

***Pacific Place Garage /Request for Proposals
Submitted Questions and Answers***

(Submitted questions are in plain font with quotation marks; answers are in bold italics)

“I just had one quick question related to the RFP. I understand that the Cost Proposal is worth 400 points. How will Cost Proposals be scored? Will a high score correlate to the lowest fees or will points be earned for value (combination of cost and firm qualifications)?”

RES has yet to determine exactly how cost proposals will be scored. RES recognizes that given the complexity of the Garage some part of the real estate firm’s fee might not be strictly commission-driven, but instead might be payable on a fee-for-services basis. Thus, proposers should address to what extent their fee would be payable on a fee-for-services basis, and whether any fee-for-services is to be offset against a commission payable pursuant to the closing of a sale.

“References are not specifically requested in Section 8 (Response Materials) but it is indicated in Section 9.4 that references may be contacted. Should we provide a separate page of specific references or will the City be gleaning the reference information from the supporting/illustrative projects we provide in support of our bid?”

References are not required at this time. But, pursuant to section 9.4 of the Request for Proposals, RES reserves the right to – at a later date - both request references and contact them.

“Regarding the 128K square feet of additional development potential referenced in the Umbrella Agreement (Page 5, Section 3C), who controls this? Does the City have the right to sell it?”

Although the City – in its capacity as the owner of the Garage, has considerable control over the development of additional floor area within the Retail (condominium) Unit, it does not have the right to sell any development rights associated with the Retail Unit.

While the duty to establish a negative easement and restrictive covenant (also referred to elsewhere in the originating documents as an “air space restriction” or “bulk restriction”; herein as the “negative easement”) restricting the Retail Unit’s ability to develop additional floor area emanates from section 3-C of the Umbrella Agreement, the actual negative easement is established in section 9.10 of the condominium declaration for Pacific Place (see King County recording number 199808271807). The negative easement is “in favor of and

appurtenant to the Garage Unit.” It follows that the Garage is the benefited property, while the Retail Unit is the burdened property.

Typically, the owner of the benefited property has a unilateral right to terminate the easement. But the interplay between the condominium declaration and the Umbrella Agreement complicates matters.

More specifically, there are three potential stakeholders under the Umbrella Agreement: first, MPH Pacific Place, as the owner of Retail Unit (and as a successor-in-interest to Pine Street Development LLC); second, the City of Seattle, in its capacity as the owner of the Garage (and as a successor-in-interest to Community Development Properties King County II); third, the City of Seattle, in its capacity as a possible third-party beneficiary to the Umbrella Agreement.

While the City’s conveyance of the Garage will terminate its rights under the Umbrella Agreement which are specific to the ownership of the Garage, it is possible that other Umbrella Agreement rights of the City might survive the City’s conveyance of the Garage.

That being said, while the Garage owner’s termination of the condominium declaration’s negative easement is a condition precedent to the development of an additional 128,000 square feet of floor area within the Retail Unit, given that other, remaining rights of the City under Umbrella Agreement might survive the City’s conveyance of the Garage, the termination of the negative easement might not be sufficient to clear the way for the development of the additional floor area.

“Would the City provide a post-award timeline illustrating the expectations and deadlines of the plans for the City of Seattle?”

Section 8.7 of the Request for Proposals discusses the primary constraint on the City’s timeline – the City Council’s schedule. Given both (a) the eight-week lead time to bring an item to a City Council committee (let alone to the City Council as a whole) and (b) the fact that the City Council does not act on legislation during its mid-September through November budget window, it follows that a purchase and sale agreement for the Garage (subject only to City Council approval) should be fully executed by no later than mid-July.