



### NOTICE OF INVITING PROPOSALS

Notice is hereby given that Request for Qualifications/Proposals (RFQ/RFP) for developers to assist with master-planning, pre-development, and property development of Barstow's Harvey House will be received at [barstow@localequity.com](mailto:barstow@localequity.com), until 4:00pm (local) on June 17<sup>th</sup>, 2022.

### DESCRIPTION OF WORK

The City of Barstow is requesting qualifications and proposals from qualified developers to reposition and increase the use of the development known as the Harvey House at 685 N 1st Ave, Barstow, CA 92311. The successful developer ("Developer") will propose the programming, renovation, and successful commercialization of the building and site, and be able to provide financing to execute on such vision.

### OBTAINING RFP DOCUMENTS AND REGISTRATION AS PROPOSER

The RFP documents may be downloaded via the internet at [Bid Opportunities / Request for Proposals | City of Barstow \(barstowca.org\)](https://www.barstowca.org/Bid-Opportunities-Request-for-Proposals). If you are interested in submitting a proposal, it is IMPERATIVE that you contact the [barstow@localequity.com](mailto:barstow@localequity.com) with your company name, address, phone, fax, contact person, and email address to receive a registration form. Failure to officially register may result in not receiving addenda to the RFP. Failure to acknowledge the addenda to the RFP may render your proposal as non-responsive.

### PROPOSALS

Proposals should follow submission requirements as outlined in the RFP document. If your firm is interested and qualified, please submit responses to [barstow@localequity.com](mailto:barstow@localequity.com)

### PROPOSALS TO REMAIN OPEN

The Proposer shall guarantee that all contents of their proposal shall be valid for a period of 90 calendar days from the due date of the proposal. The receiving time as of the email's electronic signature will be the governing time for the acceptability of the Proposal. Telegraphic, mailed, printed, and telephonic proposals will not be accepted. Late proposals will not be accepted.



## CITY OF BARSTOW HARVEY HOUSE REDEVELOPMENT



### **REQUEST FOR QUALIFICATIONS/PROPOSALS FOR:**

*Developer to Assist with Planning, Programming, Development, and  
Property Repositioning/Leasing*

**Contact:** Gil Keinan  
Local Equity  
603 N Euclid Ave  
Ontario, CA 91762  
Email: [Barstow@localequity.com](mailto:Barstow@localequity.com)

## I. Introduction and Executive Summary

### A. Introduction

The City of Barstow (City) is located in the Mojave Desert Region of central San Bernardino County, California, about 130 miles northeast of Los Angeles and 150 miles southwest of Las Vegas. The population of Barstow is approximately 23,000 and serves as a vibrant regional retail commercial center. Strong interstate highway travel-oriented services, a large rail facility, and two major military bases contribute to a diversified economic base.

Recently, the City has experienced successful commercial and residential growth, and anticipates further growth in the coming years. For this reason, the City seeks the services of a professional and experienced developer to assist with the master planning, pre-development and property development.

### B. Executive Summary

The City of Barstow, California (“City”) is requesting qualifications and proposals from qualified developers to reposition and increase the use of the Harvey House at 685 N 1st Ave, Barstow, CA 92311.

Barstow Harvey House, also known as Harvey House Railroad Depot and Barstow station, is a historic building in Barstow, California. Originally built in 1911 as Casa del Desierto, a Harvey House hotel and Santa Fe Railroad depot, it currently serves as an Amtrak station and government building housing city offices, the Barstow Chamber of Commerce and Visitor Center, and two museums (Wikipedia). NASA offers an interactive experience and there are various rooms that serve as magnificent venue for social and corporate events. Many of the public facilities were closed to the public during the current pandemic.

The successful developer (“Developer”) will propose the programming, renovation, and successful commercialization of the building and site.

#### ***Development Opportunity:***

- Serves as Barstow’s Amtrak station
- Directly adjacent to one of BNSF’s largest intermodal facility
- Adjacent to the 1<sup>st</sup> Ave bridge, which was recently approved for a multi-million replacement
- 2 minute drive from Barstow’s Historic Downtown and Route 66
- Located in an Opportunity Zone.

