

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the “**Agreement**”) is made and entered into as of October 2, 2023 (the “**Date of Agreement**”), by and between the **CITY OF GARDEN GROVE**, a municipal corporation (“**City**”) and **EDGEMOOR GARDEN GROVE CIVIC PARTNERS LLC**, a Maryland Limited Liability Company (the “**Developer**”) (the Developer and the City are collectively referred to herein as the “**Parties**”).

RECITALS

The following recitals are a substantive part of this Agreement.

A. City is a municipal corporation seeking an experienced developer to design, construct, and finance the Civic Center Revitalization Project (the “**Project**”) described in more detail in Attachment 1 on property owned by the City as shown in the Site Map attached hereto as Exhibit A and incorporated herein by reference (the “**Site**”).

B. Developer is an experienced Developer of public facilities as generally described in the Developer’s Response to the Request for Qualifications (“**RFQ**”).

C. The Developer and the City have entered into this Agreement to (i) facilitate the ability of the Parties to develop a design and guaranteed maximum price for the Project; (ii) agree on a methodology for the sequence of events for the design, construction, and financing of the Project; (iii) prepare and refine a proposal to finance the Project (“**Project Financing**”); and (iv) negotiate a contract pursuant to which Developer will design and construct the Project at a guaranteed maximum price (the “**Project Agreement**”).

D. The foregoing Recitals constitute a substantive part of this Agreement.

E. This Agreement is in the vital and best interests of the City and the health, safety and welfare of its residents, and in accordance with public purposes of applicable state and local laws and requirements.

F. The Parties intend that during and for the period of negotiations set forth herein (the “**Negotiation Period**”) each will perform certain actions and responsibilities under this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **Principals Governing the Implementation of this Agreement.**

The following principals will govern the conduct of the Parties in connection with the Implementation of this Agreement:

a. Project Budget Formatting.

(1) The Parties will agree upon a format for the Project Budget to be provided to the City by the Developer at each Milestone (as defined herein) and periodically during the term of this Agreement (the “**Project Budget**”). A cost model template that will be used to develop the Project Budget will be mutually developed and used throughout the design and development process. The final version of the Project Budget will become an attachment to the Project Agreement.

(2) The cost estimate format will initially utilize a Unifomat approach in the early design phases (Budget, Concept and Schematic Design). This can then transition to both a Unifomat and CSI Structure at the later design stages (Design Development and Construction Documentation). For purposes of this Agreement, “Unifomat” and “CSI Structure” shall have the meaning given to each by the Construction Specifications Institute.

(3) The Parties will mutually agree within the time periods later agreed and provided in the Master Project Schedule (as defined herein) upon all components of the Project Budget including, but not limited to, all direct labor, material and equipment costs, all General Requirements and Conditions, all design and construction contingencies, insurance, overhead, profits, and fees.

(4) The Developer’s design-build contractor’s profit percentage will be 2% of Total Capital Cost and the total Developer Fee will be 2.5% of Total Capital Cost as proposed in the Developer’s response to the Request for Qualifications. Without double counting profit and developer fee, “Total Capital Cost” shall include all components of the Project Budget.

(5) All of the Project Budget components, as far as reasonably possible given a particular design level of detail, will be supported by detailed quantity take-offs, vendor and material pricing quotations, local market studies (where available) and key project cost driver information and assumptions, which will be made available to the City as and when requested.

b. Target Value Design.

(1) It is the intent of the Parties to establish and support a rigorous Target Value Design process at every step in the Project evolution. For the purposes of this Agreement, “**Target Value Design**” means a management practice by the Developer that drives the design, schedule, and financing strategy to deliver the Project for a Total Capital Cost that is expected to fall within a range of \$110 million to \$150 million and an average annual financing costs of \$8 million to \$9 million (the “**Affordability Range**”).

(2) In each case subject to the limitations in Section 1.i., if any Project Budget is outside of the Affordability Range, the Developer will bring the Project back within the Affordability Range. This design, price, validate cycle is to be continuous and highly proactive. The intent is to ensure that design time is not lost

due to the need for Value Engineering (cost reduction) at milestone estimating points. For purposes of this Agreement, “Value Engineering” means an organized effort directed at analyzing designed building fixtures, systems, equipment, material selections, and financing strategy for the purpose of achieving essential functions at the lowest life cycle costs consistent with required performance, quality, reliability and safety.

c. Regular Cost Meetings and Cost Reports.

(1) The Developer shall prepare and deliver to the City, at a minimum, monthly reports that demonstrate the expected delivery costs and the variances, if any, from the Affordability Range. These reports are to be reviewed by the City and the Developer at a monthly cost-specific review meeting to be organized by the Developer.

