

TRANSMITTAL

To:

THE COUNCIL

Date: 10/2/2017

From:

THE MAYOR

TRANSMITTED FOR YOUR CONSIDERATION. PLEASE SEE ATTACHED.

A handwritten signature in blue ink, appearing to read 'Eric Garcetti', is written over a light blue circular stamp.

(Ana Guerrero) for

ERIC GARCETTI
Mayor



Eric Garcetti, Mayor
Rushmore D. Cervantes, General Manager

Housing Development Bureau

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hcidla.lacity.org

October 2, 2017

Council File: 12-0049-S10; 12-0049-S11
Council District: 1, 8, 10, 13, 14
Contact Persons: Christopher LeMarr (213) 808-8968
Mariana Lem (213) 808-8966
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Honorable Eric Garcetti
Mayor, City of Los Angeles
Room 303, City Hall
200 North Spring Street
Los Angeles, CA 90012

Attention: Mandy Morales, Legislative Coordinator

**COUNCIL TRANSMITTAL: REQUEST FOR APPROVAL OF RECOMMENDATIONS
RELATIVE TO THE SELECTION OF DEVELOPERS FOR AFFORDABLE HOUSING
PROJECTS; AND, AUTHORITY FOR VARIOUS ACTIONS RELATED TO THE
DISPOSITION AND DEVELOPMENT OF CITY-OWNED PROPERTIES**

SUMMARY

The Los Angeles Housing + Community Investment Department (HCIDLA) requests approval of the recommendations contained in this report relative to the disposition and development of housing assets currently owned by the City of Los Angeles (City) to maximize utilization of public land for affordable housing.

On December 14, 2016, the City Council authorized HCIDLA to release a Request for Qualifications/Proposals (RFQ/P) to select qualified developers to develop eight projects comprised of nine properties (one project consists of two sites) owned and controlled by the City (C.F. No. 12-0049-S10 and C.F. No. 12-0049-S11). HCIDLA released the RFQ/P on March 20, 2017, and 28 proposals were received for the development of eight affordable housing projects by the May 24, 2017 deadline.

Upon thorough review of the proposals submitted, HCIDLA recommends the City enter into negotiations with eight affordable housing developers to develop the sites, the outcome of which is estimated to be 285 new affordable housing units. The eight affordable housing projects consist of five properties transferred to HCIDLA from the former Community Redevelopment Agency of the City of Los Angeles (CRA/LA), two properties that have been combined into a single project managed and controlled by the Department of Transportation (LADOT), and one City-owned site identified by the Office of the City Administrative Officer (CAO) as part of the Affordable Housing Opportunity Site Program (AHOS).

HCIDLA requests authority to execute Exclusive Negotiation Agreements (ENAs) and Disposition and Development Agreements (DDAs) with the selected developers identified in Table 1 below. In addition, HCIDLA requests the authority to amend contracts with Estolano LeSar Perez Advisors, Inc. (ELP) and Keyser Marston Associates, Inc. (KMA) to provide the technical assistance necessary to negotiate and structure a DDA for each of the eight projects identified in Table 1. ELP and KMA will assist staff by conducting pro-forma analysis and underwriting for each of the eight projects identified in Table 1.

Table 1: HCIDLA Qualified Developer Recommendations			
Property Address	Proposer (Lead developer)	Estimated # Units	RFQ/P Score
619 S. Westlake Avenue	Cesar Chavez Foundation	79	97
1035 S. Berendo Street	West Hollywood Community Housing Corporation	33	100
1047 S. Mariposa Avenue	West Hollywood Community Housing Corporation	40	100
283 W. Imperial Highway	Clifford Beers Housing	54	97
9513 S. Spring Street	Habitat for Humanity of Greater Los Angeles	2	76
4600 & 4601 W. Washington Boulevard	Western Community Housing, Inc.	68	95
1816 N. Wilton Place	Youth Policy Institute	1	71
3551 E. 4th Street	Restore Neighborhoods LA, Inc.	8	87

RECOMMENDATIONS

The General Manager of HCIDLA respectfully requests that:

- I. Your office schedule this transmittal for consideration at the next available meeting(s) of the appropriate City Council Committee(s) and forward it to the City Council for review and approval immediately thereafter;
- II. The City Council, subject to the approval of the Mayor, take the following actions:
 - A. Authorize the General Manager of HCIDLA, or designee, to select developers for the eight affordable housing developments, which will include permanent supportive housing for homeless, and other types of affordable housing;
 - B. Authorize the General Manager of HCIDLA, or designee, to negotiate and execute ENAs with the selected developers, subject to the approval of the City Attorney as to form;
 - C. Authorize the General Manager of HCIDLA, or designee, to negotiate and execute DDAs with the selected developers, subject to the approval of the City Attorney as to form;
 - D. Authorize the HCIDLA General Manager, or designee, and the LADOT General Manager, or designee, to negotiate and execute a Joint Development Agreement (JDA) with the selected developer for the LADOT managed properties located at 4600-4614 W. Washington Boulevard, and 4601-4615 W. Washington Boulevard, subject to the approval

of the City Attorney as to form;

