

EXCLUSIVE NEGOTIATING AGREEMENT

GREENS DEVELOPMENT, INC

(Development of Hotel, Multi-Family Housing and Retail)

This Exclusive Negotiating Agreement (“ENA”) is hereby entered into this _____ day of _____, 2019 (“Effective Date”), by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), and GREENS DEVELOPMENT, INC., a California Corporation (collectively “Developer”), as follows:

I.

PURPOSE/TERM

1.1 Purpose. The purpose of this ENA is to establish a period during which Developer shall have the exclusive right to conduct investigatory analyses on portions of Assessor Parcel Numbers 213-113-001, 213-111-011, -012, -013, -015, -016 and -017 (“Site”), for the purpose of the development of hotels, multi-family housing, commercial/retail. Developer and City will negotiate the acquisition of the Private Portion of the Site (“Private Side” as defined Section 2.3), which is intended to culminate in a Purchase, Sale and Development Agreement (collectively “Agreements”).

1.2 Term. The term of this ENA shall be twenty-four (24) months with one (1) six (6) month option to extend with the authority of the City Manager. Any extension will be by mutual written consent of the parties. At or prior to the termination of the ENA, the City and Developer may enter the Agreements that would include the close of escrow being subject to Developer obtaining all project entitlements and building permits, as well as City Council approval of the Agreements. Approval to enter into Agreements is not guaranteed. This ENA may be earlier terminated pursuant to Section 8 herein.

1.3 Consideration. The City recognizes the value of the planning, design, and related services to be performed by Developer and the documentation and other information likely to result therefrom. In consideration of the exclusive rights granted to Developer hereunder, Developer shall furnish to the City copies of all title, parcel maps, records of survey and all related environmental documents pertaining to the Site acquired or developed by Developer, or by a third party on Developer’s behalf, as they become available.

1.4 Right of Entry. During the term of this ENA, representatives of the Developer shall have the right of access to and entry upon the Site for the purpose of obtaining data and making surveys and tests that Developer deems necessary to carry out the Site analyses. Prior to such access and entry onto the Site, the Developer and the City shall execute the City’s standard Right of Entry with Developer providing to City the requisite insurance. The Developer must coordinate with the City on access to and entry upon the Site.

II.

DEFINITIONS

2.1 “Site” shall mean that certain real property owned by the City located at the corner of Market and Third Streets and Fifth and Orange Streets and identified as Assessor Parcel Numbers 213-113-001, 213-111-011, -012, -013, -015, -016 and -017.

2.2 “Site Analyses” shall mean those investigatory activities undertaken by Developer during the Term with respect to the Site and its suitability for development of hotels, multi-family housing, commercial/retail, expansion of the Convention Center and parking structure.

2.3 “Private Side” shall mean the mixed use portion of the project identified in Exhibit “A”.

III.

OWNER PARTICIPATION

3.1 Participation by the City. This ENA shall not be construed as binding the City to enter into negotiations with Developer regarding Developer’s possible purchase and development of the Site, or any portion thereof. The City may receive competing and alternative proposals from third parties during the term of this ENA; however, the City shall be prohibited from considering any such proposals and/or engaging in negotiations with any proposing party, other than Developer, for the sale of the Site, or any portion thereof, until such time as this ENA has been terminated.

IV.

NEGOTIATIONS

4.1 Negotiations. The parties agree that negotiations, if any, under this ENA shall be conducted in accordance with the following:

4.2 Exclusive Negotiations. The City agrees to negotiate exclusively with Developer and Developer agrees to negotiate exclusively with the City for the development and acquisition of the Site. The City shall not consider proposals or engage in negotiations with persons or entities other than Developer, concerning the development of the Site or development of specific projects on the Site. Notwithstanding the foregoing, nothing in this ENA shall prohibit the City from: (i) providing information the City may have in its possession concerning the Site (provided this information is not confidential information within the meaning of Sections 6.1 and 6.2 of this ENA); or (ii) referring third parties to Developer for consideration by Developer of their participation as partners, joint ventures, developers, or contractors with regard to development of the Site, or any portion thereof.

4.3 Diligence and Good Faith. The parties agree that at all times, they will negotiate diligently and in good faith to carry out the obligations of this ENA on or before the times established herein.

4.4 Cooperation. The parties agree that, at all times during this ENA, each party shall cooperate with the other party and shall supply such information and documents related to the Site as may be within the party's possession and reasonably requested by the other party.

V.

DEVELOPER OBLIGATIONS

5.1 Developer Obligations. Developer promises and agrees to diligently pursue, and to use its best efforts, to complete its obligations set forth in this ENA.

5.2 Report on Status. At regular thirty (30) day intervals, commencing on the Effective Date of this ENA, Developer shall report on the status of the performance of its obligations under the ENA to the City.

