

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2018, (“Effective Date”) by and between the City of Merced, a California Charter Municipal Corporation (“City”) and The Richman Group of California, LLC, a California Limited Liability Company (“Developer”).

WHEREAS, the City expects to acquire certain real property consisting of an approximately 5.0 acre site located in the City of Merced, County of Merced, State of California, located near the intersection of Childs Avenue and B Street or near the intersection of 18th Street and Martin Luther King Jr. Way (the “Property”);

WHEREAS, the Developer acknowledges a primary objective of the City is the development of a residential project to serve the community;

WHEREAS, the City and 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 and operate a 100+ unit multi-family rental apartment development within the City of Merced (the “Project”). The City and Developer believe it to be in the best interest of the City for the Project to be developed on the Property;

WHEREAS, The City anticipates that following the execution of this Agreement, the City and Developer shall negotiate the terms of a Disposition and Development Agreement (“DDA”) for the acquisition and redevelopment of the Property by Developer. City and Developer wish to conduct exclusive negotiations for a DDA;

WHEREAS, The City expects that following the execution of this Agreement and during negotiation of the DDA, Developer is directed to proceed with project design and entitlements so as to meet certain schedules that require project entitlement approval for potential funding source applications. Given the deadlines, requirements and limitations of the City’s agreement for site control with the County of Merced, the City and Developer acknowledge the need for expeditious processing of design and property entitlements during a time in which the Developer will not have any development rights pursuant to a DDA. Therefore, this ENA contains a reimbursement commitment in Section 4 and budget (“Entitlement Budget” in Exhibit A) for Developer’s design work and

pursuit of these entitlements during the ENA, all of which will be considered City work product, owned by and assignable to the City of Merced if Developer and City do not ultimately agree to terms of a DDA;

WHEREAS, during the Exclusive Negotiating Period (as defined below), the staff, consultants and attorneys of the City will devote substantial time and effort in reviewing plans, assembling and reviewing information and providing redevelopment planning and financial assistance to the Developer in connection with the proposed Project and in negotiating and preparing the DDA; and

WHEREAS, The City and Developer desire to enter into this Agreement in order to facilitate the negotiation of the DDA and to set forth the rights and obligations of the parties during the Exclusive Negotiating Period.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. EXCLUSIVE NEGOTIATING PERIOD. During the period from the Effective Date through the date that is three hundred (300) days thereafter (the "Exclusive Negotiating Period"), Developer and City shall negotiate with each other in good faith with respect to the creation of a DDA providing for the acquisition of the Property by Developer and the development of the Project.

2. OBLIGATIONS OF CITY. During the Exclusive Negotiating Period, the City shall have the following obligations:

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

B. City staff shall be available to meet with Developer to discuss the Project, so that Developer shall sufficient input to prepare its full proposal for the Project.

C. Identification and coordination of Project funding commitments for capital subsidies associated with Project construction and operational subsidies during Project lease up and after Project completion.

3. OBLIGATIONS OF DEVELOPER. Within one hundred fifty (150) days of the Effective Date, the Developer shall submit to the City a “Preliminary Development Concept Package,” consisting of the following:

- A. A preliminary development proposal generally describing the Project for the site subject to City review and approval.
- B. An initial estimate of development costs, including construction and non-construction costs, including the proposed purchase price for land.
- C. A preliminary description of the proposed method of financing.
- D. A proposed construction and operating pro forma which identifies all sources and uses of funds.
- E. Submittal of preliminary design(s) (including a scaled site plan indicating building and parking layout) for the purpose of demonstrating compliance with the design requirements of the City and to assist the City in conducting a review under the California Environmental Quality Act (“CEQA”) and National Environmental Policy Act (“NEPA”). This submittal is anticipated to require the Developer to invest in certain property due diligence and reports including, but not limited to: architecture, site survey, engineering reports for wet and dry utilities, phase I environmental, traffic, acoustic, green house gas emissions and legal. These expenditures are further detailed in the Entitlement Budget in Exhibit A.
- F. Evidence reasonably acceptable to the City that the Developer and its joint venture partners (if any) have the significant financial resources necessary for development.

City staff may solicit proposals and select independent financial or design consulting firms to verify and further analyze the Preliminary Development Concept Package at the City’s sole expense.