#### ***Current Assets on the parcel that may be repositioned:***

- Harvey House [Any modifications will need to comply with the Secretary of the Interior’s Standards for the Treatment of Historic Properties.]
- Large Parking lot

#### ***Developer Qualifications***

The City seeks a developer or organization that has demonstrated the following:

- Successful development of historic sites.
- Expertise in assembling financing for Public Private Projects (P3s).
- Expertise in collaborating with community stakeholders to create projects that deliver strong social and financial returns.
- Experience in the design and programming of commercial assets that have significant historical value

The successful developer will create a compelling vision that is a benefit to the local residents, the city, the County of San Bernardino, and the business community. A significant amount of feedback is expected by local residents.

**Desired Development Products**

The City is soliciting proposals from entities interested in:

- Establishing a long-term site development plan that may provide benefit to its surrounding communities
- Engagement with community stakeholders to reach consensus
- Assisting the City in achieving the highest and best use;
- Entering into a ground and asset lease with the city

The City and the selected developer will enter into an Exclusive Negotiating Agreement (ENA) to finalize business terms and developer obligations (see Attachment B). Final business terms and developer obligations will be based on minimum terms agreed to by the developer in response to the RFP. Final business terms and developer obligations will be incorporated into the future agreement that will supersede the ENA as the governing document for the transaction. For illustrative purposes only, the following is an outline of a possible structure of developer obligations. For illustrative purposes only, the following is an outline of a possible structure of developer obligations:

**Possible Structure of Developer Obligations (For Illustration Only)**

<p><b>Phase 1 – Entitlements, including CEQA:</b></p> <p>Developer is under ENA and negotiates a lease</p>	<ul style="list-style-type: none"> <li>▪ Developer proposes updated programming mix for the development, and any additional density development on the parking lot</li> <li>▪ Prepare plan and specific plan for site as approved by City</li> <li>▪ Collaborate with city stakeholders via a charette</li> <li>▪ Create site development program and financing plan</li> <li>▪ Coordinate required historic and environmental process as approved by City</li> <li>▪ Collaborate with the city on final lease</li> </ul>
<p><b>Phase 2 – Site Development Program:</b></p> <p>City has transferred ownership/control via the lease</p>	<ul style="list-style-type: none"> <li>▪ Prepare site development plans</li> <li>▪ Manage all consultants and contractors</li> <li>▪ Update site development plan</li> <li>▪ Update site finance plan</li> <li>▪ Solicit Contractor Bids</li> <li>▪ Secure site development financing</li> <li>▪ Oversee/manage construction</li> <li>▪ Oversee site subleasing</li> <li>▪ Site development plan schedule to be negotiated</li> </ul>

The City is open to entertaining any other form or complexity of development, including but not limited to, proposals that integrate sustainability, health & wellness, combined with commercial uses into the design.

The selected developer will set out clear deal terms, and potential amount ranges. Additionally, the developer should highlight the type of assets that will be developed, accompanied by potential conceptual layout.

II. Submittal Instructions, Questions and Timeline

#### **A. Registration Form**

All interested parties are required to complete and return the registration form, found in Attachment D.

#### **B. Pre-Bid Meeting**

A Non-Mandatory Pre-Bid meeting will be held via Zoom on **Tuesday, May 10, 2022 at 11:00 am PT.**

#### **C. Questions**

Interested parties may not communicate about this RFP with elected officials or staff representing the City of Barstow, or any other individuals retained by the City to support this procurement. All questions and requests for clarification must be submitted in writing to [barstow@localequity.com](mailto:barstow@localequity.com) by **4:00 pm on Tuesday, May 17, 2022.** Questions after that date/time will not be answered.

Responses to questions submitted prior to the established question deadline will be released on **Tuesday, May 24, 2022.**

#### **D. Submittal Deadline**

Please return RFQ/P responses for review by **Friday, June 17, 2022 at 4:00 pm** to the contact listed below. All proposals must be received **prior** to the aforementioned deadline. Any proposal received after the deadline shall not be considered.

The City may continue to solicit qualifications and proposals beyond the above date if the City, in its respective sole determination, is not satisfied with the number and quality of submittals received.

