

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

Garden Grove Agency for Community Development

To: Agency Board

From: Matthew Fertal

Dept:

Dept: Director

Subject: CIVIC CENTER NEGOTIATING
AGREEMENT

Date: May 12, 2009

OBJECTIVE

The purpose of this report is for the Garden Grove Agency for Community Development (Agency) to consider a Negotiating Agreement (NA) with Sonnenblick-Del Rio Development, Inc. (Developer), for the development of a 100,000 square foot office building in the city of Garden Grove within the area know as the "Civic Center," which is bounded by Stanford Avenue on the north, Garden Grove Boulevard on the south, and Euclid Street on the west (Site).

BACKGROUND

The Civic Center properties have been identified as potential opportunities for the Agency to solicit additional governmental, institutional, and/or educational uses to expand and augment the existing Civic Center area. The Agency, in conjunction with the Developer, have an opportunity to solicit interest to add approximately 100,000 square feet of additional governmental and/or institutional office space within the Civic Center area. The NA will allow the Developer to prepare initial studies and designs to secure potential tenants for the office building.

DISCUSSION

The NA period is for one hundred eighty (180) days. Additionally, the Developer agrees that within thirty (30) days following the date of the execution of the NA, it shall submit to the Agency the following documents, reports, and information in a form reasonably satisfactory to the Agency Director, that will provide the Agency with the following information (Developer Submissions):

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Developer Submissions

- A site plan, elevations, and a description of the proposed development project sufficient for preparation of the initial study, including types of units, unit sizes, approximate square footage of units, tentative designation of parking, pedestrian, recreational and landscape areas, vehicular circulation system, and heights of buildings.
- A proposed schedule for the development of the project.
- Detailed biographical and background description of the Developer and its principals involved in the proposed development entity, including such matters as Developer's prior record with respect to the completion of other projects. It is understood that the Agency may take appropriate steps to verify such matters, and the Developer agrees to cooperate in furnishing information to the Agency.

FINANCIAL IMPACT

None. However, if the Agency decides to enter into a Disposition and Development Agreement (DDA) with the Developer, the completed project is projected to generate new Agency revenue of approximately \$200,000 annually. Additional financial impacts, if any, will be identified when the Agency considers the DDA.

COMMUNITY VISION IMPLEMENTATION

- Seeking to expand and augment the Civic Center area;
- Improving the City's economic base through development of tax-generating uses where appropriate; and
- Improving the aesthetics of the community and eliminate blighting influences.

RECOMMENDATION

Staff recommends that the Agency:

- Approve the attached Negotiating Agreement with Sonnenblick-Del Rio Development, Inc., for the development of a 100,000 square foot office building in the city of Garden Grove known as the "Civic Center."



MATTHEW J. FERTAL
Director

Attachment 1: Negotiating Agreement

NEGOTIATING AGREEMENT (Sonneblick-Del Rio Development, Inc.)

This **NEGOTIATING AGREEMENT** (“Agreement”) is dated for reference purposes as of the 12th of May, 2009 (the “Effective Date”), and is entered into by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body corporate and politic (“Agency”), and Sonneblick-Del Rio Development, Inc., (“Developer”). Agency and Developer are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

The following Recitals are a substantive part of this Agreement.

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California, Health and Safety Code Section 33000, *et seq.* (“Act”), Developer desires to redevelop approximately six (6) acres of real property located in the City of Garden Grove and within the boundaries of the Garden Grove Community Project Area (“Project Area”) and in an area commonly referred to as the “Civic Center” that is bounded on the north by Stanford Avenue, on the south Garden Grove Boulevard, on the east by Eight Street, and on the west by Euclid Street (“Proposed Development Site, as depicted on the attached Site Map (Exhibit A).

