

RESOLUTION NO. 2010-534

Adopted by the Sacramento City Council

September 7, 2010

EXCLUSIVE RIGHT TO NEGOTIATE WITH CHRYSLER GROUP REALTY COMPANY LLC FOR PURCHASE OF 5.119 ACRES OF CITY-OWNED LAND

BACKGROUND:

- A. The City owns in fee the real property described in Exhibits A and B of **Exhibit 1** to this resolution, comprising approximately 5.119 acres ("the Property"). Until 2004, the Property was part of a 21-acre parcel that the City leased to the Sacramento Trapshooting Club, which for nearly 80 years used the parcel as a shooting range.
- B. After the club's lease expired, the City remediated the 21-acre parcel (to remove lead, arsenic, and polynuclear aromatic hydrocarbons) in accordance with California law and subject to supervision by the County of Sacramento Environmental Management Department. The approved remediation plan required the City to excavate the contaminated soil from the entire parcel; to consolidate the excavated soil on the eastern side of the parcel; and to cap the consolidated soil with impermeable material. When the remediation was finished, the City and the County of Sacramento Environmental Management Department entered into a Maintenance Agreement for the cap and a recorded Covenant to Restrict Use of Property – Environmental Restriction.
- C. Concurrently with the remediation, the City developed the 21-acre parcel for commercial use, taking the following steps: the City (1) certified an environmental-impact report that studied the effects of remediating and developing the 21-acre parcel; (2) reconfigured the 21-acre parcel into two legal parcels; (3) changed the zoning designation to C-4 (Heavy Commercial Zone); and (4) approved a planned-unit development that allows the sale of new and used automobiles. Then the City leased the 21-acre parcel to Raption Investment Group LLC ("Raption"), which operates a Honda dealership on the northern half (City Agreement No. 2007-0555, dated June 5, 2007).
- D. Although Raption originally intended to sublease the southern half of the 21-acre parcel, which includes the Property, Raption has indicated that it is interested in relinquishing its lease as to the Property, which the City desires to sell or lease for development as a dealership selling new and used automobiles. Chrysler, in turn, desires to purchase the Property from the City for the purposes of constructing and operating such an automobile dealership together with ancillary uses such as retail selling of merchandise related to automobiles and maintaining, repairing, and painting automobiles. The City and Chrysler thus desire to enter into an agreement giving Chrysler the exclusive right to negotiate with the City for purchase of the Property. The exclusive right to negotiate enables Chrysler to conduct its due diligence before committing to purchase Property, and it provides a framework for negotiations between the City and Chrysler on the terms of a proposed purchase agreement.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Manager or his designee is authorized to execute an Exclusive Right to Negotiate with Chrysler Group Realty Company LLC in a form substantially the same as the form attached to this resolution as **Exhibit 1**.

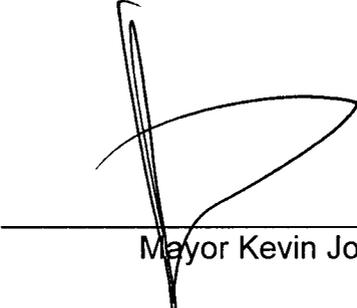
Adopted by the City of Sacramento City Council on September 7, 2010 by the following vote:

Ayes: Councilmembers Cohn, Hammond, McCarty, Pannell, Tretheway, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: Councilmembers Fong, Sheedy, and Waters.



Mayor Kevin Johnson

Attest:


Shirley Concolino, City Clerk

Exhibit 1

Form of Exclusive Right to Negotiate between the City of Sacramento and Chrysler Group Realty Company LLC

Exclusive Right to Negotiate

This Exclusive Right to Negotiate (“this ERN”), dated September __, 2010, for purposes of identification, is between **Chrysler Group Realty Company LLC**, a Delaware limited-liability company (“Chrysler”), and the **City of Sacramento**, a California municipal corporation (“the City”).

