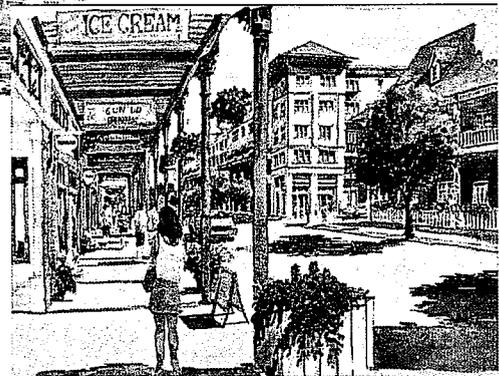


COMMUNITY MARITIME PARK ASSOCIATES, INC.



**REQUEST FOR QUALIFICATIONS
CONSTRUCTION OWNERS REPRESENTATIVE
FOR THE COMMUNITY MARITIME PARK PROJECT**

APRIL 24, 2009

**COMMUNITY
MARITIME
P A R K**

REQUEST FOR QUALIFICATIONS

Construction Owners Representative for
The Community Maritime Park Project
RFQ No. 2009-01

Community Maritime Park Associates, Inc, (CMPA) is requesting sealed statements of interest and qualifications through **Monday, May 25, 2009, 4:00 PM** central standard time, from professional, engineering, construction management and/or architectural firms or individuals experienced negotiating and/or overseeing design-build agreement/s, overseeing design, engineering and construction general contracts, compliance with design guidelines, budgeting and scheduling and on-site day-to-day construction oversight for a complex public works and mixed use development.

CMPA is a Florida Non-Profit, 501(c)3, organization formed to carry out the development, operation and maintenance of the Community Maritime Park Project, including all public and private improvements on approximately 30 unimproved acres of formerly industrial, municipally owned, waterfront property (the Vince Whibbs, Sr. Community Maritime Park) located on Pensacola Bay, in Pensacola, Florida.

Immediately following the deadline for receipt of statements, those statements received will be opened and publicly acknowledged. Statements of qualifications with an original signature, **fifteen (15)** copies and **one (1)** Portable Document File (PDF) electronic copy of all materials submitted should be submitted to:

**Community Maritime Park Associates, Inc.
c/o Edward E. Spears, Administrator
Neighborhood & Economic Development Division
City of Pensacola
5th Floor, City Hall
222 West Main Street
Pensacola, Florida 32502**

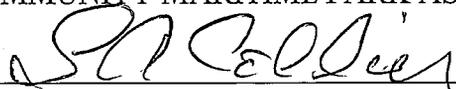
The information may also be hand delivered to CMPA at the address above. Statements received after the closing time will be returned unopened. **Statements must be clearly marked "Statements of Interest and Qualifications for Community Maritime Park Construction Owners Representative"**

Questions regarding this solicitation and project must be e-mailed, no later than 5 p.m., May 15, 2009, to:

**Edward E. Spears, Administrator
Neighborhood & Economic Development Division
City of Pensacola
E-Mail: espears@ci.pensacola.fl.us**

Any addenda that is generated for this project will be posted on the following website:
<http://www.ci.pensacola.fl.us/live/pages.asp?pageID=6112> It is the responsibility of any potential respondent to regularly check for addenda for this request.

COMMUNITY MARITIME PARK ASSOCIATES, INC.



Lacey A. Collier, Chairman

COMMUNITY MARITIME PARK ASSOCIATES, INC.

CONSTRUCTION OWNERS REPRESENTATIVE FOR THE COMMUNITY MARITIME PARK PROJECT

SECTION A: BACKGROUND AND PURPOSE

The Project:

The Vince Whibbs, Sr. Community Maritime Park is a master planned, public/private, urban renewal project on an environmentally contaminated 32-acre parcel located on Pensacola Bay, in Pensacola, Florida. The project is envisioned as a world-class, signature mixed-use development that will re-establish a dynamic public waterfront on the western half of Downtown Pensacola. The project will feature an expansive public waterfront park; a community multi-use facility suitable for baseball and other athletic events, festivals, and other community activities; conference center; university educational and office facilities; a performing arts amphitheatre; commercial; office; retail; residential; restaurant; entertainment; promenades; parking and all necessary ancillary uses, including infrastructure and site improvements. The centerpiece of the project will be The Vice Admiral John H. Fetterman State of Florida Maritime Museum and Research Center, to be constructed, owned and operated by the University of West Florida. Designated the official maritime museum of the State of Florida by the Legislature and then Governor Jeb Bush in 2006, the museum is dedicated to the continued education, preservation and research of Florida's cultural and natural maritime resources. Co-housed in the museum area will the Pensacola Multi-Cultural Museum designed to celebrate Pensacola diverse history.

The Community Maritime Park Conceptual Design was created by Urban Design Associates, Inc., adopted by the Pensacola City Council and ratified by the citizens of Pensacola, in a referendum. The Design Criteria Package was created by a team of architects and engineers, including Caldwell Associates Architects, Urban Design Associates, HKS Architects, Sasaki, Inc., Hatch Mott MacDonald, Qore, Inc., and others. Currently, the Community Maritime Park Associates, Inc., the non-profit partner with the City of Pensacola, created to carry out the project, is entering into a contract with a Master Developer to design, construct, operate and manage the project in accordance with approved design guidelines and CMPA oversight. The Owners Representative will serve as the CMPA's agent ensuring that all contractual requirements are met.

The Community Maritime Park property, significant in Pensacola's unequaled 450 years of history, was utilized as the Panton-Leslie trading post as early as 1784. The property saw many expansions and changes in use as the Pensacola waterfront evolved. Last utilized in the 80's as a petroleum depot and sea-to-rail transfer station, the site has sat fallow, contaminating Pensacola Bay, for over 20 years. The City of Pensacola acquired the property in the 1990's to ensure a public use for the site. The current proposal was approved by the Pensacola City Council in 2005 and affirmed, via referendum, in September 2006. Since that time, project professionals have been engaged to complete the Design Criteria, acquire all necessary environmental permits and select project professionals to develop the amenities approved by the Citizens of Pensacola. The project has advanced to the point that the public financing guaranteed by the City of Pensacola has been authorized, with construction scheduled to begin in the summer of 2009. CMPA desires to have the Construction Owner Representative engaged as soon as possible to assist with the project going forward.

All background information on the project, including leases, development agreements and the approved Design Criteria are located on the internet at: <http://www.ci.pensacola.fl.us/live/pages.asp?pageID=6112>

Purpose of Construction Owners Representative (COR):

Community Maritime Park Associates, Inc. (CMPA) is a Florida Non-Profit Corporation formed to carry out the development, operation and maintenance of the Community Maritime Park Project, including all public and private development on approximately 30 acres of formerly industrial, vacant, and municipally-owned property located on Pensacola Bay. CMPA has entered into two legal agreements with the City of Pensacola: the Master Development Agreement and the Master Lease Agreement. CMPA is in the final stages of contract negotiations with a Master Developer to carry out the project as envisioned by the Pensacola Community, the Board of Trustees and the Design Criteria. The developer may serve as general contractor for all or portions of the work under GMP contract(s), subject to CMPA approval. These legal documents together define specific obligations relating to the development of the project. The COR, once under contract, will be expected to familiarize themselves with the relevant terms of these agreements. A summary of the key points can be found in Attachment #2.

CMPA is now seeking firms and/or individuals experienced providing construction owners representation for large, public works and mixed-use projects. Skills should include knowledge of design principles, conducting design reviews, negotiating and/or managing design-build agreement/s, overseeing design, engineering and construction general contracts, compliance with design guidelines, budgeting, scheduling and communication for a complex, large public works and mixed use development. Firms and/or individuals should possess extensive, detailed experience in on-site, day-to-day construction oversight, trouble-shooting, decision making and conflict resolution of projects of similar scope, size complexity and cost. The construction owners representative will be the liaison with the Developer and sub-contractors on all aspects of the design, engineering, procurement and construction of the project with an emphasis on those issues that may impact the developer's ability to fulfill his commitments with a focus on adherence to budget and schedule. These services are envisioned to ensure the interests of the community, the City of Pensacola and the CMPA are protected.