B. Agency desires to enter into negotiations with Developer and negotiate the terms and provisions of a Disposition and Development Agreement (“DDA”); likewise, Developer desires to enter into negotiations with Agency and negotiate the terms and provisions of a DDA in order to acquire the Proposed Development Site for the purpose of planning, design, construction, development and operation of a multi-story, 100,000 square foot office building to be more fully described, planned for, and defined in the DDA (“Proposed Development Project”).

C. The Parties acknowledge and agree that the purpose of this Agreement is to establish a period during which Developer shall be provided the opportunity to enter onto the portions of the Site owned by Agency and City to perform due diligence and, in addition, Developer shall have the exclusive right to negotiate with Agency toward the terms and provisions of a mutually acceptable DDA which will include, without limitation, a site plan, scope of development, schedule of performance, covenants or other regulatory agreement, economics, method of financing, financial participation and security therefor, and the specific uses to be contained within the Proposed Development Project, and which DDA may additionally include provisions for the delivery of financial guarantees to secure Developer’s performance.

D. The Parties intend that during the Negotiating Period (as the term is hereinafter defined) each will perform certain actions and responsibilities under this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **Negotiating Period.** Agency agrees to negotiate with Developer and Developer agrees to negotiate with Agency for a period of one hundred eighty (180) days from and after the Effective Date (“Negotiating Period”) toward the terms and provisions of a mutually acceptable DDA for the Proposed Development Project, if the Proposed Development Project is determined to be feasible by the Parties, each acting in its sole and absolute discretion; provided, however, that (i) if the Parties are proceeding

with commercially reasonable diligence and in good faith to complete their negotiations with respect to a mutually acceptable DDA but Agency's ability to take final action on the proposed DDA is delayed as a result of the need for the City of Garden Grove ("City") or Agency to comply with applicable provisions of the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*, ("CEQA")) with respect to the DDA and/or the Proposed Development Project, the Negotiation Period shall be automatically extended for the period of time it takes for City or Agency to complete and take final action on the DDA and the Proposed Development Project pursuant to CEQA and (ii) if prior to close of business on what would otherwise be the last day of the Negotiation Period Developer executes and submits to Agency a proposed DDA that is the product of negotiations and a meeting of the minds between Developer and Agency's staff and consultants the Negotiation Period shall be automatically extended for an additional thirty (30) days to provide Agency sufficient time to prepare such reports and conduct such public meetings and hearings as may be needed to enable Agency's Board of Directors to determine whether to approve and execute the proposed DDA. Each Party covenants and agrees that during the Negotiation Period its negotiations with the other Party shall be exclusive and during such period neither Party shall negotiate or enter into an agreement with any other person or entity regarding development of the Proposed Development Site.

Agency and Developer shall negotiate diligently in good faith to carry out all the obligations of this Agreement on or before the times established in this Agreement, to establish development plans and concepts, to determine the economic and market feasibility of the Proposed Development Project, to establish the value of the Proposed Development Site, and to determine the financial participation and obligations of both Agency and Developer under the DDA. If at the end of the Negotiating Period, the Parties have not completed negotiations of the terms and provisions of a mutually acceptable DDA, as evidenced by execution by Developer's duly authorized members and corporate officers, and approved as to form by Developer's legal counsel, on the final form of such DDA; then this Agreement shall automatically terminate without further written notice or further action by either Party. Except as otherwise expressly set forth in this Agreement, upon such automatic termination of this Agreement, the Parties knowingly acknowledge and agree that neither Party shall have any further rights or remedies to the other hereunder.

If needed, the Parties may mutually agree in writing to extend the Negotiating Period an additional three months, in their sole and absolute discretion, with neither Party obligated to extend, even if one Party desires to extend, the Negotiating Period. Agency undertakes no commitment or obligation to Developer to consider or grant any extension and does not by this Agreement commit or exercise any of its discretion to agree or not to agree to extend such Negotiating Period.

