RESOLUTION NO. 2008-056

Adopted by the Redevelopment Agency
of the City of Sacramento

July 22, 2008

APPROVAL OF AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE WITH RICHARDS BLVD. JOINT VENTURE FOR THE REDEVELOPMENT OF THE 300 BLOCK OF NORTH 7TH STREET

BACKGROUND

A. The 300 block of North 7th Street, located in the River District Redevelopment Project Area, is proposed as a mixed-use, transit-oriented district (the "Project") in the Richards Boulevard Area Plan, adopted by City Council on December 13, 1994.

B. The River District Redevelopment Plan identifies increasing the level of private investment in the Project Area, reusing parcels that are stagnant or improperly utilized, and the remediation of contaminated parcels as strategies to eliminate blight.

C. The River District Redevelopment Plan provides for the reasonable participation of property owners with the experience and ability to undertake redevelopment projects.

D. A substantial number of parcels in the Project are owned or controlled by the Richards Blvd. Joint Venture, a group of business and property owners with construction and development expertise who desire to investigate the scope and feasibility of the Project, develop a conceptual master plan, enlist the participation of other property owners including the State and negotiate an agreement between the parties for the financing and development of the Project.

E. The City Council approved the execution of the Agreement for Exclusive Right to Negotiate on January 30, 2007, which provided for the potential extension of the Agreement.

F. The proposed action authorizes staff to work with the developer to define the scope and feasibility of the proposed development project and to complete the environmental review process for the project, and as such is exempt from environmental review under CEQA Guidelines Section 15262.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:

Section 1. After due consideration of the facts presented, the findings, including the foregoing recitals and the environmental findings regarding this action, as stated in this Resolution are approved and adopted.

Section 2. The City Manager, as designated representative of the Agency, is authorized to enter into an Agreement for Exclusive Right to Negotiate with Richards Blvd. Joint Venture in substantially the form attached to this resolution as Exhibit 1.

Section 3. Further, the City Manager as designated representative is authorized to extend the Agreement by one year based on substantial progress of the Richards Blvd. Joint Venture in developing the project.

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Exhibit A Agreement for Exclusive Right to Negotiate

Adopted by the Redevelopment Agency of the City of Sacramento on July 22, 2008 by the following vote:

Ayes: Councilmembers Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: Councilmember Cohn.

Heather Fargo

Chair Heather Fargo

Attest:

Shirley Concolino

Shirley Concolino, Secretary

Exhibit A

FORM OF AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE NORTH 7TH STREET MASTER DEVELOPMENT

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Agency") and the RICHARDS BLVD. JOINT VENTURE LLC ("Developer") have entered into this Agreement for Exclusive Right to Negotiate ("ERN") as of _____, ("Effective Date") upon the follow terms:

1. **RECITALS.** This ERN is based upon the following recitals, facts and understandings of the parties:

a. Developer and Agency desire to investigate the potential to acquire and develop certain real property ("Property") located in the City of Sacramento, County of Sacramento, State of California. The Property is within the River District Redevelopment Project Area ("Project Area") and is owned or controlled in part by Developer and Developer's members. The properties are in the vicinity of the intersection of Richards Boulevard and North 7th Street in the River District Redevelopment Project Area. Additional properties may be incorporated into the negotiations including those that Developer may control or whose owners are willing to participate in the Project, including State-owned properties.

b. As part of the potential acquisition of the portion of the Property owned by the State, the parties propose to relocate existing State facilities and develop the entire Property under a comprehensive master plan that assures development as a mixed-use project ("Project"), consistent with the River District Redevelopment Plan ("Redevelopment Plan") and its implementing documents. The Project would be important to the furtherance of the Project Area and the elimination of blighting conditions in the Project Area.

c. The parties desire to investigate the scope and feasibility of the Project, develop a conceptual master plan for development of the Project, enlist the participation of other property owners including the State, investigating the process by which Agency could potentially acquire the State-owned portion of the Property and, if successful, negotiate an agreement between the parties for the financing and development of the Project.

d. The negotiation for the fulfillment generally of this ERN, acquisition of other land in the Project, development of the Project, and the completion of the Project are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements under which the Project may be undertaken.

2. **Identity of Parties**. The legal identities of the parties to this ERN and their addresses are as follows:

a. Developer is Richards Blvd. Joint Venture LLC, a California limited liability company, organized and doing business in the State of California. The principal office of Developer is located at 1722 3rd Street, Suite 202, Sacramento, California 95814. Developer shall make full disclosure to Agency of the identity of all principals, officers, stockholders, partners, joint venturers, and entities in Developer. Initially, the members of Developer are Johan Otto, Steve Ayers, Lynn Pomeroy, Steve Goodwin and Mark Weise.

b. Agency is the Redevelopment Agency of the City of Sacramento, a public body, corporate and politic, organized under California law and functioning within the jurisdiction of the City of Sacramento. The principal office of Agency for purposes of this ERN is located at 915 I Street, 3rd Floor, Sacramento, California 95814.

c. Notices to any party shall be personally delivered or sent by first class mail to its principal office address. Notices to Agency shall be clearly marked "Attention River District Redevelopment Project Area".

