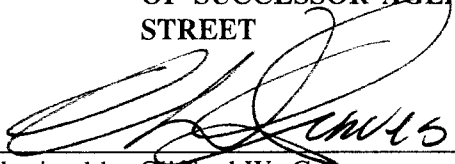


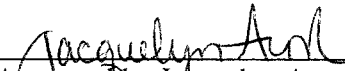


City of Carson Report to Successor Agency

July 2, 2013
New Business Consent

SUBJECT: CONSIDER ENTERING INTO AN EXCLUSIVE NEGOTIATING AGREEMENT WITH PANATTONI DEVELOPMENT COMPANY, INC. FOR THE DISPOSITION OF SUCCESSOR AGENCY-OWNED PROPERTY LOCATED AT 2254 EAST 223RD STREET


Submitted by Clifford W. Graves
Director of Community Development


Approved by Jacquelyn Acosta
Acting Executive Director

I. SUMMARY

Panattoni Development Company, Inc. (Developer) desires to enter into an Exclusive Negotiating Agreement (ENA) (Exhibit No. 1) with the Carson Successor Agency (Agency) to purchase and develop an approximately 5.5-acre, Agency-owned, property located at 2254 E. 223rd Street (Site) (Exhibit No. 2).

The Developer intends to purchase the Site to develop a business park. The ENA would be for a period of 180 days, during which the terms of a Purchase and Sale Agreement (PSA) would be crafted.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE the Exclusive Negotiating Agreement by and between the Carson Successor Agency and Panattoni Development Company, Inc.
2. AUTHORIZE the Agency Chairman to execute the Exclusive Negotiating Agreement following approval as to form by Agency Counsel.

III. ALTERNATIVES

1. MODIFY and APPROVE the Exclusive Negotiating Agreement as the Agency Board may deem necessary.
2. TAKE another action the Agency Board deems appropriate.

IV. BACKGROUND

The Agency is responsible for disposing of properties formerly owned by the Carson Redevelopment Agency. The state's Department of Finance (DOF) must issue a Finding of Completion (FOC) before the sale of Agency-owned property may occur. For this reason the Developer and the Agency wish to enter into an ENA that would allow sufficient time to exclusively negotiate the disposition of the Site and enter into a PSA once the FOC is issued by the DOF. The Agency and Developer agree that an exclusive negotiation period of 180 days is

appropriate.

The terms and conditions negotiated during the ENA period will be memorialized in a PSA that will be presented to the Agency Board for approval. The PSA will have certain provisions that would require the Developer to develop the Site as a business park.

At the request of Mayor Dear and Mayor *Pro Tem* Santarina, staff has asked Tesoro if they are interested in purchasing the property, and their representative has stated that they "might" be interested but have given no further details.

V. FISCAL IMPACT

There will be no fiscal impact, other than budgeted staff and consultant time.

VI. EXHIBITS

1. Exclusive Negotiating Agreement. (pgs. 3-8)
2. Site map. (pg. 9)

Prepared by: Amelia Soto

TO:Rev06-19-2013

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Public Works
Community Development	Community Services

Action taken by Successor Agency

Date _____ Action _____

EXCLUSIVE NEGOTIATING AGREEMENT

This **EXCLUSIVE NEGOTIATING AGREEMENT** (this "Agreement") dated as of June 4, 2013 (the "Effective Date"), is made by and between the **CARSON SUCCESSOR AGENCY**, a public body, corporate and politic (the "Agency"), and **PANATTONI DEVELOPMENT COMPANY, INC.**, a California Corporation (the "Developer"), with reference to the following facts.

RECITALS:

A. The Agency is the fee owner of that certain real property consisting of an approximately 5.5-acre site located in the City of Carson, County of Los Angeles, State of California, commonly known as 2254 East 223rd Street, Carson, California, and as more particularly described in Exhibit "A" attached hereto and incorporated by reference herein (the "Property").

B. The purpose of this Agreement is to effectuate duties of the Agency to dispose of property formerly held by the Carson Redevelopment Agency.

C. The Agency is responsible for disposing of properties formerly owned by the Carson Redevelopment Agency. The state's Department of Finance must issue a Finding of Completion before the sale of Agency-owned property may occur. The Developer and the Agency agree that the Exclusive Negotiating Period (as defined below) would allow sufficient time to exclusively negotiate the disposition of the Property and enter into a Purchase and Sale Agreement once the Finding Of Completion is issued by the Department Of Finance.

D. The Agency and the Developer wish to negotiate with each other as to the terms and conditions of an agreement that would result in Developer acquiring the Property and covenanting to construct a business park on the Property ("Project").

E. The Agency anticipates that following the execution of this Agreement, the Agency and the Developer shall negotiate the terms of a Purchase and Sale Agreement ("PSA") for the acquisition and redevelopment of the Property by Developer. Agency and Developer wish to conduct exclusive negotiations for a PSA.