(2) As a minimum, the monthly cost report should address each of the following to the extent reasonably available at such time, and considering the timing for initial delivery of each of the below in the overall Master Project Schedule:

(i) The Project Budget, including forecast capital construction costs versus the Affordability Range with all divergence and variation being identified and explained.

(ii) Current status of Project mark-ups including General Conditions, General Requirements, overhead and profit, insurance, and bonding.

(iii) Actual rate of spend against the ENA Period Budget.

(iv) Market conditions with respect to Project Financing and cost of materials.

(v) Project construction logistics and long lead item procurement.

(vi) A Master Project Schedule that aligns with the Project Budget.

(vii) Risk Register (as defined herein).

(viii) Sustainability Goals Tracking (as defined herein).

(ix) Lifecycle Cost analysis (as defined herein).

(x) Updates on the Project Financing implementation (as described in Section 1.h).

d. Deviation from Project Budget.

(1) In each case subject to the principles in Section 1.i., upon preparation of a design phase estimate, if the Project Budget is outside the Affordability Range, it

is the Developer's responsibility to re-design the Project, to bring the Total Project Cost within the Affordability Range. Cost reduction measures are to be fully documented and re-estimated to demonstrate budget compliance.

e. Risk Management.

(1) At the commencement of the Project, and no later than 15 days after execution of this Agreement, the Developer shall prepare an initial risk register identifying major risks to Project success, such as risks relating to entitlements and permits, utilities, site conditions, financings, inflation, supply chain disruptions and technical risks (the "**Risk Register**"). This Risk Register will list all of the Projects' known and perceived risks and opportunities, including financing risks.

(2) The Risk Register shall be scored in terms of potential cost and schedule impact and shall list risk mitigation strategies and the team individuals responsible for managing and delivering the various mitigations.

(3) The Risk Register shall be a formal, managed and live document and should form part of the Developer's monthly cost reporting to the City.

Items (1), (2), and (3), above, are referred to herein collectively as "Risk Management Strategies."

f. Construction Scheduling and Logistics.

(1) The Developer will create a resource loaded master project schedule which will include all design phases, construction phases, commissioning, and handover activities necessary for the comprehensive development of the Project (the "**Master Project Schedule**"). The initial draft is attached to this Agreement as Attachment 2 and shall be updated to account for adjustments otherwise permitted under this Agreement or otherwise agreed between the Parties and must not result in liability to the City under this Agreement that exceeds the applicable monthly amount of expenditures described in the ENA Period Budget submitted with the Developer's Statement of Qualifications.

(2) The Master Project Schedule will be a live document that is continuously monitored and measured against an agreed baseline by Developer. The Master Project Schedule status should form part of the Developer's monthly reporting to the City.

(3) The Developer shall ensure that if divergence from the Master Project Schedule appears to be occurring, that this position is immediately reported to the City along with recommendations for appropriate corrective actions and measures, including by the City or third-parties which may otherwise be causing the delay.

(4) Provided the Developer has satisfied its obligations (to the extent possible) relative to any applicable milestone, including Milestone No. 1, Milestone 2 Package, and any other deadline in the Master Project Schedule or this Agreement

(a “Performance Milestone”), if the timeframes for the Performance Milestones are not satisfied or met timely without fault of the Developer, the Negotiation Period (and the term of this Agreement) shall be extended a reasonable time to allow satisfaction of the Performance Milestones. Similarly, if unforeseen circumstances arise which delay or prevent satisfaction of the Performance Milestones, where neither Party has any control over such unforeseen circumstances (e.g. Acts of God, third party delay or litigation, strikes or other labor disputes, civil commotion, riots, etc.), excepting project financing, then the Negotiation Period (and the term of this Agreement) shall be extended a reasonable time to allow the Parties to fully perform but only to the extent caused by the delay or where performance was prevented. In no event shall any extension of time granted under this Section 1.f.4 exceed ninety (90) days without each Party’s written approval.

g. Sustainability and Life Cycle Cost Analysis.

(1) The Developer shall, at a minimum, target a LEED Silver rating for the new Public Safety Facility (“PSF”). The Developer shall exercise opportunities to deliver energy efficiency and sustainability strategies into the operation of the Project. These elements will be ascertained at the start of the Project and will be designed into all required elements of the Project.

(2) The Developer will create a tool for sustainability goals tracking (“**Sustainability Goals Tracking**”) which shall form part of the monthly reporting to the City.

(3) The Developer shall prepare appropriate “Life Cycle Cost Analysis” in order to evidence the initial capital cost of a project element versus its overall operation, maintenance and final disposal costs. The initial cost versus benefit equation should be shown to allow the City to make informed decisions in terms of critical element selections, particularly related to energy consuming components such as HVAC and Electrical systems. Life Cycle Cost decisions may be considered when considering if the Project meets the Affordability Range.

h. Project Financing Implementation.