3. **EXCLUSIVE NEGOTIATION.** During the term of this ERN, the parties shall negotiate exclusively with each other, and in good faith, regarding the Property and the Project concerning the matters set forth in Section 7 below. The parties acknowledge and agree that neither party is obligated by this ERN or otherwise to undertake the Project or any other Project on the Property and that no party has a cause of action against the other arising under this ERN for failure to approve or undertake the Project.

4. **TERM.** This ERN shall be effective as of the Effective Date, and shall terminate upon the earlier of completion of all obligations or one year after the Effective Date unless extended by written agreement of the parties. If substantial progress is being made, the City Manager, on behalf of the Agency, may extend the Term for additional one year periods with the consent of the Developer.

5. **LEGISLATIVE ACTION.** Agency and Developer acknowledge that the Agency must exercise its independent legislative authority in making any and all findings and determinations required of them by law concerning the Project. This ERN does not restrict the legislative authority of the Agency in any manner, whatsoever, and does not obligate the Agency to enter into the Disposition and Development Agreement or Owner Participation Agreement for the Project (collectively the "Agreement") or to take any course of action with respect to the Project.

a. Each party shall bear its own costs related to this ERN.

b. If the Project's Agreement is disapproved by final action of the governing body of the Agency, in exercise of its independent review and legislative authority, or otherwise as may be required in this ERN or by law, this ERN shall terminate as of the date of such disapproval.

c. Developer acknowledges that Agency and the City of Sacramento are separate legal entities, and that the Project is also subject to independent review by the City in proper exercise of its jurisdiction, including without limitation, review by the City's Planning Department, Design Review, Preservation Board and Building Department.

6. **CEQA REVIEW.** In accordance with the California Environmental Quality Act ("CEQA"), Agency as lead agency shall prepare the environmental documentation and consider the environmental effects of the Project prior to considering action to approve the proposed Agreement.

a. Nothing in this ERN shall be construed to limit the application of CEQA to the Project or to changes in the Project or to control the actions of Agency in meeting its respective CEQA obligations. In fulfilling its obligations under CEQA, the Agency shall act independently and without regard to its respective obligations under this ERN. Agency shall not be liable, in any

respect, to Developer or any third party beneficiary of this ERN for their action or inaction in fulfilling their respective CEQA obligations.

b. Agency will not consider the approval of the Project and Agreement unless and until it has fully reviewed and considered the environmental impacts of the proposed Project in accordance with CEQA. After CEQA review, Agency is not, and shall not be considered to be, obligated by this ERN, or otherwise, to approve an Agreement or any other agreement. After CEQA review, Agency is not obligated, by this ERN or otherwise, to adopt findings of overriding considerations for the approval of the Project or take any other action in support of the proposed Project. After CEQA review, Agency is not precluded, by this ERN or otherwise, from rejecting the Project or from imposing mitigation measures as a condition of Project approval, which measures mitigate or avoid direct or indirect environmental effects of the Project.

c. Upon Agency request, Developer shall supply data and information both to determine the impact of the development on the environment and to assist in the preparation of the environmental documents for the proposed Project.

7. **NEGOTIATION OF AGREEMENT.** The parties shall negotiate actively and in good faith to achieve the scope of performances set forth in Section 8 below and develop an agreement for consideration by the governing board of the Agency in fulfillment of its legislative responsibilities.

a. As the circumstances warrant, the proposed Agreement will be in the form of a Disposition and Development Agreement or Owner Participation Agreement as commonly used by the Agency. In addition to other provisions stated in this ERN, the Agreement will address, among other terms, the following provisions: (a) use covenants to run with the land; (b) completion assurances; (c) insurance and indemnities, including hazardous materials indemnities; (d) anti-discrimination provisions; (e) performance assurances such as the deposit; (f) limitation on transfers prior to Project completion; (g) compliance with CEQA mitigation; and (h) Agency's Art in Public Places requirements.

b. The Agreement will establish the terms under which the Agency or Developer would obtain title to the Property and/or other Properties and the terms for ownership and development of the Property by the Developer together with the Developer-owned portions of the Property. As necessary to acquire the Property, the Agreement will include the respective obligations of the Agency and Developer to identify, acquire, and develop another site for use by the State as a replacement for existing facilities.

c. To develop the terms of the Agreement, Developer will analyze potential replacement sites for the existing facilities acceptable to the State and the Agency and prepare a proposal, including without limitation a timetable and budget, for the relocation of the existing facilities to such new site(s), and Developer will investigate and prepare a financing proposal to accomplish the relocation proposal. Developer will prepare a proposal, including without limitation a timetable and budget, for the design and development of the Project, and Developer will investigate and prepare a financing proposal to accomplish the development proposal.

d. The Agency will actively participate in negotiations with the State to develop the terms of the proposal regarding acquisition and replacement of the existing facilities and will negotiate with Developer regarding the feasibility of Agency or other financial assistance for demonstrated shortfalls in available financing for the Project.

