



## MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Brown, Carlson, Barofsky, McRae and Schlossberg  
FROM: Frank Lawson, General Manager; Anne Kah, Administrative Services Manager  
DATE: April 27, 2022 (May 3, 2022 Board Meeting)  
SUBJECT: Amendment to Request for Proposals for EWEB's HQ Riverfront Property  
OBJECTIVE: Action

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### **Issue**

The Request for Proposals (RFP) and RFP process as currently written may limit the Board's decision making in some situations, therefore a revision has been made to allow the Board greater flexibility in awarding to a Proposer within the Competitive Range.

### **Background**

On April 5, 2022, Commissioners approved the RFP; Section 4.6 Competitive Range, and 4.7.1 Selection, state "If the Board elects to request presentations, the Proposer with the highest total score as a result of written proposal scoring AND presentation scoring will be awarded the contract."

### **Discussion**

As presently written, the overall scoring of proposals equals the cumulative points awarded for written proposals (scored by the Evaluation Team) and the points awarded for presentations (scored by the Board). The RFP does not specifically include a provision for the Board to rank or score written proposals.

Due to the subjective nature of some evaluation criteria, we recognize the collective Board and the Evaluation Team may value some criteria differently.

In some scenarios, the RFP's current language could restrict the Board's decision making. For example, if the Board did not wish to request presentations or best and final offers, there is no stated provision for the Board to rank proposals in another way. Therefore, the proposal scored highest by the Evaluation Team could appear to be the successful proposal. Should the Board wish to make an award to another Proposer in the Competitive Range, there is no mechanism to articulate the basis for their decision which could draw extra scrutiny in the event of an award protest.

The RFP has been amended to allow the collective Board to rank written proposals of the Proposers selected in the Competitive Range. The Board may reach a consensus on the ranking, or the Board may consider individual ratings, or the group average of ratings to reach a final decision on the ranking of proposals. By the nature of the Competitive Range, any proposal on the "short list" has a reasonable chance of being selected. Points awarded by the Evaluation Team will be used to determine the

Competitive Range but will not carry over to the next step of the competitive process. As such, proposals within the Competitive Range will have an equal chance of being selected by the Board.

**Recommendation/ Requested Board Action**

The proposed revisions are reflected in Sections 3, 4.6, 4.6.1, 4.7, 4.7.1, and 4.9 of the RFP; the relevant excerpts and the amended solicitation process are provided for the Board's consideration. Management recommends approval of the RFP and solicitation process as amended.

Furthermore Management requests the Board's authorization to make any additional non-substantive administrative or process edits that are necessary to finalize the RFP without further Board approval.

**Reference Documents:**

Amended RFP

Amended EWEB Headquarters Property – Request for Proposals Solicitation Process

## **EWEB Headquarters Property – Request for Proposals Solicitation Process, Amended May 3, 2022**

The process will be managed through the Project Team, Evaluation Team, General Manager, and Board. Tim O'Dell, EWEB's resident Right-of-Way Agent, will fill the role of EWEB's real estate broker and will be supported by the counsel of EWEB's attorneys, Gretchen Barnes of Cable Huston LLC, and Eric DeFreest of Luvaas Cobb.

Questions or requests for changes from Proposers and addressing unforeseen circumstances not covered by the process will be handled via Addenda by the Purchasing Coordinator. Depending on the nature of the situation, the Purchasing Coordinator will use their professional judgment whether to escalate the issue to the Project Team, and/or the Board.

EWEB will dispose of the property in accordance with applicable ordinances, statutes, laws, Board policies (in particular SD14 and Board-Staff Linkage policies), and EWEB Property Management Procedures. A [summary of statutes applicable to the sale of the property](#) was provided to the Board in the backgrounder for the November 2, 2021 board meeting.

### Project Team, Evaluation Team and Board Liaison Roles and Responsibilities

Two distinct staff managed teams will work on separate activities that support the eventual sale of the property. Board Liaisons will participate fully as Team members in all facets of their respective Team's responsibilities, subject to any restriction under the Oregon Government Ethics laws. The Board Liaisons will act as individual Commissioners, with no authority to act on behalf of the Board at large.

The Project Team and Evaluation Team members will take care to avoid communications and sharing of information between Teams that could appear to create a quorum of Commissioners or give appearance of serial communication among a quorum. In the same vein, Board Liaisons will not communicate with each other, or with other Board members, outside the staff project meetings and Board meetings to discuss their thoughts and opinions on this matter as this could be perceived as a meeting of the Board.

The Project Team is tasked with responsibilities related, but not limited to, the development and issuance of the RFP, PSA template, and solicitation processes. Examples include creating drafts and recommendations for the following:

- priorities, goals, and acceptable parameters for disposal of the property,
- selection process and schedule,
- Purchase and Sale Agreement template,
- RFP content,
- evaluation criteria and scoring that will be used by the Evaluation Team to assess proposals,
- non-disclosure agreement,
- public engagement strategies.

The Project Team is comprised of two Board Liaisons and members from EWEB's Property,

Purchasing, Facilities, Communications & Marketing, Management, and GM Office. The term of the Project Team Board Liaison assignment will expire when the RFP has closed. Assigned staff will remain active members on the Project Team to carry out administrative and managerial duties, provide guidance related to processes, and may perform an advisory role to the Evaluation Team and Board through the duration of the RFP process. During the Evaluation Team and Board's consideration of proposals, the expertise of staff Project Team members may be used to provide an unbiased explanation of complexities of property transactions and potential outcomes of the options presented by proposers.