(1) No later than 30 days from the date of this Agreement, the Developer shall provide an explanation of the strategy to develop and execute an efficient financing structure.

(2) The Developer will provide a monthly financing status update, to include a financial model that contains the elements of the Developer’s cost, schedule, and financing strategy and illustrates the supporting financial projections. The financial model must have appropriate functionality to show the costs and benefits of different financing strategies being considered by the Developer for review and approval by the City.

(3) Taking into account impacts to the Developer, the City reserves the right to advance the Project financing through its own debt issuance.

i. ENA Period Budget.

(1) The ENA Period Budget is the budget submitted by the Developer as part of Developer's Response to RFQ which describes the proposed amount and overall rate of Developer expenditures for which the City will be liable during the term of the ENA, as may be amended from time to time in accordance with this Agreement (the "**ENA Period Budget**"). The ENA Period Budget is attached hereto as Exhibit B.

(2) The ENA Period Budget shall form a basis against which actual costs are tracked and reported by the Developer. This cash flow shall form part of the monthly report to the City.

(3) The City's liability for the Developer's actual costs for reimbursement under Section 14 may not exceed the total ENA Period Budget in any single month (and all prior months leading up to the date of termination) without prior written approval by the City.

(4) While the Developer may at its own risk, incur costs in excess of the ENA Period Budget, in no instance will the Developer be obligated to incur such excess costs in performing its obligations under this Agreement. The ENA Period Budget will remain fixed and will not be varied, unless otherwise permitted under this Agreement or the City requests a change to the Project or otherwise causes or directs the Developer to incur costs materially more than the ENA Period Budget, in which case the Developer will promptly notify the City, and the Parties will, agree in writing on how to manage such increased costs, including, either through an increase to the ENA Period Budget, direct payment by the City or recovery at financial close.

2. **Exclusive Agreement to Negotiate.**

a. Required Actions.

(1) Within three (3) days of the date of execution of this Agreement (the "**Date of Agreement**"), the Developer will submit a complete description of the Project team including hierarchy, responsibilities and contact information.

(2) No later than 36 days from the Date of Agreement, the Developer shall present at least two (2) design concepts to be reviewed by the City. The City shall provide feedback to the Developer within ten (10) days of council review of the design concepts, such comments to be received by the time periods indicated in the Master Project Schedule.

(3) No later than one hundred (100) days from the Date of Agreement ("**Milestone No. 1**"), Developer shall submit to the City the following:

(i) 50% Design Development Drawings for the PSF and parking garage, including site plan and elevations;

- (ii) the Master Project Schedule;
- (iii) a proposed Project Financing plan describing the proposed method of financing, including construction and permanent financing and, if applicable, proposed credit enhancement;
- (iv) the Project Budget; and
- (v) a plan for review, rectification, and feedback.

After receipt of the complete Milestone No. 1 Package, City will review and provide input to Developer. If City determines that the Milestone No. 1 Package, as originally submitted is not adequately satisfying the terms of this Agreement, in the sole and complete discretion of the City, City shall so inform Developer within seven days.

- (4) Upon receipt of such information, Developer shall, within fourteen (14) days of receipt of such notice, submit a revised Milestone No. 1 Package or inform City in writing that it agrees that this Agreement shall be terminated.

If City determines that a Milestone No. 1 Package is acceptable in accordance with this Agreement, Developer shall proceed with preparation of a "Milestone 2 Package," as described below.

- (5) No later than sixty eight (68) days from the approval by City of the Milestone No. 1 Package, Developer shall submit to the City a "Milestone 2 Package," consisting of the following:

- (i) 100% Design Development drawings and 50% Structural/Foundation drawings, in each case for the PSF and parking garage;
- (ii) proposed final Project Financing, with a description of the terms and conditions of such financing;
- (iii) a revised Master Project Schedule;
- (iv) Project Budget; and
- (v) a plan for review, rectification, and feedback

After receipt of the complete Milestone No. 2 Package, City shall review the Milestone No. 2 Package. Within seven (7) days of a complete submittal under this Section 2.a.(4), City will provide input to Developer concerning the Milestone No. 2 Package. If City determines that the Milestone No. 2 Package, as originally submitted, does not satisfy this Agreement, in the sole and absolute discretion of the City, City shall so inform Developer. Upon receipt of such information, Developer shall,

within fourteen (14) days of receipt of such notice (or such other period of time agreed between the Parties), either (i) submit a revised Milestone No. 2 Package or (ii) inform City in writing that it agrees that this Agreement shall be terminated.

(6) If City determines that a Milestone No. 2 Package is acceptable, it shall be referred to as the “Final Milestone No. 2 Package”, and the parties will proceed with the negotiation of an agreement pursuant which Developer will design and construct the Project (the “Project Agreement”).

