal process for this Project (the Preferred Proposer shall not substitute this authorized agent without prior written notice to the City)
2. The Preferred Proposer's federal Internal Revenue Service Employer Identification Number
3. Evidence that the Preferred Proposer and its team members possess all licenses, registrations, and credentials required to perform the Project
4. If not previously submitted in a manner acceptable to the City, a copy of the final organizational documents for the Preferred Proposer and for each member or partner if the Preferred Proposer is a limited liability company, partnership, or joint venture
5. If applicable, a guaranty, in a form acceptable to the City, together with appropriate evidence of authorization thereof, from each entity or Guarantor that provided a letter of parent company support
6. Any other reasonable requirements requested by the City during the Agreement finalization period

Delivery of the preceding items is a condition precedent to Agreement execution and final award. If the Preferred Proposer does not provide the above items within the times specified in this Section 6, the Preferred Proposer may not be entitled to obtain the City's execution of the Agreement.

Subject to the mutual agreement of the parties, if following receipt of the information and documents listed in this Section 6 the City does not execute the Project within 15 business days, then the Preferred Proposer shall have the right to withdraw its Proposal without penalty. If the Preferred Proposer does not execute the Agreement by the date specified in this Section 6, the City may (a) negotiate for award of the Project to the Proposer whose Proposal had the next highest score, (b) re-advertise and complete the Project under a different agreement, (c) cancel the Project, or (d) pursue any other option it chooses in its sole discretion.

The Agreement will not be effective until it has been fully executed and delivered by both of the parties thereto.

## **7. PROTESTS**

This Section 7 sets forth the exclusive protest remedies available with respect to this RFP and the award, if any, of the Project. By submitting its Proposal, each Proposer expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be binding, final and conclusive. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. The submission of a Proposal shall be deemed the Proposer's irrevocable and unconditional agreement with its waiver and limitation of rights.

Any protests and related statements described in this Section 7 shall be submitted for filing by hand delivery to the Designated Contact.

### **7.1 PROTESTS REGARDING RFP REQUIREMENTS**

Proposers may protest the terms of this RFP on the grounds that (a) a material provision in this RFP is ambiguous, (b) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement, or (c) this RFP in whole or in part exceeds the authority of the City. Protests regarding this RFP shall be filed with the Designated Contact or Designated City Representative only after the Proposer has informally discussed the nature and basis of the protest with the City in an effort to remove the grounds for protest.

Protests regarding RFP documents shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements, if any, shall be submitted as sworn affidavits and under penalty of perjury.

Proposers shall file protests as soon as they know the basis for the protest, but in no event later than seven days before the Proposal Due Date. The protestant shall concurrently file a copy of the protest with the other Proposers. Other Proposers may file statements in support of or in opposition to the protest within 7 Business Days of the filing of the detailed statement of protest. The Proposer filing the protest shall have the burden of proving its protest by clear and convincing evidence.

No hearing will be held on the protest, but it shall be decided, on the basis of the written submissions, by the City's designee, whose decision shall be final, conclusive, and not subject to legal challenge unless wholly arbitrary and capricious. The City's designee, who shall be an employee of the City, shall issue a written decision regarding any protest to each Proposer. If necessary to address the issues raised in a protest, the City may, in its sole discretion, make appropriate revisions to RFP documents by issuing Addenda.

Notwithstanding the existence of a protest, the City may, in its sole discretion, continue the procurement process or any portion thereof.

The failure of a Proposer to file a basis for a protest regarding RFP documents within the applicable period shall preclude consideration of that ground in any protest of the City's selection decision, unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests. The City may extend the Proposal Due Date, if necessary, to address any such protest issues. If the protest is granted, the City shall not be liable for payment of the Proposer's protest costs. The City shall not be liable for any damages to the Proposer filing the protest or to any participant in the protest, on any basis, express or implied.

## **7.2 PROTESTS REGARDING THE SELECTION DECISION**

Any protest regarding the City's selection decision must be filed within seven Business days after City Council's approval to select the Preferred Proposer. The Proposer filing the protest shall concurrently file a copy of the protest with the other Proposers, whose addresses may be obtained from the City. The notice of protest shall specifically state the grounds for the protest.

Within 10 Business days after delivery of the notice of protest to the City, the protestant shall file a detailed statement of the grounds, legal authority, and facts, including all documents and evidentiary statements in support of the protest. The protestant shall concurrently file a copy of the detailed statement with the other Proposers. Evidentiary statements, if any, shall be submitted as sworn affidavits and under penalty of perjury. The protestant shall have the burden of proving its protest by clear and convincing evidence. Failure to file a protest within the applicable period shall constitute a waiver of the right to protest the selection decision other than any protest based on facts not reasonably ascertainable as of such date.

Other Proposers may file statements in support of or in opposition to the protest within seven Business days of the filing of the detailed statement of protest. The City shall promptly forward copies of any such statements to the protestant. Any evidentiary statements shall be submitted as sworn affidavits and under penalty of perjury. The City may also, at its discretion, submit a statement regarding the protest.