#### **E. Digital Submittal and Contact**

Proposal packages are limited to 30 pages and 15MB in size, including all attachments and addendums. Proposal packages are to be submitted electronically to:

##### **Barstow RFP- HARVEY HOUSE**

Local Equity Economic Development Organization

[barstow@localequity.com](mailto:barstow@localequity.com)

All responses must be completed as required, signed by an officer of the firm who is authorized to enter into a binding agreement with the City on behalf of the company. Proposals (as described below) are to be digitally submitted to the email address and time designated above and clearly identified with the developer's name, address, telephone number, and email address. Submit one digital proposal titled as **"Request for Qualifications/Proposal – Harvey House."**

### **III. Submittal Requirements**

#### **A. Submittal Overview**

The City reserves all rights to amend or modify this RFQ/P, reject all proposals, extend any dates, or extend the submittal deadline until responses are received.

All materials submitted during any part of the selection process shall become the property of City. The respondent may designate portions of its submittals, which contain proprietary data as “confidential”, but the City cannot guarantee that it will be able to legally enforce such confidentiality.

The City shall not be responsible for any costs and/or obligations incurred by and/or on behalf of a potential developer in preparing, submitting, or otherwise participating in any part this RFQ/P, the selection, documentation, or the development process in its entirety. The City reserves the right to request clarification or additional information from respondents. Information included in this RFQ/P is believed to be accurate but should be independently verified by potential respondents.

## **B. Request for Proposal Content**

The City’s top priority is to select a development partner to reprogram the Project in a way that will be synergistic and supportive of the city needs. The evaluation criteria will consider a prospective developer’s experience in successfully working on projects of similar size, scope and quality, industry relationships and financial wherewithal.

Respondents shall provide the information that follows in this Section. Once the City has the opportunity to evaluate each response, some or all respondents may be invited to make specific Project presentations and/or be invited for personal interviews.

Respondents selected to advance to interviews will be notified via email. Based on interview results, next steps may include, but not be limited to, additional submittals, financial references, and a preliminary letter of interest (LOI) which would include a detailed description / site plan of the proposed Project, proforma, and specific Project delivery and performance benchmarks.

The proposal, at a minimum, shall include the following information presented in a clear and concise manner:

- 1. Cover Letter** – Include a summary of the respondent’s basic qualifications, experience, past and current project experience of similar nature and size, and reasons for interest in this opportunity. The letter must be signed by a principal or authorized officer including a statement that the officer may make legally binding commitments for the entity.
- 2. Project Scope** – Describe the potential conceptual project. Include sufficient detail and definition as to the concept to give the City Council and Staff enough information to have an idea of what the final development could contain. Supporting market data, concept plan, and collateral materials are encouraged to provide support for the proposed Project. Include at a minimum:
  - a. Proposed reprogramming
  - b. Conceptual drawings
  - c. Images of similar projects
  - d. Narrative of the plan design, and intended social and economic outcomes
- 3. Organizational Chart** – Identify members of the Project development team and provide a brief description of each team member’s role including the following:
  - Principals involved in the Project.
  - Resumes of key team members.
  - Designation of lead contact for the team.
- 4. Firm Qualifications** – A summary of current and previous experience of the team with regard to

projects comparable both in size and uses within the last five (5) years. As appropriate, this information should include a project description, photos or site plans, if available, land uses, dates completed, developer role, cost/value, financing sources, duration of development processes, role of current employees in the project, and existing status as to ownership of current developments, percentage owned since project completion, and volume sold.

5. **Project Approach** – A high level summary of the team’s approach and anticipated timing related to planning, design, approvals, financing, phasing, development, construction, and operation.
6. **Financial Data** – A description of the anticipated financing structure to be employed to finance the anticipated Project.
7. **Deal Terms Summary** – Provide a proposed summary of deal terms between yourself and the city. If a ground lease is proposed, then term and lease payments should be highlighted.
8. **References** – An accurate list of no less than five (5) references (name, title, entity, telephone number and contractual relationship to respondent) that may be contacted with respect to current and past project experience. Additionally, please provide a reference list of, and contact information for, five to ten public sector elected officials and executive staff involved in the previous projects identified as examples of Firm Qualifications.
9. **Conflict of Interest** - Disclosure of any past, ongoing, or potential conflicts of interest related to the City which the proposer may have as a result of performing the work described in this RFP.
10. **Litigation History with Public Agencies** – Provide information as to any litigation that any developer/development entity that comprises the overall team has had with public agencies over the last ten years.