2. **Developer's Negotiators.** Developer represents to Agency that Robert Sonneblick and Nelson Del Rio are members of Developer and the individuals with whom Agency staff shall work with on a day-to-day basis concerning the negotiations toward a mutually acceptable DDA for the development of the Proposed Development Project. If Developer desires to designate another individual or other individuals as the lead negotiator(s) for the Proposed Development Project, then it shall provide written notification to Agency Director in a timely manner.

3. **Developer Submissions.** Within thirty (30) days after the Effective Date, Developer agrees to prepare and submit, or cause to be prepared and submitted, in complete form, to Agency the following documents, reports, and information, the adequacy of which shall be reasonably satisfactory to Agency Director (together, "Developer Submission"):

(a) A Proposed Development Project description and development/site plan application sufficient for the preparation of a complete initial study under CEQA, including types of units,

unit sizes, approximate square footage of units, tentative designation of parking, pedestrian, recreational and landscape areas, vehicular circulation system, and heights of buildings.

(b) Preliminary site plans, floor plans, circulation plans, and architectural/design concepts for the development showing access roads, amount and location of parking, location and size of all proposed buildings, including height and perimeter dimensions, pedestrian and vehicular circulation system, landscaping, exterior elevations from each perspective (NESW), and the architectural design of the Development Project.

(c) A proposed schedule for planning, construction and development of the Proposed Development Project.

(d) To the extent permitted by applicable federal, state, and local laws and regulations, Agency agrees all financial and economic information submitted by Developer to Agency shall be treated as confidential and as proprietary to Developer and shall not be released to the public or treated as a public record unless otherwise consented to by Developer in writing or as determined required to be disclosed as determined either by Agency's counsel or by a reviewing tribunal pursuant to applicable law, in consultation with Developer's legal counsel.

4. **Supplemental Progress Reports.** In addition to the Developer Submission required in Section 6 above, at intervals of not less than thirty (30) days during the Negotiation Period (including all extended period(s)), as requested by Agency, Developer shall provide to Agency verbal or written reports regarding its progress in meeting the terms and obligations of this Agreement.

5. **Agency Consideration of Developer Submittals.** Within thirty (30) days after Developer has submitted each item described in Section 6, Agency shall notify Developer in writing of its approval or disapproval of the submittal(s) (and if disapproved, a reasonable statement of the reasons therefor and what suggested changes could be made to make the submittal acceptable to Agency.) Developer's Submission pursuant to Section 6 shall in no event ever be deemed approved by Agency as a result of Agency's failure to timely approve or disapprove such submissions or failure to provide a complete or reasonable statement of the reasons for disapproval.

6. **Agency Cooperation.** Agency shall cooperate with Developer's professional consultants and associates in providing information and assistance reasonably within the capacity of Agency to provide in connection with the preparation of Developer's Submission or other submittal(s) pursuant to this Agreement or as required by state or local laws and regulations. This requirement does not obligate Agency to incur any monetary costs therefor.

7. **Design and Development Objectives.** The design and development objectives for the Proposed Development Project shall be specified in the DDA and the actual development shall be in conformity therewith. All design, architectural, and building plans for development shall be subject to review and approval of Agency and the City Council of City, and as applicable, the Garden Grove Planning Commission and other applicable boards or commissions with jurisdiction or authority regarding the Proposed Development Project or the Proposed Development Site.

8. **Change in Developer.** The qualifications of Developer and the members of Developer are of particular interest to Agency. It is because of the qualifications that Agency has entered into this Agreement with Developer. Consequently, no person or entity, whether a voluntary or an involuntary successor of Developer or any member of Developer, shall acquire any rights or powers under this Agreement nor shall Developer or any member thereof assign all or any part of this Agreement without prior Agency approval, which approval or disapproval Agency may grant or deny in its sole discretion. Any purported transfer, voluntary or involuntary or by operation of law, without Agency pre-approval,

shall be absolutely null and void and shall confer no rights whatsoever under this Agreement or relating in any respect the Proposed Development Project upon any purported assignee or transferee and shall be a basis for automatic termination of this Agreement. Developer shall have the right to assign its rights under the Negotiating Agreement if Developer or the members of Developer as of the date this Agreement is being approved retains a majority interest of at least 51% and management control of the successor entity.