F. During the Exclusive Negotiating Period, staff, consultants and attorneys of the Agency and the City will devote substantial time and effort in reviewing plans, assembling and reviewing information and providing redevelopment planning and assistance to the Developer in connection with the proposed Project and in negotiating and preparing the PSA.

G. The Agency and the Developer desire to enter into this Agreement in order to facilitate the negotiation of the PSA and to set forth the rights and obligations of the parties during the Exclusive Negotiating Period.

NOW, THEREFORE, the parties hereto agree as follows:

1. **EXCLUSIVE NEGOTIATING PERIOD**. During the period from the Effective Date through the date that is one hundred eighty (180) days thereafter (the "Exclusive Negotiating Period").

Developer and the Agency shall negotiate with each other in good faith with respect to the creation of a PSA providing for the acquisition of the Property by Developer and the development of the Project.

2. DEPARTMENT OF FINANCE. Sale of the Property will occur once a Finding of Completion ("FOC") is issued by the Department of Finance ("DOF"). If the FOC is still pending after the Exclusive Negotiating Period has ended the Exclusive Negotiating Period may be extended pursuant to Section 6 of this Agreement.

3. OBLIGATIONS OF AGENCY. During the Exclusive Negotiating Period, the Agency shall have the following obligations:

a. the Agency shall not negotiate, discuss nor otherwise communicate with any other person or entity, other than the Developer, regarding the lease, transfer, sale, or other disposition of the Property or the development of the Project, except for entities or persons which have an interest therein pursuant to applicable law or contractual rights or obligations;

b. the staff of the Agency shall be available to meet with Developer to discuss the Project, so that Developer shall have sufficient input to prepare its full proposal for the Project.

4. OBLIGATIONS OF DEVELOPER. Within sixty (60) days of the Effective Date, the Developer shall submit to the Agency a "Preliminary Development Concept Package," consisting of the following:

a. a preliminary development proposal generally describing the Project for the Property.

b. an initial estimate of development costs, including construction and non-construction costs, such as the proposed purchase price for land;

c. a preliminary description of the proposed method of financing; and evidence reasonably acceptable to the Agency that the Developer and its joint venture partners (if any) have the significant financial resources necessary for development.

Within thirty (30) days of the date of receipt of the Preliminary Development Concept Package, the Agency will provide its evaluation ("Preliminary Agency Evaluation") to the Developer of the Preliminary Development Concept Package.

Following the Preliminary Agency Evaluation, the Agency and the Developer shall continue to negotiate in good faith concerning the acquisition, development and use of the Property. During the Exclusive Negotiation Period, the Developer shall bear the costs of all actions and activities of the Developer, and the Agency shall bear the costs of all actions and activities of the Agency.

Prior to the termination of the Exclusive Negotiating Period, or any extension thereof, the Parties shall negotiate in good faith a mutually acceptable PSA for the development of the Project. If such a PSA is not entered into during the Exclusive Negotiation Period, or any extension thereof, then all rights, duties, and obligations of the parties hereto (except as otherwise provided in Section 13 hereof) shall terminate, and Agency shall be free to negotiate with any other party with respect to the disposition of the Property for any purpose or use whatsoever.

5. PURCHASE AND SALE AGREEMENT. During the Exclusive Negotiating Period the parties shall attempt to negotiate a PSA regarding the sale of the Property and development of the Project

6. EXTENSION. The Exclusive Negotiating Period may be extended by the mutual written consent of the parties for up to a cumulative total of not more than one hundred twenty (120) days. The Agency's Executive Director may grant such extension upon receipt of an extension request and a report from Developer indicating in specific terms the efforts of Developer to date and the anticipated steps to be undertaken in the extension period for completion of the planning and negotiation phases of the Project. Prior to granting any such extension, the Agency shall consider all the efforts made by the Developer under and pursuant to the terms and conditions of this Agreement including tenant lease commitments and to negotiate in good faith a PSA with the Agency for the Project. The granting of any extension pursuant to this Section 6 shall be in the complete control and discretion of the Agency.

7. TERMINATION. Either party may terminate this Agreement (and, with it, the Exclusive Negotiating Period) if the other party fails to comply with and perform in a timely manner, to the reasonable satisfaction of the first party, all provisions hereof to be performed by the other party, or if progress is not being made in negotiations hereunder to the first party's reasonable satisfaction. The party seeking to terminate this Agreement shall give ten (10) days written notice to the other party which specifies any dissatisfaction by the first party, including the opinion that the other party is not diligently prosecuting the performance of its obligations hereunder, and the first party shall not terminate this Agreement if the other party cures the deficiency specified in the notice to the reasonable satisfaction of the first party within such ten (10) day period.

8. NO PREDETERMINATION OF AGENCY DISCRETION. The parties agree and acknowledge that, while this Agreement does provide that the parties shall negotiate in good faith, this Agreement does not obligate either the Agency or the Developer to enter into a PSA, and approval of any PSA shall require the approval of both parties, with the Agency Board giving its approval, if at all, only after consideration of the PSA at a public meeting of the Agency Board, and all other proceedings required by law.