Separately, the Evaluation Team will be composed of two Board Liaisons and an additional three to seven members appointed by the General Manager. This Team will adhere to rules which are intended to provide fair and equitable evaluation of proposals and avoidance of conflicts of interest.

The Evaluation Team will be tasked with:

- comprehensive evaluation and scoring of proposals,
- recommendation for Competitive Range to the General Manager and the full Board.

The term of the Evaluation Team Board Liaison assignment will expire after a recommendation has been submitted to the full Board, and the Board has had an opportunity to resolve all questions or clarifications with the Evaluation Team.

#### RFP Development

##### *Acquisition Options (RFP Section 2.3)*

The intent of the solicitation is to encourage the broadest range of proposals from both public and private entities. The Board indicated that sale/divestiture of the property is preferred, however, creative options that will facilitate financing should remain open. Offers may include purchase or lease-to-own. Property trades and long-term lease without the intent to purchase are not acceptable forms of offers for the purpose of the RFP.

##### *Evaluation Criteria (RFP Section 3)*

"Section 3.0 Triangle Lot Impact to Future Intended Use" is intended to obtain information from Proposers to help the Board with their future decision on the postponed Resolution No. 2207. This section is for informational purposes only and no points will be rewarded.

Proposals will be evaluated according to the following set of criteria and associated points, using a 100-point scoring system.

- 3.1 Future Intended Use/Community Benefit (20 points possible)
- 3.2 Economic Benefit to Community (i.e. property tax, job creation, tourism, etc.) (20 points possible)
- 3.3 Economic Benefit to EWEB's Customer-Owners/Sale Price (40 points possible)
- 3.4 Terms and Conditions/Contingencies (10 points possible)
- 3.5 Qualifications and Experience with Similar Developments/Endeavors (10 possible points)

A Purchase and Sale Agreement (PSA) template will be incorporated in the RFP documents

with the intent to establish general expectations for the associated terms and conditions. Included in the RFP evaluation criteria 3.4 Terms and Conditions/Contingencies, proposers will have the opportunity to provide a list of requested exceptions to the sample PSA. Specific terms and conditions, and other details such as proposal follow-through assurance and potential deed restrictions will be negotiated with the successful Proposer.

When the building is sold, included in the terms and conditions of the sale, EWEB may require a negotiated lease agreement to meet its interim/transitory space requirements for the 4th floor backup Dispatch Center potentially through Q2 2023.

Prior to RFP closing and before any review of proposals, the Project Team will submit the Evaluation Team instructions to the Board for consideration and feedback. The instructions will provide guidance to the Evaluation Team around things to consider when allocating points within each category of criteria.

*Confidentiality and Disclosure of Proposal or Contents (RFP Section 1.14 and 1.15)*

Proposals are not automatically exempt from public records disclosure but may qualify under certain circumstances described in ORS 192.355(4). Additionally, the Evaluation Team's assessment and competitive range recommendation may be an Internal Advisory Communication protected by ORS 192.355(1).

Proposers may provide certain sensitive information under a uniform Non-Disclosure Agreement (NDA), so that certain proposal information may be considered a Confidential Submission under ORS 192.355(4). For the protection of all proposers during the competitive process, EWEB will not disclose the contents of proposals publicly. While the solicitation is underway, EWEB will only disclose the name of the proposers, a descriptive title of the proposal, and indicate which proposals are within the competitive range (notwithstanding Oregon Public Records Law (ORS 192.344 to 192.478)).

Furthermore, for proposals which qualify for the competitive range, EWEB reserves the right to make known the proposer's identity, a summary of the intended use, and purchase price of proposals, except for any information that is exempt from disclosure according to the terms of the solicitation and applicable Non-Disclosure Agreement. All proposals may be made available for public inspection after Intent to Award is issued, except for any information that is exempt from disclosure according to the terms of the solicitation and applicable Non-Disclosure Agreement.

It is noteworthy that the scope of information considered confidential under ORS 192.355(4) and ORS 192.355(1) is also relevant to what the Board may discuss in executive session.

#### RFP Issuance/Open for Responses

EWEB plans to issue the RFP in the second quarter of 2022.

A public hearing on the procedure for the sale of EWEB's Riverfront/Headquarters Property was held during the April 5, 2022 Board Meeting. Following the public hearing and Board approval, notification of the property's availability and Request for Proposals will be posted on the State's procurement website [OregonBuys.gov](https://OregonBuys.gov) and [EWEB.org](https://EWEB.org), and advertisements will be placed in the newspaper(s) of record. Entities who have already expressed interest in the property will receive an email directing them to these websites.

While the solicitation is open, a non-mandatory property site inspection will be offered to all Proposers at a scheduled date and time. Additional tours may be scheduled upon request. Interested parties will be encouraged to ask questions, responses related to the substance of the RFP that EWEB believes will be of value to other proposers will be shared equitably. Proposers will be responsible for understanding how and if responses apply to their specific situation.

Concurrent to the RFP open period, the Project Team will finalize instructions to be used by the Evaluation Team, these guidelines will be submitted to the collective Board for consideration and feedback prior to the RFP closing date.

A Closing Date will be established 90 days after the RFP issuance. EWEB reserves the right to extend the RFP Closing Date via Addenda at the discretion of the Purchasing Coordinator.

The RFP will request that Proposers express an "Intent to Propose" within 60 days of RFP issuance (RFP Section 1.3 Letter of Intent to Propose).

#### Review and Evaluation of Proposals – to commence late Q3 or early Q4 2022

After the Closing Date, the Project Team Liaisons term will end, and the Evaluation Team will commence with comprehensive scoring.