## IV. Evaluation Criteria, Procedures, and Anticipated Timeline

### A. Evaluation Criteria (and decision weight)

The following criteria will be used as the primary basis for evaluating developer responses:

- **Experience (10%):** Does the developer team possess the experience to deliver the targeted development Project? (e.g., historic property experience, similar projects, nearby/similar markets, team member experience, hotel industry relationships, no litigation).
- **Concept (50%):** Is there a clear Project concept provided and does it meet the City’s vision? (e.g., proposed scale, quality and uses).
- **Financial Wherewithal (30%):** Does the developer team demonstrate access to capital for proposed Project development including equity for initial architecture, engineering, consultants and other due diligence costs? (e.g., evidence of equity and debt financing for total Project costs, references, etc.).
- **Proposal Responsiveness (10%):** Completeness, organization, timeliness, etc.

The order of presentation of the above criteria does not necessarily denote the specific importance of the same. Following in-person and/or online interviews, eventual selection of a preferred developer will be based on additional factors, such as LOI terms (e.g., financial structure, Site/Project valuation, initial financial pro forma), supportive market data, quality of design and development, fiscal impact to the City and other taxing entities, and



as applicable, Site deliverables to be provided by the City. In its consideration of the response to this RFQ/P, the City may request additional information.

## **B. Evaluation Procedures**

1. City Staff will evaluate and rank responses to this RFQ/P based on which proposals best satisfy the objectives expressed by the City in this RFQ/P for recommendation to the City Council.
2. All respondents will be notified of evaluation results, particularly those firms that have been selected for in-person and/or online interviews. City Staff shall present the recommendations to the City Council. The City Council may conduct in-person and/or online interviews with developers before the final selection.
3. The City will pursue negotiations with the top-ranked respondent with the goal of entering into an Exclusive Negotiation Agreement (“ENA”) and negotiating a mutually acceptable LOI within 90 days of selection. If a satisfactory ENA cannot be negotiated with that respondent, the City will formally end negotiations with that respondent and may pursue negotiations with the respondent that next best satisfies the objectives and goals expressed by this RFQ/P, as determined by the City, or in its sole and absolute discretion proceed on alternative basis, or terminate process.
4. The purpose of the ENA will be to negotiate a mutually acceptable binding Disposition and Development Agreement (DDA). Through the ENA process, the City will agree not to negotiate with any other developer regarding the Site.
5. The City reserves all rights to modify or terminate the selection process, go outside of the selection process to select a developer, or not select a developer at all. The City further reserves the right to modify any of the proposed selection criteria in pursuing negotiations with any developer. This RFQ/P and selection process does not constitute any type of offer and creates no contractual or other liability to the City. There is no guarantee that a DA will be consummated, or that any Project will be reviewed pursuant to this RFQ/P.
6. It should be noted that both the ENA and the subsequent development agreement will include performance timelines that allow the City to terminate the agreement without liability, should the developer not reach the agreed upon milestones in the timeline provided. Such termination may occur without liability to the City, even if delays were due to actions within the City’s control.

## **V. Anticipated Timeline**

- RFQ/P released **Tuesday, April 26<sup>th</sup>, 2022.**
- Responses to RFQ/P due on **Friday, June 17<sup>th</sup>**
- City review of responses and invitations for interviews sent in **July 2022.**
- Interviews expected to be held in **July/August 2022.**
- City to consider ENA with preferred developer by **August/Sept 2022.**

## **VI. Conflict of Interest**

The City of Barstow’s elected officials and employees are prohibited from participating in the selection process for this RFQ/P if they have any financial or business relationship with any Respondent. This RFQ/P process will be conducted in compliance with all laws regarding political contributions, conflicts of interest, or unlawful activities, including, but not limited to, the City’s Conflict of Interest Policy and applicable laws.

The Developer and its officers, employees, associates and subcontractors, if any, shall comply with all local and state conflict of interest statutes of the applicable to Developer’s services under this Agreement, including the Political Reform Act (Gov. Code § 81000 et seq.) and Government Code Section 1090. Developer shall incorporate a



clause substantially similar to this Section VI into any subcontract that Developer executes in connection with the performance of this Agreement.

## VII. Insurance Requirements

The successful proposer shall secure all insurance required under the ENA and provide any necessary documentation to the City seven (7) calendar days subsequent to City Council approval. All insurance required must be submitted and approved by the City prior to a Notice to Proceed is issued.