SECTION B: SCOPE OF SERVICES REQUIRED

General: This solicitation is for a Construction Owners Representative to provide professional services to include, but not limited to: negotiation and/or oversight of design-build agreement/s, negotiation and oversight of Guaranteed Maximum Price (GMP) contracts, oversight of design, engineering and construction general contracts, compliance with design guidelines, budgeting, scheduling and on-site, day-to-day construction oversight, liaison with contractors, trouble-shooting, decision making and conflict resolution for the Community Maritime Park project in order to assist the CMPA and City in realizing their programmatic, policy, and financial objectives for the project. The COR may be a firm and/or individual and or any legal collaborative partnership of same. The COR shall:

1. Represent and protect the CMPA's and City of Pensacola's interest in regards to the Community Maritime Park Project aspects identified in this scope of work.
2. Meet with the CMPA Board and staff to gain understanding of the background and purpose of the project and its various component parts.
3. Coordinate with the CMPA Board, staff and CMPA consultants as required or scheduled.
4. Coordinate with City staff and City Consultants as necessary.
5. Recommend approaches, implement processed and negotiate a Design-Build Contract(s) and Guaranteed Maximum Price (GMP) contract(s) on behalf of the CMPA and City of Pensacola, which shall address such contract aspects as phasing, schedule, materials, approach, price, terms and deliverables.

6. Monitor the preconstruction phase to ensure issues implying risk, cost, quality, or delay are adequately addressed and competitive, market-reasonable pricing is attained, including input on staging, contracting approaching and arrangements.
7. Provide or coordinate cost estimation services at various stages of design/value engineering and contracting process to verify reasonableness of Master Developer's pre-construction estimates and proposed GMP budgets.
8. Serve as the CMPA's Owners Representative throughout design and construction.
9. Provide assistance, counseling and reports to the CMPA regarding project progress, including but not limited to construction timelines, deadlines, quality, safety, cost estimates and expenditures and small, minority and local participation.
10. Conduct meetings with the Master Developer, CMPA City and others as required.
11. Assist CMPA staff with administering the Master Development Agreement and Design-Build Agreement(s).
12. Assist CMPA staff with approval and oversight of the Master Developer's design/engineering and construction general contracts.
13. Enforce the Design Criteria Package as approved by the CMPA.
14. Ensure, along with CMPA staff and City staff, compliance with all regulatory approvals, including all environmental permits, zoning and land use regulations.
15. Review and recommend, along with CMPA and City staff any changes to the Design Criteria, project scope, program and change orders to the CMPA.
16. Review plans and specifications and special instructions to contractors.
17. Verify and approve, along with CMPA staff project payments.
18. Review and recommend, along with CMPA staff expenditures from project contingencies
19. Complete regular, ongoing on-site inspections and written progress reports.
20. Assist CMPA with dispute resolution to invocation of contract dispute resolution procedures.
21. Make final inspections, report on completed projects and oversee close-out procedures.

SECTION C: PERSONNEL

Key project personnel should be available at least through completion of the Phase 1 Public Improvements project which may take approximately two years. All personnel to be assigned to this project are subject to approval by CMPA. Replacement personnel must have equivalent education and experience as the individuals whom they replace. Resumes of personnel to be assigned to this project, including replacement personnel, are to be submitted to CMPA for review and CMPA reserves the right to interview replacement personnel prior to its approval. The consulting firm shall be responsible for all briefings of replacement personnel as to the status of the project at no expense to CMPA. All personnel shall be employees of the consulting firm, a collaborative partner and/or an independent contractor. No personnel assigned to this project shall be considered the employees of CMPA or the City of Pensacola at any time. Personnel, firms, sub-firms or independent contractors providing services under this solicitation are prohibited from participating in any capacity with any other party associated with the Maritime Park Project, including, but not limited to Maritime Park Development Partners, or their subsidiaries.

SECTION D: PROPOSAL REQUIREMENTS

1. Proposals shall be limited to 25 pages, not including covers, dividers, tabs, tables of contents or required forms. Any information presented after the 25th page of the proposal will not be considered. The proposal should generally follow the titles and format of the RFQ. Please provide page numbers.

2. Identification of each organization/person to provide services under the proposal, including company principals and organizational history.
3. Resumes, licensure, and certifications of the personnel who will be assigned to work with, or consult with, CMPA shall be included.
4. Identify the project manager and other key project staff and the extent of their involvement with and availability during the project.
5. Provide experience of the firm, individual and/or staff with providing construction owners representation for projects of a similar scope, size complexity and cost, including budgets, completion dates, contact information.
6. Describe the organization and approach to providing services for this project and what specific services and level of effort would be recommended. Identify core COR services envisioned and alternate services which the CMPA may wish to consider.
7. Provide list of references relevant to the scope of work identified above.
8. Small, Minority and Local Business participation in conformance with the CMPA Covenant with the Community (Attachment #1)
9. Any additional information which may be of value to CMPA during the selection process, including description of required.

SECTION E: GENERAL CONDITIONS

Instructions: Careful attention must be given to all requested items contained in this RFQ. Applicants are invited to submit responses in accordance with the requirements of this RFQ. **PLEASE READ THE ENTIRE SOLICITATION BEFORE SUBMITTING A PROPOSAL.** Applicants must provide a response to each requirement of the RFQ. Responses should be prepared in a concise manner with an emphasis on completeness and clarity. All Responses shall be submitted in a sealed envelope or package with the RFQ number and opening date clearly noted on the outside of the envelope.

Rejection of Proposals: CMPA reserves the right to accept or reject any or all responses, to waive any irregularities, technicalities, or informalities, and to re-advertise for a Request for Qualifications when deemed in the best interest of CMPA.

Responses/Proposal Receipt: Sealed Responses will be accepted in accordance with the instructions detailed in this RFQ. After that date and time, Responses will not be accepted. The Applicants shall file all documents necessary to support its Proposal and shall include them with its Proposal. Applicants shall be responsible for the actual delivery of Responses during business hours to the exact address indicated in the RFQ. Post marks will not substitute for actual receipt of the proposal by the stated deadline. All materials submitted under this RFQ become the property of CMPA.

Governing Law: Applicants will agree that agreements shall be governed by the laws of the State of Florida, without regard to its conflict of law provisions and the venue for any legal action will be Escambia County, Florida.

Public Records: Any material submitted in response to this Request for Qualification will become a public document pursuant to Florida Statute §119.07. This includes material which the responding applicants might consider to be confidential or a trade secret. Any claim of confidentiality is waived upon submission, effective after opening pursuant to Florida Statute § 119.07.

No Contingency Fees: By responding to this solicitation, each applicant warrants that it has not and will not employ or retain any company or person, other than a bona fide employee working solely for the firm, to solicit or secure an agreement pursuant to this solicitation and that it has not and will not pay or agree to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the firm, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of an agreement.

Public Entity Crimes: By submitting a proposal each firm is confirming that the firm has not been placed on the convicted vendors list as described in the Florida Statute § 287.133 (2) (a).

Small/Minority and Local Business Enterprise: CMPA has adopted a Covenant with the Community (Attachment #1) detailing the Board of Trustees desire for small, minority and local business participation in this project. The spirit of the Board's agreement with the Community, expressed through the Covenant, is that its terms are seen as a minimum to achieve rather than a goal. Small, Minority and Locally owned firms and/or local and/or minority individuals that meet the requirements of this RFQ are encouraged to respond.

A Small Business Enterprise (SBE) is defined as:

- an independently owned and operated business concern located in the 325 zip code area,
- employs 50 or fewer permanent full-time employees, and
- a net worth of not more than \$1,000,000. As applicable to sole -proprietorships, the \$1,000,000 net worth shall include both personal and business investments.

A "Local Business Enterprise" is an independently owned and operated business concern located in the 325 zip code area (not including Post Office Boxes), with preference being given to businesses with offices and operations in Escambia County, Florida. Ownership is defined as a minimum of 51% local ownership. Beyond that, local participation will be judged by the proximity of the of that firms' headquarters or principal place of business to the City of Pensacola first, Escambia County second and geographical proximity within the State of Florida third.

If your company meets the criteria of a Small Business Enterprise as defined above or has received a Minority Business Enterprise designation, please include this information in your response. Ethnic participation will be measured first by percentage participation of each specific minority in the City compared to its portion of the total population in the City and then secondarily by the total participation of all ethnic minorities in the City to their portion of the total population in the City. The 2000 census should be the basis for the estimates or explanations should be provided for other figures.

In accordance with the Covenant with the Community, Minority and Local participation is fundamental to the Community Maritime Park Project. All Respondents are required to detail the guaranteed level of Minority and Local participation that will be provided.

Selection Process: The selection process will be conducted under the Florida Statute §287.055 (Consultants' Competitive Negotiation Act) to engage new consultants in specific disciplines of consulting as indicated herein.

SECTION F: INSURANCE AND INDEMNIFICATION

Before starting and until termination of work for, or on behalf of, CMPA, the CONSULTANT shall procure and maintain insurance of the types and to the limits specified. The term CMPA as used in this section of the Contract is defined to mean Community Maritime Park Associates, Inc. itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents. Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to CMPA, for CMPA's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

1. **WORKERS' COMPENSATION:** The CONSULTANT shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations, including U.S. Longshore and Harborworkers Act coverage, whether legally required or not. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person-accident, \$100,000 each person - disease, \$500,000 aggregate - disease.