#### *Competitive Range (RFP Section 4.6)*

Based on the allocation of points established in the RFP, a range of proposals which are deemed to have a reasonable chance of being selected for award (the "Competitive Range"), will be determined by the Evaluation Team. The range will be dictated by a "natural break" in scoring (as opposed to a predetermined number of proposals). For example, suppose there are seven proposals and four clearly score higher than the others and their scores are not significantly different from one another. In this example the top four proposals would be considered in the Competitive Range.

All submitted proposals, ratings, and a recommendation for the Competitive Range will be forwarded to the General Manager. Following the General Manager's examination and confidence in the process, he will provide all proposals to the Board with a recommendation for the Competitive Range based on the recommendation and scoring of Evaluation Team. The aforementioned information will be contained in a confidential memorandum in accordance with ORS 192.355(1) and Confidential Submissions in accordance with ORS 192.355(4).

The materials will be provided to all Commissioners for independent review in advance of the Board Meeting.

The Board may ask questions and discuss the recommendation with the Evaluation Team in executive session pursuant to ORS 192.355(1) which exempts communications within a public body of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of action. Because some proposals may be eliminated during this critical phase of the process, it is important for the Board to have a clear understanding of the reasoning behind the recommendation, and, if needed, an opportunity to discuss the General Manager's and Evaluation Team's perspectives openly to assure the Board that the appropriate proposals advance to the next step.

Commissioners also have discretion to hold an executive session for a Board discussion of confidential proposal content as designated through the Non-Disclosure agreement within the scope of ORS 192.355(4). Pursuant to ORS 192.660(2)(f) the Board may meet in executive session to discuss "exempt public records".

In public session, the Board will deliberate and take action to either expand the Competitive Range to include the next highest scored proposal(s), eliminate proposal(s) from the Competitive Range, or affirm the "short list" for further evaluation.

Once the Competitive Range is determined by the Board, only that range will be considered for award.

EWEB will notify all Proposers whether they have been selected for the Competitive Range (or "short list").

Optionally, the Board may ask Competitive Range Proposers to deliver a live presentation in a public Board Meeting for the purpose of providing supplemental information and answering clarifying questions about their proposal. It is the Board's discretion whether this step is necessary to assist them in arriving at a decision to ultimately award a contract. Once all presentations (if any) are complete, the Board will make an assessment in executive session. The collective Board will rank written proposals of the Proposers selected in the Competitive Range. The Board may reach a consensus on the ranking, or the Board may consider individual ratings, or the group average of ratings to reach a final decision on the ranking of proposals.

#### *Best and Final Offers (RFP Section 4.6 Competitive Range)*

EWEB reserves the right to request Best and Final Offers to provide flexibility to negotiate with multiple parties in the event a single proposal does not distinctly rise above the others. There is no known statutory requirement directing the Board to seek Best and Final Offers in this circumstance, nor is there unilateral right of the proposers to supplement their submitted proposals. Reserving this right does not require the Board to exercise the option, it merely leaves the possibility open for the Board's discretion should the situation call for it.

Any Best and Final Offers may be submitted under a uniform Non-Disclosure Agreement (NDA), so that sensitive information may be considered a Confidential Submission under ORS 192.355 (4).

EWEB reserves the right to make Best and Final Offers publicly available at the conclusion of the award process, except to the extent that Proposer has appropriately marked discrete information as Confidential Information or Trade Secret Information subject to the Non-Disclosure Agreement.

Following Board discussion of proposals (and/or presentations if any) in executive session, Commissioners will enter public session to decide whether to request Best and Final Offers from any Proposers. If the Board exercises its option to request Best and Final Offers, then selected Proposers will be permitted to amend their proposals, if desired, according to a predefined process developed by the Project Team.

#### Selection and Award – to commence Q4 2022 (RFP Section 4.7-4.9)

An executive session will be held pursuant to ORS 192.660(2)(f) – to discuss exempt public records, and pursuant to ORS 192.660(2)(e) - to deliberate with persons designated by the governing body to negotiate the real property transaction with the selected proposer. During the non-public meeting, the Board will discuss any Best and Final Offers (submitted according to ORS 192.355 (4)) as well as provide the General Manager with negotiation criteria and limits for the property transaction.

Following executive session, the Board will convene in public session to conduct final deliberations and take formal action to announce its Intent to Award. At this time the Board will also direct the General Manager to negotiate and execute a Purchase & Sale Agreement, and all other documents necessary to complete the transaction(s), with the successful Proposer within the guidelines established in executive session.

At the subsequent Board Meeting, a resolution will be presented for the Board's formal action.

#### *Protest Process (RFP Sections 1.5 Solicitation Protest and 4.10 Award Protest)*

EWEB has the discretion to allow protests or to reconsider decisions. Although protests are unlikely, the RFP includes instructions for submitting protests and the associated timeframe for doing so. A pre-defined process for Award Protest has been developed to establish guidelines that each side can rely upon in the event of an objection.

#### *Negotiations and Execution of Agreement*

Following Award, EWEB's Property representative, and legal counsel will provide counsel and assistance throughout the final negotiations and execution of the Purchase and Sale Agreement.



### Communications Plan

A communications framework was provided to the Board as correspondence for the February 1, 2022 meeting. Later that month, EWEB issued a press release announcing the upcoming sale of the Riverfront/Headquarters Property. Three local television stations, the Register-Guard newspaper, and Eugene Chamber of Commerce shared our story, generating significant community discussion. The press release and a one-minute video announcement were published in EWEB's newsroom and shared on EWEB's social media channels. A listing of these media announcements, with clickable links for viewing, are included on the project website [eweb.org/riverfront](http://eweb.org/riverfront).