## VIII. Indemnification

Attention is directed particularly to the indemnification provision in the ENA. Any agreement for development services the City may enter into following this RFQ/P shall include a clause obligating the Developer to indemnify and defend the City to the fullest extent of the law. Any such agreement also shall address the Developer's responsibility to project delay and construction change orders to the extent such are caused by the Developer's negligence, recklessness, or will misconduct.

## IX. Acceptance or Rejection of Proposal

The City reserves the right to accept, reject, or accept a portion of any and all proposals. The City also reserves the right to waive any informality or irregularity in any proposal as deemed to be in its best interest. Additionally, the City may, for any reason, decide not to award the Contract as a result of this RFQ/P or cancel the RFQ/P process. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by the submission of the proposal. The City reserves the right to negotiate services and associated costs.

## X. Legal Compliance

All proposals must be submitted, filed, made, and executed in accordance with State and Federal laws related to proposals for agreements of this nature whether the same or expressly referred to herein or not. Any company submitting a proposal will by such action thereby agree to each and all of the terms, conditions, provisions, and requirements set forth, contemplated, and referred to in the RFQ/P, and other contract documents, and to full compliance therewith.

By issuing this RFQ/P, the City does not authorize any development of the property before compliance with the Planning and Zoning Law, the City's municipal code, the California Environmental Quality Act (Public Resources Code § 21000 et seq. ["CEQA"]), the CEQA Guidelines (14 Cal. Code Reg. § 15000 et seq.), and other applicable laws, policies and procedures. The City expressly reserves its full legislative power and its consideration of any proposed development will include evaluation of alternatives to the proposal, including not approving the proposal, or adopting other, alternative legislative actions approving other types of development or other land uses than proposed. The City's commitment to compliance with CEQA includes a full commitment to analysis, and mitigation as required, of the potential historic resources impacts of any proposed development of the property.

### **Attachments:**

**Attachment A: Assessor Map**

**Attachment B: Exclusive Negotiating Agreement (ENA)**

**Attachment C: Cost Proposal**

**Attachment D: Registration Form**

**Attachment A:  
Assessor Map**

**Attachment B:**  
**Exclusive Negotiating Agreement**

## **EXCLUSIVE NEGOTIATION AGREEMENT**

### **City of Barstow Dana Park Redevelopment**

This Exclusive Negotiation Agreement (“**Agreement**”) is entered into by and between the CITY OF BARSTOW, a California municipal corporation (“**City**”), and \_\_\_\_\_ (“**Developer**”), as of the Effective Date indicated below. The City and Developer are each sometimes hereinafter referred to as a “**Party**” and collectively as the “**Parties**.”

### **RECITALS**

- A. The City is the owner of certain real property in the City of Barstow, California more particularly described in the Attachment A “Assessor Map,” consisting of approximately 22.86 acres of City-owned real property located at 850 Barstow Road, Barstow, CA 92311 (“**Site**”).
- B. The City has experienced successful commercial and residential growth, and anticipates further growth in the coming years. For this reason, the City seeks to reposition Dana Park with professional and experienced developer to execute on the development in the manner agreed upon by the Parties.
- C. The purpose of this Agreement is: (i) to establish a framework for development of the Site and negotiation of a Land Lease or Purchase and Sale Agreement or other agreement between the Parties (the “**DDA**”) for development of the Project; (ii) to give a level of assurance that the City will negotiate exclusively with Developer for a certain period of time; and (iii) to allow the parties to conceive and give substance and detail to a proposed development project for the Site. At this time, the nature and design of the Project has not been determined.
- D. The Barstow City Council authorized the execution of this Agreement at a regular meeting on \_\_\_\_\_, 2022 (“**Effective Date**”).

### **AGREEMENT**

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

NOW, THEREFORE, in view of the City’s goals and objectives involving the City’s Dana Park redevelopment and in consideration of the mutual promises set forth herein, City and Developer agree as follows:

1. **Exclusive Negotiating Period.**

A. **Exclusive Negotiating Period.** The Parties agree to diligently negotiate in good faith for a period of 12 months (the “**Negotiating Period**”) commencing on the Effective Date, for the purpose of negotiating a DDA. During the Negotiating Period (including extensions in accordance with this Agreement), the City shall not negotiate with any entity, other than Developer, regarding the development of the Site, sale, disposition, or solicit or entertain bids or proposals to do so.