Background

The City owns in fee the real property described in Exhibits A and B, comprising approximately 5.119 acres (“the Property”). Until 2004, the Property was part of a 21-acre parcel, depicted in Exhibit C, that the City leased to the Sacramento Trapshooting Club, which for nearly 80 years used the parcel as a shooting range. After the club’s lease expired, the City remediated the 21-acre parcel (to remove lead, arsenic, and polynuclear aromatic hydrocarbons) in accordance with California law and subject to supervision by the County of Sacramento Environmental Management Department. The approved remediation plan required the City to excavate the contaminated soil from the entire parcel; to consolidate the excavated soil on the eastern side of the parcel; and to cap the consolidated soil with impermeable material. When the remediation was finished, the City and the County of Sacramento Environmental Management Department entered into a Maintenance Agreement for the cap and a recorded Covenant to Restrict Use of Property – Environmental Restriction.

Concurrently with the remediation, the City developed the 21-acre parcel for commercial use, taking the following steps: the City (1) certified an environmental-impact report that studied the effects of remediating and developing the 21-acre parcel; (2) reconfigured the 21-acre parcel into two legal parcels; (3) changed the zoning designation to C-4 (Heavy Commercial Zone); and (4) approved a planned-unit development that allows the sale of new and used automobiles. Then the City leased the 21-acre parcel to Raption Investment Group LLC (“Raption”), which operates a Honda dealership on the northern half (City Agreement No. 2007-0555, dated June 5, 2007).

Although Raption originally intended to sublease the southern half of the 21-acre parcel, which includes the Property, Raption has indicated that it is interested in relinquishing its lease as to the Property, which the City desires to sell or lease for development as a dealership selling new and used automobiles. Chrysler, in turn, desires to purchase the Property from the City for the purposes of constructing and operating such an automobile dealership together with ancillary uses such as retail selling of merchandise related to automobiles and maintaining, repairing, and painting automobiles. On September 7, 2010, the Sacramento City Council authorized the City Manager to enter into an exclusive right to negotiate with Chrysler on an agreement through which the City will sell the Property to Chrysler.

With these background facts in mind, the City and Chrysler hereby agree as follows:

1. **Exclusive Right to Negotiate.** During the term of this ERN the City shall negotiate exclusively and in good faith with Chrysler on an agreement through which Chrysler will purchase the Property from the City.
2. **Feasibility.** During the term of this ERN, Chrysler shall determine, in good faith, whether the physical condition of, and legal entitlements for, the Property are acceptable; whether the design of Chrysler's proposed buildings and other improvements on the Property is acceptable to the City; whether utilities of adequate capacity to serve Chrysler's needs are available to the Property; whether the Property will satisfy Chrysler's financial and competitive objectives in the trade area; and whether, in general, the Property is feasible for Chrysler's proposed dealership, economically and otherwise. In making these determinations and in deciding whether to enter into an agreement to purchase the Property, Chrysler may consider its own interests alone and is not required to consider the effect of its determinations or its decision on the City.
3. **Right of Entry for Site Assessment.** The City has obtained the consent of Rapton, the current lessee of the Property, for Chrysler to enter the Property in accordance with this Section 3.
 - (a) *Site Assessment.* At no cost to the City, Chrysler and its agents may enter upon the Property at reasonable times during Rapton's ordinary business hours and make any test borings, surveys, studies, and environmental site assessments that Chrysler determines to be appropriate. Chrysler may determine the scope, sequence, and timing of the test borings, surveys, studies, and environmental site assessments, which Chrysler and its agents shall conduct, to the extent reasonably possible, in a manner that minimizes inconvenience to Rapton and Rapton's customers. In performing test borings, surveys, studies, and environmental site assessments, Chrysler and its agents shall comply with all applicable laws, regulations, and agreements, including but not limited to the Maintenance Agreement and the recorded Covenant to Restrict Use of Property – Environmental Restriction described above in the Background. Chrysler shall provide the City, at no charge, with a copy of each report prepared in connection with an environmental site assessment (whether "phase I" or "phase II"), subject to the following: Chrysler makes no representations or warranties as to the accuracy of the reports, and the City may not rely on the reports.
 - (b) *Restoration.* Chrysler shall repair, at no cost to the City or Rapton, any disturbance or damage caused to the Property by the activities of Chrysler or its agents, so that the Property is restored to the same condition it was before those activities.
 - (c) *Indemnification.* In this Section 3(c), "the City" means the City and its officers, employees, and agents; and "Rapton" means Rapton and its members, officers, employees, and agents. Chrysler shall indemnify, protect, defend, and hold harmless the City and Rapton from and against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through appeal, whether for outside counsel or the City Attorney) that arise in any way from Chrysler's exercise of its rights under this Section 3. Chrysler's obligation under this Section 3(c) does not cover any liabilities, claims, demands, damages, and costs that arise from the negligence or wrongful conduct of the City or Rapton. Chrysler's obligation under this Section 3(c) will survive the expiration or termination of this ERN.