(7) Exclusive Negotiation. During the term of this Agreement, the City will negotiate exclusively with Developer concerning the development of the Project.

b. Term. The term of the Negotiation Period commences as of the Date of Agreement and shall continue until the earlier to occur of (i) the execution by the parties of the Project Agreement, or (ii) two hundred forty five (245) days of the Date of Agreement (the “Term of the Negotiation Period”) at which time this Agreement shall automatically terminate unless sooner terminated pursuant to Section 14 or extended under the terms of this Agreement, including either under Section 1.f.4. or otherwise by the parties acting at their sole and absolute discretion.

c. Agreement to Negotiate. The City (by and through its staff and consultants) and Developer agree that for the term of the Negotiation Period (whether said period expires or is earlier terminated by the provisions herein) each party shall negotiate diligently, reasonably and in good faith to carry out its obligations under this Agreement with the goal of coming to agreement on a Project Agreement, subject to the right of termination described in Section 14. The Developer expressly agrees and acknowledges that its rights to obtain approvals from the City pursuant to this Agreement are subject to and based upon compliance by the Developer with this Agreement (including without limitation the making of all submittals required pursuant to this Agreement, in conformity with this Agreement). An initial draft of the Project Agreement will be delivered by the responsible Party in accordance with the Master Project Schedule.

d. Supplemental Progress Reports. In addition to the requirements of Section 1 above, for so long as this Agreement remains in effect Developer agrees to organize weekly online meetings with City staff, to organize an in-person meeting at least monthly, and to provide monthly written reports (to include the Project Budget, Risk Management Strategies, Master Project Schedule, ENA Period Budget, and Sustainability and Life Cycle Cost Analysis) to City Staff advising the City on all matters and all studies being made in furtherance of full transparency and collaboration.

3. **No Predetermination of City Discretion; No Assurances as to Actions of Other Entities**. The Parties agree and acknowledge that nothing in this Agreement in any respect does or shall be construed to affect or prejudice the exercise of the City’s discretion. Further, nothing in this Agreement in any respect does or shall be construed to affect or prejudice the City’s discretion to consider, negotiate, or undertake the acquisition and/or development of any portion

of the Property, or shall affect the City's compliance with the laws, rules, and regulations governing land uses, environmental review, or disposition of the Property.

4. **Environmental, Permits, and Other Requirements.** The City shall be responsible for compliance with the California Environmental Quality Act and obtaining all approvals related thereto and the condition of the Site. Completion of the CEQA process is anticipated for January 9, 2024. The City will be responsible for securing a conditional use permit for the Project, if applicable. If the final Project design requires additional CEQA compliance efforts, the City will work with the Developer to adjust the Master Project Schedule and ENA Project Budget, as applicable.

a. The Developer will be responsible for securing all other required entitlements and permits. The only permit identified by the City is an AQMD permit for air particulates during construction.

b. The City will directly pay the Developer for costs related to removal and disposal of hazardous substances from soil and existing buildings and the City will be deemed the generator and arranger for all such substances. The Parties will agree on further details, indemnities and procedures regarding surface and subsurface site conditions under any right of access agreement described in Section 5 below and the Project Agreement.

c. The City will provide assistance with coordinating governmental approvals and with utility owners for utility relocation and for any other purpose as required for the Project.

d. The City will provide the recently completed geotechnical assessment, and any other site condition reports or surveys of the Site to the Developer and the Developer can utilize such reports without independently validating their content.

5. **Right of Entry.** Ownership of the property will remain with the City during the period covered by this Agreement. The Developer will have the right to access the Site solely to perform its obligations under this Agreement, including ordinary and customary visual site investigations; provided, however, any invasive or physically intrusive site investigations will be governed by a right of access pursuant to a right of entry agreement for specified purposes, with notice to the City. The Developer shall provide the City a notice (which may be sent via email) of the Developer's intent to enter the Site at least three (3) days prior to the intended date of entry, which notice shall include a general description of the activities to be conducted.

6. **Stakeholder Engagement.** Developer agrees to participate, as needed, in meetings with stakeholders and community regarding proposed projects. This will include producing presentation materials including renderings, schedules, budgets, etc. in a format suitable for viewing at a public meeting.

7. **Costs and Expenses.** Except as otherwise provided in this Agreement, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with the performance of its obligations under this Agreement. The City may include its internal costs and its actual and direct third-party costs in the Total Project Cost to be reimbursed through the Project Financing, but in such event, the Affordability Range may be

adjusted. Where the Project Agreement is executed, and the Developer is responsible for financing the Project, the Developer shall also recover all of its costs reasonably incurred under this Agreement at financial close of the Project to be reimbursed through the Project Financing. Where the City finances the Project, then the Developer will be reimbursed under the Project Agreement through a mobilization payment funded with the proceeds of the City's financing (or any other funding made available by the City) for all its costs reasonably incurred under this Agreement-.