2. **COMMERCIAL GENERAL, AUTOMOBILE, PROFESSIONAL LIABILITY AND UMBRELLA LIABILITY COVERAGES:** The CONSULTANT shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies filed by the Insurance Services Office. CMPA shall be an Additional Insured for Commercial General Liability and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this Contract. CMPA shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required. Commercial General Liability coverage must be provided, including bodily injury and property damage liability for premises, operations, products and completed operations and independent contractors. Broad Form Commercial General Liability coverage or its equivalent shall provide at least, broad form contractual liability applicable to this specific agreement, personal injury liability and broad form property damage liability. The coverage shall be written on occurrence-type basis. Business Auto Policy coverage must be provided, including bodily injury and property damage arising out of operation, maintenance or use of owned, non-owned and hired automobiles. Professional Liability insurance coverage must be provided to afford protection for errors and omissions arising out of services provided under, or associated with this Contract. Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

3. **CERTIFICATES OF INSURANCE:** Required insurance shall be documented in the Certificates of Insurance which provide that CMPA shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. CMPA shall be named on each Certificate as an Additional Insured and this contract shall be listed. If required by CMPA, the CONSULTANT shall furnish copies of the CONSULTANT's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by CMPA and ACORD 25. Any wording in a Certificate which would make notification of cancellation, adverse change or restriction in coverage to CMPA an option shall be deleted or crossed out by the insurance carrier or the insurance carrier's agent or employee. The CONSULTANT shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to CMPA and shall file with CMPA Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced,

in a manner acceptable to CMPA, the CONSULTANT shall, upon instructions of CMPA, cease all operations under the Contract until directed by CMPA, in writing, to resume operations.

4. INSURANCE OF THE CONSULTANT PRIMARY: The CONSULTANT's required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the CONSULTANT's coverage. The CONSULTANT's policies of coverage will be considered primary as relates to all provisions of the Contract.

5. LOSS CONTROL AND SAFETY: The CONSULTANT shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the CONSULTANT shall not be deemed to be an agent of CMPA. Precaution shall be exercised at all times by the CONSULTANT for the protection of all persons, including employees, and property. The CONSULTANT shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

6. HOLD HARMLESS: The CONSULTANT shall indemnify and hold harmless CMPA, its officers, employees and consultants from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and costs, including attorney's fees and costs on appeal, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONSULTANT and persons employed or utilized by the CONSULTANT in the performance of this contract. The CONSULTANT's obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

7. PAY ON BEHALF OF THE CMPA: The CONSULTANT agrees to pay on behalf of CMPA, as well as provide a legal defense for CMPA, both of which will be done only if and when requested by CMPA, for all claims as described in the Hold Harmless paragraph. Such payment on the behalf of CMPA shall be in addition to any and all other legal remedies available to CMPA and shall not be considered to be CMPA's exclusive remedy.

SECTION G: LENGTH OF CONTRACT

The contract time for the professional consultant's services will be for a period of time as mutually agreed to between CMPA and consultant and shall be made a part of the contract before final execution of the document. It is anticipated that services will be required at least through completion of the Phase 1 Public Improvements project which may take approximately two to three years.

SECTION H: AWARD AND CONTRACT EXECUTION

All proposals will be reviewed by the Board of Trustees of the Community Maritime Park Associates. The proposals will be ranked and the top ranked firm(s) and/or individual will be asked to make an oral presentation to the Board. Following oral presentations, the top ranked firm and/or individual will have the opportunity to negotiate an agreement with the CMPA. The final agreement, if negotiated, will be forwarded to the CMPA Board of Trustees for its approval. The CMPA Board will submit the agreement to the Pensacola City Council for final approval. **Applicants should not contact Board of Trustee members or City of Pensacola City Council members at any time without express prior approval granted by the Board of Trustees at a regularly scheduled meeting.** If selected, the top ranked applicant will have 30 days to negotiate an agreement. If an agreement cannot be reached within 30 days, CMPA reserves the right to extend the negotiation period, begin negotiations with the second ranked

firm(s) and/or individual and/or reject all and begin the process again.

SECTION I: EXCLUSION FROM FURTHER WORK

The selected consultant(s) and key, higher level employees for this project will be excluded from providing any additional professional services for any aspect of the Community Maritime Park Project, except with the specific approval of the CMPA Board. Selected consultant(s) shall have employment contracts with covenants not to compete with key, high level employees precluding them from providing any professional services to the same extent as the selected consultant(s), except with the specific approval of CMPA Board. The form and content of said employment contracts shall be subject to review and approval by CMPA.

SECTION J: CONTINUING CONTRACT

The selected consultant(s) are eligible to extend its agreement to provide other services relating to the Community Maritime Park Project subject to certain exclusions. Authorization for services other than those expressly set forth in the agreement shall be at the sole discretion of CMPA and is not guaranteed.

SECTION K: NUMBER OF COPIES REQUIRED

One (1) original and fifteen (15) copies, plus one (1) Portable Document File (PDF) electronic copy of all materials submitted shall be submitted in one proposal package.

SECTION L: EVALUATION OF PROPOSALS

Proposals shall be evaluated and a selection made using the criteria identified on the attached evaluation sheet.

SECTION M: ORAL PRESENTATIONS

Firms and/or individuals will be short listed based upon the written qualifications submitted to CMPA. CMPA will schedule formal oral presentations for those firms short listed by the selection committee. Firms and/or individuals invited to make oral presentations will be required to provide a sealed price proposal that will serve as a basis for negotiation for services.

**EVALUATION SHEET
COMMUNITY MARITIME PARK
CONSTRUCTION OWNERS REPRESENTATIVE PROPOSAL
WRITTEN/ORAL PRESENTATION
RFQ NO. 2009-01**

Date: _____

Name of Firm(s)/Individual: _____

Reviewer: _____

1. Staff/Team Qualifications and Experience 40 Points _____
- a. Education and qualifications of individual staff members selected to work on this project
 - b. Demonstrated knowledge of overall scope of work required
 - c. Demonstrated specialized expertise of the company, principals and project staff providing owners representation for design and construction as primary line of business or primary contracted service
 - d. Demonstrated knowledge of the principles and practices of construction owners representation, specifically, relevant engineering, architecture and related principles, constructability and means and methods, productivity, scheduling, procurement management, construction labor issues, safety and, especially, cost management and value engineering of large public works and multi-use projects
 - e. Demonstrated knowledge with pertinent federal, state and local laws and ordinances governing development, including ADA.
 - f. Previous, successful projects of a similar scope, size, cost and phasing with strictly implemented urban design or architectural standards and guidelines.
 - g. Demonstrated experience with contract negotiation and administration
 - h. Demonstrated knowledge and experience regarding jobsite safety for similar projects
 - i. Demonstrated experience in urban environments requiring close interaction among affected parties, staging of activities, and costs occurring as the results of heightened coordination efforts.
 - j. Experience acting on behalf of non-profits, government or institutional clients with limited staff capacity to coordinate and interpret the technical demands of complex construction activity
 - k. Demonstrated capability and experience in effecting cost savings, value engineering, containing costs, ensuring on-time and quality construction, and otherwise fulfilling owners project objectives through implementation of its COR responsibilities
2. Scheduling, Budgeting and Communications 30 Points _____
- a. Current workload and commitment of key project staff to project
 - b. Ability to be available and effectively represent CMPA at all times
 - c. Demonstrated ability to meet project schedules
 - d. Demonstrated ability to evaluate productivity of project construction and service providers
 - e. Demonstrated ability to coordinate projects of similar size, scope and cost
 - f. Demonstrated skill in meeting budgetary requirements
 - g. Demonstrated ability to ensure quality requirements throughout project
 - h. Demonstrated verbal and written reporting skills, including representing CMPA with various media.
4. Project Approach and Services to be Provided 10 Points _____
5. Small/Minority Business Participation 10 Points _____
6. Local Business Participation 10 Points _____
- TOTAL POINTS _____

***52.209-5 FAR Certification Regarding Debarment, Suspension,
Proposed Debarment, and Other Responsibility Matters***

1. The Offeror certifies, to the best of its knowledge and belief, that the Offeror and/or any of its Principals:

A. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency.

B. Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

C. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph 1-B of this provision.