No hearing will be held on the protest, but it shall be decided on the basis of the written submissions by the City's designee, whose decision shall be final and conclusive. The City's designee will consider, based on a preponderance of the evidence, whether the City's determination was arbitrary, capricious, or contrary to law, and will either affirm City's original determination or recommend remedial steps, if appropriate, to address the issues raised in the protest. The City's designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. The decision shall not be subject to legal challenge unless wholly arbitrary and capricious. If the protest is granted,

the City shall not be liable for payment of the protestant's costs of protest or any other Proposer's costs, nor payment of the Stipend if the Project does not move forward as contemplated by the City. The City shall not be liable for any damages to the entity filing the protest or to any participant in the protest, on any basis, express or implied.

## **8. CITY'S RIGHTS AND DISCLAIMERS**

### **8.1 CITY'S RIGHTS**

In connection with this RFP, the City and Port reserve to themselves all rights (which shall be exercisable by the City in its sole discretion) available to them under Applicable Law, including without limitation, with or without cause and with or without notice, the right to do the following:

1. Develop the Civic Center in any manner that it, in its sole discretion, deems necessary
2. Investigate the qualifications of any Proposer under consideration
3. Reject any or all Proposals
4. Reject any or all Proposals received as Non-Responsive
5. Issue a new RFP
6. Cancel, modify, or withdraw this RFP in whole or in part at any time prior to the execution of the Agreement by City, including adding or deleting Proposer responsibilities contained in this RFP
7. Modify all dates set or projected in this RFP
8. Issue Addenda
9. Disqualify any Proposer that changes its Proposal, members of its team, or key personnel without City approval
10. Negotiate any Agreement terms with any Proposer – The Agreement between the parties shall incorporate and include this RFP, together with any modifications thereto, and the Preferred Proposer's Proposal, together with any City-approved modifications and clarifications thereto. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed DA, the final executed Agreement(s), the RFP, any modifications and clarifications to the Preferred Proposer's Proposal, and the Preferred Proposer's Proposal. Specific exceptions to this general rule may be noted in the final executed Agreement.
11. Appoint the PSC to review Proposals and seek the assistance of outside technical experts and consultants in evaluating the Proposals

12. Accept and review non-conforming Proposals or seek and receive clarifications or supplements to a Proposal
13. Waive minor irregularities and informalities in Proposals received where such is merely a matter of form and not substance, and the correction or waiver of which is not prejudicial to other Proposers – Minor irregularities are defined as those that will not have an adverse effect on the City’s interest and will not give a Proposer an unfair advantage or benefit not enjoyed by other Proposers.
14. Reject any Proposals that appear unrealistic in the terms of technical commitments or lack of technical competence, or are indicative of failure to comprehend the complexity and risk of the Project
15. Reject any Proposals that appear unrealistic in the terms of financial structure or rates, or are indicative of failure to comprehend the complexity and risk of the Project
16. Make a selection after all factors have been evaluated – The City shall not be obligated to accept the lowest priced proposal.
17. Exercise any other right reserved or afforded to the City under this RFP and Applicable Law

## **8.2 DISCLAIMERS**

In connection with this procurement, the City’s disclaimers include the following:

1. The RFP neither commits the City to enter into the Agreement nor obligates the City to pay for any costs incurred in preparation and submission of Proposal(s) by any Proposer, except for the Stipend, as detailed in Appendix L.
2. The City is not liable for any costs that may be incurred in developing the proposals, and any expenses incurred by a Proposer in responding to the RFP are entirely the responsibility of the Proposer and shall not be reimbursed in any manner by the City except as prescribed in the RFP. By submitting a Proposal, a Proposer disclaims any right to be paid for such costs, except for payments related to Stipends. The City is also not liable for costs incurred by any Preferred Proposers to negotiate the Agreement and any other costs prior to entering into the Agreement, except as prescribed in the RFP or allocated to the City by the Agreement.
3. Execution and performance of the Agreement with the Preferred Proposer is contingent upon sufficient appropriations and authorizations being made by the City Council for performance of the Agreement.

4. In no event shall the City be bound by or liable for any obligations regarding the Project, except for Stipend payments as detailed in Appendix L, until such time (if at all) as the City has executed, authorized, and delivered the Agreement.
5. The City will not be liable for federal, state, or local excise taxes, including possessory interest tax (if applicable), associated with or which may be a consequence of any Proposal or any aspect of a final recommended ENA or Agreement, and all tax consequences of any development Proposal or structure presented by any Proposal shall be the sole and exclusive responsibility of the Proposers.
6. The execution and performance of the Agreement pursuant to the RFP is contingent upon sufficient appropriations and authorizations being made by the City Council for performance of the Agreement between the Preferred Proposer and the City.

In submitting a Proposal in response to the RFP, the Proposer is specifically acknowledging these disclaimers.