5.3 Information. Developer shall respond to all City requests for information by promptly providing such information and documents that are in the possession, custody and control of Developer and which have not previously been submitted by Developer to the City. Any such information not transmitted to the City as of the date of termination of this ENA shall be sent by the thirtieth (30th) day after termination of this ENA.

5.4 Reports. Developer shall furnish to the City copies of all title reports, title documents, parcel maps, records of survey, and all related environmental documents pertaining to the Site and acquired or developed by Developer, or by a third party on Developers' behalf, as the same become available.

VI.

CITY OBLIGATIONS

6.1 City Obligations. The City promises and agrees to diligently use its best efforts to complete its obligations set forth in this ENA.

6.2 Developer's Financial Information is Confidential. The City shall keep Developer's statements of personal worth or personal financial data provided to establish Developer's qualification for the project confidential as permitted by the exemption stated in California Government Code section 6254 (n).

6.3 Confidentiality of Information. For a period of six (6) months after termination of this ENA, the City shall consider as confidential any proformas or similar documents prepared by Developer, related to development of the Site, and any work product of Developer or its consultants related to the Site, which is supplied by Developer to the City. During the term of this ENA, and for the period after termination specified in the immediately preceding sentence the City shall refrain from releasing such information to any person or entity other than Developer or its designees, unless Developer consents to release of such information or until the City's legal counsel has determined, after notification to Developer's legal counsel, that the release of such information is required by the California Public Records Act (Government Code §6250 et al.), the U.S. Freedom of Information Act (5 U.S.C. §552 et seq.) or other applicable federal, state, or City statute, laws, or ordinances, or as may be required by an order of a court of competent jurisdiction. This section shall survive the expiration of the ENA.

6.4 Governing Body Approval Process. This ENA and any subsequent conveyance or agreements contemplated by this ENA are subject to approval by the City Council of the City ("City Council").

VII.

LIMITING CONDITIONS

7.1 Discretionary Approval. The acceptance by the parties hereto of the terms and provisions of this ENA is merely an accommodation to clarify the process the parties' desire to commence and pursue in connection with Developer's evaluation of the Site and the conveyance by Developer to the City of information pertaining to the Site and obtained or developed by Developer, or a third party on Developer's behalf. No agreement shall be binding upon the City until the City Council has had an adequate opportunity to consider any agreement for approval and have, in the free exercise of their discretion, approved the agreement. Developer acknowledges and agrees that nothing herein restricts nor shall be deemed to restrict the City Council in the free exercise of its discretion, or in the free exercise of its executive, quasi-judicative, or legislative powers.

7.2 Limitation on Remedies. The City and Developer each acknowledge and agree that neither the City nor the Developer would have entered into this ENA if it were to be liable to the other for monetary damages or other remedies. Accordingly, the City and Developer each acknowledge and agree that their respective sole and exclusive right and remedy upon the breach of this ENA by the other is to terminate this Agreement.

VIII.

TERMINATION/EXTENSIONS

8.1 Termination. This ENA may be terminated in one of the following ways: (i) lapse of time; (ii) mutual agreement of the parties; or (iii) the expiration of fifteen (15) days after one party sends the other party written notice of the noticed party's failure to timely and diligently

perform any of its obligations under this ENA, and the noticed party's failure to cure or correct the failure to perform within the same fifteen (15) day period.

IX.

GENERAL TERMS AND CONDITIONS

The following general terms, conditions, and covenants shall apply to this ENA:

9.1 Assignment. There shall be no assignment or other transfer (“Assignment”) of the rights and/or obligations of Developer under this ENA unless the City has given its prior written approval to the Assignment. The City shall not unreasonably withhold its approval of an Assignment that meets the following requirements: (i) the Assignment is to a validly organized and existing business entity which is a corporate affiliate or subsidiary of Developer, of which Developer is a general partner, or of which Developer is the majority shareholder (meaning owning at least 51% of the outstanding stock entitled to voting rights in the business entity); (ii) the Assignment is to an entity that expressly assumes the obligations of Developer under this ENA in a writing satisfactory to the City; (iii) Developer remains fully responsible for the performance of, and liable for the obligations of, Developer under this ENA; and (iv) the assignee is financially capable of performing the duties and discharging the obligations it is assuming. Developer shall promptly notify the City in writing of any and all changes whatsoever in the identity of the persons in control of Developer and the degree thereof.

9.2 Nondiscrimination. Developer agrees to refrain from discriminating against persons in the course of its conduct under this ENA on the basis of race, color, creed, religion, military or veterans status, sex, sexual orientation, gender, gender identity, gender expression, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto), of any person or group of persons, and shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) and the California Fair Employment and Housing Act (Cal. Government Code §12900 et seq.), as they exist on the date of this ENA or as they may thereafter be amended, repealed and reenacted, or otherwise modified. Developer further agrees not to establish or permit any such practice or practices of discrimination or segregation with reference to its conduct under this ENA. Any further agreement between the parties shall contain appropriate, the City approved, non-discrimination and non-segregation provisions binding Developer and its successors and assignees, and shall be covenants running with all affected parcels of the Site.