9. **Non-Discrimination.** Developer shall not discriminate against nor segregate any person or group of persons on account of sex, race, color, marital status, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Proposed Development Project, nor shall Developer establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use, or occupancy of tenants, lessees, subtenants, subleases or vendees of the properties.

10. **Environmental Requirements.** Certain state and local environmental requirements (including without limitation, CEQA) may be applicable to the Proposed Development Project and DDA. Pursuant to such requirements certain environmental documents and environmental assessments of the Proposed Development Site may be required to be prepared for the Proposed Development Project and land therefor. Developer shall pay for any costs to prepare or cause to be prepared such environmental assessment and impact documents, if any, as may need to be completed in connection with the DDA and/or Proposed Development Project, including without limitation an environmental impact report ("EIR"), if required, and assessments or studies for Phase 1 and/or Phase 2 environmental assessments (collectively, the "Environmental Costs"). Developer agrees to provide Agency complete and true copies of any and all environmental reports, assessments, or other documents prepared and, if this Agreement is terminated or expires without Agency and Developer having entered into a DDA, all such documents may be used by Agency for use and evaluation of future projects, if any, proposed for the Proposed Development Site, and Developer shall not be entitled to any compensation therefor, subject to the following: (i) Developer does not represent or warrant that it will have or be able to convey to Agency the full ownership rights of the design professionals or other third party consultants who prepared such reports, assessments, or other documents, and Developer's assignment to Agency shall be limited to such ownership rights, if any, as may be held by Developer only; (ii) Developer makes no representation or warranty to Agency or any other third party with respect to the accuracy or completeness of any of the information contained within any such reports, assessments, or other documents, Agency's (or any other third party's) use of the same shall be at Agency's (or such third party's) sole risk, Agency (or such third party) shall assume all responsibility to verify, modify, or supplement such reports, assessments, or other documents, as needed, and Developer shall have no responsibility whatsoever with respect thereto; and (iii) in the event of any administrative, judicial, or arbitration or mediation proceedings that may be filed or prosecuted against Developer or any of the members or assignees of Developer (collectively, the "Indemnified Parties") arising out of the information contained in any such reports, assessments, or other documents, Agency shall indemnify, defend, and hold harmless the Indemnified Parties from and against any and all claims, liabilities, and losses for personal injury or death, property damage, economic loss, and other costs and expenses, including without limitation attorney's fees, expert witness fees, and other litigation expenses.

11. **No Predetermination of Agency or City Discretion.** The Parties agree and acknowledge that nothing in this Agreement in any respect shall be construed to affect or prejudice the exercise of Agency's (or City's) discretion relating to consideration and/or action on any submittal by or application from Developer. Further, nothing in this Agreement in any respect shall be construed to constitute a determination or precommitment by Agency to undertake the acquisition of either of the Third Party Parcels, by negotiated purchase or eminent domain, and nothing in this Agreement shall be

deemed to affect Agency's (or City's) obligation to comply with the laws, rules, and regulations governing the acquisition and disposition of property pursuant to applicable laws.

12. **Agreement Does Not Constitute Development Approval.** Agency and City reserve final and complete discretion and approval rights as to any DDA, any other agreement, and all proceedings and decisions in connection herewith and therewith. This Agreement shall not be construed as a grant of development rights or land use entitlement to construct, develop, operate, or otherwise use the Proposed Development Project or Proposed Development Site, or any other project or property. All design, architectural, and building plans for the Proposed Development Project shall be subject to the review and approval of Agency and City (and any other governmental entity or agency with jurisdiction over the Proposed Development Project or Proposed Development Site.) By its execution of this Agreement, Agency is not committing itself to nor agreeing to undertake the disposition of the Proposed Development Site, or any part thereof, or other real property to Developer, or any other acts or activities requiring the subsequent independent exercise of discretion by Agency, City, or any board, commission, agency, or department thereof (or any other governmental entity or agency with jurisdiction over the Proposed Development Project or Proposed Development Site.)