B. **Extensions.** The Negotiating Period may be extended by written agreement of the Parties, in which the City Manager shall have the authority and discretion, but no obligation, to execute on behalf of the City up to two extensions of six months each. Further extensions may be approved by City Council. If a proposed DDA between the Parties is scheduled for consideration at a public hearing, the Negotiating Period shall be automatically extended for up to 30 days, if needed, to provide for consideration and action by City Council.

C. **Effect of this Agreement.** Under this Agreement, the Parties merely enter a period of exclusive negotiations. This Agreement is not intended to bind the City or Developer: (i) to acquire any property; (ii) to approve or commit to any project; or (iii) to enter into any further agreement or contract. The City reserves its general land use police powers and its discretion to make future decisions related to the Site. By entering into this Agreement, the City does not authorize any development of the property before compliance with the Planning and Zoning Law, the City’s municipal code, the California Environmental Quality Act (Public Resources Code § 21000 et seq. [“CEQA”]), the CEQA Guidelines (14 Cal. Code Reg. § 15000 et seq.), and other applicable laws, policies and procedures. The City’s consideration of any proposed development will include evaluation of alternatives to the proposal, including not approving the proposal, or adopting other, alternative legislative actions approving other types of development or other land uses than proposed. The City’s commitment to compliance with CEQA includes a full commitment to analysis, and mitigation as required, of the potential historic resources impacts of any proposed development of the property.

D. **Termination.** This Agreement may be superseded by a DDA approved by the Parties. If the Parties have not approved such an agreement upon the expiration of the Negotiating Period (as the Negotiating Period may be extended), then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement.

E. **Cure of Default.** A Party may terminate this Agreement upon the failure of the other Party to negotiate in good faith, and the failure of the other Party to cure after receipt of notice of such failure from the non-defaulting Party and continuance of such failure after fifteen (15) days opportunity to cure. No Party shall have a right to specific performance of this Agreement. In the event of an uncured default by a Party, the sole remedy of the non-defaulting Party shall be to terminate this Agreement.

## 2. **NEGOTIATION TASKS**

A. **Overview.** To facilitate negotiation of the DDA, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Section 1 in a timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period.

B. **Financing and Costs of Project.** Within the Negotiating Period (excluding extensions thereto), the Developer shall provide the City, for its review and approval, with a preliminary detailed financial analysis for the Project containing, among other matters, a development budget and operating proforma (the "Financing Proposal"). The Financing Proposal shall identify the sources of funding for each phase, or component, of the Project, including but not limited to all proposed sources of debt and equity to be utilized for the Project. The financial analysis shall be refined by the Parties during the Negotiating Period, as appropriate, and will be used to evaluate the financial feasibility of the Project and to assist in the negotiations of terms regarding development.

C. **Master Plan.** Within the initial Negotiating Period (excluding extensions thereto), the Developer shall prepare, consistent with the approved Master Development Plan, conceptual site plans including schematic design of the various components of the Project and a preliminary analysis of land use entitlements required for the entire Project, for the City's review and approval (the "Master Plan").

D. **Planning Approvals.** The Developer acknowledges that the Project requires discretionary approvals and entitlements from the City (the "Planning Approvals"). During the Negotiating Period (excluding extensions thereto), the City and the Developer will agree on the type of Planning Approvals necessary for development of the Project, which may include a site plan review, zoning amendment, a tentative map, and a final map. The Developer shall be responsible for the payment of all application fees associated with the Planning Approvals.

3. **Environmental Requirements.** State and local environmental regulations (including, without limitation, the California Environmental Quality Act) may be applicable to the proposed development of the Site. The Parties agree to cooperate to investigate and gather information relevant to the Site and the environmental impact of its proposed development. Developer shall be responsible for all cost and expense incurred by City to cause to be prepared the environmental, historic resources analyses, and similar CEQA and planning documents that may be required for the proposed project.

4. **Costs and Expenses.** All fees and expenses of engineers, architects, financial consultants, legal, planning and other consultants or contractors, retained by Developer for any evaluation, appraisal, planning or design relating to the Site or negotiation of a future agreement that may be undertaken by Developer during the Negotiation Period, pursuant to or in reliance upon this Agreement or in Developer's discretion, regarding any matter relating to the subject

matter of this Agreement, shall be at the sole cost and expense of Developer. No such activity shall be deemed to be undertaken for the benefit of, at the expense of, or in reliance upon City.