The public will be able to access information about EWEB's Riverfront/Headquarters Property, the RFP, and associated process by visiting the project website. Timely updates and additional information will be provided as the RFP process unfolds.

DRAFT



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Brown, Carlson, Barofsky, McRae, and Schlossberg  
FROM: Anne Kah, Administrative Services Manager; Frank Lawson, CEO & General Manager  
DATE: March 30, 2022 (April 5, 2022, Regular Session)  
SUBJECT: EWEB Headquarters Property – Request for Proposals Solicitation Process  
OBJECTIVE: Board Action

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## Issue

EWEB's downtown headquarters site is the last piece of the Utility's riverfront property that has been slated for redevelopment as part of the EWEB Riverfront Master Plan, which was finalized in 2010 after consulting with hundreds of community members under the guidance of a Community Advisory Team.

According to [ORS 221.727](#), the EWEB Board of Commissioners may adopt, after public notice and hearing, a procedure for the sale of individual parcels of a class of EWEB's owned real properties, or any interest therein, under a single program established for the sale of that class of properties. EWEB may thereafter sell any parcel under that adopted procedure in lieu of the procedure under ORS 221.725 (Sale of city real property).

The Board wishes to adopt such a procedure for the sale of EWEB's Riverfront/Headquarters Property. EWEB intends to use a Request for Proposals (RFP) to carry out an equitable process to select the offer that is in the best interest of our customer-owners, EWEB, and the community. At the April 5, 2022 Board Meeting, Management will seek approval of the solicitation process as well as the Request for Proposals (RFP), sample Purchase and Sale Agreement (PSA), and Non-Disclosure Agreement documents.

This memorandum contains the recommendation of the EWEB Riverfront Property Project Team (Project Team) and General Manager Lawson. These drafts have been reviewed by legal counsel to ensure compliance with applicable rules and policies, as well as fairness of the evaluation criteria and scoring. The process is intended to provide a solid framework to guide the Board, General Manager, Project Team, EWEB Riverfront Property Evaluation Team (Evaluation Team), and Proposers throughout the solicitation, so the respective parties and the public know what to expect.

## Background

On November 6, 2018, Resolution No. 1826 declared the EWEB Headquarters (HQ) buildings and associated property surplus for utility purposes. The City Manager expressed interest in acquiring the property under the provisions of City Code 2.196 which created a 5-year timeline for EWEB and the

City to fulfill agreed-to terms.

On December 3, 2019, Resolution No. 1939 authorized the General Manager to negotiate and execute the terms and conditions of the potential post-remediation transfer of real property south of the former EWEB steam plant and substation, referred to as the “MGP Site” to the City of Eugene under the guidance provided by the Board in executive session.

On April 21, 2021, EWEB executed a Purchase and Sale Agreement (PSA) with the City of Eugene for the sale of the “MGP Site”. The Agreement included conditions that required the City of Eugene to waive its rights to the Headquarters property effective upon the settlement parties (Cascade and PacifiCorp) agreement of EWEB’s assignment of maintenance responsibilities to the City.

On August 17, 2021, that condition was met, and the City of Eugene thereby released their exclusive right to negotiate for the sale/transfer of the Headquarters buildings and property under Eugene City Code Section 2.196. This milestone permits EWEB to dispose of the Headquarters buildings and property.

According to EWEB Property Management Policies, if the City of Eugene waives their exclusive right to negotiate, EWEB will initially explore the interest of other public agencies in the surplus property.

Staff engaged in a targeted outreach to informally gauge local government and community focused organizations’ desire to purchase or lease the property. The results of this endeavor revealed interest from several entities who aspired to lease, lease to own, and/or purchase the property. Respondents shared inspiring visions and indicated varying degrees of flexibility regarding timing. The need for fundraising and/or partnerships appeared to be a common theme. This information was shared with Commissioners in October 2021.

At the November 2, 2021, Board Meeting, Commissioners directed the General Manager to deploy a formal Request for Proposals (RFP) process, directed to the real estate market at large, for the sale of the HQ property.

Following discussion at the January 4, 2022 Board Meeting, Commissioners adopted [Resolution No. 2201](#) on February 1, 2022. This action formally assigned Sonya Carlson and John Brown to be individual Board Liaisons to the staff-managed Project Team. Additionally, Mindy Schlossberg and John Barofsky were assigned to be individual Board Liaisons to the staff-managed Evaluation Team. The liaisons will participate fully as individual members on their respective Teams. All decisions requiring board-action will be made by the full Board in accordance with the EWEB bylaws.

At the January 4 and March 1, 2022 Board Meetings, Management provided a draft recommendation for the solicitation process as well as preliminary drafts of the Request for Proposals (RFP) and Purchase and Sale Agreement (PSA) documents. Commissioners provided feedback and direction which the Project Team, including two Board Liaisons, have incorporated into the following updated framework and documents.

### **Procedure for the Sale of EWEB’s Riverfront/Headquarters Property**

The process will be managed through the Project Team, Evaluation Team, General Manager, and Board. Tim O’Dell, EWEB’s resident Right-of-Way Agent, will fill the role of EWEB’s real estate

broker and will be supported by the counsel of EWEB's attorneys, Gretchen Barnes of Cable Huston LLC, and Eric DeFreest of Luvaas Cobb.

Questions or requests for changes from Proposers and addressing unforeseen circumstances not covered by the process will be handled via Addenda by the Purchasing Coordinator. Depending on the nature of the situation, the Purchasing Coordinator will use their professional judgment whether to escalate the issue to the Project Team, and/or the Board.