- E. Authorize the HCIDLA General Manager, or designee, to request and collaborate with the City Attorney to prepare ordinances authorizing the sale of properties, if applicable, subject to City Council approval;
- F. Authorize the HCIDLA General Manager, or designee, to amend the contract with ELP, Contract Number C-127170, to provide a one-year extension, subject to review and approval of the City Attorney as to form and compliance with all necessary city, state, and federal requirements;
- G. Authorize the HCIDLA General Manager, or designee, to amend the contract with KMA, Contract Number C-128506, to provide two one-year extensions for a total contract term of three years, through October 31, 2019; and, to increase the total contract amount from \$310,000 to \$415,000, using the Low and Moderate Income Housing Fund 55J, 43M844 Technical Services account;
- H. Authorize the HCIDLA General Manager, or designee, to prepare Controller instructions for any necessary technical adjustments consistent with the Mayor and City Council actions, subject to the approval of the City Administrative Officer (CAO), and instruct the Controller to implement these instructions.

BACKGROUND

In response to the City's affordable housing crisis, HCIDLA created the Land Development Program to leverage publicly owned land for development as affordable housing in the City. The Land Development Program consists of properties transferred to HCIDLA from CRA/LA, LADOT and surplus land identified by the CAO as part of the AHOS program.

The eight affordable housing projects included in this RFQ/P consist of: five properties transferred to HCIDLA from the CRA/LA, two properties combined into a single project that are managed and controlled by LADOT, and one AHOS property.

A list of the eight RFQ/P projects is provided in Table 2 below.

Table 2: Property Information					
#	Property Address	Council District	Housing Asset	Parcel Size (sq. ft.)	Proposed Project Type
1	619 S. Westlake Avenue	1	CRA	32,365	Large multifamily & public parking
2	1035 S. Berendo Street	1	CRA	11,803	Large multifamily
3	1047 S. Mariposa Avenue	1	CRA	11,799	Large multifamily
4	283 W. Imperial Highway	8	AHOS	17,385	Large multifamily

5	9513 S. Spring Street	8	CRA	5,010	Homeownership
6	4600 & 4601 W. Washington Boulevard	10	LADOT	36,512	Large multifamily & public parking
7	1816 N. Wilton Place	13	CRA	7,333	Child Care Center & 1 unit of housing
8	3551 E. 4th Street	14	CRA	6,000	Small multifamily

REQUEST FOR PROPOSALS (RFQ/P) PROCESS

On December 14, 2016, the City Council authorized HCIDLA to release a RFQ/P to select qualified developers for development of nine properties owned and controlled by the City. On March 20, 2017, the RFQ/P was released with the goal of soliciting proposals that could successfully demonstrate a qualified developer's ability to seek financing, design, build and market affordable housing. The RFQ/P was released through the Los Angeles Business Assistance Virtual Network (LABAVN) to ensure that a wide pool of applicants would have an opportunity to participate in the RFQ/P process. In order for RFQ/P proposals to be eligible for consideration, developers were required to be in good standing with HCIDLA business practices, and achieve a minimum RFQ/P score of 70 points. Following the RFQ/P release, a mandatory Bidders Conference was held on April 11, 2017, with proposals due by May 24, 2017, 4:00 p.m. The RFQ/P process and timeline is detailed in Table 3 below.

Table 3: RFQ/P Timeline	
Event/Action	Date
Authority to release RFQ/P	December 19, 2016
Release of RFQ/P	March 20, 2017
Bidder's Conference	April 11, 2017
Site visits scheduled for each property	April 19 - 26, 2017
Proposals Due	May 24, 2017
Review & scoring complete	July 24, 2017
Developer interviews	July 25 to August 10, 2017
Initial scores released	August 15, 2017
Last day to submit appeals	August 22, 2017
Recommendations released to Mayor	September 2017
Mayor and City Council approval	September 2017 (Anticipated)
Negotiation and Execution of ENAs	October 2017 (Anticipated)
Negotiation and Execution of DDAs	May 2018 (Anticipated)

RFQ/P Scoring

HCIDLA established eight RFQ/P evaluation teams comprised of three to five affordable housing professionals, including staff from HCIDLA, CAO, LADOT, Department of City Planning (Planning) and Economic and Workforce Development Department (EWDD). Each evaluation team was responsible for a single project, and each member of the evaluation team reviewed the submitted proposals and scored each proposal independently. Following the individual scoring process, the evaluation team met as a group to review and come to agreement on a consensus score for each proposal received for their assigned project. Consensus scoring ensured that each member of the evaluation team vetted the proposal and

concurred on points allocated to each scoring section. With the scoring of developer qualifications, the evaluation team took into consideration previous project experience, financial capacity, organizational structure, and the proposed project vision.

