



## City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 12/11/2012

**Report Type:** Consent

**Title:** Exclusive Right to Negotiate the sale of 3.12 acres of City-owned property to Anthem Senior Living

**Report ID:** 2012-00948

**Location:** District 6

**Recommendation:** Pass a motion authorizing the City Manager's Office to sign, on the City's behalf, an Exclusive Right to Negotiate (the "ERN") with Anthem Senior Living for the purchase of approximately 3.12 net acres, located at the southwest corner of Fair Oaks Boulevard and Howe Avenue. The ERN term is 90 days, with an option for a 90-day extension at the discretion of the City Manager.

**Contact:** Sabrina Tefft, Project Manager, (916) 808-3789, Economic Development Department

**Presenter:** none

**Department:** Economic Development Dept

**Division:** Citywide Development

**Dept ID:** 18001031

### **Attachments:**

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- 1-Description/Analysis
  - 2- Background
  - 3-Exclusive Right to Negotiate
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### **City Attorney Review**

Approved as to Form  
Joseph Cerullo  
12/5/2012; 3:31:32 PM

### **Approvals/Acknowledgements**

Department Director or Designee: Jim Rinehart: 12/5/2012; 11:46:21 AM

## Description/Analysis

**Issue:** Staff recommends that the City Council authorize the City Manager to sign on the City's behalf an agreement granting Anthem Memory Care LLC ("**Anthem**") an exclusive-right-to-negotiate (the "ERN") with the City for the possible purchase of approximately 3.12 acres of City-owned real property, in fee, located at the southwest corner of Fair Oaks Boulevard and Howe Avenue. Anthem has proposed a development of a 36,000±/- sf single-story assisted-living facility dedicated solely to Alzheimer's care.

The ERN's term is 90 days, with an option for a 90-day extension at the discretion of the City Manager. The ERN will allow Anthem to conduct due diligence and determine whether to proceed with negotiating the business terms for the purchase of the City property. If Anthem decides to proceed and negotiations prove successful, then staff will present the proposed purchase agreement to the City Council for consideration.

The possible sale of the 3.12 acres to Anthem would be in the best interest of the City for the following reasons:

- The proposed use will add virtually no traffic to an extremely busy intersection
- The sale will result in property taxes on a \$10,000,000 building
- Anthem will provide full-time employment at the site for 35 persons, seven days a week
- Anthem will deposit \$10,000 in earnest money within two business days after opening escrow

Therefore, if staff presents a proposed purchase agreement to the City Council after negotiating the property's sales terms, staff intends to recommend, in accordance with City Code section 3.88.090.A.2, that the City Council provide for the sale of the 3.12 acres to Anthem without first calling for bids.

**Policy Considerations:** This project offers a compatible use of the subject property, which is located at the busiest intersection of the entire city-street grid-structure.

**Economic Impacts:** None

**Environmental Considerations:** This report concerns an activity that is exempt from the California Environmental Quality Act (CEQA) because it concerns only a feasibility or planning study for a possible future action the City Council has not approved, adopted, or funded, and because there is no possibility that approval of the ERN itself will have any significant effect on the environment. (Cal. Code Regs., tit. 14, §§ 15061(b)(3), 15262.)

**Sustainability:** This report does not address any sustainability issues.

**Commission/Committee Action:** None

**Rationale for Recommendation:** The ERN enables Anthem to investigate the physical condition of the property and to determine whether the City's design requirements will accommodate its proposed assisted living facility dedicated solely to Alzheimer's care.

**Financial Considerations:** None

**Emerging Small Business Development (ESBD):** No goods or services are being purchased as a result of this action.



## Attachment 1

### Background

The City of Sacramento owns the site at the southwest corner of Fair Oaks Boulevard and Howe Avenue. It is unimproved land that is situated at the busiest intersection of the entire city-street grid-structure.

It is surrounded by numerous commercial enterprises, as well as residential structures. The proposed development of an assisted-living, continuum-of-care facility is a low-impact, high-revenue-generating use.