2. The Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

A. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

B. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

C. A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror non-responsible.

D. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

E. The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

**52.209-6 FAR Protecting the Government's Interest When Subcontracting with
Contractors Debarred, Suspended, or Proposed for Debarment**

1. The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
2. The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
3. A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:
 - A. The name of the subcontractor.
 - B. The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
 - C. The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.
 - D. The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

Company Name: _____

Authorized Signature: _____

Printed Name: _____

Date: _____

ATTACHMENT #1
COVENANT WITH THE COMMUNITY

THE COMMUNITY MARITIME PARK COVENANT

Community Maritime Park Associates, Inc. (CMPA) is a not-for-profit organization created in order to:

- Open up the waterfront to all,
- Create educational opportunities for people of all ages,
- Create good paying jobs,
- Provide a location for thousands to enjoy the community and each other through open land for picnicking, fishing, and providing a venue for concerts, plays and sports,
- Attract investment into the downtown area which then benefits all of Northwest Florida.

We expect a project of this size to attract companies looking to relocate and provide additional new high-paying jobs to our community.

This project does not stand alone; it is a catalyst for a better today and tomorrow for the people of Pensacola. The non-profit board of community volunteers will ensure that the leases and activities keep the waterfront park available and open to all; there will be no gates or high-rise condominiums blocking access to the waterfront.

Inclusion is paramount. In order to ensure this, the CMPA is committed to the following:

1. The Board of Trustees selection will be representative of the City of Pensacola's demographic diversity.
2. CMPA commits to establishing a Contractor Academy to educate and assist local and minority contractors. The program will be structured to ensure that Minority Businesses are better equipped to meet the requirements of Federal, State, and Local government guidelines. The Academy focus will be to build companies and their business structures as well as helping to identify and understand bonding and insurance requirements and the specific guidelines for business development. CMPA will build a structure of support in the Academy that gives minority businesses the tools to ensure their long term success.
3. Concerning areas governed by the Master Lease, all contractors will be sought to help ensure they are representative of the demographic diversity of the city with a particular focus on attracting minority-owned companies.
4. Contracting for support services for the park from security, to maintenance, to accounting, legal, and advertising, will be done in a manner so that the result is that the companies receiving the contracts will be representative of the demographic diversity of the community.
5. Due to the community commitment of the CMPA, every effort will be made to ensure that activities such as sporting camps, educational camps, and recreational camps will be provided to city youth with free or scholarship enrollment to those in need of assistance.

ATTACHMENT #2

MASTER DEVELOPMENT AGREEMENT SYNOPSIS

COMMITTEE MEMORANDUM

COMMITTEE: Committee of the Whole
FROM: Alvin G. Coby, City Manager
DATE: April 20, 2009
SUBJECT: Community Maritime Park Development Agreement and Sub-Lease

RECOMMENDATION:

That City Council approve the Development Agreement and Sub-Lease between Community Maritime Park Associates, Inc. (CMPA) and Maritime Park Development Partners, LLC (MPDP) for services as the Developer, construction of the Public Improvements, development of the Private Improvements and management of the Public Improvements subject to CMPA's satisfaction of the Conditions Precedent contained in the 2006 Master Development Agreement and Master Lease and MPDP qualifying as a Design/Build Contractor under Section 287.055 Florida Statutes.

SUMMARY:

Under Section 4.03(b) of the 2006 Master Development Agreement, the CMPA must submit to the City for review and approval all project plans and specifications coordinated among project professionals prior to commencement of any work. The means by which the CMPA has elected to fulfill its role as Developer of the Maritime Park is to contract with a private master developer. As a result, the document(s) that the City is required to approve is that Agreement between the CMPA and its chosen developer.

Herewith submitted for City Council review and approval is the proposed Agreement between the CMPA and MPDP. Provided the Development Agreement and Sub-Lease are approved by both the CMPA Board and City Council, the documents provide for MPDP to act as Master Developer, General Contractor, Developer of the Private Improvements and Manager of the Public Improvements. For services rendered in each role, MPDP will be compensated under a fee structure either identified in the Agreement or to be specified in subsequent agreements.



City of
Pensacola

Committee of the Whole

Subject: Community Maritime Park Development Agreement and Sub-Lease

April 20, 2009

Page Two

For CMPA to proceed with the project, the City must accept that CMPA has, or likely will, fulfill the Conditions Precedent, specifically:

- Demonstration of the capability to cause the Development
- Commitment by Quint Studer to utilize the Conference Center
- Commitment by Pensacola Pelicans to utilize the multi-use stadium
- University of West Florida (UWF) commitment of funds for development of the Maritime Museum
- UWF commitment to use space in the Conference Center
- Conduct of an Economic Viability and Market Analysis (City)
- Approval of the project development strategy (City)
- Obtaining all regulatory approvals
- Availability of public financing
- Approval of the Site Preparation Plans (City)
- Issuance of permits
- Establishment of a Guaranteed Maximum Price (GMP) for the Public and Private Improvements.

Of the Conditions Precedent, the CMPA and City have accomplished all except 1) the CMPA's demonstration that it can cause the Development to occur which will be evidenced by execution of the Development Agreement and Sub-Lease, and 2) establishment of a GMP for the Site Preparation and Public Improvements, which is proposed to be accomplished through MPDP acting as the Design/Build Contractor. However, prior to CMPA's execution of the Development Agreement and Sub-Lease, a formal request must be made of the City to accept accomplishment of the Conditions Precedent which in turn establishes the 2006 Master Lease Commencement Date.

The Development Agreement also contemplates that MPDP will fulfill its role as General Contractor by means of a Design/Build Contract. While MPDP has identified the individual that will act as the Qualifying Agent under State law, that person does not currently hold the required certification. Hence, it is recommended that the Agreement be approved but execution withheld until MPDP qualifies as a Design/Build Contractor.

Provided all aspects of the Development Agreement proceed as proposed and no unforeseen delays are encountered in the construction of the Site Preparation and Public Improvements, the project is scheduled for completion in May, 2011.

Committee of the Whole

Subject: Community Maritime Park Development Agreement and Sub-Lease

April 20, 2009

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PRIOR ACTION: 1/28/2009 City Council Workshop
4/06/2009 City Council Workshop

FUNDING: Budget: \$40,000,000
Actual: \$38,000,000

FINANCIAL IMPACT:

The current proposal is for the issuance of a 30-year fixed rate Capital Improvement Revenue Bond to provide \$40 million in net proceeds, secured by Tax Increment Financing revenues with a covenant to budget and appropriate non-ad valorem revenues.

ATTACHMENTS:

- 1) March 10, 2009 Abramson & Associates Summary of Proposed Terms
- 2) April 6, 2009 Committee Memorandum
- 3) Proposed Development Agreement and Sub-Lease

STAFF CONTACT:

PRESENTATION: Yes

COMMITTEE MEMORANDUM**FOR INFORMATION**

COMMITTEE: Committee of the Whole

FROM: Alvin G. Coby, City Manager

DATE: April 6, 2009

SUBJECT: Community Maritime Park Development Agreement
and Sub-lease

As of 6:00 p.m. Friday, April 3rd, the City and MPDP negotiation teams had not been able to resolve various issues to the extent that a mutually acceptable Development Agreement is available. While both teams have worked diligently to resolve points of contention, there remains major and minor issues yet to be addressed. However, as evidenced below, significant progress has been made and there is little doubt that an Agreement will be reached.

SUMMARY:

On January 28, 2009, City Council directed City staff to become actively involved in negotiation of the Agreement between Community Maritime Park Associates, Inc. (CMPA) and Maritime Park Development Partners, LLC (MPDP) for development of the Community Maritime Park. The City Council directive was in response to City staff's conclusion that the November 26, 2008 proposed Agreement between CMPA and MPDP was not drafted in the best interests of the City of Pensacola. The staff conclusion was substantiated by a detailed evaluation of the Agreement by the City's consultant, Mr. Barry Abramson.

The opinions of City staff and the City's consultant were based upon a review of the "business deal" and not a detailed review of all aspects of the Agreement. While it was acknowledged that an equitable agreement could be reached, a negotiation of the business terms and a substantial rewrite of the Agreement appeared as the only means of reaching a successful conclusion between the parties.

Staff and the consultant identified a number of major issues on which there was need for either new or modified understandings. Hence, the first task of Mr. Abramson (City consultant) and Mr. Beitsch (CMPA consultant) was to negotiate the major terms of the Agreement. That task was accomplished and reported on March 10, 2009, by Mr. Abramson in the Summary of Proposed Terms for Master Development Agreement and Lease between Community Maritime Park Associates, Inc. and Maritime Park Development Partners, LLC for Community Maritime Park.

**City of
Pensacola**

Committee of the Whole

Subject: Community Maritime Park Development Agreement and Sub-lease

April 6, 2009

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The Summary of Proposed Terms served as the basis for a substantial and substantive re-draft of the Agreement.