The RFQ/P scoring criteria enabled a maximum of 100 points possible to be awarded to a developer or development team, with a mandatory qualification threshold of 70 points. The proposal evaluation criteria was divided into two sections, 50 points for Common Criteria and 50 points for Project Specific Criteria. The evaluation criteria and point allocation is outlined in Table 4.

Table 4: Evaluation and Scoring Criteria	
Common Criteria (50 Points)	Points
A. Development Team Qualifications	20
B. Financial Capacity	18
C. Compliance	5
D. Community Benefits	5
E. Clarity of Presentation-Written Proposal	2
Project Specific Criteria (50 Points)	
F. Project Feasibility	30
G. Community Engagement	15
H. Clarity of Presentation-Interview	5
Total	100

Appeals Process

Developers were notified of their proposal scores on August 15, 2017, and were given five business days to submit an appeal based on HCIDLA's scoring procedures. By the deadline date of August 22, 2017, HCIDLA received five appeals.

To review the appeals, HCIDLA formed an Appeals Committee consisting of senior management staff holding professional-level positions in HCIDLA's Housing Finance and Asset Management divisions. The members of the Appeals Committee were not involved in the initial RFQ/P review process, thereby ensuring fairness of each appeal review. Every member of the Appeals Committee carefully reviewed each appeal, and came to a unanimous decision regarding all five of the appeals. The Appeals Committee ultimately denied each of the five appeals, and concluded that the RFQ/P Scoring Teams applied a consistent and fair methodology for scoring all proposals.

Proposal Scores

A total of 28 proposals were submitted by the May 24, 2017, 4:00 P.M. deadline. Of the 28 proposals, one proposal did not meet the published RFQ/P requirements because the developer was in default with Federal, State, and City-sponsored programs, and therefore was disqualified. Table 5 below outlines the 27 proposals submitted which were reviewed and received final scores.

Table 5: Final RFQ/P Proposal Scores		
Project	Lead Developer	Total Score
619 S. Westlake Avenue	Cesar Chavez Foundation	97
	Hollywood Community Housing Corporation	96
	West Hollywood Community Housing Corporation	95
	Mercy Housing California	94
	New Economics for Women	90
	Abode Communities	86
	Omni America LLC	81
	AidaLena Holdings, LLC	80
	Chelsea Investment Corporation	78
	Retirement Housing Foundation	77
	Many Mansions	77
1035 S. Berendo Street	West Hollywood Community Housing Corporation	100
	Western Community Housing, Inc.	98
	Restore Neighborhoods LA, Inc.	85
1047 S. Mariposa Avenue	West Hollywood Community Housing Corporation	100
	Western Community Housing, Inc.	98
	Restore Neighborhoods LA, Inc.	85
283 W. Imperial Highway	Clifford Beers Housing	97
	LA Family Housing	94
	The Olson Company	73
9513 S. Spring St	Habitat for Humanity of Greater Los Angeles	76
	Restore Neighborhoods LA, Inc.	75
	The South Bay Village of Hope	15
4600 & 4601 W. Washington Boulevard	Western Community Housing, Inc.	95
	Volunteers of America, Los Angeles	83
1816 N. Wilton Place	Youth Policy Institute	71
3551 E. 4th Street	Restore Neighborhoods LA, Inc.	87

AUTHORITY TO NEGOTIATE AND EXECUTE ENA AND DDA

HCIDLA is requesting authority to negotiate and execute ENAs and DDAs with the selected affordable housing developers indicated in Table 1, to enable development of the eight proposed affordable housing projects. A sample HCIDLA ENA can be found in Attachment A to this report.

REQUEST TO AMEND CONSULTANT CONTRACTS

HCIDLA received Council and Mayor approval in September 2015 and May 2016 (C.F. No. 12-0049-S5; C.F. No.12-0049-S11) to negotiate and execute contracts with consultants from the CAO's pre-qualified

list of consultants, selected through a RFQ process administered by the CAO (C.F. No. 12-1549-S2), in a total amount not to exceed \$540,000.

To date, HCIDLA has executed contracts with KMA and ELP to provide technical service support to plan, entitle, finance, develop and underwrite HCIDLA multi-family and homeownership projects. HCIDLA executed a one-year contract with KMA on November 1, 2016 in the amount of \$310,000. KMA's contract is set to expire on October 31, 2017. HCIDLA also executed a one-year contract with ELP on January 21, 2016 in the amount of \$25,000. The ELP contract was amended on January 21, 2017 to increase the total contract amount to \$125,000 and provide a one-year extension from January 20, 2017 to January 20, 2018.