**5. Assignment.** City is entering into this Agreement on the basis of the particular experience, financial capacity, skills and capabilities of Developer. This Agreement is personal to Developer and is not assignable without the prior written consent of City, which may be given, withheld or conditioned in City’s sole and absolute discretion.

**6. Developer’s Indemnification of City.** Developer shall indemnify, defend and hold harmless City, and the elected and appointed officials, officers, agents and employees of City (individually or collectively, an “Indemnified Party”) against any and all losses arising out of any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, arising through Developer, Developer’s contractors or employees and brought or asserted against any Indemnified Party that relates to or arises out of: (i) property damage or bodily injury or death of any person in connection with this Agreement; (ii) entry upon the Site by Developer, its contractors or employees; (iii) any inspection of the Site by Developer, its contractors or employees; or (iv) the preparation of any report or plans commissioned by Developer; provided, however, that no Indemnified Party shall be entitled to indemnification under this Section for any matter caused by such Indemnified Party’s gross negligence or willful misconduct or for any matter arising from the discovery of any pre-existing condition upon the Site. In the event any action or proceeding is brought against an Indemnified Party by reason of a claim arising out of any loss for which Developer is obligated to indemnify, defend or hold harmless the Indemnified Party, and upon written notice from such Indemnified Party, Developer shall, at Developer’s sole expense, answer and otherwise defend such action or proceeding. The provisions of this Section shall survive the expiration or termination of this Agreement.

**7. Notices.** Notices required hereunder shall be in writing and sent to the following addresses, or such other address as a Party may designate by written notice, and shall be deemed effective when: (i) personally delivered; (ii) deposited in the U.S. Mail with postage prepaid, registered or certified and return receipt required; or (iii) sent by reputable overnight carrier that provides proof of delivery.

**City:**

Attn: City Manager  
City of Barstow  
City Hall  
220 E Mountain View St  
Barstow, CA 92311

**Developer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8. Miscellaneous Provisions.**

**A. Governing Law.** This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.



B. **Exhibits and Recitals.** All Exhibits and Recitals included herewith are incorporated into this Agreement by reference as if fully set forth herein.

C. **Modification.** This Agreement may be amended or modified only by a written instrument signed by both Parties.

D. **Severability.** The invalidity of any portion of this Agreement shall not affect the validity of the remaining portions, which shall remain in full force and effect.

E. **No Third Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the Parties. No other person shall have any right of action based upon any provision of this Agreement.

F. **Headings.** The headings included in this Agreement are for convenient reference only and shall not affect the interpretation of this Agreement.

G. **Waiver.** The failure of a Party to enforce any right hereunder will not constitute a waiver of any right or damages. No waiver, benefit, privilege, or service voluntarily given or performed will establish any contractual right by custom, estoppel, or otherwise.

H. **Time.** The Parties agree that time is of the essence with respect to performance of all obligations under this Agreement.

I. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the Site, and supersedes all prior negotiations, understandings or agreements as to the subject matter herein.

J. **Execution.** This Agreement may be executed in counterparts, which together shall compose a single instrument. A Party's signature transmitted by facsimile or electronic mail shall be valid and effective.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first appearing above.

**CITY OF BARSTOW**

**DEVELOPER**

By: \_\_\_\_\_  
Willie Hopkins  
City Manager

By: \_\_\_\_\_

APPROVED AS TO FORM:  
*Matthew T. Summers, City Attorney*

By: \_\_\_\_\_

**Attachment C:**  
**Cost Proposal**

## Attachment D: Registration Form

To be officially registered as a respondent for this specific project, and to ensure all interested parties receive all addendums and updates to this RFQ/RFP the following information must be submitted via email to: [barstow@localequity.com](mailto:barstow@localequity.com)

Failure to officially register may result in not receiving addendum(s), updates, and amendments to this RFQ/P. In addition, failure to acknowledge future receipt of addendum(s), updates, and amendments may render your proposal as non-responsive.

It is the respondent's responsibility to verify that their firm is officially registered.

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Primary Contact Name: \_\_\_\_\_

Primary Contact Email Address: \_\_\_\_\_

Primary Contact Phone Number: \_\_\_\_\_

Secondary Contact Name: \_\_\_\_\_

Secondary Contact Email Address: \_\_\_\_\_

Secondary Contact Phone Number: \_\_\_\_\_