8. **No Change in Developer or its Constituent Members.** The Developer shall within three (3) days of this Agreement make full disclosure to the City of all pertinent information concerning the Developer team as referenced in Section 2(a), including any joint venture partners. The qualifications of the Developer team and its key personnel are of particular interest to the City. Consequently, no person or entity, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign all or any part of this Agreement, other than to an affiliate of Developer, without the prior written approval of the City, which approval the City may grant, withhold, condition, or deny at its sole and absolute discretion. Any other purported transfer, voluntarily or by operation of law, shall be absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee.

9. **Lead Negotiators.** Lisa Kim shall be the lead negotiator for the City with respect to the subject matter of this Agreement. Brian Dugan shall be lead negotiator for Developer with respect to the subject matter of this Agreement. The lead negotiator for the Developer shall have authority to contractually bind the Developer.

10. **Insurance and Indemnification.**

a. Insurance Requirements.

(1) Commencement of Work. Developer shall not commence work under this Agreement until all insurance certificates and endorsements have been received and approved by the City. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the City of any material change, cancellation, or termination at least thirty (30) days in advance.

(2) Workers Compensation Insurance. For the duration of this Agreement, Developer and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the City, its officers, officials, agents, employees, and volunteers.

(3) Insurance Amounts. Developer shall (either directly or through its subcontractors) maintain the following insurance for the duration of this Agreement:

(i) Commercial general liability in an amount not less than \$2,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be approved by the City, admitted and licensed in California, and have a Best's Guide Rating of A-, Class VII or better, as approved by the City;

(ii) Automobile liability in an amount not less than of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable) Insurance companies must be approved by the City, admitted and licensed in California, and have a Best's Guide Rating of A-, Class VII or better, as approved by the City.

(iii) Professional liability in an amount not less than \$2,000,000 per occurrence; Insurance companies must be acceptable to City and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the City. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the Agreement, and, in the event the parties do not enter into a Project Agreement for a period of three (3) years from the date of the completion of services provided. In the event the parties enter into a Project Agreement, the services performed by Developer under this Agreement shall be considered performed as part of the Project Agreement. In the event of termination, cancellation, or material change in the policy, Developer shall obtain continuing insurance coverage for the prior acts or omissions of Developer during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

(4) (i) An Additional Insured Endorsement, ongoing and completed operations, for the policy under section 3(a) shall designate City, its officers, officials, employees, agents, and volunteers as additional insureds. Developer shall provide to City proof of insurance and endorsement forms that conform to City's requirements, as approved by the City.

(ii) An Additional Insured Endorsement for the policy under section 3(b) shall designate City, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, lease, hired, or borrowed by Developer. Developer shall provide to City proof of insurance and endorsement forms that conform to City's requirements, as approved by the City.

(iii) For any claims related to this Agreement, Developer's insurance coverage shall be primary insurance as respects to City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

(iv) If Developer maintains higher insurance limits for the Project through Project specific insurance than the minimums shown above, Developer shall provide coverage for the higher insurance limits obtained by the Developer.

b. Indemnification. To the fullest extent permitted by law, Developer agrees to protect, defend, and hold harmless City and its elective or appointive boards, officers, agents, and employees from any and all third-party claims and related liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or to the injury or destruction of tangible property directly caused by the negligence, recklessness and/or intentional wrongful conduct of Developer, Developer's agents, officers, employees, subcontractors, or independent contractors hired by Developer in the performance of the Agreement. The only exception to Developer's responsibility to protect, defend and hold harmless City, is due to the negligence, recklessness and/or wrongful conduct of City, or any of its elective or appointive boards, officers, agents, or employees. This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable and shall survive termination of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Developer.

11. **Address for Notices.** Any non-legal notice may be delivered digitally through e-mail to the below stated e-mail addresses and any formal legal notices pursuant to this Agreement shall be in writing and sent (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery, (iii) by certified or registered mail, postage prepaid, return receipt requested, to the following addresses:

To City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92842
Attention: Lisa Kim, City Manager
Email: lisak@ggcity.org

With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr., Special Counsel
Email: tclark@stradlinglaw.com

Omar Sandoval, Director & Shareholder Woodruff
& Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626
Attention: Omar Sandoval, City Attorney
Email: osandoval@woodruff.law

To Developer: Edgemoor Garden Grove Civic Partners LLC
7900 Westpark Drive
McLean, VA 22102
Attn: Brian Dugan, Managing Director
Email: brian.dugan@edgemoor.com

12. **Default.** Failure by either party to perform one or more 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, the action required to cure the default, and the time period of ten (10) days within which to cure or commence to cure the default; provided, however, that such cure period shall be extended for such longer period as reasonably necessary if (a) the breaching Party is making reasonable efforts to cure the breach as promptly as practicable, (b) a cure cannot practicably be achieved within the initial cure period, and (c) prior to the end of the initial cure period, the breaching Party gives the non-breaching Party notice of the need for an extension, which notice will describe the actions being taken by the breaching Party to cure the breach.