Currently, KMA and ELP are providing HCIDLA staff with underwriting assistance for the Land Development Program, including project feasibility analysis, pro-forma analysis and residual land value analysis necessary to structure and negotiate DDAs for 22 active multi-family and homeownership projects. KMA is responsible for providing support for 18 multi-family projects, 13 of which are Permanent Supportive Housing (PSH) projects. The recommendations contained in this report would add an additional seven multi-family projects to KMA's scope of work, increasing the total to 25 active multi-family projects. ELP is responsible for providing support for four homeownership projects. The recommendations contained in this report would add one additional homeownership project to ELP's scope of work, which would increase the total to five active homeownership projects. As a result of the increased scope of work, HCIDLA is requesting the authority to amend the KMA contract to increase the total contract amount from \$310,000 to \$415,000.

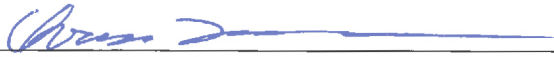
HCIDLA staff estimates that it may take up to two years to negotiate and structure DDAs for the seven additional multi-family projects contained in this report and one year to negotiate and structure the one homeownership project contained in this report. As a result, HCIDLA is requesting authority to amend the KMA contract to provide up to two one-year extensions to October 31, 2019, and to amend the ELP contract to provide a one-year extension from January 21, 2018 to January 20, 2019.

FISCAL IMPACT STATEMENT

The recommendations in this report will authorize HCIDLA to execute ENAs and DDAs with developers selected from the Housing Dispositions and Development RFQ/P, resulting in the development of eight permanent supportive, affordable housing or homeownership projects.

The recommendations in this report will also increase the KMA contract from \$310,000 to \$415,000, using the Low and Moderate Income Housing Fund 55J, 43M844 Technical Services. The sum of all executed and future contract compensation will not exceed \$540,000 from the Low and Moderate Income Housing Fund 55J. There is no impact to the General Fund.

Prepared by:



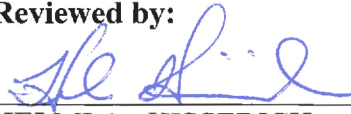
CHRISTOPHER LEMARR
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Reviewed by:



MARIANA LEM
Finance Development Officer I

Reviewed by:



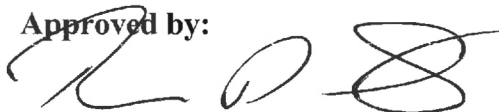
HELMY A. HISSERICH
Director, Housing Strategies & Services

Approved by:



LAURA K. GUGLIELMO
Executive Officer

Approved by:



RUSHMORE D. CERVANTES
General Manager

Attachment A: Sample Exclusive Negotiation Agreement



Eric Garcetti, Mayor
Rushmore D. Cervantes, General Manager

ATTACHMENT A – SAMPLE EXCLUSIVE NEGOTIATION AGREEMENT

Sample of HCIDLA Exclusive Negotiation Agreement

Exclusive Negotiation Agreement

This AGREEMENT is made as of the Effective Date (defined in Section 14 below) by and between _____, (DEVELOPER and the Los Angeles Housing and Community Investment Department (HCIDLA).

RECITALS

- A. The City of Los Angeles currently owns the property consisting of _____ (____) parcels located near the intersection of _____ and _____ in the City of Los Angeles, as more particularly described on the legal description attached hereto as Exhibit "A" ("Site") consisting of parcels at: 1) _____, Assessor Parcel Number: _____, containing approximately _____ square feet and 2) _____, Assessor Parcel Number _____, containing approximately _____ square feet.
- B. The qualifications submitted by DEVELOPER best support the type of affordable housing development conceptually envisioned by the City of Los Angeles.
- C. On _____ the Los Angeles City Council approved (Council File: _____) the selection of the DEVELOPER for the purpose of creating a full development plan for the project leading to negotiating the terms of a Development and Disposition Agreement ("DDA")
- D. Together, HCIDLA and the DEVELOPER (collectively referred to as "Parties", or if referred to in the singular form "Party") desire to negotiate exclusively for the development of the Project at the Site.

The Parties agree to negotiate exclusively and in good faith to enter into a DDA and/or a Ground Lease upon the following terms and conditions.

1. Agreement to Negotiate Exclusively: Good Faith Negotiations

HCIDLA agrees that, after competitive bidding and selection process outlined above, during the Negotiation Period (as defined in Section 2 below) and provided that DEVELOPER is not in default of its obligations under this Agreement (subject to reasonable notice and opportunity to cure such default), HCIDLA shall negotiate exclusively and in good faith with DEVELOPER, with respect to a DDA, property disposition such as a sale or Ground Lease to be entered into between HCIDLA and DEVELOPER concerning the rights and obligations of each respective Party concerning the development of the Site. During the negotiation period, HCIDLA shall not solicit or entertain offers or proposals from other third parties concerning the Site. DEVELOPER acknowledges, however, that HCIDLA may, from time to time, be contacted by other developers respecting the Site and that such contact is expressly permitted so long as HCIDLA does not initiate or further the contact and HCIDLA indicates to such other developers that HCIDLA has executed this Agreement with DEVELOPER and that HCIDLA is unable to: (1) discuss anything concerning the Project; (2) discuss anything concerning these negotiations; (3) entertain any other offer or proposals; or (4) negotiate

with any other developer until this Agreement expires or is terminated, as provided in Section 2 below.