The new Agreement is being developed to address the conclusions, opinions and concerns expressed to City Council on January 28, 2009, in the following manner:

- *If MPDP assumes responsibilities as Developer, General Contractor, and Manager of the Public Improvements, what is the future role of the CMPA?*

The CMPA remains responsible to the City for completing the Site Improvements, construction of the Public Improvements, sub-leasing of parcels for private development, and operating the completed improvements. The CMPA will fulfill its responsibilities through management of a contractual relationship with MPDP. CMPA will have authority to approve the project's design criteria, approve all contracts, oversee construction of the Public Improvements, assign the Agreement and terminate the services of MPDP. CMPA will, in cooperation with MPDP and the City, negotiate the Design Build Contract, periodically determine rents for lands associated with the Private Improvements and develop the Management Agreement for the Public Improvements.

- *The Development Fee was not defined.*

The CMPA will pay MPDP a Development Fee equal to four percent (4%) of the costs actually expended in the Public Improvements Budget except for costs associated with impact fees, the Development Fee, unused contingencies and any costs or functions of the CMPA. The Development Fee does not cover MPDP's direct costs; but, it is the only source of compensation for their work associated with the "Contractors Academy."

- *The Development Fee was front-loaded.*

In that public financing has not been secured, but to avoid delay in commencing the project, in the interim between execution of the Development Agreement and securing financing, the CMPA will pay MPDP reasonable, actual and verifiable expenses up to a maximum of one hundred thousand dollars (\$100,000) per month. After financing is secured, the CMPA will pay MPDP the remainder of the fee in

Committee of the Whole

Subject: Community Maritime Park Development Agreement and Sub-lease

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equal monthly payments; however, the payment amounts will be adjusted periodically based on the project schedule so that the last payment is made upon project completion and the total equals 4% of actual project costs.

- *Means of CMPA managing construction with MDPD functioning as both Developer and General Contractor*

The CMPA will retain a Construction Owner's Representative that will be responsible for technical oversight and coordination of the project for CMPA. The Owner's Representative may be either an individual or a firm with the project management expertise and experience required by CMPA to effectively manage the project. Because the Master Development Agreement did not contemplate the Developer and General Contractor being one in the same, funding for an Owner's Representative was not incorporated into anticipated project costs. The Agreement provides for the allocation of \$600,000 from the Public Improvements Budget for the Owner's Representative and eligible supporting services.

- *General Contractor percentage allowances for overhead, profit, general conditions, and contingency were not identified.*

The Agreement stipulates the following percentage allowances for the General Contractor which will be further clarified in the Design Build Contract and the Guaranteed Maximum Price (GMP):

- Profit and overhead combined shall be 3%
- The maximum amount for contractor's personnel costs allocated to General Conditions (subject to further review) shall be 4%
- A maximum performance bond fee under General Conditions of 1%
- A contractor controlled contingency of 4% of hard costs, with expenditure subject to approval by CMPA

- *Option for the Developer to advance funds*

Not more than thirty-eight million dollars (\$38,000,000) in proceeds from public financing will be made available to the Public Improvements Budget. The concept of the Developer advancing funds for the project has been deleted from the Agreement.

Committee of the Whole

Subject: Community Maritime Park Development Agreement and Sub-lease

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- *Authority to incorporate changes in the Project*

The Project will be constructed in conformance with the Design Criteria; however, design changes may be agreed upon as market and financial conditions change. Regardless, MPDP must request CMPA authority to make design changes.

- *MPDP management of the Public Improvements*

Upon execution of a Management Agreement and substantial completion of the Public Improvements, MPDP will have the right to manage the Public Improvements and receive a Management Fee for a period of five (5) years with an option to renew for an additional five (5) years. MPDP shall receive:

- 4% of office and other income from the Public Improvements
- \$20,000 for management of park facilities
- 10% of revenues from events and sponsorships

However, in the event that net cash flows are negative for any twelve (12) month period for any reason other than an extraordinary event, the Management Agreement may be terminated unless MPDP chooses to make up the difference to maintain the Management Agreement.

- *Qualifications to manage the multi-use facility vs. a third party*

An annual fee for managing the facility which is the lower of 1) a commercially reasonable rate or 2) the actual cost of the Developer, not to exceed \$250,000, to hire a third party.

- *Term of ninety-nine (99) years for all parcels*

The Agreement is structured to allow the following sub-lease term lengths:

- Ninety-nine (99) years for any parcel on which a building with a minimum occupiable area of 20% dedicated to residential
- Eighty (80) years for any parcel on which the building will be or contain a hotel
- Sixty (60) years for all other parcels

Committee of the Whole

Subject: Community Maritime Park Development Agreement and Sub-lease

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- *Proposal that land rents be estimated based upon the fair value of the unimproved property*

The Agreement employs a land pricing matrix approach to periodically determine rental rates utilizing the following concepts:

- Land pricing will be set on a buildable square foot basis with a matrix of uses (residential, office, retail, restaurant, hotel, other)
- For differential uses on waterfront vs. non-waterfront parcels
- Recognition that the land is improved vs. raw land
- Emphasis on residual value
- Pricing based upon the gross area of the enclosed building that is habitable
- Application of a dollar-per-square-foot pricing to the square footage attributable to the use component
- Assumption that parking is available and no costs are attributed to creating parking

- *Provisions for Termination*

All aspects of the Agreement can be terminated for cause by the CMPA at any time.

- Should public financing not be secured, after execution of the Agreement a payment of \$50,000 can terminate the Development Agreement
- Should financing not be secured within 24 months or should CMPA desire to terminate the development aspect of the Agreement for convenience, a payment of \$250,000 is required
- Other than for sustained negative cash flow and for cause, the Management Agreement can be terminated if MPDP no longer holds development rights on the property
- Termination of MPDP's right to sub-lease any remaining undeveloped parcels if the pace of developing 30,000 square feet per year (forty-eight (48) months after Agreement execution) or payment of a penalty of three thousand dollars (\$3,000) per acre for the remaining undeveloped parcels.

Under Section 4.03(b) of the 2006 Master Development Agreement, the CMPA must submit all site preparation plans and specifications to the City for review and approval prior to commencement of any work. However, per the 2006 Agreement, the City does not have the right to review and approve other contracts and commitments made by the CMPA. The Agreement has been modified in recognition of the City, as the owner of the property, the owner of the Public Improvements and the financier, to allow for review and approval of any amendments to the Development Agreement, the periodic land-pricing determination(s), the Design Build Contract, and the Management Agreement.

Committee of the Whole

Subject: Community Maritime Park Development Agreement and Sub-lease

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Finally, in an effort to provide the CMPA with greater project control and achieve more security for both the CMPA and the City, substantive revisions have been made in sections controlling Project Coordination, Development and Management Fees, site preparation, public improvement plans and specifications, public improvements construction, sub-lease of project site, unavoidable delay and change in control.

Some of the known issues yet to be resolved are:

- Whether termination of the Development Agreement ends MPDP's right to develop Private Improvements
- Whether the Developer is obliged to provide any insurance
- What is the standard of repair and maintenance (good quality or simply code compliance)
- What is the standard of condition of the Property upon lease termination or expiration
- Who receives insurance proceeds representing the value of the improvements in the event of casualty loss

Further, neither group has had an opportunity to thoroughly review the document to assure that it is worthy of being recommended for approval.

While documents will be exchanged over the weekend and both teams will have reviewed the material by Monday, April 6, I do not believe that the documents will be suitable for City Council action at that time.

However, it is the intent to provide a full briefing on the status of the Agreement at the Committee of the Whole meeting on Monday, April 6. Hopefully, a detailed briefing by the consultants will allow Council to expedite the process once final documents are in hand.

CITY COUNCIL MEMORANDUM

FOR INFORMATION

TO: Mayor and City Council
FROM: Alvin G. Coby, City Manager
DATE: March 11, 2009
SUBJECT: Summary of Proposed Terms for Agreements With Maritime Park Development Partners

Attached for Council's information is a summary of the proposed terms for the Development and Lease Agreements between the Community Maritime Park Associates (CMPA) and the Maritime Park Development Partners (MPDP). While the summary provides an overview of the major issues proposed in the business relationship between the CMPA and MPDP, it should not be construed to address all of the understandings that will ultimately be contained in the final Development Agreement. The attached summary is a synopsis of the major deal elements which were the focus of negotiations.

On Tuesday, March 10, 2009, the Attorneys for MPDP provided the negotiating team and City staff a "black-lined" copy of the proposed Development Agreement. A detailed review of the document will be undertaken by both consultants (Mr. Abramson and Mr. Beitsch) to assure that all elements of the negotiations have been incorporated. Simultaneously, Mr. David Cardwell (consulting attorney) will conduct a review of the document to assure that the document is in the appropriate legal format. Concurrent with the activities of the City consultants, City staff will review the document to assure that the best interests of the City are being met. While all will endeavor to complete the review as quickly as possible, the significance of the issue warrants sufficient time to thoroughly review the document; however, at the latest, City staff anticipates the review will be complete no later than March 31, 2009.

