

**EXHIBIT A**  
**REQUEST FOR PROPOSALS FOR DEVELOPMENT OF CITY-OWNED PROPERTY**

AGREEMENT TO NEGOTIATE EXCLUSIVELY

THIS AGREEMENT TO NEGOTIATE EXCLUSIVELY (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF TULARE, a public body ("City") and, a corporation (the "Developer"), on the terms and provisions set forth below.

THE CITY AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

I. [\$100] Negotiations

A. [\$101] Good Faith Negotiations

The City and the Developer, acknowledging that time is of the essence, agree for the Negotiation Period set forth below to negotiate diligently and in good faith:

Development of \_\_\_\_\_ project at the Site which is commonly described as a portion of 2600 W. Paige Avenue, Tulare, California 93274, comprised of approximately fifty-nine and seventy-six one hundredth net acres (59.76 net acres).

Among the issues to be addressed during the Negotiation Period as defined in §102 are: (1) The terms and conditions of conveyance of the Site to Developer or Developer's Client, including the purchase price for the Site; (2) Developer's or Developer Client's financing plan to develop the Site including partnership structure, planned equity investment, construction financing and permanent financing; (3) design and aesthetic considerations of the development of the Site, including but not limited to configuration of the development, satisfaction of vehicle circulation and parking requirements, and architectural quality; (4) amount and terms of payment(s) from Developer or Developer's Client to City; (6) requirements and restrictions placed on the development pursuant to the proposed Disposition and Development Agreement (the "DDA"); and (7) all other terms and conditions of the DDA.

B. [\$102] Duration of this Agreement

The duration of this Agreement (the "Negotiation Period") shall be \_\_\_\_\_ from the date of execution of this Agreement by the City. The City may, in its sole discretion, agree to extend the Negotiation Period if Developer's performance is satisfactory to the City. The additional time would be to identify and come to tentative agreement on the issues described in Section 101, as well as any other relevant issues (the "Extension Period"). If upon expiration of the Negotiation Period the Developer and City have not mutually agreed in writing to extend this Agreement for the Extension Period, then this Agreement shall automatically terminate.

In the event the Developer has not continued to negotiate diligently and in good faith, the City shall give written notice thereof to the Developer who shall then have ten (10) working days to commence negotiating in good faith. Following the receipt of such notice and the failure of the Developer to thereafter commence negotiating in good faith within such ten (10) working days, this Agreement may be terminated by the City. In the event of such termination by the City, the City shall not have any further rights against or liability to the other, except those as otherwise detailed herein after, under this Agreement.

C. [\$103] Non-Refundable Deposit to City

The parties acknowledge and agree that the City will expend, and have expended, considerable resources in the negotiation and review of the proposed development of the Site. To offset a portion of the staff, legal and other consulting costs that the City will incur during the Negotiation Period and to ensure Developer's commitment to the development of the Site, the Developer shall submit to the City a non-refundable deposit (the "Deposit") in the amount of TEN THOUSAND DOLLARS (\$10,000). AS CONSIDERATION FOR CITY EXPENDITURES IN FURTHERANCE OF THIS AGREEMENT, DEVELOPER ACKNOWLEDGES AND AGREES THAT THIS DEPOSIT SHALL BE NONREFUNDABLE. By initialing below, Developer provides its assent to said non-refundable deposit.

Developer Initials: \_\_\_\_\_

The Deposit shall be in the form of cash, or other form of legal tender as approved by the City Finance Director, to ensure that the Developer will proceed diligently and in good faith to negotiate and perform all of the Developer's obligations under this Agreement.

II. [\$200] Development Concept

A. [\$201] Scope of Development

B. [\$202] Developer's Findings, Determinations Studies and Reports

Upon reasonable notice, as from time-to-time requested by the City, the Developer agrees to make oral and written progress reports advising the City on all matters and all studies being made by the Developer. In the event the City and the Developer do not enter into a DDA, the Developer shall submit to the City copies of all studies and reports prepared for the proposed development of the Site by or for the Developer to the extent the Developer is legally able to do so, and the City shall have the right to the use and benefit of all such studies and reports.

III. [\$300] Acquisition of the Site

The purchase price and/or other consideration to be paid by the Developer for the Site under the DDA will be established by the City after negotiation with the Developer. Such purchase price and/or other consideration will be based upon such factors as market conditions, density of development, costs of development, risks of the City, risks of the Developer, estimated or actual Developer profit, public purpose and/or fair value for the uses permitted to be developed and financial requirements of the City, and will be subject to approval by the City Council of the City of Tulare after a public hearing as required by law.

IV. [\$400] The Developer

A. [\$401] Office of the Developer

The principal office of the Developer is:

B. [\$402] Members of the Developer

The managing member of the Developer is:

C. [\$403] Full Disclosure

The Developer has made full disclosure to the City of its principals, officers, major partners, joint venturers, key managerial employees and other associates, and all other material information concerning the Developer and its associates. Any significant change in the principals, associates, partners, joint venturers, negotiators, development manager, Developers, professional and directly-involved managerial employees of the Developer is subject to the approval of the City. Notwithstanding the foregoing, the Developer reserves the right at its discretion to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of developing the Site, provided that the Developer retains management and control of such entities and remains fully responsible to the City hereunder.

V. [\$500] The Developer's Financial Capacity

A. [\$501] Financial Ability

During the Negotiation Period, the Developer shall submit to the City satisfactory evidence of its ability to finance and complete the acquisition and development of the Site.

B. [\$502] Full Disclosure

The Developer will be required to make and maintain full disclosure to the City of its methods of financing to be used in the acquisition and development of the Site.

VI. [\$600] City's Responsibilities

A. [\$601] City Assistance and Cooperation

The City shall cooperate fully in providing the Developer with appropriate information and assistance for development of the Site.

B. [\$602] City Council Public Hearing

A DDA resulting from the negotiations hereunder shall become effective only after and if the DDA has been considered and approved by the City Council of the City of Tulare at a public hearing called for such purpose.

VII. [\$700] Real Estate Commissions

The City shall not be liable for any real estate commissions or brokerage fees which may arise herefrom. The hereby City represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer agrees to hold the City harmless from any claim by any broker, agent or finder retained by the Developer.

VIII. [\$800] Limitations of this Agreement

By its execution of this Agreement, the City is not committing itself to or agreeing to undertake: (1) acquisition of land; (2) disposition of land to the Developer; or (3) any other acts or activities requiring the subsequent independent exercise of discretion by the City or any City or department thereof.

This Agreement does not constitute a disposition of property or exercise of control over property by the City. Execution of this Agreement by the City is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the City as to any Disposition and Development Agreement and all proceedings and decisions in connection therewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set opposite their signatures. The effective date of this Agreement shall be the date this Agreement is signed by the City.

\_\_\_\_\_, 2011

CITY OF TULARE, a public body "CITY"

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney

"DEVELOPER"  
By \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_  
Developer Counsel

SAMPLE

EXHIBIT A

DESCRIPTION OF THE SITE

Tulare County APN: Portion of 174-040-005  
City of Tulare Address: 2450 West Paige Avenue  
Approximate Area: 20-Acres

EXHIBIT B

MAP OF THE SITE

[To Be Inserted.]