The Parties agree, in consideration of this Agreement, to negotiate in good faith with each other with respect to the terms and conditions as set forth in the RFP and the proposed project to be included in the DDA, property disposition such as a sale or Ground Lease and to cooperate in the preparation thereof. The Parties shall provide each other with any information regarding the Site or Project that may be reasonably requested by any other Party.

2. Period of Negotiation

The Parties agree to negotiate in good faith for a period of 360 days from the Effective Date, as defined in Section 14 hereof (the "Negotiation Period"). If the Parties have not agreed upon the form of a draft DDA property disposition such as a sale or the Ground Lease to be delivered to The City Council and Mayor by such date, then this Agreement shall automatically terminate provided, however, that if prior to the expiration of the Negotiation Period, the Parties have not agreed upon the form of a draft DDA property disposition such as a sale or Ground Lease satisfactory to the Parties to be delivered to The City Council and Mayor, then the Parties may mutually agree to extend the term of this Agreement for an additional period of up to 90 days. If the Parties cannot agree upon such an extension, this Agreement shall automatically terminate.

The Negotiation Period may be extended only by written agreement between the Parties and HCIDLA shall have the right to thereafter develop or dispose of the Site as it shall determine appropriate in its sole and absolute discretion.

This Agreement may also be terminated if the Parties agree in writing that a successful consummation of the negotiations is impossible.

3. Test and Surveys

During the Negotiation Period, DEVELOPER shall conduct such tests, surveys, and other analyses as the DEVELOPER deems necessary to determine the feasibility of designing, constructing, leasing and financing the Project and shall complete such tests, surveys, and other analyses promptly within the Negotiation Period. For these purposes, HCIDLA shall provide to DEVELOPER, its agents and/or representatives, the right to enter onto the Site and to conduct such tests, surveys, and other procedures ("Tests"). DEVELOPER shall take all necessary effort to ensure that such Tests shall not unreasonably alter the condition of the Site, or other HCIDLA activities on the Site. DEVELOPER shall indemnify and hold harmless the City and its departments (HCIDLA), its Boards, Officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including but not limited to, reasonable attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including DEVELOPER's and any

contractor's and subcontractor's employees and agents, or damage or destruction of any property of any property of the Parties hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to any such entry on the Site by DEVELOPER, its agents or representatives, provided that such indemnity shall not relate to existing Site conditions that differ substantially from existing plans and drawings, and could not have been discovered by reasonable visual inspection or reasonable and typical non-intrusive tests prior to any intrusive testing. DEVELOPER shall present HCIDLA with evidence of a general liability insurance policy in an amount of at least \$1 million, naming the City of Los Angeles as an additional insured. The insurance policy shall cover all liability and property damage arising from DEVELOPER's employees' presence on the Site during Tests. Any destruction or alteration of site features or surfaces resulting from the tests shall be fully replaced at the full expense of the Developer within ten (10) business days.

4. Essential Terms

A. **DDA.** DEVELOPER's rights and obligations shall be specifically set-forth in the DDA and shall include without limitation all of the following:

- 1) Project Description;
- 2) Scope of Development;
- 3) DEVELOPER Site Inspection rights;
- 4) The financial relationships between the parties
- 5) Method of land transfer and ownership rights over specific improvements that could include property disposition for sale or Ground Lease;
- 6) Scope and method of disposition for a sale or Ground Lease of property, depending on HCIDLA's preferred method of disposition;
- 7) Design and construction of the Project, including HCIDLA review, approval, and inspection rights, and DEVELOPER assurances;
- 8) Deposits and Costs Reimbursements;
- 9) Schedules of Performance, including effect of change;
- 10) Restrictions on Transfers;
- 11) Covenants to enter into property disposition such as sale or Ground Lease and other required agreements;
- 12) Escrow provisions, including title, deliveries to escrow, conditions to close of escrow and delivery of Site, parts thereof;
- 13) Insurance and Indemnity;
- 14) Defaults, remedies and termination;
- 15) Encumbrances and rights of lenders;
- 16) Agreement on all other matters necessary to reach a full comprehensive agreement; and
- 17) Restrictions on use of Site.