13. **Remedies for Breach of Agreement.** In the event of an uncured default under this Agreement, the sole remedy of the non-defaulting party shall be to terminate this Agreement. Following such termination, except as provided in Section 14 below, neither party shall have any further rights, remedies or obligations under this Agreement. Neither party shall have any liability to the other for monetary damages or specific performance for the breach of this Agreement, or failure to reach agreement on a Project Agreement as to the Project, and except for any compensation to be paid under Section 14 below, each party hereby waives and releases any such rights or claims it may otherwise have at law or at equity. Furthermore, the Developer knowingly agrees that it shall have no right to specific performance nor to claim any right of title or interest in the Site or any portion thereof.

14. **Termination.** This Agreement shall: (i) automatically terminate upon the expiration of the Term of the Negotiation Period, or (ii) terminate by written notice in the event of an uncured default by either party, or (iii) notwithstanding anything herein to the contrary, either party may terminate the Agreement upon fourteen (14) days' written notice, without cause ((i), (ii) and (iii) "Termination"). In the event of Termination, as the sole and exclusive remedy of the Parties, the City shall (within thirty (30) days of receipt of a proper invoice) reimburse the Developer for all documented external professional services costs, Developer out-of-pocket costs (including financing costs) and construction costs (such costs not to exceed the amounts set forth in the ENA Period Budget for the commensurate period), incurred by the Developer in connection with its performance of this Agreement. In exchange for and following such payment, the City shall be given sole and exclusive ownership of all work product of the Developer in connection with the implementation of this Agreement and the City agrees it cannot rely upon any such work product for any purpose, including further design or construction of the Project. If the Developer terminates this Agreement for the City's default, the Developer's documented internal costs will also be reimbursed by the City in an amount not to exceed the commensurate period in the ENA Period Budget. In connection with Termination, and solely in the case of the Developer following full payment and satisfaction by the City of any amounts due and payable under this Section 14, both Parties forever release the other Party, and waive all rights that exist under applicable law to bring a claim or litigation against the other Party, including for losses, economic damages or any other damages under or in connection with this Agreement and both Parties shall waive any other right or remedy available under law, including specific performance, or otherwise. The provisions of this Paragraph 14 do not apply in the event that this Agreement has been superseded by a Project Agreement.

15. **Time of Essence.** Time is of the essence of every portion of this Agreement in which time is a material part. During the Negotiation Period the time periods set forth in this Agreement for the performance obligations hereunder shall apply and commence upon a complete submittal of the applicable information or occurrence of an applicable event. In no event shall an incomplete submittal by the Developer trigger any of the City's obligations of review, approval and/or performance hereunder; provided, however that the City shall notify the Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for the City's action on the particular item in question. Further, the time periods set forth herein are outside dates of performance. In the event a party completes a performance item earlier than the time required hereunder, the time for the next performance obligation of a party shall commence. Thus, the parties agree that the requirements hereunder may occur and be completed in a shorter time frame than set forth herein.

16. **Real Estate Commissions.** Each party represents to the other that it engaged no broker, agent or finder in connection with this Agreement or the transactions contemplated hereby. Each Party shall not be liable to the other Party for any real estate commission, brokerage fees, or finders fees which may arise with respect to this Agreement.

17. **Developer Not an Agent / Severability.** The Developer is not an agent of the City.

18. **Press Releases.** The Developer agrees to discuss any press releases with the City Manager or his designee prior to disclosure or publication in order to assure accuracy and consistency of the information. The City, in its sole discretion, may decline the issuance of any press release.

19. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties, integrates all of the terms and conditions 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. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officials/authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate officials/authorities of the City and the Developer as no amendment may be made to this Agreement without the written consent of both Parties.

20. **Agreement Does Not Constitute Development Approval.** The City reserves final discretion and approval as to any sublease or development and all proceedings and decisions in connection therewith. This Agreement shall not be construed as a grant of development rights or land use entitlements to construct the Project. All design, architectural, and building plans for the Project shall be subject to the review and approval of the City and such governmental entities properly exercising authority with respect thereto. By its execution of this Agreement, the City is not committing itself to or agreeing to undertake the disposition of the Property to the Developer, or any other acts or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof. By entering into this Agreement, the Developer does not commit itself to enter into a binding Project Agreement. The parties recognize that the Developer must first negotiate the terms of the Project Agreement before exercising its sole and absolute discretion to enter into it.

21. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California. The Superior Court of the County of Orange County shall be the site and have jurisdiction for the resolution of all such actions.