Upon completion of the review of the Development Agreement, the final draft will be provided to City Council and City Council can advise as to when the document should come forward for formal consideration if prior to the thirty (30) day review period desired for major documents.

Attachment

City of
Pensacola



ABRAMSON & ASSOCIATES, Inc.

Real Estate Advisory Services

MEMORANDUM

TO: Al Coby
City Manager, City of Pensacola

FROM: Barry Abramson

SUBJECT: Summary of Proposed Terms for Master Development Agreement and Lease between Community Maritime Park Associates, Inc. and Maritime Park Development Partners for Community Maritime Park

DATE: March 11, 2009

Maritime Park Development Partners (MPDP) proposed a draft development agreement for its acting as master developer for Community Maritime Park in December, 2008. Significant unresolved issues and concerns were noted by City Council, staff, and consultants. At the City Council Workshop on January 23, 2009, the City tasked Abramson & Associates, Inc. to work, along with Owen Beitsch of Real Estate Research Consultants, advising his client, Community Maritime Park Associates (CMPA), to negotiate a deal with MPDP that would be reasonable and in the best interests of the City; specifically a deal that would entail all of the four roles MPDP had proposed playing in the project, as long as terms could be negotiated by which MPDP's playing these roles would be in the City's best interests in comparison with alternate options.

After review of supplemental information provided by and negotiations with MPDP, we can report that we believe we have agreement on the major substantive terms for such a deal.

While the deal elements which were the focus of negotiation have been reviewed in written form and agreed upon by the parties, a redrafted development agreement has not yet been prepared. MPDP plans to provide a redrafted agreement within the next couple of days. It is hoped that agreement on this will follow shortly thereafter, though careful review and fine-tuning could extend the time required. We believe that the agreement on major terms warrants the additional time and effort to reach what we hope will be a mutually satisfactory development agreement.

At this point, we can state that the following major concerns have been satisfactorily addressed by the agreed upon terms, as summarized in following sections of this transmittal.

ROLES OF MPDP AND CMPA AND PROJECT SCOPE AND BUDGET

MPDP proposed and terms have been negotiated for it to play all four of the following roles:

- Development Manager for the Site Preparation Project and Public Improvements (defined herein as Multi-Use Stadium and the Park)
- General Contractor for the Site Preparation Project and Public Improvements
- Developer of the private development parcels
- Manager of the Public Improvements

Concerns expressed about the draft development agreement were:

- The conformance of the draft agreement with the RFQ if MPDP acts as general contractor for the Site Preparation Project and the Public Improvements;
- The advisability of MPDP playing all four roles and the need for the contractual roles to be clearly defined with provision for termination for unsatisfactory performance;
- The need for CMPA to employ an additional layer of construction owner's representation if MPDP acts as general contractor;
- Confirmation of the role of CMPA and the City as solely responsible for approving design changes in the Site Preparation Project and the Public Improvements;
- The lack of interest in MPDP's providing private financing for the Site Preparation Project and the Public Improvements;
- Given the difficulty in attracting private development in the near future, the implications for changes to program or phasing; and
- The continued role of CMPA if MPDP plays all four roles.

We believe the negotiated terms satisfactorily address these concerns.

It is our understanding that MPDP's playing all of these roles is not inconsistent with the procurements process. We believe that the terms summarized in following sections of this transmittal result in the roles being clearly defined and MPDP's playing all these roles not being in conflict with CMPA's and the City's interests.

We have negotiated what we consider to be reasonable payment provisions for termination at CMPA's discretion, as described more fully in the Development Manager section below.

CMPA will need to engage qualified construction owner's representation and related support services to ensure its and the City's interests are adequately protected. Accordingly, we have stipulated that the \$38 million budget will have to include allocation for CMAA's construction owner's representation and supporting services (e.g. cost estimation, design review), estimated at \$500,000 in addition to the \$200,000 for administration already allocated from the Public Financing outside the \$38 million budget. We believe that the development fees that have been negotiated with MPDP are reasonable after accounting for the cost of CMAA owner's representation.

Additionally, we have stipulated that the \$38 million budget will include an allocation for an owner held contingency preliminarily set at 4% to protect CMAA and the City against costs that may arise from unforeseen conditions or change orders.

The budget for the Site Preparation Project and Phase 1 Public Improvements financed by the Public Financing shall be a minimum of \$38 million and no more than \$38 million shall come from bond or bridge financing from the City/CRA. No private financing will be allowed.

The program of Public Improvements that can be constructed with the remainder of the \$38 million budget (or a larger budget, if net additional public funds from sources other than the City can be obtained for the project), will be the subject of preliminary design, estimation, value engineering, and programming efforts, which shall constitute a major element of MPDP's initial work. Based on the budget submitted by MPDP as Exhibit F of its draft development agreement in December, it would appear that approximately the same program of Phase I Public Improvements could be estimated to be constructed, with the above allocations for owner contingency and owner's representation and related services offset by decreased construction fees and reimbursable expenses that have been negotiated. Should the available public funds be estimated to be inadequate to support a desired program, phasing or other strategies would be considered.

CMPA, along with the City and their professional advisors, will have an important ongoing role in promoting the public's interests in the project. This will include review and authorization of all programmatic and design changes in the Site Preparation Project and the Public Improvements proposed by MPDP, which approval shall rest solely with the CMAA and the City. Approval of private development in a manner consistent with the design criteria, in addition to numerous other responsibilities essential to the realization of full public benefit for the project are vital, as more fully addressed in the last section of this transmittal.

DEVELOPMENT MANAGER FOR SITE PREPARATION AND PUBLIC IMPROVEMENT PROJECTS

Concerns expressed about the draft development agreement relative to this role were that:

- The development fee should be reasonable for the services provided; and
- The development fee should be specifically established in the agreement.

We believe the negotiated terms satisfactorily address these concerns as follows:

Development Fee

The fee for MPDP serving in its capacity as development manager is set at 4.0% of specified hard and soft costs. This fee includes MPDP's setting up and operating the Contractor Academy and MPDP is absorbing a considerable amount of the effort, general expenses, and proposal and other third party expenses above a maximum invested prior to the execution of the development agreement. Based on these considerations and the effort anticipated to fulfill this role, we consider this to be fair fee.

Payment Schedule

Front loading of fees has been largely eliminated, but the agreement does recognize risk prior to financing, considerable work in early stage, mobilization costs, and demobilization upon termination, at terms considered to be reasonable

For an initial period commencing upon execution of the development agreement until closing of the public financing, MPDP shall be paid up to \$100,000 per month for professional and general expenses incurred during that period. Thereafter, the remainder of the fee shall be paid on a pro rata basis over the life of the Site Preparation and Public Improvement project.

Reasonable payment provisions for termination without cause – \$50,000 if the Public Financing does not close within 24 months of termination and \$250,000 if it does, would provide some compensation for effort and value added prior to execution of the development agreement, mobilization, and demobilization.

Third Party Costs

Third party costs for substantive work contributing to the project incurred by MPDP prior to execution of the development agreement shall be reimbursable up to a maximum amount of \$150,000. Other third party costs incurred by MPDP prior to the execution of the development agreement for substantive work and for proposal/marketing shall not be

reimbursable, their compensation coming only from the development fee. Approved third party expenses incurred after execution of the development agreement shall be reimbursable. All third party cost reimbursements shall be subject to CMPA review, approval, and audit.

Deposit

In recognition of the considerable pre-execution and early stage investment of effort and cost, a portion of which will not be recouped by initial development fee, no good faith deposit will be required.

Key Man

Bruce Cutright, who was identified in the proposal as project manager and whose specialized expertise was considered a major asset of the team, has been specified as a key man and a minimum level for his involvement throughout the project required.

GENERAL CONTRACTOR FOR SITE PREPARATION AND PUBLIC IMPROVEMENT PROJECTS

Concerns expressed about the draft development agreement relative to this role were:

- That compensation for overhead, profit, and general conditions, and contingency and cost savings provisions be specified in the agreement and reasonable in the context of the construction marketplace.

MPDP's role as general contractor shall be subject to negotiation of a design-build contract(s) and GMP contracts. CMPA, using qualified construction representation, will ensure in the negotiation of these contracts that any reasonable concerns about staffing, organization, financial capacity at risk, and financial and other arrangements are adequately addressed to provide confidence that MPDP will be a high quality and cost-effective contractor. At this point, the terms negotiated in the development agreement are confined to setting terms for major compensation and financial elements and setting a framework for moving forward. We believe that the negotiated terms satisfactorily address the major issues that can be resolved at this stage; the subsequent effort in the design-build and GMP contracting stages will be essential to ensuring that this element is satisfactory.