B. **Ground Lease.** The Ground Lease shall include, without limitation, provisions relating to all of the following:

- 1) Demise of the premises, including conditions, exceptions, representations and warranties;
- 2) Term, including options and extensions, if any;
- 3) Payment for Ground Lease based generally on the structure proposed in the original RFP response, taxes and other charges (including appropriate security and bonds);
- 4) Restrictions on Transfers;
- 5) Encumbrances and rights of lenders;
- 6) Possessions, use, subleasing, operations, maintenance and compliance with laws;
- 7) Construction of improvements and operations, including HCIDLA inspection and approval rights, and environmental matters;
- 8) Insurance, indemnity, damage, destruction and eminent domain;
- 9) Default, cure, dispute, remedies;
- 10) Termination and surrender of Site; and
- 11) Administrative provisions.

5. Development Goals for Site

- a) Coordinate with HCIDLA on the development and property disposition such as a sale or Ground Leasing of the Site.
- b) Provide for rental housing opportunities to low income individuals, families and/or homeless.
- c) Ensure that all uses on the Site are consistent with the local jurisdiction's adopted land use plans.
- d) Create a development which increases mobility, economic development (including job creation), and meets other community needs.
- e) Design of a development that meets community needs and standards.

6. Topics for Negotiation

In addition, or as supplement to the Essential Terms, as described in Section 4, the topics for negotiation (to the extent of, and as limited by the terms of the Proposal) shall include, among other things:

- a) Project assembly [e.g. re-subdivision of Site, maintaining current subdivision of Site, etc.];
- b) Structure of the transaction [include, e.g. structure of property disposition such as a sale, Ground Lease (or leases), exchanges, easements, as applicable];
- c) Method of calculating value and paying for property disposition such as a sale or Ground Lease based generally on the structure proposed in the original RFP response;
- d) The terms of the proposed DDA, property disposition such as a sale or Ground Lease and other agreements as described in Section 4 above;
- e) Availability of the Site to the DEVELOPER;
- f) Proposed land uses and appropriate assurances regarding the continued use of the Project improvements for their original intent;
- g) Site layout and conceptual architectural and urban design plans;

- h) HCIDLA's requirements upon DEVELOPER to ensure long-term affordability of rental units;
- i) Permanent financing plan, including strategy as it relates to HCIDLA's Managed Pipeline;
- j) Aesthetic considerations;
- k) Quality and type of construction;
- l) DEVELOPER's responsibility to obtain environmental clearances, entitlements, and project financing;
- m) Terms of DEVELOPER's construction financing and HCIDLA's right to approve same; and
- n) Project schedule and any other considerations necessary to fully implement the proposed Project in a timely fashion.

7. Deposit

Prior to and as a condition precedent to the execution of this Agreement by HCIDLA DEVELOPER shall submit to HCIDLA a good faith non-refundable site control fee ("SITE CONTROL FEE") in the amount of _____ in the form of cash or certified check to subsidize holding costs.

8. Broker's Fees

The Parties represent and warrant to each other that no broker or finder has been engaged, or is in any way connected with the transactions contemplated by this Agreement. In the event any claim for brokers' or finders' fees is made in connection with the transaction contemplated by this Agreement, the Party upon whose statement, representation or agreement the claim is made shall indemnify, hold harmless and defend the other Parties from and against such claims.

9. Assignment

As a condition to any proposed assignment of this Agreement, DEVELOPER shall be required to make full disclosure to HCIDLA of the principals, officers, stockholders, partners, etc., and all other reasonable pertinent information concerning the assignee of DEVELOPER and its associates.

Except as to an assignment to an entity wholly controlled or wholly owned by DEVELOPER or a limited partnership in which DEVELOPER or an affiliate is a general partner, for which HCIDLA's consent is not required, no assignment by DEVELOPER of its rights and obligations hereunder shall be made without the express written consent of HCIDLA, which consent shall be given or withheld at the sole discretion of HCIDLA. For purposes of this Agreement, an Affiliate of the Limited Partner means any investor or investment fund in which the general partner or managing member of the investor or investment fund, directly or indirectly controls, is controlled by or is under common control with the Limited Partner. Upon any permitted assignment by Developer of its rights and obligations hereunder, DEVELOPER and the permitted assignee shall execute a written assignment agreement and the succeeding entity shall be deemed DEVELOPER for all purposes under this Agreement. Notwithstanding anything which may be or appear to be

herein to the contrary, no assignment hereof by DEVELOPER shall relieve DEVELOPER of its obligations under this Agreement unless specifically agreed to in writing by HCIDLA.

DEVELOPER shall along with any request for approval of any assignments hereof, deliver to HCIDLA the most recent financial statement and/or the financial statements of the assignee. HCIDLA understands and acknowledges the proprietary nature of said information and, to the extent permitted by law, agree not to disclose said information to any person or entity other than representatives of HCIDLA or their consultants, having a need to know.