22. **Implementation of Agreement.** The City shall maintain authority to implement this Agreement through the City Manager (or his or her duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially (i) change the uses or concept of the Project, or (ii) add to the costs or risks incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform. All other material and/or substantive interpretations, waivers, or amendments shall require the collective consideration, action and written consent of the governing board of the City.

23. **No Third Party Beneficiaries / Counterparts.** There are no third-party beneficiaries of this Agreement. This Agreement may be executed in counterparts, each of which, after all the Parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

24. **Waiver of Damages / Survival.** Except for the City's failure to pay any amounts due and payable under this Agreement, each party hereby waives any claim for monetary damages for breach or default hereunder.

25. **Confidentiality.** Subject to complying with the California Public Records Act, the Developer shall not be required to deliver information, reports or analyses containing confidential or proprietary information.

NOW THEREFORE, the Parties have executed this Negotiation Agreement as of the date and year first set forth above.

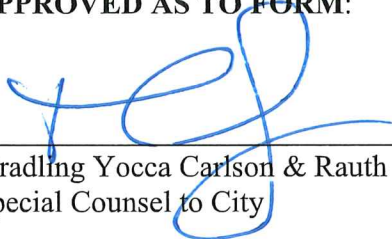
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CITY OF GARDEN GROVE, a municipal corporation

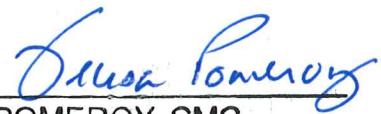
By: 

City Manager


APPROVED AS TO FORM:



Stradling Yocca Carlson & Rauth PC
Special Counsel to City

ATTEST: 


TERESA POMEROY, CMC
City Clerk
City of Garden Grove
DATED: 10/11/23



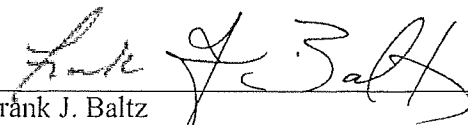
Woodruff & Smart
City Attorney
By Omar Sandoval

DEVELOPER:

**EDGEMOOR GARDEN GROVE CIVIC
PARTNERS LLC**, a Maryland limited
liability company

By: 

Brian Dugan
Authorized Representative

By: 

Frank J. Baltz
Authorized Representative

ATTACHMENT 1 PROJECT DESCRIPTION

The Project represents a transformative endeavor aimed at enhancing the heart of Garden Grove, including a new 90,000+ square foot PSF, a new re-envisioned and reconfigured 2.7-acre Civic Center Park, a new 450-space parking structure, and the demolition of the existing police headquarters building following the completion of the new PSF and parking structure.

The City selected the Developer as the development team to enter exclusive negotiations. During this exclusive negotiating period, it is intended that the Developer will advance a design, plan of finance, schedule, and budget and that the parties will agree on terms for the Developer to design, construct, and finance the Project. The exclusive negotiation period is intended to culminate in a single Project Agreement to govern completion of the design, financing, and construction.

The Project is a significant undertaking that embodies the City of Garden Grove's commitment to enhancing its civic core. It is expected to yield substantial benefits for the community, providing a modern and efficient public safety facility, improved park amenities, functional parking infrastructure, and economic opportunities for local and disadvantaged firms. The project represents a pivotal step towards a vibrant and thriving Garden Grove.

PSF

The new PSF will replace the existing police facility and include additional capacity to support anticipated expansion to 2039 projected staffing levels. It will consolidate the following functions: Police Administration and Administrative Services, Records, Evidence and Property, Communications, Investigations, Community Policing, SWAT, memorials for fallen officers, shared training amenities, and a larger temporary holding area.

The new facility is currently envisioned to be an "Essential Services" building providing 911 dispatch and other important public safety services, along with an Emergency Operations Center and modern server room. The new building shall exemplify the values of the Garden Grove Police Department by creating an environment that is welcoming and supportive of the community, fiscally responsible, and purpose-driven in its mission to protect and serve the residents of Garden Grove. The City has a minimum sustainability objective of LEED Silver.

Parking Structure

The parking structure is intended to accommodate secured police fleet vehicle parking, staff personal vehicles, and public parking. It is anticipated it will need to be large enough to accommodate 450 vehicles, with the distribution of secure and non-secure parking to be determined during the design process.

Civic Center Park

The re-visioned park is expected to provide activated, safe, and welcoming green space that is suitable for a wide range of uses and community amenities. It is anticipated that the majority of the park improvements will happen after the construction of the new PSF, parking structure, and demolition of the current police facilities.

**ATTACHMENT 2
MASTER PROJECT SCHEDULE**

See below.

EXHIBIT "A"

MAP OF THE SITE

See below.