13. **Address for Notices.** Any notices pursuant to this Agreement shall be in writing and sent by (a) Federal Express (or other established express delivery services which maintains delivery records); or (b) by hand delivery; or (c) by certified or registered USPS mail postage prepaid, return receipt requested, to the following addresses:

To Agency: Garden Grove Agency for Community Development
11222 Acacia Parkway
Garden Grove, California 92840
Attention: Matthew Fertal, Agency Director/City Manager

To Developer: Sonneblich-Del Rio Development, Inc.
12011 San Vicente Blvd., #330
Los Angeles, CA 90049
Attention: Mr. Robert Sonneblich

14. **Default.** Failure by either Party to negotiate in good faith or to perform any other of its duties as provided in this Agreement shall constitute an event of default under this Agreement. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the action required to cure the default. If the default remains uncured fifteen (15) days after the date of such notice, the non-defaulting Party may exercise the remedies set forth in Section 18 of this Agreement.

15. **Remedies for Breach of Agreement.** In the event of an uncured default under this Agreement, the non-defaulting Party's sole remedy is termination of this Agreement; provided, however, (i) unless this Agreement is terminated due to the uncured material default of Agency, Developer shall remain responsible for the Environmental Costs and any and all other fees, expenses, and costs allocable and payable by Developer hereunder and Agency shall retain all right to seek any remedy available at law or equity to cause Developer to pay for the Environmental Costs; (ii) if this Agreement is terminated due to the uncured material default of Agency, Developer shall retain all right to recover its Deposit; and (iii) nothing in this Section 18 is intended to supersede or modify Developer's right to recover its Deposit to the extent Developer has such right under Section 2 of this Agreement. Developer knowingly agrees that it shall have no right to specific performance for conveyance of the Proposed Development Site or any part thereof, nor to claim any right of title or interest in the Proposed Development Site or any portion thereof.

16. **Attorney's Fees.** In the event any action is taken pursuant to this Agreement, the prevailing Party shall be entitled to recover its actual and reasonable attorney's fees and costs.

17. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

18. **Time of Essence.** Time is of the essence of every portion of this Agreement in which time is a material part.

19. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.

20. **Broker's Commission.** Each Party represents that it has not engaged any broker, agency or finder in connection with this Agreement, and agrees to hold the other Party harmless from any claim by any other broker, agent or finder retained by the Party making the above representation.

21. **Implementation of the Agreement.** Agency shall maintain authority to implement this Agreement through the Agency Director (or his authorized representative(s).) Agency Director shall have the authority to extend the term of the Negotiating Period pursuant to Section 1 hereof, to take all actions required to be taken on Agency's part with respect to authorizing Developer's entry onto the Agency Parcels and (if approved by the City) the City Parcels pursuant to Section 5 of this Agreement, to approve Developer's Submission(s) made pursuant to Section 6 hereof, to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the Agency so long as such actions do not materially or substantially change uses or development permitted on the Proposed Development Project or Proposed Development Site, or add to the costs incurred or to be incurred by Agency, as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform. All other materials and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Agency Board.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the date and year first appearing above.

AGENCY:

GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic

By: _____
Agency Director

ATTEST:

Secretary of the Agency

APPROVED AS TO FORM:

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By: _____
Agency Director

ATTEST:

Secretary of the Agency

APPROVED AS TO FORM:

Agency Counsel

[signature block continued on page 7]

[signature block continued from page 6]

DEVELOPER:

SONNEBLICK-DEL RIO DEVELOPMENT, INC.

By: _____
Robert Sonneblick

Title: _____

APPROVED AS TO FORM:

Counsel to Developer

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Attachment A