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- priorities, goals, and acceptable parameters for disposal of the property,
- selection process and schedule,
- Purchase and Sale Agreement template,
- RFP content,
- evaluation criteria and scoring that will be used by the Evaluation Team to assess proposals,
- evaluation criteria and scoring that will be used by the Board to assess potential presentations,
- non-disclosure agreement,
- public engagement strategies.

The Project Team is comprised of two Board Liaisons and members from EWEB's Property, Purchasing, Facilities, Communications & Marketing, Management, and GM Office. The term of the Project Team Board Liaison assignment will expire when the RFP has closed. Assigned staff will remain active members on the Project Team to carry out administrative and managerial duties, provide guidance related to processes, and may perform an advisory role to the Evaluation Team and Board through the duration of the RFP process. During the Evaluation Team and Board's consideration of proposals, the expertise of staff Project Team members may be used to provide an unbiased

explanation of complexities of property transactions and potential outcomes of the options presented by proposers.

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A Purchase and Sale Agreement (PSA) template will be incorporated in the RFP documents with the intent to establish general expectations for the associated terms and conditions. Included in the RFP evaluation criteria 3.4 Terms and Conditions/Contingencies, proposers will have the opportunity to provide a list of requested exceptions to the sample PSA. Specific terms and conditions, and other details such as proposal follow-through assurance and potential deed restrictions will be negotiated with the successful Proposer.

When the building is sold, included in the terms and conditions of the sale, EWEB may require a negotiated lease agreement to meet its interim/transitory space requirements for the 4th floor backup Dispatch Center potentially through Q2 2023.

Prior to RFP closing and before any review of proposals, the Project Team will submit detailed scoring instructions to the Board for consideration and approval. The instructions will provide guidance around allocating points within each category of criteria – for example, types of use that are considered valuable, and a formula for assigning points based on the offer price.

*Confidentiality and Disclosure of Proposal or Contents (RFP Section 1.14 and 1.15)*

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collective Board for consideration and approval prior to the RFP closing date.

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*Competitive Range (RFP Section 4.6)*

Based on the allocation of points established in the RFP, a range of proposals which are deemed to have a reasonable chance of being selected for award (the “Competitive Range”), will be determined by the Evaluation Team using the Board-approved evaluation instructions. The range will be dictated by a “natural break” in scoring (as opposed to a predetermined number of proposals). For example, suppose there are seven proposals and four clearly score higher than the others and their scores are not significantly different from one another. In this example the top four proposals would be considered in the Competitive Range.

All submitted proposals, ratings, and a recommendation for the Competitive Range will be forwarded to the General Manager. Following the General Manager’s examination and confidence in the process, he will provide all proposals to the Board with a recommendation for the Competitive Range based on the recommendation and scoring of Evaluation Team. The aforementioned information will be contained in a confidential memorandum in accordance with ORS 192.355(1) and Confidential Submissions in accordance with ORS 192.355(4).

The materials will be provided to all Commissioners for independent review in advance of the Board Meeting. Each proposal in the Competitive Range should be evaluated by Commissioners considering only the goals and all other factors contained in the RFP.

The Board may ask questions and discuss the recommendation with the Evaluation Team in executive session pursuant to ORS 192.355(1) which exempts communications within a public body of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of action. Because some proposals may be eliminated during this critical phase of the process, it is important for the Board to have a clear understanding of the reasoning behind the recommendation, and, if needed, an opportunity to discuss the General Manager’s and Evaluation Team’s perspectives openly to assure the Board that the appropriate proposals advance to the next step.

Commissioners also have discretion to hold an executive session for a Board discussion of confidential proposal content as designated through the Non-Disclosure agreement within the scope of ORS 192.355(4). Pursuant to ORS 192.660(2)(f) the Board may meet in executive session to discuss “exempt public records”.

In public session, the Board will deliberate and take action to either expand the Competitive Range to include the next highest scored proposal(s), eliminate proposal(s) from the Competitive Range, or affirm the “short list” for further evaluation.

Once the Competitive Range is determined by the Board, only that range will be considered for award.

EWEB will notify all Proposers whether they have been selected for the Competitive Range (or “short list”).

Optionally, the Board may ask Competitive Range Proposers to deliver a live presentation in a public Board Meeting for the purpose of providing supplemental information and answering clarifying questions about their proposal. It is the Board’s discretion whether this step is necessary to assist them in arriving at a decision to ultimately award a contract. Once all presentations (if any) are complete, the Board will make an assessment in executive session using the evaluation and scoring methodology previously defined by the Project Team and approved by the Board for this step of the process.

#### *Best and Final Offers (RFP Section 4.6 Competitive Range)*

EWEB reserves the right to request Best and Final Offers to provide flexibility to negotiate with multiple parties in the event a single proposal does not distinctly rise above the others. There is no known statutory requirement directing the Board to seek Best and Final Offers in this circumstance, nor is there unilateral right of the proposers to supplement their submitted proposals. Reserving this right does not require the Board to exercise the option, it merely leaves the possibility open for the Board’s discretion should the situation call for it.

Any Best and Final Offers may be submitted under a uniform Non-Disclosure Agreement (NDA), so that sensitive information may be considered a Confidential Submission under ORS 192.355 (4).

EWEB reserves the right to make Best and Final Offers publicly available at the conclusion of the award process, except to the extent that Proposer has appropriately marked discrete information as Confidential Information or Trade Secret Information subject to the Non-Disclosure Agreement.

Following Board discussion of proposals (and/or presentations if any) in executive session, Commissioners will enter public session to decide whether to request Best and Final Offers from any Proposers. If the Board exercises its option to request Best and Final Offers, then selected Proposers will be permitted to amend their proposals, if desired, according to a predefined process developed by the Project Team.