8. **SCHEDULE OF PERFORMANCES.** The parties shall perform the following stated obligations at the times specified in the following schedule ("Schedule of Performances"):

Responsible Party	Action	Due Date
Developer and Agency	Meet and confer concerning progress of the foregoing actions; Developer to submit progress reports at each meeting	At least once each month during the term of this ERN, as it may be extended, commencing not later than twenty (20) days of the Effective date
Developer and Agency	Meet and confer with the State of California regarding the potential acquisition of the Properties	No later than forty-five (45) days after the Effective Date, subject to availability of State personnel, and thereafter as necessary to negotiate for such acquisition
Developer	Prepare and submit proposed development options and timetable to State of California and Agency for the relocation of the existing facilities	No later than ninety (90) days after the Effective Date
Developer	Prepare and submit proposed development options and timetable to Agency for the Project	Prior to one hundred eighty days (180) days after the Effective Date
Developer	Submit information as requested by Agency and City staff for review of Developer's proposal, for environmental review and for inclusion in presentations to governing bodies	Within ten (10) days of request, or as deemed reasonable by the parties

9. **OTHER EXTENSION.** Upon written request of Developer, Agency shall reasonably consider an extension of the initial term of this ERN for the earlier of an additional term of one year or upon completion of all obligations if Developer has acted diligently and in good faith in performing its obligations under this ERN and if there is a reasonable likelihood that the parties can negotiate a mutually acceptable Agreement.

10. **DEFAULTS.** Either of the Agency or the Developer shall be in default of this ERN if it (a) fails to fulfill its obligations when due, which failure is not caused by the other party, (b) does not negotiate the Agreement in good faith and upon the terms stated in this ERN, (c) does not reasonably cooperate with the other in fulfilling the other's obligations under this ERN, or (d) refuses to execute the Agreement when negotiations are completed after the Agency has approved the Project, and deposit any funds then required of it for the Agreement (except if the Agency has disapproved the Project after public hearing in exercise of its legislative authority or in accordance with CEQA in exercise of its independent review).

The defaulting party shall have thirty (30) days to cure the default. Should the defaulting party fail to cure the default within the thirty (30) days, the nondefaulting party may terminate this

ERN by written notice to the defaulting party, and may pursue equitable remedies available to it for such default, but not to exceed the costs it has incurred to implement this ERN.

a. After termination of this ERN, Developer shall have no rights under this ERN to participate in the development of the Project with the Agency, and the Agency shall have the absolute right to pursue development of the Project, in any manner it deems appropriate.

b. The remedies contained in this Section 10. are the sole and exclusive remedies for default of this ERN, and neither party may claim, as a result of a default of this ERN, any damages, whether monetary, non-monetary, contingent, consequential or otherwise.

11. **PREDEVELOPMENT COSTS.** Developer shall bear all predevelopment costs relating to actions of Developer under this ERN, including but not limited to costs for planning, environmental, architectural, engineering and legal services, and other costs associated with preparation of Developer's Proposal and the Agreement.

12. **ASSIGNMENT.** This ERN is not assignable by either party in whole or in part without the prior written consent of the other parties.

13. **APPLICABLE LAW; VENUE.** This ERN shall be construed in accordance with the law of the State of California, and venue for any action under this ERN shall be in Sacramento County, California.

14. **ATTORNEYS' FEES.** In the event of any dispute between the parties, whether or not such dispute results in litigation, the prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, witness and expert fees and investigation costs. A party receiving an award after arbitration or an order or judgment after hearing or trial shall not be considered a prevailing party if such award, order or judgment is not substantially greater than the other party's offer of settlement made in advance of the arbitration, hearing or trial.

EXECUTED as of the date first written above, in Sacramento, California.

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By:_____
Ray Kerridge, City Manager, City of Sacramento as Delegated Signatory of the Agency

Approved as to form:

_____
Agency Counsel

DEVELOPER: RICHARDS BLVD. JOINT VENTURE LLC

By: _____
Johan Otto
Managing Member

Approved as to form:

By:_____
Counsel for Developer