

EXCLUSIVE NEGOTIATING AGREEMENT

REGIONAL PROPERTIES, INC.

(Disposition and Development of Parking Garage 3)

This Exclusive Negotiating Agreement (“ENA”) is hereby entered into this _____ day of _____, 2017 (“Effective Date”), by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), and REGIONAL PROPERTIES, INC., a California corporation (“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 of Parking Garage 3 and adjacent office building located on the 3700 block of Market Street, Riverside, California, identified as Assessor’s Parcel Numbers 213-262-001, -002, -007, -008 and -009 (“Site” and/or “Garage 3”), for the purpose of determining Developer’s interest in and development of a “Class A” Office project and parking garage with an open air plaza fronting Mission Inn Avenue consistent with the City’s General Plan and Downtown Specific Plan (“Project”). The Project would also include the Developer’s acquisition of the Site at fair market value and the requirement for Developer to replace all of 297 public parking spaces existing in Garage 3. Of these spaces, 174 spaces are reserved exclusively for the California Tower office building, located at 3737 Main Street (Cal Tower). Monthly permits for parking spaces in Garage 3 are \$60 a month. During construction of the Project, the Developer shall be responsible for finding replacement parking for Cal Tower’s tenants.

1.2 Term. The term of this ENA shall be twelve (12) months with two (2) six (6) month options 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 into a Purchase, Sale and Development Agreement for the Site that would include the close of escrow being subject to Developer obtaining all project entitlements and building permits, as well as City Council approval on the disposition of the Site and the Purchase, Sale and Development Agreement. Approval to enter into a Purchase, Sale and Development Agreement is not guarantee. This ENA may be earlier terminated pursuant to Section 8 herein.

1.3. Consideration. The City recognizes the value of the Site analyses 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 Existing Tenants. A portion of the Site is currently occupied by three tenants and the remainder of the Site is being used as a public parking garage. The existing tenants include Rodney Danielson, Standing Chapter 13 Trustee (Rodney Danielson), occupying approximately 6,018 square feet; University Enterprises Corporation at CSUSB doing business as the Inland Empire Small Business Development Center (SBDC), occupying approximately 2,325 square feet; and Central Parking, occupying approximately 1,776 square feet. The remaining 436 square feet is the common area between SBDC and Central Parking.

The existing lease with Rodney Danielson will expire on August 31, 2019, which includes the recent extension of an additional two years. The existing lease with SBDC will expire on January 22, 2018. Central Parking is utilizing its space as a condition of the existing Professional Consultant Services Agreement with the City, which expires on June 30, 2018. The Developer shall be responsible to find replacement office space(s) for the remaining tenant(s) prior to development of the Project.

1.5. 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 and identified as Parking Garage 3 and adjacent office building, located on the 3700 block of Market Street, Riverside, California (Assessor's Parcel Numbers 213-262-001, -002, -007, -008 and -009).

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 an office building and parking garage.

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

4.1. Exclusive Negotiations. The City agrees to negotiate exclusively with Developer and Developer agrees to negotiate exclusively with the City for the acquisition of the Site and subsequent private development of a “Class A” office building and associated parking garage for the Project as well as replacement of 297 public parking spaces existing in Garage 3 with an open air plaza fronting Mission Inn Avenue. Of these spaces, 174 spaces are reserved exclusively for Cal Tower. During construction of the Project, the Developer shall be responsible for finding replacement parking for Cal Tower’s tenants. 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.

4.2. 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.

4.3. 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. Developer Obligations. Developer promises and agrees to diligently pursue, and to use its best efforts, to complete the following obligations:

5.1. 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.

5.2. 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.

5.3. Within ninety (90) days following the Effective Date, Developer shall develop and present to the City staff, for review, all of the following:

5.3.1 A conceptual development for the Project that shall include, at a minimum, the development of a “Class A” office building with sufficient parking for the proposed Project, replacement of the existing 297 public parking spaces in Garage 3, and an open air plaza along Mission Inn Avenue;

5.3.2 Proposed land use categories, including any proposed changes to the City’s General Plan and/or Downtown Specific Plan, necessary to accommodate the development of the Project; and

5.3.3 A list of anticipated lease rates for the Site, by parcel, phase and/or use, as appropriate.

5.4. Within one hundred twenty (120) days following Effective Date, Developer shall develop and present to the City staff for review of the following:

5.4.1 An offer for acquisition of the Site and provide a proposed structure for the transaction, including proposed time schedule for construction commencement and completion of the Project; and

5.4.2 Provide a written financial pro-forma in a reasonable form and substance regarding the anticipated costs and returns related to the development, operation, sale and lease (as applicable) of the Project.

5.5. Developer to assist the City by providing all construction, maintenance, and operation of all proposed private improvements so the City can prepare the costs of additional or increased levels of public services and any new public revenues, anticipated to be generated by the Project, by phase, if applicable.

5.6. Developer to provide a temporary parking replacement plan for at least 297 parking spaces during construction of the Project, including 174 parking spaces for Cal Tower.

VI.

CITY OBLIGATIONS

6. **City Obligations.** The City promises and agrees to diligently use its best efforts to complete the following obligations within the times required herein:

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

6.2. 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.

6.3. Governing Body Approval Process. This ENA and any subsequent conveyance or agreements contemplated by this ENA is 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 purchase and sale shall be binding upon the City until the City Council has had an adequate opportunity to consider any purchase and sale for approval and have, in the free exercise of their discretion, approved the purchase and sale. 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-adjudicative, 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. 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

9. 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, sex, sexual orientation, gender, 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 Covenants, 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: City Manager
3900 Main Street
Riverside, CA 92501

To Developer:

Regional Properties, Inc.
Attn: Mark Rubin
9201 Wilshire Blvd., Suite 103
Beverly Hills, CA 90210

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.

9.16. 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.

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

9.18. 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.

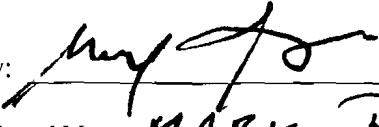
[SIGNATURES ON FOLLOWING PAGE.]

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

CITY OF RIVERSIDE,
a California charter city and
municipal corporation

By: _____

REGIONAL PROPERTIES, INC.,
a California corporation

By: 
Printed Name: MARK RUBIN
Its: PRESIDENT

ATTEST:

By: _____
City Clerk

By: _____

Printed Name: _____

Its: _____

APPROVED AS TO FORM:

By: 
Chief Assistant City Attorney