#### Selection and Award – to commence Q4 2022 (RFP Section 4.7-4.9)

An executive session will be held pursuant to ORS 192.660(2)(f) – to discuss exempt public records, and pursuant to ORS 192.660(2)(e) - to deliberate with persons designated by the governing body to negotiate the real property transaction with the selected proposer. During the non-public meeting, the Board will discuss any Best and Final Offers (submitted according to ORS 192.355 (4)) as well as provide the General Manager with negotiation criteria and limits for the property transaction.

Following executive session, the Board will convene in public session to conduct final deliberations and take formal action to announce its Intent to Award. At this time the Board will also direct the



General Manager to negotiate and execute a Purchase & Sale Agreement, and all other documents necessary to complete the transaction(s), with the successful Proposer within the guidelines established in executive session.

At the subsequent Board Meeting, a resolution will be presented for the Board's formal action.

#### *Protest Process (RFP Sections 1.5 Solicitation Protest and 4.10 Award Protest)*

EWEB has the discretion to allow protests or to reconsider decisions. Although protests are unlikely, the RFP includes instructions for submitting protests and the associated timeframe for doing so. A pre-defined process for Award Protest has been developed to establish guidelines that each side can rely upon in the event of an objection.

#### *Negotiations and Execution of Agreement*

Following Award, EWEB's Property representative, and legal counsel will provide counsel and assistance throughout the final negotiations and execution of the Purchase and Sale Agreement.

#### Communications Plan

A communications framework was provided to the Board as correspondence for the February 1, 2022 meeting. Later that month, EWEB issued a press release announcing the upcoming sale of the Riverfront/Headquarters Property. Three local television stations, the Register-Guard newspaper, and Eugene Chamber of Commerce shared our story, generating significant community discussion. The press release and a one-minute video announcement were published in EWEB's newsroom and shared on EWEB's social media channels. A listing of these media announcements, with clickable links for viewing, will be included on the project website.

The public will be able to access information about EWEB's Riverfront/Headquarters Property, the RFP, and associated process by visiting the project website. Timely updates and additional information will be provided as the RFP process unfolds.

#### **Recommendation/Requested Board Action**

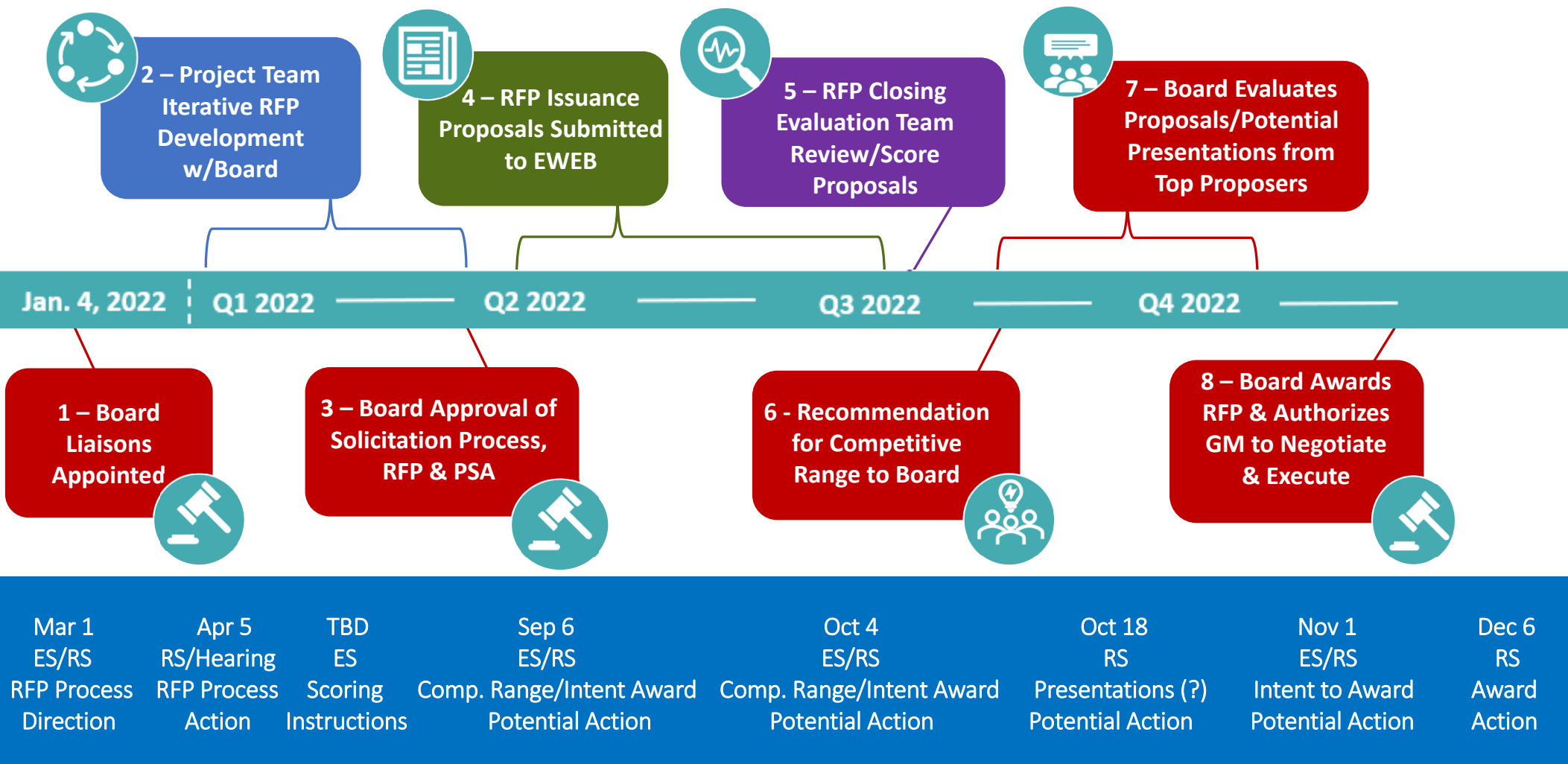
Management's recommendation is contained in this backgrounder and attachments. A public hearing will be held on April 5, 2022. Following public comments Management will seek the Board's approval of the Draft RFP Solicitation Process contained in this memorandum, as well as the Draft Request for Proposals, Draft Purchase and Sale Agreement, Draft Non-Disclosure Agreement which were provided to the Board pursuant to ORS 192.355(1).