The benefits of such a development include the following:

- Over \$2 million in sale proceeds to the City
- Over \$500,000 in permits and fees to the City
- Construction jobs
- Property taxes on a \$10,000,000 building
- The addition of 35 employees working 24/7, adding activity and synergism to the surrounding retail and medical office projects
- A visually attractive single-story building that will be compatible with the surrounding office buildings
- A facility that will add virtually no traffic to the boulevard and intersection

The Economic Development, Community Development and Public Works Departments concur on the desirability of having this site developed as an assisted-living facility.



## Exclusive Right to Negotiate

This Exclusive Right to Negotiate (“**this ERN**”), dated December 11, 2012, for purposes of identification, is between ANTHEM MEMORY CARE LLC, an Oregon limited-liability company (“**Anthem**”), and the CITY OF SACRAMENTO, a California municipal corporation (“**the City**”).

### Background

The City owns in fee the real property described located at the southwest corner of Howe Avenue and Fair Oaks Boulevard in the City of Sacramento, comprising approximately 3.12 acres and designated as Assessor’s Parcel Number 295-0020-007 (the “**Property**”). Anthem has expressed interest in acquiring the Property from the City for the purpose of developing an assisted-living facility dedicated to caring for persons afflicted by Alzheimer’s disease. The City, in turn, is interested in exploring the possibility of selling the Property to Anthem for that purpose.

***With these background facts in mind, the parties 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 Anthem on an agreement through which Anthem will purchase the Property from the City.
- 2. Feasibility.** During the term of this ERN, Anthem shall determine, in good faith, whether the physical condition of, and legal entitlements for, the Property are acceptable; whether the design of Anthem’s proposed buildings and other improvements on the Property is acceptable to the City; whether utilities of adequate capacity to serve Anthem’s needs are available to the Property; whether the Property will satisfy Anthem’s financial and competitive objectives in the trade area; and whether, in general, the Property is feasible for Anthem’s proposed use, economically and otherwise. In making these determinations and in deciding whether to enter into an agreement to purchase the Property, Anthem 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.**
  - (a) *Site Assessment.* At no cost to the City, Anthem and its agents may enter upon the Property at reasonable times make any test borings, surveys, studies, and environmental site assessments that Anthem determines to be appropriate. Anthem may determine the scope, sequence, and timing of the test borings, surveys, studies, and environmental site assessments, which Anthem and its agents shall conduct, to the extent reasonably possible, in a manner that minimizes inconvenience to the public. In performing test borings, surveys, studies, and environmental site assessments, Anthem and its agents shall comply with all applicable laws, regulations, and agreements. Anthem 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: Anthem makes no representations or warranties as to the accuracy of the reports, and the City may not rely on the reports.

(b) *Restoration.* Anthem shall repair, at no cost to the City, any disturbance or damage caused to the Property by the activities of Anthem 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. Anthem shall indemnify, protect, defend, and hold harmless the City 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 Anthem’s exercise of its rights under this Section 3. Anthem’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. Anthem’s obligation under this Section 3(c) will survive the expiration or termination of this ERN.

**4. No Obligation to Sell or Purchase.** This ERN does not obligate the City to sell the Property to Anthem or enter into an agreement to that end, nor does it obligate Anthem 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 Anthem’s purchase of the Property will be effective only if approved by the Sacramento City Council.

**5. 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 5 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. Either 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 5.

*If notice is to the City:*

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

*If notice is to Anthem:*

Anthem Memory Care LLC  
3 Monroe Parkway  
Suite P – Box 430  
Lake Oswego, OR 97035  
Attention: Mark Rockwell

*and*

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

6. **Assignment.** Anthem 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 Anthem.
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.
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 90<sup>th</sup> day after the effective date unless, before that time and day, the City Manager elects in writing to extend this ERN for another 90 days. If the City Manager timely elects to extend, then this ERN expires at 5:00 p.m. (California time) on the 180<sup>th</sup> 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 and is intended to be their final, complete, and exclusive expression of those matters. It may be modified only by a written agreement signed by both parties.

*(Signature Page Follows)*

**City of Sacramento**

**Anthem Memory Care LLC**

By: \_\_\_\_\_  
John F. Shirey, City Manager

Dated: December \_\_, 2012

By: \_\_\_\_\_  
Mark Rockwell, President

Dated: December \_\_, 2012

Recommended for Approval

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: \_\_\_\_\_