9.3 Non-liability of City Officials and Employees. No council member, official, consultant, attorney, or employee of the City shall be personally liable to Developer, or any successor, or assign, or any person claiming under or through them, in the event of any default or breach by the City or for any amount which may become due to Developer or to its successor, or on any obligations arising under this ENA.

9.4 Conflicts of Interest. No board member, official, consultant, attorney, or employee of the City shall have any personal interest, direct or indirect, in this ENA nor shall any such member, official or employee participate in any decision relating to this ENA which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

9.5 Warranty Against Payment of Consideration for ENA. Developer represents and warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this ENA, other than payments to consultants retained by Developer to assist it in the negotiation of this ENA.

9.6 No Third Party Beneficiaries. This ENA, its provisions, and its obligations are for the sole and exclusive benefit of the City and Developer. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties' obligations under this ENA.

9.7 Recitals and Definitions. The Recitals and Definitions set forth at the beginning of this ENA are a substantive and integral part of this ENA and are incorporated herein by this reference.

9.8 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this ENA or any of its terms. References to section numbers are to sections in this ENA unless expressly stated otherwise.

9.9 Interpretation. The City and Developer acknowledge that this ENA is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this ENA. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this ENA. In any action or proceeding to interpret or enforcement of this ENA, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this ENA to determine and give effect to the intention of the parties hereto.

9.10 Severability. Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this ENA shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this ENA is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this ENA and shall not affect any other provision, term, condition, covenant, and/or restriction, of this ENA and the remainder of the ENA shall continue in full force and effect.

9.11 Amendments to ENA. Any amendments to this ENA must be in writing and signed by the appropriate authorities of the City and Developer. The City Manager, or his designee, shall have the authority to make minor amendments to this ENA, including, but not limited to, the granting of extensions of time to Developer, on behalf of the City so long as such actions do not

materially change the ENA or make a commitment of additional funds of the City. All other changes, modifications, and amendments shall require the prior approval of the City Council.

9.12 Administration. This ENA shall be administered by the City Manager, or his designee, following approval of this ENA by the City Council. The City shall maintain authority of this ENA through the City Manager, or his designee. The City Manager shall have the authority to exercise the options to extend the ENA and to issue interpretations with respect to this ENA on behalf of the City so long as such actions do not materially change the ENA or make a commitment of the City.

9.13 Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the parties shall be given in writing and personally served or dispatched by registered or certified mail, postage prepaid, return receipt requested, or by reputable overnight delivery service, or personal delivery, to the principal offices of the parties, as designated below. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Any such notice shall be deemed to have been received upon the date personal service is affected, if given by personal service, or upon the expiration of three (3) business days after mailing, if given by certified mail, return receipt requested, postage prepaid.

To City

City of Riverside
Attn: Nathan Freeman
3900 Main Street
Riverside, California 92522

To Developer

Greens Development, Inc.
Attn: Ashutosh Kadakia
9289 Research Drive.
Irvine, California 92618

9.14 Computation of Time. The time in which any act is to be done under this ENA is computed by excluding the first day (such as the Effective Date) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code Sections 6700 and 6701. If any act is to be done by a particular time during a day, that time shall be Pacific Standard Zone time.

9.15 Authority. The individuals executing this ENA on behalf of Developer and the instruments referenced on behalf of Developer represent and warrant that they have the legal power, right and actual authority to bind Developer to the terms and conditions hereof and thereof.

9.16 Counterpart Originals. This ENA may be executed in duplicate originals, each of which is deemed to be an original.

9.17 Effective Date of ENA. This ENA shall not become effective until the date it has been formally approved by the City Council and executed by the appropriate authorities of the City and Developer. This date shall be affixed on the cover page of this ENA and shall be used as the “Effective Date” for purposes of calculating time under this ENA.

[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this ENA on the date and year first above written.

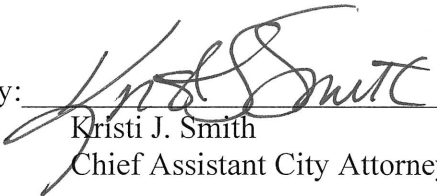
CITY OF RIVERSIDE

By: _____
Al Zelinka
City Manager

Attested to:

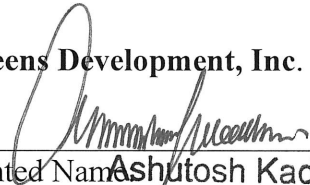
By: _____
Colleen J. Nicol
City Clerk

Approved as to form:

By: 
Kristi J. Smith
Chief Assistant City Attorney

DEVELOPER

Greens Development, Inc.

By: 
Printed Name: Ashutosh Kadakia
Its: Chief Financial Officer

By: _____
Printed Name: N/A
Its: _____

EXHIBIT A
Private Side of Site
(as indicated)