In the event the Board does not wish to approve the complete package of documents on April 5, 2022 Management suggests the Board consider individual motions to approve discrete items that meet the Board's approval.

#### **Attachments**

1. Timeline
2. Eugene Code 9.3145 Permitted Uses
3. Eugene Code 9.3146 Prohibited Uses

# HQ Process Flow & Timing



## 9.3145 S-DR Downtown Riverfront Special Area Zone Permitted Uses.

The uses listed at EC [9.3145\(1\)](#) through [\(8\)](#) are permitted in the S-DR Zone as specified below, except as limited at EC [9.3146](#) S-DR Downtown Riverfront Special Area Zone Prohibited Uses and EC [9.3147](#) S-DR Downtown Riverfront Special Area Zone Willamette Greenway Setback. Accessory uses as defined at EC [9.0500](#) are permitted.

(1) *Retail Sales and Service Uses.* Permitted as specified in [\(a\)](#) through [\(c\)](#) below. This category of uses refers to the sale, lease, or rent of products to the general public; personal services; entertainment; product repair; or services for consumer and business goods.

(a) *Retail Sales – Oriented.* Permitted in S-DR/MU, S-DR/MU/1, and S-DR/MU/2. Examples include, but are not limited to:

1. Consumer home and business goods stores;
2. Consumer vehicle stores (including passenger vehicles, motorcycles, light and medium trucks, boat and watercraft, bicycles, and other recreational vehicles) provided the activity is within a building;
3. General merchandise stores (including supermarket and department stores).

(b) *Personal Service – Oriented.* Permitted in S-DR/MU, S-DR/MU/1 (above ground floor only), and S-DR/MU/2. Examples include, but are not limited to:

1. Banks and credit unions;
2. Business, arts, and other trade schools;
3. Dance or music studios;
4. Mail, photo, copy, and package services;
5. Personal care services;
6. Urgent medical care;
7. Daycare, preschools, and nursery schools.

(c) *Entertainment – Oriented.* Permitted in S-DR/MU, S-DR/MU/1, and S-DR/MU/2. Examples include, but are not limited to:

1. Artist galleries and studios;
2. Health clubs, gyms, membership clubs, and lodges;
3. Hotels, motels, and other temporary lodging;
4. Indoor or outdoor entertainment activities (including pool halls, bowling alleys, ice rinks, and game arcades);

5. Restaurants, cafes, delicatessens, brewpubs, taverns, and bars;
6. Theaters.

(2) *Office Uses*. Permitted in S-DR/MU, S-DR/MU/1 (above ground floor only), and S-DR/MU/2. This category of uses refers to activities conducted in an office setting generally focused on business, professional, medical, or financial services. Examples include, but are not limited to:

- (a) Financial businesses (including lenders, brokerage houses, bank headquarters, and real estate agents);
- (b) Medical, dental, and veterinarian clinics and laboratories;
- (c) Professional services (including lawyers, accountants, engineers, architects, and planners);
- (d) Sales offices;
- (e) TV and radio studios;
- (f) Live/work units (where there is an office on the ground floor with residential above in an interconnected unit).

(3) *Residential Uses*. Permitted in S-DR/MU, S-DR/MU/1 (above ground floor only), and S-DR/MU/2. This category of uses refers to the residential occupancy of a dwelling unit by one family. Tenancy is arranged for a minimum of 30 days or longer. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of temporary lodging and are listed under "Retail Sales and Service." Examples of residential uses include, but are not limited to:

- (a) Apartments and retirement center apartments (including those with accessory services such as food service, dining rooms, and housekeeping);
- (b) Condominiums;
- (c) Rowhouses.

(4) *Institutional Uses*. Permitted in S-DR/MU and S-DR/MU/2 (above ground floor only). This category of uses refers to:

(a) Activities of a public, nonprofit, or charitable entity, which provide a local service to the community. Generally, they provide the service on the site or have employees at the site on a regular basis. Examples include, but are not limited to:

1. Community centers;
2. Daycare, preschools, and nursery schools;
3. Government services;
4. Libraries, museums, and interpretive centers;

5. Municipal services (including drive-through facilities);
6. Public and private schools, colleges, and universities;
7. Religious institutions;
8. Senior centers;
9. Transit stations;
10. Surface parking owned or operated by a public agency.

(b) Special events sponsored or operated by a public agency (notwithstanding the standards for Temporary Activities at EC [9.5800](#)).

(5) *Manufacturing and Production Uses*. Permitted in S-DR/MU. This category of uses refers to the manufacturing, processing, fabrication, packaging, or assembly of goods. Examples include, but are not limited to:

- (a) Breweries, distilleries, and wineries;
- (b) Catering establishments;
- (c) Processing of food and related products;
- (d) Production of energy;
- (e) Weaving or production of textiles or apparel;
- (f) Woodworking (including cabinet makers).