9. NO OTHER AGREEMENT. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the parties and no representations have been made by either party to the other as an inducement to enter into this Agreement, except as expressly set forth herein. All prior negotiations, written or oral, between the parties are superseded by this Agreement. This Agreement may not be altered, amended or modified except by a writing executed by both parties. Notwithstanding anything provided herein to the contrary, whether express or implied, the City and the Agency shall have no obligation to enter into a PSA with Developer, and neither the City nor the Agency nor their respective members, officers, staff or agents have made any promises to Developer other than to exclusively negotiate with Developer during the Exclusive Negotiating Period, and no statements of the City or the Agency or their respective officers, members, staff or agents as to future obligations shall be binding upon the City or the Agency until a full PSA is approved and duly executed by the Agency.

10. PROHIBITION AGAINST ASSIGNMENT BY DEVELOPER. This Agreement shall not be assigned by Developer without the Agency's prior written consent, which consent may be withheld in its sole and absolute discretion.

11. PROHIBITION AGAINST TRANSFER BY AGENCY. The Agency shall not transfer the Property during the Exclusive Negotiating Period.

12. ATTORNEYS' FEES. If either party should bring any legal proceeding relating to this Agreement, or to enforce any provision hereof, the party in whose favor judgment is rendered shall be entitled to recover reasonable attorneys' fees and expenses of litigation from the other.

13. INDEMNIFICATION. Except for actions arising solely from the Agency and/or City's reckless acts or reckless omissions, Developer shall indemnify, defend, and hold the Agency and City harmless from any and all costs, losses, claims and other liability brought by a third party (i) challenging the validity, legality or enforceability of this Agreement, or (ii) seeking damages which may arise directly or indirectly from negotiation, formation, execution, enforcement, Developer's performance under this Agreement or termination of this Agreement. This indemnity shall survive the expiration or other termination of this Agreement until such time that the proper instrument such as a Purchase and Sale Agreement or a Development Agreement is executed by both parties which supercedes this Agreement. In the event that any claim should be filed against the Agency or City which would require indemnification by the Developer, the Agency or City shall notify the Developer of such claim in a timely manner to permit the Developer the opportunity to provide adequate representation to the Agency or City with respect to any such claim.

14. NOTICES. Any notice which is required or permitted to be given hereunder shall be given in writing by certified mail, postage prepaid, and return receipt requested, or by personal delivery. Notices shall be considered given upon the earlier of (a) personal delivery or (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice:

If to Developer:

Panattoni Development Company, Inc.
20411 SW Birch Street, Ste. 200
Newport Beach, CA 92660
Attn: Mark D. Payne
Phone: (949) 296-2945 Fax: (916) 669-4841

With a copy to:

CVM Law Group, LLP
20411 SW Birch Street, Ste. 200
Newport Beach, CA 92660
Attn: Fredric Albert
Phone: (949) 296-2992
Fax: (916) 669-4860

If to the City or the Agency:

Carson Successor Agency
701 E. Carson Street

Carson, California 90745
Attn: Clifford Graves
Phone: (310) 233-4800
Fax: (310) 233-4832

With a copy to:

Aleshire & Wynder, LLP
Tower 17
18881 Von Karman Avenue, Suite 400
Irvine, CA 92612
Attn: Sunny Soltani
Phone: (949) 223-1170
Fax: (949) 223-1180

15. NON-BINDING NATURE OF AGREEMENT. Each of the parties acknowledges and agrees that because circumstances may change, and because each of the parties have not fully considered the ramifications of their present intentions, including the proposed terms of the PSA, this Agreement shall not be construed to bind the Agency or the Developer to enter into a PSA. The actual covenants and agreements of the parties with respect to the disposition and development of the Property shall be set forth in the PSA to be hereafter negotiated. By its execution of this Agreement, the Agency is not committing itself to or agreeing to undertake (a) any acquisition of land for the Project or the disposition of land to the Developer; or (b) any other acts or activities requiring the subsequent independent exercise of discretion by the Agency, the City, or any agency or department thereof. This Agreement does not constitute a disposition of property or exercise of control over property by the Agency or the City and does not require a public hearing. Execution of this Agreement by the Agency is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the Agency and City as to any PSA and all proceedings and decisions in connection therewith.

16. APPLICABLE LAW. This Agreement shall be construed and interpreted under, and governed and enforced according to the laws of, the State of California.

17. COUNTERPARTS. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

AGENCY:

CARSON SUCCESSOR AGENCY,
a public body, corporate and politic

By: _____
Chairman Jim Dear

ATTEST:

Agency Secretary Helen S. Kawagoe

APPROVED AS TO FORM:

Aleshire & Wynder, LLP
a limited liability partnership

By: _____
Agency Counsel

DEVELOPER:

**PANATTONI DEVELOPMENT
COMPANY, INC.**
a California Corporation

By: _____
Name: Mark D. Payne
Its: Partner

EXHIBIT "A"



2254 E. 223RD STREET

APN: 7315-007-903