Within thirty (30) days of the date of receipt of the Preliminary Development Concept Package, the City will provide its evaluation (“Preliminary City Evaluation”) to the Developer of the Preliminary Development Concept Package. Such evaluation will include the City’s evaluation of items addressed in the Preliminary Development Concept Package. The Preliminary City Evaluation

shall indicate City's preliminary determinations as to the appropriate level of review under CEQA and NEPA.

Following the Preliminary City Evaluation, the City and 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 City shall bear the costs of all actions and activities of the City.

Prior to the termination of the Exclusive Negotiating Period, or any extension thereof, the parties shall negotiate in good faith a mutually acceptable DDA for the development of the Project. If such a DDA is not entered into during the Exclusive Negotiating 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 City shall be free to negotiate with any other party with respect to redevelopment of the Property for any purpose or use whatsoever.

4. PROJECT ENTITLEMENTS & BUDGET. The City acknowledges that Project entitlements are required to meet certain timelines associated with maintaining the City's site control, and the City is requesting Developer pursue Project entitlements during the Exclusive Negotiating Period, a period during which the ENA between Developer and City is not binding. Therefore, Developer is entitled to reimbursement from the City of its Entitlement Expenses if the City: a) is not able to provide or secure, given the good faith assistance and cooperation of the Developer, the subsidy "gap" financing to make the Project feasible; or b) is not able to maintain site control of the Property sufficient to allow the Project to proceed through no fault of Developer or Developer's reasonable pursuit of project entitlements and feasibility.

The Entitlement Expenses referred to in this section specifically exclude any internal costs incurred and expended by Developer or any of Developer's affiliates. Entitlement Budget expenses also exclude any legal costs or expenses incurred by Developer, Developer's affiliates, or third parties in negotiating the ENA and DDA. Entitlement Expenses do include third party costs by companies not affiliated with Developer for architectural work, engineering work and other studies associated with attaining Project entitlements.

Upon request by City, Developer shall provide any documentation related to Entitlement Expenses, no later than five (5) business days after receipt of such a request from City.

Any reimbursement of Entitlement Expenses is subject to a) the City's approval herein of the Entitlement Budget and b) should the Developer and City not agree to terms of a DDA, the assignability of the work product to the City. The maximum amount City will pay to Developer for reimbursement of Entitlement Expenses is One Hundred and Forty Three Thousand dollars (\$143,000). (See Exhibit A attached hereto.)

5. DISPOSITION AND DEVELOPMENT AGREEMENT. During the Exclusive Negotiating Period the parties shall attempt to negotiate a DDA regarding the development of the Project which contains various provisions, including, but not limited to, the following:

- A. The design of the Project by the Developer, which design shall be subject to approval by the City.
- B. The construction of the Project by the Developer in accordance with final plans and specifications to be provided by the Developer and approved by the City and pursuant to a detailed schedule of performance approved by the City, and in full compliance with all applicable laws including, but not limited to, those pertaining to the payment of prevailing wages should they apply.
- C. The operation and management of the Project by the Developer in a good and professional manner and the maintenance of landscaping, buildings and improvements in good condition and state of repair so as to be attractive to the residents and to the community.
- D. The operation of the Project by the Developer in compliance with all equal opportunity standards established by Federal and State law.
- E. The right of the City to inspect the Project from time to time to assure compliance with the foregoing provisions.
- F. The furnishing by the Developer to the City, upon the City's request, of conceptual drawings and schematics, final plans and working drawings for the Project and participation in presentations regarding all phases of development.
- G. Assurances that the Project shall be of the highest quality.

- H. The terms and conditions of the acquisition and sale of the Property.
- I. The terms and conditions of financial assistance, including City residual receipts loan and other Project subsidies.

6. ARCHITECTURAL RENDERINGS. No more than thirty (30) days after the date on which the City provides its comments on the Preliminary Development Concept Package, the Developer shall deliver to the City architectural renderings of the Project, including, but not limited to, scaled elevations, site plan and perspective views.

7. EXTENSION. The Exclusive Negotiating Period may be extended by the mutual written consent of the parties for up a cumulative total of not more than three hundred (300) days. The City's City Manager 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 City 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 DDA with the City for the Project. The granting of any extension pursuant to this Section 6 shall be in the complete control and discretion of the City.

8. 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 of the reasonable satisfaction of the first party within such ten (10) day period.

9. NO PREDETERMINATION OF CITY 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 City or the

Developer to enter into a DDA, and approval of any DDA shall require the approval of both parties, with the City Council giving its approval, if at all, only after consideration of the DDA at a public meeting the City Council, and such consideration following a public hearing and all other proceedings required by law.