(6) *Industrial Service Uses*. Permitted in S-DR/MU. This category of uses refers to the repair or servicing of industrial, business, or consumer machinery, equipment, products, or by-products. Examples include, but are not limited to:

- (a) Electric motor repair;
- (b) Printing, publishing, and lithography;
- (c) Research and development laboratories;
- (d) Repair of scientific or professional instruments;
- (e) Sales, repair, or storage for building, heating, plumbing, or electrical contractors;

(7) *Parks and Open Space Uses*. Permitted in S-DR/MU, S-DR/MU/1, S-DR/MU/2, and S-DR/CL. This category of uses refers to areas used for public recreational activities and areas having scenic, biological, or ecological significance identified for preservation or enhancement. Examples include, but are not limited to:

- (a) Parks, public squares, plazas, boardwalks, fountains, arboretums, trails, multi-use paths, gardens, and natural areas;

- (b) Park furnishings (including play equipment, picnic tables, benches, bicycle racks, and interpretive signage);
- (c) Park structures (including kiosks, gazebos, pavilions, picnic shelters, pergola, arbors, and restrooms);
- (d) Green infrastructure (including infiltration planters, rain gardens, flow-through planters, vegetated swales, vegetated filter strips, and water quality ponds, basins, and wetlands).

(8) *Utilities and Communications Uses*. Permitted in S-DR/CL and S-DR/MU. This category of uses refers to above ground infrastructure services that include, but are not limited to:

- (a) Water, gas, sanitary sewer, stormwater treatment and drainage, electric, telephone, and cable service infrastructure;
- (b) Pumping stations, underground transmission facilities, and substations;
- (c) District heating and cooling systems (including geothermal wells);
- (d) Related physical facilities that do not include buildings regularly occupied by employees, parking areas, or vehicle, equipment, or material storage areas.

(Section 9.3145 added by Ordinance No. 20513, enacted July 8, 2013, effective August 9, 2013; and amended by Ordinance No. 20619, enacted July 22, 2019, effective August 25, 2019.)

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**The Eugene Code is current through Ordinance 20659, passed September 15, 2021.**

Disclaimer: The city recorder's office has the official version of the Eugene Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

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## 9.3146 S-DR Downtown Riverfront Special Area Zone Prohibited Uses.

The following uses are not permitted in the S-DR Zone:

(1) The following “Retail Sales and Service Uses” are not permitted:

- (a) Agricultural Machinery Rental;
- (b) Casinos;
- (c) Drive-through facilities, except as permitted at EC [9.3145\(4\)\(a\)5](#);
- (d) Indoor firing ranges;
- (e) Heavy Equipment Sales;
- (f) Kennels;
- (g) Mortuaries;
- (h) Outdoor sales or leasing of consumer vehicles, including passenger vehicles, motorcycles, light and medium trucks, boat and watercraft, and other recreational vehicles;
- (i) Recreational vehicle parks;
- (j) Recycling or transfer stations (with the exception of small recycling centers as defined at EC [9.0500](#));
- (k) Taxidermists;
- (l) Vehicle service such as motor vehicle repair, tires sales and service, gas station, or car wash.
- (m) A retail marijuana use that is located within 1,000 feet of another retail marijuana use.
  - 1. “Premises” means the location of a retail marijuana use described in a license issued by the Oregon Liquor Control Commission pursuant to ORS 475B.105.
  - 2. “Retail Marijuana Use” means a recreational marijuana retail facility licensed by the Oregon Liquor Control Commission pursuant to ORS 475B.105.
  - 3. “Within 1,000 Feet” means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of a retail marijuana use to the closest point anywhere on the premises of another retail marijuana use.

(2) The following “Residential Uses” are not permitted:

- (a) Detached single-family dwellings;
- (b) Duplexes;

- (c) Manufactured housing.
- (3) The following “Institutional Uses” are not permitted:
- (a) Cemeteries;
  - (b) Correctional facility.
- (4) The following “Manufacturing and Production Uses” are not permitted:
- (a) Concrete batching and asphalt mixing;
  - (b) Feed lots;
  - (c) Lumber mills, pulp and paper mills, and other wood products manufacturing;
  - (d) Production of pre-fabricated structures (including manufactured homes);
  - (e) Slaughterhouses and meatpacking.
- (5) The following “Industrial Service Uses” are not permitted:
- (a) Auto and truck salvage and wrecking;
  - (b) Exterminators;
  - (c) Fuel oil distributors;
  - (d) Heavy truck servicing and repair;
  - (e) Machine shops;
  - (f) Salvage or wrecking of heavy machinery, metal, and building materials;
  - (g) Solid fuel yards;
  - (h) Tire re-treading or recapping;
  - (i) Towing and vehicle storage;
  - (j) Truck stops;
  - (k) Welding shops.
- (6) The following “Parks and Open Space Uses” are not permitted:
- (a) Camping;
  - (b) Community and neighborhood centers within the S-DR/CL subdistrict (permitted in the S-DR/MU subdistrict);
  - (c) Golf course (including driving range);



(d) Dwellings.

(7) The following “Utilities and Communications Uses” are not permitted. Telecommunications facilities, except for telecommunications collocation and antenna, as defined at EC [9.0500](#) and in accordance with EC [9.5750](#), where applicable.

(Section 9.3146 added by Ordinance No. 20513, enacted July 8, 2013, effective August 9, 2013; amended by Ordinance No. 20602, enacted July 23, 2018, effective August 24, 2018; and by Ordinance No. 20619, enacted July 22, 2019, effective August 25, 2019.)

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