HCIDLA shall not assess a fee for its approval or any assignment, except to the extent that it incurs direct third party expenses, consultant or legal fees related to approval of the assignment in which event the fee shall not exceed the total of the direct costs incurred by HCIDLA related to approval of the assignment.

10. HCIDLA Obligations

During the Term of this Agreement, HCIDLA shall deliver, within 15 days of receipt of written request thereof, any existing HCIDLA information, studies, reports, site and construction plans or other documents which DEVELOPER may reasonably request to facilitate the Project design without cost or expense to DEVELOPER. The Parties shall cooperate to ensure timely review and revision of any DEVELOPER documents or plans.

This Agreement is an agreement to enter into a period of exclusive negotiations according to the terms hereof. HCIDLA expressly reserves the right to decline to enter into a DDA property disposition such as a sale or a Ground Lease in the event the Parties fail to negotiate either agreement to the satisfaction of HCIDLA. Except as expressly provided in this Agreement, HCIDLA shall have no obligations or duties hereunder and no liability whatsoever in the event the Parties fail to timely execute a DDA as long as they negotiate exclusively in good faith and cooperate in the preparation of the DDA property disposition such as a sale or Ground Lease in accordance with Section 1 above.

Developer acknowledges and agrees that HCIDLA has not agreed to fund, subsidize or otherwise financially contribute in any manner toward the development of the Project other than those representations contained in the HCIDLA RFP.

By its execution of this Agreement, HCIDLA is not committing to or agreeing to undertake: (i) disposition of land to DEVELOPER; or (ii) any other acts or activities requiring the subsequent independent exercise of discretion by HCIDLA, other than their good faith obligation to negotiate exclusively with DEVELOPER as provided herein.

The Parties recognize that one or more of the conditions to DEVELOPER's proposal set forth herein may fail to be met as a result of subsequent studies, reviews and proceedings invoking the exercise of discretion by HCIDLA or any public agency having regulatory jurisdiction.

DEVELOPER shall bear all costs incurred as a result of compliance with the California

Environmental Quality Act and the National Environmental Policy Act relating to Developer's joint development of the Project; including, but not limited to, preparation of an environmental report or any other required studies or documents.

11. Non-Liability of HCIDLA, Officials and Employees

Without limiting the provisions set forth herein, no member, official, representative, director, attorney, or employee of HCIDLA shall be personally liable to DEVELOPER or any successor in interest, in the event of any default or breach by HCIDLA or any obligations under the terms of this Agreement, or of any amount which may become due to DEVELOPER or to its successor under the terms of this Agreement.

12. Plans, Reports, Studies and Investigation

Upon written request by HCIDLA, DEVELOPER shall provide the requesting agency, without cost or expense to that agency and without representation or warranty, copies of all plans, reports, studies, or investigations (collectively, "Plan") prepared by or on behalf of DEVELOPER which the DEVELOPER owns or has the copyrights to with respect to the Site and the Project. All Plans shall be prepared at DEVELOPER's sole cost and expense, and DEVELOPER agrees to indemnify, defend and hold harmless the City of Los Angeles, its departments (HCIDLA), and its members, representatives, employees, officials, directors, attorneys, successors and assigns (collectively, "Representatives") from losses, liability, claims, causes of action, injury or expense, including without limitation, reasonable attorneys' fees and costs (collectively, "Loss and Liabilities") arising from or in any way related to the cost of preparation of such Plans. Unless the Parties execute a DDA, property disposition such as a sale, or a Ground Lease before the termination of the Agreement, the Parties agree that Plans provided to HCIDLA that have been prepared during the Term of the Agreement by or on behalf of DEVELOPER which the DEVELOPER owns or has the copyrights to with respect to the Site and the Project will be returned to Developer upon the termination of the Agreement

13. Developer's Responsibilities

Without limiting any other provision of this Agreement, during the period of negotiations hereunder, DEVELOPER, at its sole cost and expense, shall prepare and submit the following documents and perform the following acts all in furtherance of the negotiation process:

A. Submittals. HCIDLA and all agencies having regulatory jurisdiction will require planning and design approval for the Project. DEVELOPER shall meet with representatives of HCIDLA to review and come to a clear understanding of the planning and design criteria required by these agencies.