10. 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 hereto the contrary, whether express or implied, the City shall have no obligation to enter into a DDA with Developer, and neither the City nor its 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 its respective officers, members, staff or agents as to future obligations shall be binding upon the City until a full DDA is approved and duly executed by the City.

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

12. PROHIBITION AGAINST TRANSFER BY CITY. The City shall not transfer the Property to third party during the Exclusive Negotiating Period.

13. 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.

14. INDEMNITY. Developer shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Developer or Developer's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Developer or its employees,

subcontractors, or agents, or by the quality or character of Developer's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Developer to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Developer from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Developer acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

15. 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 deliver. 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:

Developer: The Richman Group of California, LLC
Attn: Rick Westberg
420 31st Street, B1
Newport Beach, CA 92663
Telephone: (619) 708-8797

City: City of Merced
Attn: Steve Carrigan, City Manager
678 West 18th Street
Merced, CA 95340
Telephone: (209) 385-6834

City of Merced
Attn: Mark Hamilton,
Housing Program Supervisor
678 West 18th Street
Merced, CA 95340

Telephone: (209) 385-6863

16. 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 DDA, this Agreement shall not be construed to bind the City or the Developer to enter into a DDA. The actual covenants and agreements of the parties with respect to the disposition and development of the Property shall be set forth in the DDA to be hereafter negotiated. By its execution of this Agreement, the City 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 City, or any agency or department thereof. This Agreement does not constitute a disposition of property or exercise of control over property by the City and does not require a public hearing. 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 DDA and all proceedings and decisions in connection therewith.

17. CONFIDENTIALITY. The City and Developer anticipate that during the Exclusive Negotiating Period each party shall from time to time disclose and provide to the other certain proprietary reports, correspondence and other information related to the Project. Unless otherwise required by law, no party shall disclose (except to its own and to the other party's employees, officers, directors, agents, advisors, existing and prospective lenders, investors, counsel, and consultants) information regarding or related to the Project which is not already public and which has been delivered to such party pursuant to the terms hereof.

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

19. 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.

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DEVELOPER
THE RICHMAN GROUP OF
CALIFORNIA, LLC
A California Limited Liability Company

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. _____

ADDRESS: _____

TELEPHONE: _____

FAX: _____

E-MAIL: _____

EXHIBIT A

**The Richman Group & Central Valley Coalition for Affordable Housing
Childs and B Project
Projected Budget for Costs Spent Prior to Development Agreement
Project Entitlement & Funding App Budget**

Entitlement & Funding Application Budget		Amount
Architect	RFP - Developer's Risk/Pursuit	na
Architect	Entitlement submittal	50,000
Landscape	Entitlement submittal	5,000
Civil	Site survey & drainage reports for entitlement	12,500
Entitlement	CEQA & NEPA processing & coordination	15,000
AHSC Consulting	Consulting/preparation AHSC application	15,000
GHG Consulting	Consulting/preparation AHSC application	7,500
TCAC Market Study	TCAC requirement	15,000
TCAC Appraisal	TCAC requirement	10,000
Legal	Negotiation - Developer's Risk/Pursuit	na
Planning Dept Fees	Entitlement fees	deferred
Contingency (10%)	To be approved by Asst. City Manager	13,000
Subtotal		143,000

Alex Padilla
California Secretary of State

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Monday, August 27, 2018. Please refer to document [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

199513610014 RICHMAN GROUP OF CALIFORNIA, LLC, THE

Registration Date:	05/16/1995
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC
Status:	ACTIVE
Agent for Service of Process:	<u>COGENCY GLOBAL INC. (C2003899)</u> To find the most current California registered Corporate Agent for Service of Process address and authorized employee(s) information, click the link above and then select the most current 1505 Certificate.
Entity Address:	340 PEMBERWICK RD GREENWICH CT 06831
Entity Mailing Address:	340 PEMBERWICK RD GREENWICH CT 06831
LLC Management	One Manager

A Statement of Information is due EVERY ODD-NUMBERED year beginning five months before and through the end of May.

Document Type	↕ File Date	↓ PDF
SI-NO CHANGE	05/05/2017	
SI-COMPLETE	06/20/2016	
REGISTRATION	05/16/1995	

* Indicates the information is not contained in the California Secretary of State's database.

Note: If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to [Name Availability](#).
- If the image is not available online, for information on ordering a copy refer to [Information Requests](#).