Profit and Overhead

Profit and overhead combined shall be 3.0%, which is considered to be in range that is competitive in the current construction industry.

Total general conditions are to be capped in the design-build contract and specific elements such as personnel costs and the payment and performance bond fee have been capped in the development agreement.

Personnel costs for preconstruction services will not be reimbursable except: that these services can be billed within the pre-financing development fee (though not increasing the total amount of the total fee); and as reasonably allocable to any portion of the work for which MPDP is awarded a GMP contract.

Contingency

General Contractor held contingency shall be 4.0%, under the condition that an owner held contingency in the same amount shall be allocated to CMPA, subject to adjustment in light of design/engineering, budget considerations that can be better assessed as the design process proceeds.

Cost Savings

100% of all cost savings shall be returned to CMPA for use in the project.

Qualifications

Marc White, who would head the construction group within MPDP, will be a key man and appropriate staff and organizational structure will be assembled to capably fulfill the role of general contractor.

Warranty Guaranty

MPDP member(s) must guaranty, insure, or otherwise set aside funds for some period of time after completion of Public Improvements to cover warranty risk. Specifics shall be negotiated in the design-build contract.

Payment and Performance Bond

The payment and performance bond must be issued by a surety company with an A rated Best rating. No later than the latter of three months after execution of the development agreement or two months after the closing on the public financing, MPDP shall provide CMPA with a letter of intent with an authorization by an attorney in fact attached from a surety company with an A rated Best rating that the company would provide MPDP with a payment and performance bond for the type and scale construction project(s) contemplated in the development agreement.

MANAGER OF THE PUBLIC IMPROVEMENTS

Concerns expressed about the draft development agreement relative to this role related to:

- MPDP's qualifications;
- The rationale for its management of the multi-use park if a third party manager would be engaged for that role;
- The term for which it makes sense to commit to a management agreement;
- Performance standards for renewals beyond a five year term;
- The reasonableness of fees; and
- Concern about CMPA operating shortfalls

We believe that, while MPDP lacks experience in managing these type of facilities, the financial motivation of maximizing the attractiveness of its private development land should result in its enlisting the appropriate expertise and managing the improvements in a manner that will benefit all parties.

Term

We also see good reason for MPDP's having the ability to manage the facilities over a relatively long period to ensure maximization of its development rights, as long as it is doing a capable job and CMPA is not operating in the red. Concerns about the length of the management commitment and the possibility of CMPA experiencing operating shortfalls have been addressed by provisions for termination in the event of sustained negative cash flow and renewal subject to MPDP having evidenced an ability to manage within budget.

Specifically, the agreement calls for an initial five year term with one five year renewal which shall be exercised at MPDP's discretion unless the actual approved expenses for either of the last two years of the initial term for which full financial information is available exceeded by 20% or more the budgeted expenses for those years for any reason, in the absence of an extraordinary event or without the direct interference of CMPA.

CMPA can terminate the management agreement with 90 days notice at any time during the initial or renewal term if CMPA net operating cash flow is negative for any 12 month period (except to the extent due to an extraordinary event or direct interference of CMPA), unless MPDP chooses to make up the difference to maintain the agreement.

Fees

We believe the fees that have been negotiated are in a format and at a level that are reasonable for the type of services provided and safeguard against excessive third party management fees. Specific fee provisions are as follows:

The multi-use stadium management fee shall be at a commercially reasonable rate for such services and shall be subject to audit and, if provided by a third party manager, shall be passed through at cost, but in no event shall it exceed either \$250,000 or a commercially reasonable rate.

\$20,000 per year flat fee for public area/park management, increasing at CPI. The structure of this portion of the fee is considered appropriate as it is essentially paying for a non-revenue producing element of the project.

10% of revenues from events, facility rentals, sponsorship up to \$1 million of combined revenues, then 5% after that. This is considered an appropriate incentive fee with the lower percentage applying above a threshold keeping it from getting excessive while still incenting and rewarding performance.

4% of office or other income from Public Improvements (exclusive of the multi-use facility) which it manages. This would be an appropriate fee that would be payable to any third party property manager for office, conference center, or other uses.

Termination

In addition to termination for sustained negative cash flow, termination of the management agreement may result from termination for cause under the development agreement or, at CMPA's discretion, after MPDP no longer holds development rights or owns property in the project.

Other terms relating to management shall be specified in a separate management agreement following execution of the development agreement.

DEVELOPER OF PRIVATE DEVELOPMENT PARCELS

Concerns expressed about the draft development agreement relative to this role were:

- Setting land pricing and lease terms applying over a long time horizon starting in a down part of the cycle that will allow development in the near term while not underpricing land as the market improves and will help maximize desired development;
- The appropriateness of the term (length) of leases;
- Holding MPDP to a schedule to maintain its development rights while allowing reasonable flexibility for market conditions
- Ensuring development in a form and promoting a mix of uses conducive to the intent of the design criteria.

We believe the negotiated terms accomplish these objectives.

Land Take-Down Form

Land shall be leased on a parcel by parcel basis as construction of individual buildings are to be undertaken.

Land Pricing

Given the expectation that substantial private development by MPDP is not imminent due to the depressed state of the real estate market and that estimating reasonable land pricing over a long term is problematic, the lease rates for the private land are to be set and periodically reset using a future land pricing approach, as opposed to fixing pricing at this time.

A fair approach for periodically setting land pricing has been agreed upon. The land pricing determined by this approach (for the initial and subsequent price setting periods) would be applicable to any private land that would be leased on a parcel by parcel basis for development on which substantial construction commences within 30 months of the pricing determination.

The land pricing would be set for a matrix of potential uses (e.g. residential, office, retail, restaurant, hotel, at waterfront versus non-waterfront locations) on a per buildable square foot basis.

The land pricing for a particular building would be determined based on applying the per square foot pricing to the square footages attributed to the use components.

The process, while allowing the opportunity for negotiation, would not require it. The process would be initiated by MPDP which would propose land pricing for the matrix of uses and provide analyses supporting the proposed land pricing. CMPA and its advisor would review MPDP's submittal, prepare its own estimates, and either agree or turn the determination over to a mutually agreeable third party expert.

The land pricing would be converted to lease rates per buildable square foot at a percentage of capital land price. For the initial 30 month period this percentage would equal a weighted average based on 6.0% for residential building square footage and 7.0% for nonresidential square footage, with the difference in the percentages reflecting both market return rates and providing an incentive for inclusion of residential use in the project which is considered important to fulfilling the vision for the project. For developments undertaken during this initial 30 month period, lease payments would escalate annually at 2.0%.

For parcels developed in later periods, the lease rate percentage would be determined at the time of the subsequent land price setting(s) based on an overall real estate return rate, as reported in a specified national real estate investment survey, with residential receiving a lower rate than nonresidential; and the annual escalation rate being fixed at the CPI rate at that time less 1.0%.

For example, if the land pricing determination for residential use is determined to be \$10 per buildable square foot and the land pricing for a nonresidential use is determined to be \$20 per buildable square foot, then if the development were to start substantial construction within the 30 month period of the initial price setting, and if the building to be constructed on the parcel included a total of 20,000 square feet of gross building area, with 10,000 square feet attributable to each of the two use components, then the first year lease payment would be \$19,500, based on the following calculations: land price on a capitalized basis at \$300,000 ($\$10 \times 10,000$ square feet plus $\$20 \times 10,000$ square feet); conversion to initial lease year lease rate at 6.5% (50% nonresidential @ 7.0% and 50% residential @ 6.0%). The second year lease payment would be \$19,890 ($\$19,500 \times 102\%$).

The lease payment would be subject to adjustment as follows. To the extent the development for that parcel incorporates structured parking, the pricing for that parcel would be adjusted to reflect the additional cost of such parking beyond what was assumed in the pricing determination after subtracting from that amount the value of any public financing provided to the development project on that parcel. Any such adjustment could not reduce land lease payments for other parcels without the authorization of CMPA. The determination of the

increment of cost attributable to structured parking would require MPDP to present a proposed adjustment with relevant construction and development analyses to CMPA for its review with a process for determination as specified above for the pricing matrix.

The rationale for the parking cost adjustment provision is that it would promote an enhanced build-out of the site, which will maximize both activity and TIF revenues (which should offset lease revenues that might be foregone due to such adjustment).

Each party will pay for its own costs in the process and share equally the costs of the third party expert, if required.

Lease Term

Any parcel required for construction of a building in which a minimum of 20% of enclosed finished area occupiable by tenants/end users (excluding parking) is allocated to residential use shall be leased for a term of 99 years.