(d) *Third-party Beneficiary.* Rapton is a third-party beneficiary of this Section 3.

4. **No Obligation to Sell or Purchase.** This ERN does not obligate the City to sell the Property to Chrysler or enter into an agreement to that end, nor does it obligate Chrysler to purchase the Property from the City or enter into an agreement to that end, and it is not to be interpreted as imposing such an obligation. Any agreement for Chrysler’s purchase of the Property will be effective only if approved by the Sacramento City Council.
5. **Assignment.** Chrysler may not assign its rights under this ERN without the City’s prior written consent, which the City may grant, withhold, or condition based on its own interests alone and without considering the effect of its decision on Chrysler.
6. **Notices.** Any notice given under this ERN must be in writing and will be effective only when sent in the manner provided by this Section 6 to the persons identified below. Notices may be sent by personal delivery, by fax or e-mail, or by mail. Notices sent by personal delivery (including notices sent by overnight courier, e.g., FedEx, UPS) will be effective when delivered to the recipient. Notices sent by fax or e-mail will be effective when the recipient sends a fax or e-mail confirming delivery. Notices sent by mail will be effective on the third business day after deposit in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. “Business Day” means any day the City’s main offices located at 915 “I” Street, Sacramento, California, are open to the public. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Section 6.

If notice is to the City:

City of Sacramento
Economic Development Department
915 I Street, Third Floor
Mail Station 18000
Sacramento, California 95814
Attention: Diana Sasser, Project Manager

If notice is to Chrysler:

Chrysler Group Realty Company LLC
1000 Chrysler Drive, CIMS 485-03-20
Auburn Hills, Michigan 48326-2766
Attention: Director, Dealership
Properties and Facilities

with a copy to—

City of Sacramento
Facilities and Real Property Management
5730 24th Street, Bldg. 4
Sacramento, CA 95822
Attention: Asset Management

7. **Waiver.** A party’s failure to insist on strict performance of this ERN or to exercise any right or remedy upon the other party’s breach of this ERN will not constitute a waiver of the performance, right, or remedy. A party’s waiver of the other party’s breach of any term or provision in this ERN will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.

8. **Interpretation.** Time is of the essence of this ERN, which is to be interpreted and applied in accordance with California law, except as follows: because the parties jointly drafted this ERN, the interpretive rule in California Civil Code section 1654 does not apply. Exhibits A, B, and C are part of this ERN.
9. **Effective Date.** This ERN becomes effective when both parties have signed it, as indicated by the dates in the signature blocks below.
10. **Term of ERN.** This ERN expires at 5:00 p.m. (California time) on the 60th day after the effective date unless, before that time and day, Chrysler notifies the City that Chrysler elects to extend this ERN for another 30 days. If Chrysler timely elects to extend, then this ERN expires at 5:00 p.m. (California time) on the 90th day after the effective date.
11. **Counterparts.** The parties may execute this ERN in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
12. **Entire Agreement.** This ERN sets forth the parties' entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by a written agreement signed by both parties.

(Signature Page Follows)

City of Sacramento

Chrysler Group Realty Company LLC

By: _____
Gus Vina, Interim City Manager

Dated: _____, 2010

Recommended for Approval

By: _____
Rhonda Lake, Facilities and
Real Property Superintendent
Department of General Services

By: _____
James R. Rinehart, Director
Economic Development Department

Approved as to Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

Attest:
Sacramento City Clerk

By: _____

By: _____

Dated: _____, 2010

By: _____

Dated: _____, 2010

Approved as to Form
Howard & Howard

By: _____
Sally A. Rutledge, Partner
Attorneys for Chrysler Group Realty
Company LLC