Attachment A

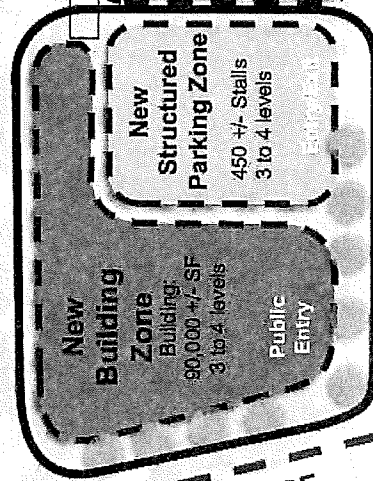
Garden Grove
High School

STANFORD AVE

EUCLID ST

Library

CMC
Senior Center



ACACIA PKWY

CIVIC FRONTAGE

CIVIC CENTER DR

City
Hall

7TH ST

15TH ST



EXHIBIT "B"

ENA PERIOD BUDGET

See below.

Project Development Costs during ENA Rev 1

9/18/2023 DRAFT

Description	Garden Grove ENA Budget (\$)	Comments	Q1-23		Q2-23		Q3-23		Q4-23		FY23		FY24		FY25	
			\$	%	\$	%	\$	%	\$	%	\$	%	\$	%	\$	%
1 ENA Period Bank Loan	\$ 100,000		75,000	75.00%	25,000	25.00%										
2 Interest- ENA Period Bank Loan	\$ 87,000		65,250	75.00%	21,750	25.00%										
3 Reimbursable	\$ 7,000		7,000	100.00%												
4 Subtotal	\$ 497,500		177,250	35.24%	46,750	9.38%	21,750	4.35%	21,750	4.35%	21,750	4.35%	21,750	4.35%	21,750	4.35%
5 Other Fees																
6 Legal Fees																
7 Other Fees																
8 Total Fees																
9 Construction Costs																
10 Land																
11 Construction																
12 Subtotal																
13 Other Costs																
14 Other Costs																
15 Subtotal																
16 Developer Project Management & Administration																
17 Project Management Fees / Expenses (Internal Developer costs)																
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19 Subtotal																
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115 Subtotal																
116 Developer Project Management & Administration																
117 Project Management Fees / Expenses (

EXHIBIT “C”

Monthly reporting requirements:

Project Budget for the construction period

Risk Register for the development and construction period

Master Project Schedule for the construction period

Financing Approach updates

Costs actually incurred by the Developer during the term of the ENA

Sustainability Goals tracker

Life Cycle Cost analysis



CITY OF GARDEN GROVE

October 20, 2023

Brian Dugan, Managing Director
Edgemoor Garden Grove Civic Partners LLC
7900 Westpark Drive
McLean, VA 22102

Steve Jones
Mayor

George S. Brietigam
Mayor Pro Tem - District 1

John R. O'Neill
Council Member - District 2

Cindy Ngoc Tran
Council Member - District 3

Joe DoVinh
Council Member - District 4

Stephanie Klopfenstein
Council Member - District 5

Kim Bernice Nguyen
Council Member - District 6

Dear Brian,

As discussed with your team on October 9, 2023, in connection with the Exclusive Negotiation Agreement entered into between the City of Garden Grove (the "City") and Edgemoor Garden Grove Civic Partners LLC (the "Developer"), dated October 2, 2023 (the "ENA"), the City has reassessed the Developer's ENA Period Budget's \$187,000 in expenses for an ENA period bank loan to finance the Developer's ENA Period Budget.

As part of such reassessment, the City has determined that since (i) \$17.5 million has already been budgeted by the City to fund pre-development costs for the Project and (ii) the City is already contractually obligated to directly fund such ENA Period Budget costs in the event of a termination of the ENA, it is in the City's best interest to save such \$187,000 in financing related expenses. As a result, notwithstanding anything to the contrary in the ENA and in accordance with ENA Section 19, the City will pay the Developer monthly for ENA work actually performed, in each case, not to exceed the total ENA Period Budget in aggregate for all prior months leading up to the date of any payment by the City.

The Developer will submit its monthly invoice as part of its monthly reports required under Section 1(c) of the ENA, and the City will promptly review, and if approved, in whole or in part, pay the relevant portion of such monthly invoices for third-party work and services performed under the ENA. The monthly invoice will include all third-party invoices and related work product to allow for verification by the City. The City agrees to use best efforts to pay the invoice within 20 days of receipt of the invoice and must pay the invoice no later than 45 days of receipt of the invoice.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lisa Kim', with a long horizontal flourish extending to the right.

Lisa Kim
City Manager
City of Garden Grove

Brian Dugan, Managing Director
Edgemoor Garden Grove Civic Partners LLC
October 20, 2023
Page 2

Acknowledged and Agreed

EDGEMOOR GARDEN GROVE CIVIC PARTNERS LLC, a Maryland limited liability company

By: 
Brian Dugan
Authorized Representative

By: 
Frank J. Baltz
Authorized Representative