Any parcel required for construction of a building which will be or include a hotel shall be leased for a term of 80 years (unless such building also meets the residential threshold, in which case the lease will be 99 years).

Any parcel not meeting either of the above conditions shall be leased for a term of 60 years.

The rationale for the different terms is as follows.

Residential, which may be developed as condominiums or later converted to condominiums, would require a 99 year term to be marketable on a for-sale basis. Additionally, this long lease term is an additional incentive to promote inclusion of residential use in the project.

The relatively long lease term for hotel is provided in recognition that this use would be an important contributor to the activation of the project and support other uses such as the conference center, but attracting a hotel and making a feasible deal could be challenging, warranting the benefit of the longer lease term.

While a 60 year lease term is considered to be at the lower end of the range that is viable for substantial development, we consider this term to be most viable for commercial office or retail development.

Timing of Land Lease Payments for Developed Parcels

Lease payments would commence upon the earlier of substantial completion or 24 months after commencement of construction. This timing, matching the payment of land lease payments to when the project starts earning revenues, is reasonable and common in public-private land leases.

Development Pace to Maintain Lease Rights to Undeveloped Land

Subject to the provisions in the following paragraphs, starting at 30 months following the execution of the development agreement, MPDP (or its sub-lessee(s)) would be expected to commence construction on a pace that would result in an annual average of 30,000 square feet of private development (defined as privately financed development, including uses such as office, residential, retail, restaurant, hotel, but excluding conference center (unless developed with private financing), UWF facilities, or other non-privately financed uses)).

MPDP shall maintain a development pace as follows to avoid penalty and maintain its development rights:

Substantial construction on a first building of no less than 30,000 square feet GBA of private development is commenced within 30 months following the development agreement and substantially completed within 48 months of the development agreement.

The above pace and provisions would apply to each subsequent year (e.g. commencement of construction on a second building of not less than 30,000 square feet no later than 42 months following the development agreement and completion no later than 60 months following the development agreement), except that private development shall be considered cumulatively, i.e. a 60,000 square foot building in the first period would automatically satisfy the obligation relative to the second period.

Should a building be developed by any party containing space for the Studer Group, the portion of the gross building area allocable to Studer's occupancy would not count toward MPDP's obligations under the development pace provisions, but the remaining additional gross building area allocated to private development (as defined previously in this section) would count toward that obligation. The rationale for this is that even if MPDP doesn't

develop this building, development is proceeding on the site and space other than that occupied by Studer would be “using up” some of the market for development that might otherwise be available to MPDP during that time frame.

The above time periods could be extended for up to 12 months in the event a condition of economic distress prevails at the time the construction start-triggered penalty provision is scheduled to apply. A condition of economic distress can be automatically considered to apply if, at the time MPDP proposes to exercise this right, it can present evidence of distress in the housing and office markets based on published benchmarks specified in the agreement.

If MPDP exercises its right to an extension for condition of economic distress, it must subsequently construct a minimum of 30,000 square feet of additional private development, in order to exercise that provision a second time. In no event, shall there be more than a total of two extensions for a condition of economic distress.

Failure to maintain the above-specified pace of development, as may be extended by the condition of economic distress provision, would result in the following:

MPDP would be able to maintain its lease rights for an additional 12 month period by paying \$3,000 per month per acre for any undeveloped parcels until such time as it is in conformance with the development pace schedule if within that 12 month period. Such payments would not be refundable or credited toward the later lease payments.

Termination

If MPDP is not in conformance at the end of the above 12 month period, CMPA would have the right to terminate MPDP's rights to lease any of the remaining private land.

Additionally, CMPA may also terminate MPDP's rights to lease private land on which it has not yet commenced substantial construction subject to the provisions for termination for cause under the development and lease agreements.

Consistency with Intent of Design Criteria

It is the clear intent of the design criteria to encourage a vibrant mix of uses and design compatible with promoting a vibrant, pedestrian friendly, seven day a week/round the clock, mixed-use environment. While we believe that CMPA's approval rights for design of buildings would provide it standing to promote these intents, we felt it to be important to explicitly secure the following provisions as to use and design:

Ground floor space facing streets that are planned to encourage pedestrian activity shall be designed and constructed in such a manner as to accommodate viable street-oriented retail or restaurant use by means of shop window frontages, entries directly accessing the street, and the like. The tenanting of such space for retail or restaurant use may or may not be viable, and especially problematic in early stages, but designing the space as specified above would maximize the potential that, even if not initially viable, such use could eventually occupy these spaces; and, for the time and to the extent such tenanting is not viable, at least other uses, such as professional or service firms, that could be attracted to public-oriented space, would likely occupy the space and contribute to an active, public-oriented pedestrian experience.

Additionally, MPDP will acknowledge the importance of including retail/restaurant, upper floor residential, and hotel uses in the project and will include such uses as makes sense for it to do so in the context of market, financial, and development realities. This is not a hard requirement, which would be impractical, but, in addition to the other incentives mentioned previously in this section, we feel it is a meaningful statement of shared vision and intent.

Studer Building

It is understood that the Studer Group will have an option for a limited time to lease directly from CMPA land upon which it may construct its office building.

CMPA will use "best efforts" to co-ordinate with MPDP in the selection of the site and its integration into the overall project. As possible, MPDP, CMPA, and Studer shall try to agree on mutually acceptable locations and/or parameters for siting such a building and specification of such siting in the development agreement. So as not to unduly impinge on the project or MPDP's development rights, the agreements between CMPA and Studer should require the Studer building be designed in conformance with the design criteria with a maximum footprint of 20,000 square feet and that a fair arrangement be reached for it sharing in its responsibility for parking.

Subordination

The leased fee interest for private development parcels shall in no way be subordinated to any financing.

Assignment

MPDP's assignment rights for a sub-lease, which would be activated by its starting construction, would be strong, basically allowing it to assign its leasehold position essentially to any legitimate, law-abiding buyer. MPDP's rights to parcels not yet taken down would be subject to CMPA approval versus at MPDP's discretion.

ROLES AND ACTIONS REQUIRED OF CMPA AND THE CITY

The project and agreement entail many interrelated elements and cover a long period of time. Over that time, there will be approvals and other actions required of CMPA and the City, and their understanding of the framework and aspects of the project and agreement and their execution of their responsibilities will be critical to how well the project realizes their programmatic, policy, and financial objectives.

Over this long time frame, CMPA Board members and City staff overseeing the project may turn over, resulting in a loss of institutional memory of the framework and interrelationships for the agreement.

These issues are found in many long-term public-private deals. Given these issues, successfully implementing the following guidelines are imperative to CMPA and the City achieving maximum realization of their objectives.

- All actions that CMPA is responsible for which impact any of the City's interests in the project should be engaged only with the active review and approval of the City.
- CMPA should engage a highly experienced construction owner's representative to participate in negotiating the design-build agreement and then to approve and oversee MPDP's design/engineering and construction general contracts for the project and its components.
- The owner's representative, be it an individual(s) hired as staff or a firm specializing in this field, should have extensive experience in construction and in the representation of owner's interests in such situations.
- This expertise should be engaged as soon as possible, with the goal of having it on hand at the time the development agreement is executed, or as soon thereafter as possible, so as to be available as MPDP is ready to negotiate the design-build contract, initiate design and preconstruction services.

- To the extent engagement of this expertise is subject to a procurement process of any length, indicating delay in bringing this service on board until significantly after the execution of the development agreement, if it is possible to engage such expertise on a more limited basis for the short term, that would be preferable to not having the support of such expertise at all; however, it is emphasized that the best option is to have the party that will act as owner's rep over the long term involved in the design-build negotiation and oversight of the early stage effort.
- The same recommendation applies for engaging an attorney experienced in negotiating design-build and construction agreements and professionals with expertise in urban design, architecture, and mixed-use development to advise CMPA and City on the merits of refinements to design and programming which MPDP may propose.
- Administrative staff should be determined with a view toward long term involvement and complementing the construction owner's representation function.
- CMPA and the City should advocate adherence to the design criteria and principals embedded in them for creating a vibrant, pedestrian friendly, seven day a week/round the clock, mixed-use environment, while being flexible to amend aspects of the criteria and project as may be warranted to recognize practical considerations as long as the essence of the criteria's intent is maintained.
- CMPA's owner's representation, supported by cost estimation services, should closely monitor the preconstruction phase and proposed GMP contract(s) to ensure issues implying risk, cost, quality, or delay are adequately addressed and competitive, market-reasonable pricing is attained, and then diligently represent CMPA and City interests throughout construction.
- CMPA and City should be aware that appropriate land pricing may change significantly from one land price setting period to the next and should enlist capable professional support with expertise in developmental land economics to represent their interests in the price setting process.