DEVELOPER, within 180 days after execution of this Agreement (subject to receipt of all plans and studies requested by DEVELOPER of HCIDLA pursuant to Section 10), shall submit to HCIDLA the following:

- a) Evidence of control or acquisition plan of any properties not owned by HCIDLA but considered essential to the Project (if applicable). Evidence shall be in the form of letters of intent from each of the owners stating commitment of land, economic terms and cost basis as well as a detailed action plan and schedule relating to the acquisition of the properties.
- b) Revised or updated Project design concept plan, including a site plan and sections as necessary to describe the proposed scope and schedule.
- c) Project development schedule including milestones for site control, financing commitments, design, environmental/entitlement, construction and completion.
- d) Financing plan/economic projection for the Project. The financing plan shall include a detailed statement of the overall estimated costs of construction and, to the extent it is then available: a) the source and availability of equity capital; and b) construction and long-term development financing. The economic projection shall estimate income to be derived from the Project, and operating costs and debt service shall include a pro forma statement of Project return adequate to enable HCIDLA to evaluate the economic feasibility of the proposed development of the Project. Prior to expiration of the Negotiation Period, DEVELOPER shall update the financing plan to include the source and availability of equity capital, construction and long-term financing if not previously included in the plan.
- e) Proposed term sheet for the property disposition such as a sale or Ground Lease. The proposal shall include without limitations
 - 1. Term, including any options,
 - 2. Rent amount based upon no less than fair-market value (base rent) additional rent based upon project performance and method of base rent adjustments (e.g. CPA adjustment periodic reappraisals, etc.);
 - 3. Recognition that HCIDLA will not subordinate its right to the base rent for the Site, but may subordinate the right to the additional Rent if required to do so;
 - 4. Recognition of costs, if any, incurred by or for the benefit of any party to achieve design objectives or construction interfaces;
 - 5. Description of any reciprocal access rights related to the common use areas; and
 - 6. The general terms upon which DEVELOPER may enter into subleases.

DEVELOPER shall submit to HCIDLA, within 180 days after execution of this Agreement as indicated above, the following documents utilizing the software application provided by HCIDLA:

- a) Project description including: (1) Site size; (2) Unit mix and unit sizes; (3) Gross building area; (4) Construction type; (5) Parking type and (6) Amenities;
- b) Site plan including: (1) Unusual site conditions; (2) Current entitlements and (3) requested entitlements;
- c) Development Team roles including: (1) Service provider and what services will be provided; (2) General contractor and (3) Property manager;
- d) Pro-forma including: (1) Breakout of development costs; (2) Tax Credit calculations including self-scoring and equity calculations; (3) Construction and permanent sources and uses; (4) Residential and commercial rents; (5) Breakout of operating

expenses; (6) Underwriting assumptions for tax-exempt bonds; (7) Financing assumptions for funding sources and whether the sources are secured and (8) Cash flow analysis;

- e) Project development schedule including: (1) Milestones for site control; (2) Financing commitments, (3) Design; (4) Environmental/Entitlements; (5) Construction and (6) Completion; and
- f) Other documents as required by HCIDLA.

B. Design Review: HCIDLA and all agencies having regulatory jurisdiction will require planning and design approval for the Project. DEVELOPER shall meet with representatives of HCIDLA and City to review and come to clear understanding of the planning and design Criteria required by HCIDLA.

C. Cost Disclosure: To support negotiation of property disposition such as a sale or the Ground Lease, the DEVELOPER agrees to disclose to HCIDLA all costs and revenue projections for the proposed Project, including the terms under which the DEVELOPER has been able to obtain control of any other adjacent properties to be included in the Project.

D. Further Information: HCIDLA reserve the right at any time to request from DEVELOPER additional or updated information including data, and commitments to ascertain the depth of the DEVELOPER's capacity and desire to lease and develop the Site expeditiously. HCIDLA will provide a reasonable time for DEVELOPER to submit to the respective agency such additional information.

14. Effective Date

The Agreement shall be deemed effective upon the date on which this Agreement is executed by all Parties, as evidenced by the date of the last signature on the signature pages hereto (the "Effective Date").

15. Entire Agreement

This Agreement represents the entire agreement of the Parties with respect to the matters set forth herein. This Agreement may not be amended except in writing signed by all the Parties hereunder.

16. Covenant Against Discrimination

DEVELOPER shall not discriminate against nor segregate any person, or group of persons on account of sex, race, color, age marital status, religion, handicaps, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the DEVELOPER establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the Site.

17. Notices

All notices required or permitted hereunder shall be delivered in person, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested to such party at its address shown below, or to any other place designated in writing by such Party.

DEVELOPER:

HCIDLA:

City of Los Angeles Housing and Community Investment Department
1200 W. 7th Street, 9th Floor
Los Angeles, CA 90017
Attention: Rushmore D. Cervantes, General Manager

Any such notice shall be deemed received upon delivery, if delivered personally or by FAX or email, (1) the next business day after delivery by a courier, if delivered by courier, and three (3) days after deposit into the United States Mail, if delivered by registered or certified mail.

IN WITNESS WHEREOF, HCIDLA AND DEVELOPER have signed this Agreement as of the dates set forth below.

By: _____ Date: _____

HCIDLA
City of Los Angeles Housing and Community Investment Department

By: _____ Date: _____

Approved as to form:

MICHAEL N. FEUER
City Attorney

By: _____ Date: _____

DEVELOPER

EXHIBIT A

LEGAL DESCRIPTION